

PRESIDENT'S REPORT

GOVERNMENT UPDATE

Maritime Security Program: As of today's meeting, the budget machinations in Washington are in full swing. With roughly \$3.5 trillion in a so-called "reconciliation" bill and another \$1.7 trillion in an infrastructure bill, (not to mention a Surface Transportation authorization that runs only through October 18) under debate the financial support for the National Defense Authorization Act (NDAA), which is where the funding for MSP resides, is unclear. A Continuing Resolution will government open through December 3 and the debt ceiling question is also delayed to that date. Whatever the outcome on the massive federal spending projects, the MSP does not appear in danger unless there is a government closure or default on the debt.

Maritime Administration: At the request of Acting Maritime Administrator Lucinda Lessley, I attended a meeting on sexual harassment at sea with others from maritime labor. The meeting was part of a response to new or resurfaced allegations of a terrible sexual assault and harassment aboard a ship enrolled in Maritime Security Program involving a cadet. The matter is under investigation and the ship involved was not under SUP contract. But because of the sensitivity of the issue and the similarities of the workplace, we have an obligation to confront the issue once again. The industry has to improve on the ability to live and work together productively while sharing confined spaces for long periods of time when there is extreme physical danger. Without developing that skill, support for our profession could be compromised just when we need it most. Moreover, it's the right thing to do.

The SUP opposes unfairness, violence, and discrimination in all its forms. We have a collective responsibility to do everything we can to ensure a harassment-free environment in an evolving workplace. Internally, the Union has zero-tolerance and specific Sexual Abuse, Assault, and Harassment Policy. We regularly provide sexual harassment training of agents, staff and increasingly, members. Our collective bargaining agreements all contain strong non-discrimination clauses which we take seriously. But this incident is a repeat of prior problems, suggesting that something else is necessary, that merely opposing discrimination is inadequate. A "no blame" reporting structure, a characteristic of advanced safety cultures, is a critical if difficult area ripe for improvement. With experience in defending members against sexual harassment and gender discrimination the SUP has worked to enable a blame-free vehicle of investigation – through the careful and faithful use of the grievance procedure where both victims and the unfairly accused deserve and gain respect and due process. There will likely be additional information, training, and materials in support of zero-tolerance for sexual harassment at sea. Generally, taking on the responsibility for maintaining and improving the psychological as well as the physical safety of the workplace should be built into our seagoing awareness. It is a professional skill and a standard feature of maritime safety to practice non-discrimination and actively prevent of sexual abuse, assault, and harassment.

PORT OF OAKLAND HOWARD TERMINAL PROPOSAL

As the membership will recall, a luxury condominium and retail project with a ballpark attached proposed for Howard's Terminal in the Port of Oakland met with the unified opposition of maritime labor in the past. The SUP again joined forces with the Marine Firemen's Union (MFOU), the International Longshore and Warehousemen's Union (ILWU), the Inlandboatmen's Union (IBU), the Marine Engineers Beneficial Organization (MEBA), and the International Organization of Masters, Mates and Pilots (MMP) to fight against the development of rare industrial waterfront property that diminishes the port. The A's have employed a divide and conquer strategy against labor while threatening to move the team to another location if it doesn't get its way. Now as the process nears a new juncture of regulatory approval, maritime labor defended its interests. The letter states in part that "Unlike construction and service work jobs that can exist regardless of where a new baseball stadium might be built, the long-term jobs supported by the maritime industry are unique to the port's location at the waterfront and cannot be relocated. Once port land is lost to commercial development, it is gone forever, along with the jobs it supports and the opportunity for future growth." It further asks the Alameda County supervisors to "do the right thing for the tens of thousands of workers in the maritime industry at the Oakland seaport, including members of our unions, and refuse to contribute county tax dollars to the A's Howard Terminal project." The position of the letter is consistent with those taken by the SUP on this project and many others over the years that would diminish the ports of our employment. See the *West Coast Sailors* or the SUP website for the complete letter.

UFCW LOCAL 5

Vaccination Policy: As with other SUP-contracted employers, UFCW Local 5 desired a vaccination policy for its employees. Although the considerations were similar, the working conditions are unique. Alerted to the pending implementation of a policy that left much uncertain, I contacted President John Nunes in Hayward with questions and discussion ensued. Eventually we reached tentative agreement on the following policy in accordance with UFCW Local 5's duty to provide and maintain a workplace free of known hazards, and the Union's desire for conditions to remain consistent with the intent of the collective bargaining agreement.

1. Overview: Effective during the first (1st) full week after this Letter of Understanding is executed, all unvaccinated employees shall be required to produce the negative results of a PCR COVID-19 test before accessing any Local 5 workplace. Such testing shall be done by employees on their regular Local 5 working hours or during periods of non-working hours. On November 1, 2021, all employees covered under the collective bargaining agreement shall either begin a vaccination cycle or take weekly tests as provided below.
2. Procedure and Documentation: Effective November 1, 2021, COVID-19 proof of vaccination or the continuation, as described above, of evidence of a negative polymerase chain reaction or PCR tests will be required on a weekly basis. Proof of vaccination shall be in the form of a CDC COVID-19 Vaccination Card. Lab test results shall be in writing shall be sent via electronic mail to

nlanderson@ufcw5.org. All employees must complete and return the UFCW Local 5 self-certification form on vaccination status. Questions and clarifications can be directed to the same office at 408 625 5630.

3. Exemptions: Medical or religious exemptions from vaccination must be based on legitimate reasons with support from medical or religious authorities, standards, and practice, and must be requested in writing to Nancy L. Anderson, Human Resources Manager, and shall be handled on a case-by-case basis subject to the grievance procedure. Evidence shall be provided by employees but Local 5 reserves the right to evaluate such evidence. There shall be no exemption from testing unless fully vaccinated. Eligible exemptions may be subject to face-covering rules or other risk mitigations as necessary.
4. Sick leave: Sick leave used due any immediate reaction caused by the vaccination shall not be deducted from employee's sick leave bank on request.
5. Additional Reporting: Employees shall not report to work if symptomatic for COVID-19, e.g., fever or temperature over 100.7, dry cough, loss of taste or smell, etc. If an employee is symptomatic prior to reporting for work, or becomes symptomatic while at the workplace, they shall immediately inform their supervisor, seek medical treatment if necessary, and isolate at home pending instructions from Human Resources.

This policy was distributed to the entire Local 5 membership for review. There were some questions and clarifications but no objections. And so, Mr. Chairman, because this policy maintains employment while at the same time safeguards the health of our members at Local 5, allows for some flexibility in terms of vaccination or testing, because sick leave use related to vaccinations will not be deducted from the member's account, as well as other administrative reliability and fairness, and because it provides access to dispute resolution through the grievance procedure, I recommend ratification.

Preparation for Collective Bargaining: the SUP/UFCW Local 5 Agreement expires on December 31, 2021. By letter dated October 4, 2021, I advised Local 5 of our intention to bargain a new contract. SUP HQ, already engaged with UFCW 5 membership on various representational matters will continue to do so in the context of bargaining. Accordingly, I'm calling all members working under that Agreement to submit written proposals for our collective consideration to improve the Agreement.

VACCINATIONS

With the Biden Administration's vaccine mandate deadline quickly approaching, (more on that later), states, cities, and counties, (most recently Los Angeles), have imposed new mandates and over the last month with increasing momentum. More than 100 large American companies and universities have done so, although a wide variety of programs makes for different definitions of mandates. Where legal objections have been raised and decisions issued – some are still pending – all so far have come down in support of legal right of employers to impose mandates. On

September 30, a judge upheld the University of California's vaccine requirement against a challenge by a professor who alleged he was immune to COVID-19 due to a prior coronavirus infection, a defense known as natural immunity. The U.S. District Court judge overseeing the case said the university system acted rationally to protect public health by mandating the vaccine and not granting exemptions because of some level of natural immunity. As is already the case with health care and airline workers, many unvaccinated American workers could soon lose their jobs if they do not comply with inoculation requirements.

It appears that some shore-based employers are willing to allow for religious or medical exemptions from the vaccine, if other safety protocols in the workplace are sufficient. But offshore maritime employers have so far argued successfully that exemptions will cause undue hardship on their respective operations based in part on the following:

- The workplace is also the living space in commercial ships, and living and working in a congregate setting, sharing quarters, workspaces and a common ventilation system for extended periods poses extraordinary risks for mariners.
- Shipboard employment means in locations remote from any medical care more sophisticated than first aid. There is neither the equipment, drugs, nor expertise to intubate and treat afflicted mariners on board and medevac options are limited.
- Arrival at a port for timely medical care depends on clearance for both the ship and the infected mariner; entry in such conditions has in fact been denied in recent experience.
- Maritime employers have incurred substantial costs to safeguard mariners and create health protections or citadels on board their vessels. Some of the costs include mariner salaries, payroll overlap, travel, and accommodations to as part of quarantine rules before they arrive on board, direct and indirect testing costs, personal protective gear and vessel decontamination costs. When a ship is idle due to quarantine requirements or re-directed to comply with various government regulations around the world there is a lost revenue consideration.

The U.S. maritime industry also now operates in the realm of a precedent setting arbitration that allows vaccine mandates, a fact that any future arbitrator or judge must take into account in dispute resolution. This is neither to argue or adopt the Company position, but rather to weigh the likelihood of success of a reasonable objection to vaccine mandates, and leaving aside, for the sake of argument, what could be the greatest responsibility and most powerful justification – the safety of everyone on the ship.

APL Marine Services: As the membership is aware, effective October 1, 2021, mandatory COVID vaccinations became required for SUP personnel dispatched to Matson offshore, standby and shoreside billets. As reported in September, APL had contacted its Unions with an incomplete proposal for roughly the same vaccination terms and conditions as Matson. Through continuous discussion, most uncertainties were resolved and a LOU styled on Matson's was imminent. APL however pulled back near the end due to undisclosed concerns of its parent company CMA-CGM.

As of today's meeting, that is still the case, but indications are clear that an APL policy is near, with or without the Union's agreement. As with Matson, a controlled policy that provides

certainty and protection, is better than Company imposed confusion. In practical effect, vaccination status is already required because job orders, themselves dependent on a very unreliable ship schedule due to congestion, are lodged with the Union too late to allow what had previously been a workaround system of compliance related to COVID testing on either end of a 10-day quarantine.

Into this mix goes the Presidential Executive Order requiring vaccinations by November 22nd (now likely to be December 8th) that applies not only all federal employees, but also “covered contractors.” The definition of contractor is broadly defined, so much so that the phrase used in guidance issued by the White House COVID Task Force on September 30 is anyone working “in connection with a federal contract.” It includes all federal worksites, including ships. Interestingly, there is no test out option and the covered contractor may still be required to vaccinate if working from a remote location. There are exemptions for authorized medical reasons, or for sincerely held religious beliefs, although the definitions and process are unclear at this time. Since much of our work is either directly or indirectly government work the implications are inescapable. And in fact, on October 6, APL informed me informally that its legal counsel had reached the determination that due to its Maritime Security Program role and its DoD cargo, APL Marine Services is classified as a contractor under the terms of Biden’s executive order. Add to that Patriot’s October 11 notification to its Union of a directive from the Office of Management and Budget that it says firmly registers the Company as a federal contractor, as expected but with far-ranging impact. Vaccination discussion for Patriot continued below. Meanwhile, America’s seagoing unions reiterated their unified position.

Second Joint Letter of Maritime Labor on COVID-19: Maritime labor once again spoke with one voice in favor of voluntary member vaccinations as matter of Union strength and job security. This is the second time that labor issued a joint statement but the first since the vaccines were introduced. It said in part that “Our advocacy for a consistent, reliable, and rapid testing regimen for mariners proved to be worthwhile and effective. Now, with the supply chain and military security of the country at risk, we ask that all of our members educate themselves on the vaccines and choose to get vaccinated. This is primarily for the safety of our shipmates and family members, but also to mitigate the effects of COVID-19 on the industry. It is a matter of future industry stability and mariner job security.” For the full text of the letter see the SUP website or the October issue of the *West Coast Sailors*.

PATRIOT

Covered contractor and vaccinations: Lance Bardo, the president of Walnut Creek-based Patriot Contract Services, said by email that covered contractor status applies and the key elements of the preliminary OMB/Patriot guidance on vaccinations are as follows:

- Covered contractor employees must be fully vaccinated no later than December 8, 2021 except in limited circumstances where an employee is legally entitled to an accommodation. This will mean all Patriot employees ashore and on ships. This date could be earlier if the Watson 2.0 contract is awarded before then as the rule says full vaccination is required on the first day of a new contract. Prior COVID-19 infection does not exempt employees from the vaccination requirement. An employee working

on a covered contract from their residence is a covered contractor employee, and must comply with the vaccination requirement for covered contractor employees, even if the employee never works at either a covered contractor workplace or Federal workplace.

- Patriot may be required to provide an accommodation to covered contractor employees not vaccinated against COVID-19 because of a disability (which would include medical conditions) or because of sincerely held religious belief, practice, or observance. The specific procedures for administering that accommodation will be consistent with industry practice, CA and EEOC regulations, CDC guidelines and established HR practices, but are not known at this time.
- Patriot will require employees to show or provide one of the following documents: a copy of the record of immunization from a health care provider or pharmacy, a copy of the COVID-19 Vaccination Record Card, a copy of medical records documenting the vaccination, a copy of immunization records from a public health or State immunization information system, or a copy of any other official documentation verifying vaccination with information on the vaccine name, date(s) of administration, and the name of health care professional or clinic site administering vaccine. A digital copy of such records, including, for example, a digital photograph, scanned image, or PDF of such a record may be acceptable.

Patriot management pointed out that some of their government contracts and CBA's already contain clauses requiring compliance with immunization requirements for mariner assignment. Management also pledged to work closely with labor to ensure fair implementation when such changes are made necessary.

Finally, management is seeking clarification from the government on various questions. They plan to follow the Executive Order requirements as a legal obligation, however, but will apparently wait on immediate implementation until regulatory formalization (likely through the revised Fair Acquisition Regulations) clause in the MSC contract.

Watson contract status: On September 30, the Defense Department awarded, to Patriot Contract Services, a \$37,649,881 modification for the fixed-price portion of the previously awarded contract to fund the operation and maintenance of the eight government-owned, contractor operated Watson-class large, medium-speed roll-on/roll-off ships. The ships are the *Charlton*, *Dahl*, *Pomeroy*, *Red Cloud*, *Sisler*, *Soderman*, *Watkins* and *Watson* and will continue to support Military Sealift Command's worldwide repositioning requirements.

The modification is a so-called bridge contract that includes a six-month period of performance. Work under the contract began October 1, 2021, and is expected to be completed by March 31, 2022, by which time the protest on the underlying contract, referred to by management as Watson 2.0, is expected to be decided. The Navy's Military Sealift Command, of Norfolk, Virginia, is the contracting activity. Although there is some uncertainty about the timing and applicability of a wage increase, probably related to the Congressional budgetary debate, I nevertheless calculated and submitted to the Company a two percent 2% Total Labor Cost

increase including wages and wage related items and allocated entirely to wages. As of today's meeting we awaiting confirmation of those rate increases and the schedule of payment.

Haina Patriot: As reported in August, Patriot disclosed in a meeting with its Unions that it had acquired another shallow draft product tanker called the *Haina Patriot*. Similar in size and purpose to *PAX*, the *Haina Patriot* is also expected to bid for government and commercial work in the refined product trades of the western Pacific. For the SUP, the goal of increased manning and improved wages in the bid was rejected by management. Management countered with same rates and manning on the grounds of the uncertain mission, charter rates, and overall commercial viability of the ship. After many exchanges of draft proposals ultimately the 2020-21 wages applicable to the *PAX*, were tentatively agreed to. As a bid for new work the wages are competitive but not sub-standard. Still, with many years of manning experience in the *PAX* as a guide, we expect the same challenges in *Haina Patriot*. Management has indicated that it is open to future allocations as well as a possible retention bonus, but in a fixed cost contract the available financial improvements are limited. Yet the Union is bound by contract to fill the billets. This is not a new problem. In the initial activation phase of the *Bob Hope* LMSR contract, the same situation was alleviated with 2 for 1 seniority acceleration. In this case, a boost to seniority accrual rate could help as well. Here, a rate of one and half day for each day or 1.5 times the normal day-for-day rate to apply to all existing and future crew members for six months through March 31, 2021, unless extended by the membership – could make a difference. The idea is to attract qualified members to these jobs and to aid SUP dispatchers at job call. The Marine Firemen have long established an accelerated seniority for Patriot's MSC ships along these lines. All seniority upgrades must still receive the full review and approval of the Membership and Ratings Committee. Therefore, Mr. Chairman, I recommend adoption of the modest 1.5 times acceleration of the seniority accrual rate within the limited six month duration period in *PAX* and *Haina Patriot* only to aid Union performance in dispatching.

The draft Memorandum of Understanding for *Haina Patriot* closely follows the template of the *PAX*, but remains a mostly standard military contract with most of the same terms and conditions but covering the employment in *Haina Patriot*. There are some small improvements including a protection on travel cost deductions and a four-hour overtime per day restriction to ship provision. In part because of its projected dual commercial and military status, and for other reasons, final signatures are still pending but will continue to press for expanded and improved job prospects for members. Together with the 2020 *PAX* rate, I also recommend approval of the draft MOU for *Haina Patriot*.

SUP COMMITTEE ON ELECTION

As per Article XII of the SUP Constitution, all members nominated for elective office at the September coastwise meetings and who desire to become candidates for the 2022-2025 term of office shall have their acceptance in the office of the Committee on Candidates at Headquarters (450 Harrison Street, San Francisco, CA 94105) prior to midnight Wednesday, October 14, 2021.

The acceptance shall be by letter which shall be dated and shall contain the following: a) The name of the candidate; b) His/her home address and mailing address; c)

his/her membership number; and d) the title of the office or other position sought, including the name of the Port in the event the position sought is that of Branch Agent or Business Agent.

No one may be a candidate for more than one office apart from the positions of the Trustee of the SUP Building Corporation and delegate to the SIUNA Convention.

Nominees who fail to comply her in with shall be regarded as having declined the nomination.

Candidates for office may request and require the Union to distribute campaign literature at the candidate's request, provided that the candidate makes such request at least five working days prior to the intended date of mailing and/or distribution and provided that the candidate pay the actual cost of mailing and/or distribution a the time of each request. The cost of mailing and/or distribution shall be at the hourly rate of the Office and Professional Employees International Union (OPEIU) Local 29. Campaign literature that the candidate requests to be mailed must be ready for mailing; stamped and envelopes stuffed and sealed; or flyers stamped, folded and sealed.

Candidates for office are entitled to submit a photograph and a statement of 100 words or less regarding Union issues for publication in a special election supplement to the West Coast Sailors that will be published in November. The statements and photos should be sent to the special editor of the West Coast Sailors prior to November 10 for inclusion in the special election supplement.

Each candidate may also post campaign material on a bulletin board to be set up in each SUP hall for that purpose. The candidate shall be allotted space for one legal-size page (8 ½ x 14) on a first-come, first-served basis.

The secret mail balloting for officers for the 2022-2025 term will begin on December 1, 2021, and end on January 31, 2022. Depending on the recommendation of the Impartial Balloting Agent, we expect the ballots will be counted on January 31, 2022.

The Committee on Election will turn to at Headquarters at 0900 on October 15 to verify the receipt of nominee acceptances, the findings of the Committee on Candidates on the initial eligibility of the candidates, review the recommendations of the Committee on Constitution, select, and recommend for membership approval an Impartial Balloting Agent and otherwise prepare the ballot. The Committee's report will be acted upon at the November coastwise meetings. Mr. Chairman, request that you call for nominations for the Committee on Election to prepare the ballot. Recognizing that in the event that all billets in the Committee cannot be filled today, recommend that Committee positions be shipped off the deck as per past practice.

QUARTERLY FINANCE COMMITTEE

In accordance with Article XXII Section 2 of the SUP Constitution, a Quarterly Finance Committee shall be elected at today's meeting to review the finances for the third quarter of 2021 and report back to the membership in November meetings. Mr. Chairman, recommend that you call for nominations. If the Committee cannot be filled today recommend that when the quarterly audit of the Union finances is complete, the Committee be shipped off the deck as per past practice. The Committee will turn to on November 8th at 0800.

HOLIDAYS

All SUP Halls will be closed on November 11, 2021 for Veteran's Day which is a holiday under all SUP agreements. Hiring halls will also be closed on Thanksgiving Day, November 25, 2021.

ACTION TAKEN

M/S/C to approve the UFCW Local 5 COVID-19 vaccination policy. Carried.

M/S/C to approve *Haina Patriot* contract/terms and 1.5 seniority accrual. Carried.

M/S/C elect a Committee on Election (Ron Reed, Mike Smith, Allen Gonzalez, Peter Leo) to prepare the ballot. Carried unanimously.

M/S/C to approve UFCW Local 5 policy on vaccinations via Letter of Understanding. Carried.

M/S/C to concur in the balance of the President's Report. Carried unanimously.