

# **PRESIDENT'S REPORT – FEBRUARY 2022**

## **VIRUS UPDATE**

The Omicron wave came, blasted our bracing and shook the Union. Operational disruptions multiplied as many members got sick and/or tested positive for the highly contagious variant. Reduced virulence was little consolation against the speed and scope of the spread, both for health and for operations that depend on a merely (positive/negative) binary test. And throughout January outbreaks on the job and going to the job caused delays, heightened screening, special situations, quarantines, and dispatching headaches.

Now the numbers tumble from peak infection, and the fervent desire to return to normal argues emotionally for a more relaxed approach to the pandemic. Some states have dropped some restrictions (masking), but still leaving it to local authorities based on varying self-generated standards. And the Supreme Court issued a confusing decision striking down vaccine mandates only and only as required by the Occupational Health and Safety Administration (OSHA). And it appears the next endemic or low-level but continuous phase is here or will be soon. But in our maritime workplace the rules flow mostly from the Coast Guard, which regulates ships, not OSHA, and the Coast Guard takes its direction from the Center for Disease Control (CDC). CDC disagreed with the states on masking among other things, and still does, forcing President Biden to say on February 12<sup>th</sup> that it was too soon to lift restrictions. Remember too that the COVID-19 restrictions put in place by foreign states, particularly China, add another layer compliance complexity that despite our objections is a fact of sailing in the international trades. We have jobs on ships in the international trades, and so by practical effect our hiring halls – like it or not – are partly connected to all the standards required by international shipboard employment.

This confusing array of standards, decisions and regulations emerged over the last month in a whiplash jungle of mind-numbing detail. If not for the serious existential consequences, the Union might claim a broad exemption due to the sometimes absurd complexity and contradictions. But that is not our fate: lives, jobs, and the future of the Union are still at stake. It is not simple and not easy, but neither is it chaos, and the last month has taught us yet again that we can do hard things. Even as it changes, the pandemic still rages. Here is a summary of points:

1. The Supreme Court ruling was on vaccine mandates, not masking, or testing or other COVID-19 related issues. It said that the OSHA could not force workplace vaccines on large employers. The effect of that decision was not to eliminate vaccines, but only to shift the authority for the requirement from OSHA back to the employers. In other words, an employer who has a non-arbitrary and non-discriminatory lawful policy that supports reasonable vaccination particularly in recognized hazardous environments has been found to be operating lawfully and both retains authority. In maritime employment, arbitrators and courts have confirmed that authority.
2. If states are changing their approach to masking and other restrictions, we are still held by Coast Guard standards and legitimate lawful company policies. So far, based on the rules of each particular jurisdiction that includes masking in many congregate settings where “up-to-date” vaccinations or pre-event testing cannot be established.

Up-to-date vaccinations, by the way, will eventually replace the term “fully vaccinated” as the pandemic goes on.

3. It is a frustrating reality that foreign regulation (such as China’s no-COVID policy) within the port state control system affects our workplace. The operational fitness of mariners comes in terms of vaccinations, foreign travel history, recency and type of testing, elapsed time from testing to arrival in China. To assert exemption is to declare oneself ineligible or worse; and could easily lead to outbreaks, ship quarantines and detentions overseas and other hardship.

**Matson Restriction to Ship:** In the Omicron context on January 6 Matson issued a COVID-19 update that stated in part: “In response to the rapid and pervasive spread of the COVID-9 Omicron variant” and “to advance crew safety and prevent an Omicron outbreak on a Matson ship, shore leave has been temporarily suspended and crewmembers are required to remain aboard the ship while in port.” The policy also prevented access of all personnel except those “absolutely necessary” to ship operations. It said the duration of this temporary shore leave restriction is unknown, but management promised to monitor the virus case situation and lift the restriction based on safety in each port. Along MFOW President Anthony Poplawski, I instructed Matson delegates to record and register restriction-to-ship claims under Section 18, and the next day, on January 7, the company stated that they would not contest any such claims. But on a series of calls management requested suspension of all trips off and other crew reliefs to “get past the peak of the Omicron surge.” The SUP considered the request, but along with the MFOW ultimately rejected it, mainly based on the harm done to registered members awaiting these jobs. These normal expectations serve the Union’s original pandemic goals: to maintain and continue hiring hall dispatching according to our hard-won rules of fairness, transparency, and democracy. To this end, on January 21<sup>st</sup>, a conference call between Matson management, myself, and MFOW President Poplawski, this and all related matters was raised again. It was agreed that the parties would adhere to the MFOW and SUP Shipping Rules except for the temporary Honolulu rule that provides for the Honolulu reliefs to be flown to the West Coast upon completion of a Honolulu-dispatched mariner’s maximum period of employment. The Unions also agreed to take special circumstances into consideration, such as when positive pre-employment tests pop up, and in situations that fall under the Chinese COVID requirements and timelines.

**Vaccination Mandate Exemptions:** While the Supreme Court recognized that OSHA has the power to regulate COVID-19 risks in environments that may be uniquely susceptible to transmission, it said it went too far in other cases. The decision changes the legal framework, but not necessarily the practical reality since now the decision to require vaccinations returns to employers and their own assessment of the risks in their own workplaces. Nothing affecting employees in a Union workplace can be arbitrary, capricious or discriminatory, but if a valid policy meets a standard test of reasonableness and provides for religious or medical exemptions with reasonable accommodations (if available), then it is legal. Of course, the position of offshore employers on the topic is not a mystery. They have as a matter of record (upheld in arbitration) that living and working on commercial ships pose extraordinary risks given the congregate setting, shared ventilation, work areas, and living quarters. Ships are also often far away from the professional medical care necessary to treat some infections. The contagious nature of the disease also makes port clearances difficult or slow, especially in foreign ports. Finally, as a measure of “undue hardship” one of the legal tests other than health and safety is the

economic costs such as to pressure on restriction compensation, quarantine and detention costs, testing costs among others. The Union's role is not to make a determination but only to evaluate the appropriateness of the Company response and if inappropriate whether we can prevail in arbitration. From what we've seen so far, it appears that such requests unlikely to succeed.

## GOVERNMENT CONTRACT MATTERS

**Watson-class:** More than three years from the outset of the bid, Patriot Contract Services received word that it has finally won the *Watson*-class bid and defeated all protests. The successor contract covers the operation and maintenance of eight ships, all of them Large Medium-Speed Roll-on/Roll-offs (LMSRs). The ships are the USNS *Charlton*, USNS *Dahl*, USNS *Pomeroy*, USNS *Red Cloud*, USNS *Sisler*, USNS *Soderman*, USNS *Watkins* and USNS *Watson*. The protest period of the bid had a life of its own, extended in part by the pandemic, and carried out through at least three steps including the Government Accountability Office, the District of Columbia Court of Appeals, and the Military Sealift Command itself. Through it all SUP mariners held fast and stayed on course. Now a new Watson era dawns with excellent ongoing job prospects for SUP mariners as well as contributions to support our benefit plans and the Union. That long-withheld certainty makes possible a temporary new hire. To aid and assist all SUP members, agents and dispatchers in the difficult work of crewing ships, and under the authority of Article XIV of the SUP Constitution, I have asked Brother Sam Worth to help out as a temporary assistant relief dispatcher with a focus on filling relief requests and building the reserve pool to ensure timely reliefs.

**Ready Reserve Force:** Last October, the Pacific District Union proposed, and Matson and Patriot agreed to, a 3.5% and 4.5% for Option Period 2 (Years 7 and 8) increase in wages and wage related items in terms of total cost in the vessels they manage for the U.S. government's Ready Reserve Force sponsored by the Maritime Administration. In accordance with the MOU between PCS and the SIU-PD, the terms and conditions of employment for the operation and maintenance of RRF ships, effective January 27, 2022, include the three and one-half (3.5) percent total labor cost on wages and wage related items and fringe benefits contributions. The Patriot ships are the GTS *Admiral Callaghan*, MV *Cape Orlando*, MV *Cape Taylor*, MV *Cape Texas* MV *Cape Trinity*, MV *Cape Victory* and MV *Cape Vincent*. The Matson operation includes the MV *Cape Henry*, MV *Cape Horn*, and MV *Cape Hudson*. Mr. Chairman, I recommend that the percentage increase to wage and wage-related items are applied to wages and wage related items, and that fringe benefit contributions be allocated as necessary. Expect the new wage scales will be printed in the *West Coast Sailors* in March.

**Maritime Prepositioning Force (MPF) vessels:** In November 2020, MSC published solicitation N32205-21-R-4117 for the operation and maintenance of six (MPF) vessels - *USNS Bobo*, *USNS Button*, *USNS Lopez*, *USNS Lummus*, *USNS Stockham* and *USNS Williams*. PCS is one of the ship managers that bid on the solicitation. The bid is awaiting award and will keep the membership informed of any developments.

**Maritime Administration on SASH policy development:** As the membership will recall, an incident of reported sexual abuse of a cadet in a U.S.-flag ship triggered an inquiry and reform initiative at the Maritime Administration. The Unions have been consulted and on

January 20<sup>th</sup> maritime labor held a conference call to discuss the details and unite in support a safe workplace. We pledged to work with Congress to get that done. A letter to the Chairman of the House Transportation Committee, Rep. Peter DeFazio (D-OR) that jointly expressed our shared commitment against sexual abuse and harassment, and to encourage incident reporting incidents to the proper authorities was signed and sent. We also noted that Congress must remember the unique nature of employment aboard merchant ships and recognize the protection of due process and privacy rights for the overwhelming majority of mariners who do not engage in such illegal and objectionable behavior. Many of the items are technical, such as what stands as an offense, how it is determined, the appropriate lookback period, and reporting requirements. Other items are more general and broadly applied such as a proposed offenders database and how that works, new video and audio surveillance, and restrictive alcohol policies. Whatever version makes it to the House floor, there is a strong likelihood that life at sea will be different once legislation is passed and new SASH regulation is in place. The membership is reminded of the seriousness of the issue and the honest reform effort being here undertaken. Workplace violence of any kind is unacceptable and intolerable, and the SUP will continue to advocate for a safer working environment for all mariners.

**USVI Second Registry:** The enemies of U.S.-flag shipping never rest. Now comes yet another second register scheme, this time based in the U.S. Virgin Islands, proposing to make the U.S.-flag shipping industry “more competitive.” The word “competition” here is meaningless except as signpost of sham, the typical subterfuge of international profiteers at the expense of American merchant mariners. “Competition” in a context like this means open to trans-national corporate plunder, it means a race to the world’s worst wages and conditions and safety and environmental standards, it means, it means offshoring what’s left and what’s good about the remaining American merchant marine.

The presidents of the seagoing unions spoke with one voice in a strong letter of objection, blasting the forces behind the flag-of-convenience expansion, and warned Congress to steer clear. “Open registries exist so that shipowners can increase their profits by avoiding the same rules, regulations, tax obligations and manning requirements that attach to a national flag fleet,” they said. “It is nothing more than an effort in labor arbitrage designed to generate registry fees at the expense of American workers and America’s national interests.”

They wrote “The proposed Virgin Islands flag of convenience open registry will not benefit the United States nor America’s maritime industry, any more than any other second or open registry benefits a national flag country. In fact, the establishment and growth of second registries by other industrialized nations has done little more than decimate their national flag fleets to the point that they are no longer able to provide the requisite military security and logistical support to their flag nations.”

The history of the U.S. merchant marine is characterized around boom-and-bust cycles, usually before and during wars, that force the nation to realize that projecting power and defending resources around the world requires ships. When the war is over the fleet is forgotten and ships are reduced by shipowners seeking maximum profits. The Unions have always stood as a bulwark to these trends, recruiting, training, and building qualified pools of mariners for all contingencies, faithfully answering the call whenever needed. The essence of the slogan “In

Peace and War” is a private commercial merchant marine, along the lines of a ready militia, available for national deployment at any time for any purpose.

The letter took note of this fact. “At its core, this proposal, allowing for the operation of vessels with foreign mariners under a United States open registry, is an affront to the American mariners who have always put themselves in harm’s way whenever called upon by our nation. Their service, most recently recognized by Congress with the award of a Congressional Gold Medal to World War II American merchant mariners, represents a clear and unwavering commitment on the part of American merchant mariners to supply and support American troops deployed around the world, with no regard for their own safety.”

And today’s extreme focus on the troubles of shipping, particularly its unreliability, cost and delay, should include U.S.-flag shipping as part of the solution and not the problem. Maritime labor put this on the record: “If the supply chain crisis has taught us anything it is that we, as a country, must begin to reverse the dangerous reliance we have on foreign sources for goods, commodities and for shipping services. Increasing America’s dependence on foreign owned and foreign manned vessels will only exacerbate the current situation and will not somehow magically enhance America’s maritime posture.” The backers of this latest flag-of-convenience scheme are invoking magical thinking in support avaricious goals. \

The letter from a unified maritime labor (including the AMO, MEBA, MFOW, MMP, MTD, SIU, SUP, and TTD) was sent to the Biden Administration, Congress, and the media. Will keep a weather eye on this ill-conceived and disrespectful initiative.

## **SUP ELECTION**

The triennial SUP Election concluded on February 1, 2022 with results certified by the SUP Balloting Committee and Unilect Election Services, the impartial balloting agent.

All unopposed candidates – President David Connolly, Vice-President Matt Henning, Seattle Branch Agent Brendan Bohannon, and SF Business Agent Roy Tufono were elected – as were the sole nominees for the SUP Building Corporation Trustees (Connolly, Henning, Tufono, Paul Fuentes and Mike Worth). The constitutional amendment to increase dues failed to garner the necessary two-thirds of those voting. In Honolulu, Acting Branch Agent Pat Weisbarth was elected in Honolulu, and Wilmington Branch Agent Leon Gandy was re-elected in Wilmington. Matt Henning, Roy Tufono, and Dave Connolly were also elected to represent the membership as delegates to at the SIUNA convention later this year.

A profound note of thanks is due to all participants, including especially the SUP Balloting Committee for their careful oversight over all aspects of the process and to all the members who voted to support the democratic traditions of the SUP. On behalf of all those elected I want the membership to know that we’ll do our level best to live up to our traditions, our Constitution, and your high expectations. Congratulations.

## **UFCW BARGAINING**

After two months of bargaining, the Union reached a tentative agreement with the United Food and Commercial Workers, Local 5. The fundamentals of the draft MOU include a three percent (3%) increase in each year over three years, an increase in phone expense reimbursement, a limited sick leave severance payout at retirement, an increase on the vacation cap, an accelerated access to the next-step salary progression for new hires, a new COVID-19 sick leave recognition, and a \$750.00 ratification bonus, among other things. The terms are pending the approval of Local 5's Executive Board and then will be subject to ratification by the SUP membership employed by Local 5 and the membership in general. Will keep the membership informed and expect to present the final terms in March.

## **QUARTERLY FINANCE COMMITTEE**

The SUP Quarterly Finance Committee met on February 15 to review the audited finances of the Union for the fourth quarter of 2021. Due to maintenance of income and careful control of costs, the Union remains on an even financial keel. The regrettable failure of the dues initiative in the just concluded election will not strengthen the Union's balance sheet, but neither will it jeopardize the near and medium-term financial stability of the Union at its present and expected expense load.

## **TRIP OFF RULES**

Shipping Rule 56 (55) on the mandatory trip off was created by members to strengthen the SUP by providing access to the work for all members, especially those of junior seniority, and especially when shipping got tight. It was borne of the idea that senior members understood the need to bring in new members and allow sufficient work opportunities to make a living while advancing seniority. Companies agreed to it with the understanding that it would cost them nothing. That is still the requirement. The Rule developed over the years to include other provisions, including the emergency trip off, intended to allow members in specific circumstances not to lose their jobs due to a real emergency ashore. But the trip off is not to be used as a "disability hold" on a job in an Unfit For Duty (UFFD) situation. In fact, the rule specifically states that "in cases of emergency (not including the illness or injury of the individual making the request, Class A, B, or C member may be granted a trip off upon presentation of proof of such emergency." Members and delegates are requested to take note and adhere to the principle of the rule.

## **HOLIDAYS**

**Lincoln's Birthday and President's Day:** SUP hiring halls will be closed on Monday, February 14, and on Monday February 21, 2022 in observance of Presidents' Day. Both days are contract holidays under the APL and the Matson Offshore Agreements.

## **ACTION TAKEN**

To allocated percentage increase in Ready Reserve Force on wages and wage-related items to be applied to wages and to allocate among fringe benefit contributions as needed. Carried.  
To concur in the balance of the January and February President's Report. Carried.