



## BOARD OF EXAMINERS

*New Orleans and Baton Rouge Steamship Pilots for the Mississippi River*

Lee A. Jackson  
*Commissioner*

Casey E. Clayton  
*President*

Kevin G. Alario  
*Commissioner*

### **DECEMBER 2, 2022 QUARTERLY MEETING MINUTES**

#### **1. Call to Order**

The special meeting was called to order at 10:01 a.m. by President Casey Clayton.

#### **2. Roll Call**

Roll call was taken. Board members present were President Casey Clayton, Captain Lee Jackson, and Captain Kevin Alario.

Also present were Ralph Wall and Jeff Pastorek.

#### **3. Adoption of the Minutes**

Captain Jackson made a motion to approve the August 31, 2022 Quarterly Meeting Minutes; the October 12, 2022 Special Meeting Minutes; and the November 28, 2022 Special Meeting Minutes; Captain Alario seconded. The motion was approved with all Examiners voting in favor.

#### **4. General Session**

##### **a. Update: NOBRA Pilot Contact Information**

Discussion: the BOE has on file contact information for all pilots, and notice has been sent to the membership advising the pilots that they should update the phone numbers, addresses, and e-mail addresses on file if modifications are necessary. Most communications will continue to be sent by e-mail, but, depending on the subject matter, some communications will also be sent by mail. The BOE is depending on each individual pilot to keep his or her contact information current.

##### **b. Update: Anti-Harassment for NOBRA**

Discussion: this program has been put in place and all membership has been notified of the requirement, which is the same for all pilots.

c. Update: Random Drug/Alcohol Testing and Hair Testing 2022

Discussion: the BOE's membership is 99% complete on both tests for 2022. And by all indications, the membership will be in full compliance by the end of the year for both U.S. Coast Guard and BOE compliance testing.

d. Update: USCG Annual Physicals

Discussion: the BOE membership is close to 100% compliance with the U.S. Coast Guard physicals. All members have either provided the necessary documentation or have been in touch about providing the needed documents in the coming days.

e. Update/Discussion: Deputy Pilots Turn Data Submittals

Discussion: several months ago, immediately after the deputy pilot's restriction changed to 820' LOA, the BOE put in place a process for the deputy pilots to report their turns to the BOE. Since then, there has not been full compliance with that process. There was discussion about the fact that, while most deputy pilots have been in compliance in following the reporting protocol, the BOE will need to make decisions about what to do with those who are not in compliance.

f. Update/Discussion: Administrative Rules/proposed changes

Discussion: the potential to change the recency rule was discussed at BOE's August 31, 2022, Quarterly Meeting. Since then, the BOE has received suggestions from the membership about ways to improve the rule. Consequently, Captain Clayton suggested the meaning of a "turn" be changed, for the purposes of recency, and also proposed a specific definition. This definition of a "turn" would be in parity with the Crescent River Port Pilots definition of a "turn," for the purposes of recency, except "special services" would be allowed to count for NOBRA pilots.

Additionally, Captain Clayton described four different revisions regarding VTC to the current rule again taking into account suggestions received by the NOBRA membership. Those four options were discussed and shifts at VTC were considered for the purposes of recency.

Captain Jackson and Captain Clayton discussed the issue of presenting the potential revisions to NOBRA. Captain Clayton and Captain Alario explained that they have had discussions about revisions to the rule with the president of the

Board of Directors for NOBRA, Captain Wattigney, who expressed to both that he had no opposition to the rule change. The only concern he voiced was he wanted to ensure a pilot could use VTC toward their recency in the event of a temporary medical condition affecting his/her ability to pilot vessels on the route. The Board is currently given this discretion in its rules.

Captain Jackson stated that to his knowledge the Board of Directors for NOBRA would not support any changes made to the administrative rules but did not provide any reasoning for this opposition. There were no members of the Board of Directors for NOBRA present at this meeting to provide any further explanation.

Public comment was provided. Several members of the public remarked that special services should be considered a “turn.” Several members urged different opinions about how VTC should be considered. Several members urged that equality among the pilots was very important to them, adding that they did not feel that the current rule created equality among members. All public comments were provided by NOBRA pilots.

Following the public comments, the Board further discussed possible changes to the recency rule. Captains Clayton and Alario agreed with changing the definition of a “turn” for the purposes of recency. Captain Jackson agreed that the rule could be improved upon and was also in agreement with the suggested definition of a “turn.”

The Board again reviewed the 4 options presented with regards to work at the VTC being considered as a “turn.” Captain Clayton asked Captain Jackson which of the 4 options he felt was the best suggestion regarding the VTC. Captain Jackson stated he felt VTC should count, for the purposes of recency, for all unrestricted pilots.

Motion by Kevin Alario to move forward with the formal process of revising the recency rule to include (1) in the definition of a turn would be revised to include pilotage of any vessel for 20 miles, a special services assignment, or any pilotage on a vessel that docks, undocks, anchors, unanchors, or turns around in the river, (2) work performed in VTC to be considered as a turn for the purpose of recency for unrestricted pilots, and (3) to remove the language that in the current rule is contained in section 6312(B)(5) (regarding VTC being considered as a “turn” for purposes of recency for pilots who have been commissioned for 20 years or more). Motion seconded by Captain Clayton. Captain Jackson voted against the Motion. The Motion passed.

g. Update/Discussion: Recency 2022

Discussion: in the past, the BOE has requested recency data from the association for all NOBRA pilots. Historically, NOBRA has provided the information to the BOE to identify which pilots have not met the recency requirement for the calendar year. This year the recency data was requested but NOBRA did not provide the BOE with the necessary documentation. Instead of providing a copy of the information to the BOE, NOBRA agreed to make the information available for review at the NOBRA office, not to include any hard copies for the Board to maintain.

There was discussion about the action to take in the event of any member's failure to complete the necessary turns to comply with the BOE's recency requirement and/or that members failure to remove themselves from rotation for their failure to comply with the recency requirement, including delivery of correspondence from counsel to the member notifying them of their immediate removal from rotation and duty, for counsel to act as the BOE's investigating officer to conduct a preliminary investigation, and for counsel to schedule the necessary hearings as required by the BOE rules and regulations to continue the applicable investigation proceedings.

Ralph Wall, counsel for the BOE, explained that the BOE already has authority to take those actions. However, if the BOE wished to provide specific direction on these matters, a motion would be appropriate. Captain Clayton asked for public comment. Public comments were provided by several present. Captain Lee Jackson suggested that a notice about recency be sent to the membership as a reminder about their recency obligations and to give them the opportunity to discuss the subject with the BOE.

Captain Clayton moved for counsel, upon receipt of verification from the NOBRA association of a member's failure to complete the necessary turns to comply with the BOE's recency requirement and/or said members failure to remove themselves from rotation for their failure to comply with the recency requirement, to deliver correspondence to said member(s) notifying them of their immediate removal from rotation and duty; for counsel to act as the BOE's investigating officer to conduct a preliminary investigation; and for counsel to schedule the necessary hearings as required by the BOE's rules and regulations to continue the applicable investigation proceedings and due process protections afforded the member in violation of 6312 or other applicable board rules and regulations; seconded by Captain Alario. The motion was approved with all Examiners voting in favor.

## **5. Executive Session**

Captain Clayton made a motion to go into executive session pursuant to La. R.S. 42:16 and 42:17(A)(1), (4), and (10) to discuss the below items; Seconded by Captain Alario. The motion was approved with all Examiners voting in favor.

- a. Individual Pilot Reviews
- b. Review/Discussion: Attorney Compensation
- c. Incidents Pending Before the Board
- d. Existing Litigation Update
  - i. Ted Davisson v. Board of Examiners, et al., 24<sup>th</sup> JDC, Case No. 823705, Div. "C"
  - ii. Jeremy Smith v. Board of Examiners, et al., 24<sup>th</sup> JDC, Case No. 825241, Div. "G"
- e. Return to Regular Session

Captain Clayton made a motion to return to regular session; seconded by Captain Jackson. The motion was approved with all Examiners voting in favor.

## **6. Any Necessary Votes Arising from Executive Session**

Motion to increase the monthly compensation to Couhig Partners, LLC and to Capella Consulting, LLC and to review those changes to compensation in six months and, if necessary, to modify the compensation agreements, by Captain Clayton, seconded by Captain Alario. The motion was approved with all Examiners voting in favor.

## **7. Adjournment**

Motion to adjourn meeting by Captain Clayton; seconded by Captain Alario. The motion was approved with all Examiners voting in favor. Meeting adjourned at 12:15 p.m.