

Restraint of Trade Subcommittee

MEETING MINUTES

Teleconference - February 16, 2011

Committee Members in Attendance: Curtis Thayer, (Committee Chairman, BMP), Captain Mike O'Hara (SWAPA, BMP), Rick Erickson (CLAA, BMP).

Additional persons present: AAG Gayle Horetski (DOL), Captain Eric Collins (self), Bryan Schultz (Eric Collins), Dick Monkman (SEAPA), Captain Jeff Pierce (SWAPA), Captain Richard Gurry (SEAPA), Bob Arts (BMP, AMA), Bruce Weyrauch (SEAPA), Captain Carter Whalen (AMP), Captain Larry Vose (self), Captain Bob Winter (self), Captain David Anderson (self), Captain Ted Kellogg (self), Captain Ron Ward (SWAPA), Captain Larry Pullin (self), Captain Hans Antonsen (self), Captain Greg Styrk (SEAPA), Captain Peter Garay (AMP), Captain John Schibel (AMP), Captain David Arzt (AMP), Jacob Sonneborn (AMP), and MPC.

Mr. Thayer convened the meeting at 1400 and summarized the intent to review concerns raised at the Board's October meeting with input from the AAG.

AAG Gayle Horetski discussed the correspondence from Captains Eric Collins and Ted Kellogg and Attorney Bryan Schultz which cited AS 45.50, prohibiting monopolies and restraint of trade. She explained the anti-trust statutes prohibit private or commercial entities from restraining trade, however, state pilotage laws essentially create a state-sponsored monopoly. Under AS 45.50.572(a) marine pilot organizations are specifically exempt from the provisions of AS 45.50.562-45.50.596.

AAG Horetski stated that, if the correspondence raised a legal issue, it more likely would be under the 1997 Alaska Supreme Court decision in *AMP v. Hendsch*. The court there found that the legislature has impliedly created a cause of action that an individual pilot could bring against a pilot organization for violations of the Marine Pilotage Act. This reasoning likely would apply to a licensed deputy marine pilot who asserted that he was not being equitably dispatched, and therefore could not practice his profession as a licensed marine pilot. She recommended a review of the legal issues under the *Hendsch* decision and AS 08.62, not under AS 45.50.

AAG Horetski indicated that she was unaware of any prior Board audit of a pilot association, but that such an audit was allowed under AS 08.62.040(a)(7). That statute does not specify how an audit should be conducted.

The subcommittee heard comments regarding a grievance arbitration between Deputy Marine Pilot Eric Collins and SEAPA. Bryan Schultz, attorney for Captain Eric Collins, explained the grievance concerned how SEAPA was administering its bylaws, an issue he views as separate from allegations of restraint of trade.

After discussion, the subcommittee members concluded that the arbitration was a matter between the parties, and not an issue for the Board at this time. Based on the summary of the requirements of AS 45.50 from the AAG, the subcommittee members concluded there are no restraint of trade issues. They did not see a need at this time for an audit of SEAPA's compliance with its bylaws.

The meeting was concluded at 1420.