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Asserting our right "…to petition the Government for redress of grievances."
Amendment 1, U.S. Constitution, Dec. 15, 1791

HEADHUNTING – A QUESTIONABLE OR ILLEGAL MARINER EMPLOYMENT PRACTICE

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HEADHUNTING DEFINED

õ**Headhunting**ö refers to the practice of using independent personnel contractors to recruit mariners on behalf of companies that own or operate vessels. The practice of **charging seamen** for this service was prohibited by the International Labour Organizationøs Placing of Seamen Convention No. 9, (1920). The wording of this Convention and should speak for itself ***except*** that it never was ratified by the U.S. Senate.

OUR ASSOCIATION'S POSITION ON THIS ISSUE

Our Association, in agreement with ILO Conventions No. 9 (1920) and No. 179 (1996) and applicable United States statutes, asserts that ***all expenses incurred for recruiting and hiring individuals*** to serve on all Coast Guard inspected vessels including towing vessels ***should be borne by the employer and not by the mariner***.

Mariners should not be required to enter into agreements where a significant portion of their paycheck is returned to an employment agency for the õprivilegeö of maritime employment. We assert that these practices have existed for at least the past 40 years in violation of statutes to the contrary.

The fact that most mariners may not complain about the problem to the Coast Guard does not mean that this problem does not exist. Many mariners have complained to us ó and we listen to their complaints.

Seeking employment in the maritime industry for the uninitiated often is little more than embarking a dangerous adventure that often does not end well. Even experienced mariners experience problems in changing jobs or finding work in a poor economy. Most õlimited tonnageö mariners, who are a majority of all credentialed mariners[(1)] are õemployees at willö and can be fired for any reason at any time without justification.[(2)] In this day and age, and with our experience in dealing with mariner issues, employment in this industry can no longer be considered as õprivilegeö worth paying for. *[[(1)]Refer to our Report #R-353, Rev. 2. [(2)]Refer to our Report #R-370-D, Rev. 6.]*

SEAMAN'S ACT OF 1915

The Seamen's Act, formally known as Act to Promote the Welfare of American Seamen in the Merchant Marine of the United States[1] was designed to improve the safety and security of United States seamen. The 1915 statute has been described as the Magna Carta of sailors' rights." *[[1]Act of March 4, 1915, ch. 153, 38 Stat. 1164.]*

The Act was sponsored in the United States Senate by Robert M. LaFollette (R. WI). The International Seamanøs Union had significant influence on the drafting of the Bill, with the President of the Union, Andrew Furuseth cited as being behind the intent and content of the bill. President Woodrow Wilson and his Secretary of Labor William B. Wilson supported its passage.

The Act was designed to promote the living and working conditions of seamen serving in the United States Merchant Marine. It applied to vessels in excess of 100 gross tons, excluding river craft.

The Act included provisions, among others, to:

- abolish imprisonment for desertion
- reduce penalties for disobedience
- regulate the working hours of seamen both at sea and in port
- establish a minimum quality for rations supplied to seamen
- regulate the payment of wages to seamen (including õadvancesö)
- set safety requirements, including the provision of lifeboats
- require a minimum percentage of the seamen aboard a vessel to be qualified able seamen.
- require at least 75% of the seamen aboard a vessel to understand the language spoken by the officers

Trade unions like the ISU provided much of the impetus for the bill, further promoted by the increasing international tensions in the years preceding the First World War. The bill was first proposed in 1913, but became law after the beginning of hostilities in Europe, though before the United States joined the conflict. The sinking of the RMS Titanic in 1912 raised many issues of safety at sea as a political issue as well. However, the Seamenøs Act did little to help seamen who were injured in the course of their duties, and the Merchant Marine Act of 1920, commonly known as the Jones Act, was passed in an attempt to address such incidents.

INTERNATIONAL LABOUR ORGANIZATION CONVENTIONS NO. 9 & NO. 179

Founded in 1919 following the First World War to bring governments, employers, and trade unions together for united action in the cause of social justice and better living conditions everywhere, the International Labour Organization (ILO) in 1946 became the first specialized agency of the **United Nations**.[1] *[[1]Refer to NMA Report #R-211-A, Background Paper on the Maritime Activities of the International Labour Organization by Bjorn Kierck Nilson.]*

In June 2000, Father Sinclair Oubre of the Apostleship of the Sea and a diligent follower of merchant mariner affairs as a member of the Merchant Marine Personnel Advisory Committee (MERPAC) brought to the attention of our Association the following passages from the International Labour Organizationøs Placing of Seamen Convention, 1920, which stated in part:

- **Article 1:** For the purposes of this Convention, the term "seamen" includes all persons, except officers, employed as members of the crew on vessels engaged in maritime navigation.
- **Article 2**: (1) The business of finding employment for seamen shall not be carried on by any person, company, or other agency, as a commercial enterprise for pecuniary gain;[1] nor shall any fees be charged directly or indirectly by any person, company, or other agency, for finding employment for seamen on any ship (2) The law of each country shall provide punishment for any violation of the provisions of this Article. . *[[1]**Vocabulary: Pecuniary gain** means as a for-profit business enterprise.]*

It was quite clear to us at the time, as it is now, that many private employment agencies were finding jobs for mariners and profiting handsomely for doing so. ***While we appreciate the role of both state and private employment services, we assert that all charges for matching the needs of employers with potential employees should be at the expense of the mariner.***

In 1996, the International Labour Organization drew up the Recruitment and Placement of Seafarers Convention (No. 179) that replaced the 1920 convention. This convention went into effect in 2001 and was ratified by nine countries including the Philippines. The Philippines alone provide an overwhelming number of mariners engaged

in worldwide trade. The new convention, unlike the 1920 convention does not distinguish between õofficersö and õratingsö as seafarers. The term õseafarers,ö however, replaces the term õseamen.ö Nevertheless, the United States Senate has not ratified these and many other ILO conventions so it is not õthe law of the land.ö

In regard to employment, Article 4(a) of the Recruitment and Placement of Seafarers Convention, 1996 (ILO No. 179) went even further even though the United States never signed that convention. It states: "A Member shall by means of national laws or applicable regulations: ensure ***that no fees or other charges for recruitment or for providing employment to seafarers are borne directly or indirectly, in whole or in part, by the seafarer***.."

WORDING FROM THE PLACING OF SEAMEN CONVENTION, 1920 (NO. 9)

Date of entry into force: **23 November 1921**

Article I

For the purpose of this Convention, the term "seamen" includes all persons, except officers, employed as members of the crew on vessels engaged in maritime navigation.

Article 2

1. The business of finding employment for seamen shall not be carried on by any person, company, or other agency, as a commercial enterprise for pecuniary gain; nor shall any fees be charged directly or indirectly by any person, company or other agency, for finding employment for seamen on any ship.
2. The law of each country shall provide punishment for any violation of the provisions of this Article.

Article 3

1. Notwithstanding the provisions of Article 2, any person, company or agency, which has been carrying on the work of finding employment for seamen as a commercial enterprise for pecuniary gain, may be permitted to continue temporarily under Government license, provided that such work is carried on under Government inspection and supervision, so as to safeguard the rights of all concerned.
2. Each Member which ratifies this Convention agrees to take all practicable measures to abolish the practice of finding employment for seamen as a commercial enterprise for pecuniary gain as soon as possible.

Article 4

1. Each Member which ratifies this Convention agrees that there shall be organized and maintained an efficient and adequate system of public employment offices for finding employment for seamen without charge. Such system may be organized and maintained, either -
   (a) by representative associations of shipowners and seamen jointly under the control of a central authority, or,
   (b) in the absence of such joint action, by the State itself.
2. The work of all such employment offices shall be administered by persons having practical maritime experience.
3. Where such employment offices of different types exist, steps shall be taken to coordinate them on a national basis.

Article 5

Committees consisting of an equal number of representatives of shipowners and seamen shall be constituted to advise on matters concerning the carrying on of these offices. The Government in each country may make provision for further defining the powers of these committees, particularly with reference to the committees' selection of their chairmen from outside their own membership, to the degree of State supervision, and to the assistance which such committees shall have from persons interested in the welfare of seamen.

Article 6

In connection with the employment of seamen, freedom of choice of ship shall be assured to seamen and freedom of choice of crew shall be assured to shipowners.

Article 7

The necessary guarantees for protecting all parties concerned shall be included in the contract of engagement or articles of agreement, and proper facilities shall be assured to seamen for examining such contract or articles

before and after signing.

Article 8

Each Member which ratifies this Convention will take steps to see that the facilities for employment of seamen provided for in this Convention shall, if necessary by means of public offices, be available for the seamen of all countries which ratify this Convention, and where the industrial conditions are generally the same.

Article 9

Each country shall decide for itself whether provisions similar to those in this Convention shall be put in force for deck officers and engineer-officers.

Articles 13 and 14: Entry into force immediately following registration of two ratifications. Thereafter, entry into force for other Members on the date on which their ratification is registered.

APPLICABLE UNITED STATES STATUTES

Whatever noble purposes the International Labour Organization (ILO) may pursue, it is up to the United States Senate to ratify all conventions, treaties, etc. with foreign countries and turn them into United States law. Even though neither ILO Convention No. 9 nor No. 179 ever was ratified by the Senate, Congress did enact the following statutes many years ago in the wake of the Seamenøs Act of 1915[1] that were reflected in both ILO No. 9 and .ILO No. 179. *[(1)For the connection, refer to U.S. Code Annotated, Popular Name Table under "Seaman's Act".]*

Existing provisions in U.S. law supports several points brought out in these international conventions. Since these statutes are contained in Title 46, U.S. Code, the U.S. Coast Guard ***should be*** the primary Executive Branch agency that enforces these statutes. Key portions of the applicable statutes specifically state:

- **46 U.S. Code §10505(a)(1)(C):** "A person may notómake to another person an order, note, or other evidence of indebtedness of the wages, or pay another person, for the engagement of seamen when payment is deducted or to be deducted from the seaman's wage." (Emphasis ours)
- **46 U.S. Code §10505(a)(2)** states: "A person violating this subsection is liable to the United States for a civil penalty of not more than $5,000. A payment made in violation of this subsection does not relieve the vessel or the master from the duty to pay all wages after they have been earned."
- **46 U.S. Code §10314(a)(1)(C)** states: "A person may notómake to another person an order, note, or other evidence of indebtedness of the wages, or pay another person, for the engagement of seamen when payment is deducted or to be deducted from the seaman's wage."
- **46 U.S. Code §10314(a)(2)** states: "A person violating this subsection is liable to the United States for a civil penalty of not more than $500. A payment made in violation of this subsection does not relieve the vessel or the master from the duty to pay all wages after they have been earned."

To the best of our knowledge and belief, the Coast Guard has never promulgated a regulation that indicates that they intend to enforce these statutes. Consequently, over the past 40 years, thousands of mariners have paid large fees to private employment agencies to secure maritime employment. We have asked Congress[1] to stop this practice and intend to renew our request. *[(1)Refer to our Report #R-350, Rev. 5, Issue "X".]*

The full text of these statutes appears on the last page of this report.

PRIVATE MARITIME EMPLOYMENT AGENCIES

For at least 40 years, maritime employment agencies have openly done business and thrived on money from securing jobs for mariners throughout the United States. A casual perusal of todayøs major trade publications contains numerous listings of these õheadhunterö agencies. Many of our mariners have reported paying hundreds and thousands of dollars to these agencies to obtain jobs on ocean, coastwise, inland, rivers and Great Lakes routes on all types and sizes of merchant vessels.

We received many reports of mariners paying dearly for jobs that only last a brief period of time. After they are terminated, often shortly after their employment fees are paid, these mariners realize that their fees did not secure anything that could be considered a permanent job. This generates an almost perpetual round of employment fees at marinersø expense. Consequently, mariners become indebted to employment agencies not only for finding them a temporary job but also for a variety of services including:

- cash advances with interest.
- providing room and board between jobs afloat.
- providing medical and drug testing services to get a job.
- transportation fees for delivery to and from the job sites.
- advances to pay for training to be eligible for employment.

Union Reports Problems With Headhunters

[In our Newsletter #33 (Aug. 2005) we reported this warning about "headhunters" directed to members of Local 333, UMD-ILA to its members exerpted in part as follows: Many of Local 333 members are "limited tonnage" mariners.].

The law means you can not enter into an agreement allowing the company to deduct payment to the Headhunters from your pay check. If a company uses an agency **the company** must pay the fee.

If an agency or company has told you õYou do not have to pay union fees and dues if you were hired through an agency,ö you have been ***mislead***. You are obligated to pay fees and dues if you are shipped to a company under union contract. That is the law and you will be made to pay or lose your job.

Unions are not in the business of causing people to lose their jobs. Considerations are made for those mariners who have been unlawfully treated by any company or agency.

Don't be duped into paying twice. You can ship directly from the union hiring hall. Just give them a call. Local 333 in New York will ship you with a temporary union card. You pay nothing. It costs nothing to ship. ***No one will ask you to sign your pay check away.***

You have three or four months to pay initiation, which is only a third of most headhunter fees. You will pay about thirty dollars a month dues. You will never have to pay to ship again no matter how many times you use your hiring hall. The union will fight for your rights. The union negotiates your pay hikes, benefits, and job improvements. You get arbitration protection and legal assistance should you become involved in a labor dispute. Your union dues help support lobbying efforts and afford representation for mariners in Washington.

We are sure there are credible agencies that charge a fair price, tell you the truth, and do not take your money out of your paycheck illegally. Beware of those that do! Like something out of the dark ages they are evil õRapper Brownö types who prey on seaman!

If you have been lied to by an agency or company while being shipped to a Local 333 company or had money taken from your pay check you should contact Local 333. (Even if you signed an agreement your rights still were violated) The unionøs legal department would like to hear your story. You may be entitled to your money back. Contact us at 718-727-5675.

Most õlimited tonnageö mariner, unlike upper-level mariners, are not members of a recognized labor union and do not have a labor organization that looks out for the best interests of their mariners. In tough economic times as we have experienced for several years, even labor unions cannot always find jobs for their members. Consequently, when jobs become available, even short-term spot jobs, our mariners become vulnerable. It is at times like these that enforcing existing statutes become even more critical.

COAST GUARD POSITION ON THIS ISSUE

Before presenting any issue to Congress, we determine the Coast Guardøs position.

On Oct. 6, 2000, our Association wrote to the Eighth District and presented the foregoing information. We received a reply in a letter dated Nov. 7, 2000 from CAPT C.M. McNally, Eighth District Legal Officer. The letter stated in part: "The statutes to which you refer do notí prohibit a seaman from using an employment agency to secure employment on a vessel and paying a fee therefore. Neither do they prohibit a vessel owner from using the services of an employment agency to facilitate crewing his vessel ***so long as he pays the agency directly***. Rather the statutes prohibit a person from entering into an agreement for the engagement of a seaman ***and then deducting payment for the service of engaging that seaman from the seaman's pay."***

[NMA Comment: In our experience, the employer does pay the employment agency directly and even signs a contract to do so – but the employer pays the agency with money deducted from the mariner's paycheck.]

We assert that many employment agencies charge mariners for their services in obtaining employment for them and arrange for the employer to deduct the agreed-upon amount from their employeeøs paycheck to satisfy this debt. Thereby the employer is enlisted to serve as the employment agencyøs collection agent. In addition, some employment agencies provide additional services ó some necessary to comply with Coast Guard regulations ó on a for profit basis. Our complaint does not extend to such services.

WE REQUEST ADDITIONAL INFORMATION FROM OUR MARINERS

Although a number of mariners have explained the process to us in detail, we need additional factual evidence such as copies of employment contracts from our mariners and letters citing other abuses of the system. Although we have contacted attorneys in regard to this matter, we must obtain a body of factual evidence from our mariners that show that existing statutes are being violated. Consequently, if, after reading the statutes recited above, you believe that you have been treated unfairly ***at any time during your career afloat***, and if you are willing and able to produce sufficient paperwork including personal letters describing your experiences with the process to back your position, please contact our Association.

NMA WILL RENEW OUR APPROACH TO THE 112th. CONGRESS

Our Association approached the 110th and 111th Congress with this issue in NMA Report #R-350, Rev. 5, Issue õXö ó õReview Existing Employment Statutes and International Conventions.ö Since no action was taken, we plan to renew our request as follows:

[Request for Congressional Action: We ask Congress to review and provide for adequate enforcement of existing maritime employment statutes to protect our mariners serving on all inspected vessels and to extend coverage of "coastwise" voyages to mariners serving on inland, rivers and Great Lakes routes.]

Discussion: Congress previously enacted legislation that we believe clearly asserts that all expenses incurred for recruiting and hiring merchant mariners must be borne by the employer and ***not*** the mariner. Since these statutes date back almost 100 years, we believe Congress should ***review*** the specific statutes listed above to determine:

- If the wording of the statutes are sufficiently clear to express the will of Congress? *[We question why statutes that appear clear to our mariners have not been enforced for at least 40 years!]*
- Who should these statutes apply to? *[We believe they should apply to **all** mariners who work on **inspected vessels** including towing vessels regardless of route or tonnage. What about uninspected vessels?]*
- Which agency should be responsible for drafting regulations to enforce these statutes? *[It is clear that the Coast Guard has never promulgated enforceable regulations covering these statutes. There are additional areas recited in ore Reports #R-350, Rev. 5 and #R-204, Rev. 1 where the Coast Guard never promulgated regulations to enforce statutes.]*

The fact that most mariners do not complain about the problem to the Coast Guard does not mean that the problem does not exist. We believe that these employment practices violate 46 U.S. Code §10505(a)(1)(C), 46 U.S. Code §10505(a)(2), for coastwise voyages as well as 46 U.S. Code §10314(a)(1)(C), and 46 U.S. Code §10314(a)(2) for foreign and intercoastal voyages.

In reading these two statutes, we also noted a wide discrepancy in the Civil Penalties between the two ó the difference is between $500 (i.e., five ***hundred*** dollars) and $5,000 (i.e., five ***thousand*** dollars). We believe that the larger base figure, that was adjusted for inflation, more adequately reflects the significance of the problem facing our mariners and would be required as a bare minimum to eradicate it.

Full Text of the Existing Statutes

46 U.S. Code §10505. Advances *[46 U.S. Code Chapter 105 applies to **Coastwise Voyages**]*

(a)

(1) A person may not—

(A) pay a seaman wages in advance of the time when the seaman has earned the wages;
(B) pay advance wages of the seaman to another person; or
(C) make to another person an order, note, or other evidence of indebtedness of the wages, or pay another person, for the engagement of seamen when payment is deducted or to be deducted from the seamanøs wage.
(2) A person violating this subsection is liable to the United States Government for a civil penalty of not more than $5,000. A payment made in violation of this subsection does not relieve the vessel or the master from the duty to pay all wages after they have been earned.
(b) A person demanding or receiving from a seaman or an individual seeking employment as a seaman, remuneration for providing the seaman or individual with employment, is liable to the Government for a civil penalty of not more than $5,000.
(c) The owner, charterer, managing operator, agent, or master of a vessel seeking clearance from a port of the United States shall present the agreement required by section 10502 of this title at the office of clearance. Clearance may be granted to a vessel only if this section has been complied with.
(d) This section does not apply to a fishing or whaling vessel or a yacht.

46 U.S. Code §10314. Advances *[46 U.S. Code Chapter 103 applies to **International and Intercoastal Voyages**]*
(a)
(1) A person may notô
(A) pay a seaman wages in advance of the time when the seaman has earned the wages;
(B) pay advance wages of the seaman to another person; or
(C) make to another person an order, note, or other evidence of indebtedness of the wages, or pay another person, for the engagement of seamen when payment is deducted or to be deducted from the seamanøs wage.
(2) A person violating this subsection is liable to the United States Government for a civil penalty of not more than $500. A payment made in violation of this subsection does not relieve the vessel or the master from the duty to pay all wages after they have been earned.
(b) A person demanding or receiving from a seaman or an individual seeking employment as a seaman, remuneration for providing the seaman or individual with employment, is liable to the Government for a civil penalty of not more than **$500**.
(c) This section applies to a foreign vessel when in waters of the United States. An owner, charterer, managing operator, agent, or master of a foreign vessel violating this section is liable to the Government for the same penalty as an owner, charterer, managing operator, agent, or master of a vessel of the United States for the same violation.
(d) The owner, charterer, managing operator, agent, or master of a vessel seeking clearance from a port of the United States shall present the agreement required by section 10302 of this title at the office of clearance. Clearance may be granted to a vessel only if this section has been complied with.
(e) This section does not apply to a fishing or whaling vessel or a yacht.