



NMA REPORT #R-366

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Asserting our right "...to petition the Government for redress of grievances."

Amendment 1, U.S. Constitution, Dec. 15, 1791

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THE PLIGHT OF TOWING VESSEL PERSONNEL

The Gulf Coast Mariners Association represents hundreds of licensed and unlicensed lower-levelö mariners in the Eighth Coast Guard District that work on all types of commercial vessels of less than 1,600 gross register tons (GRT).

In June 2000, we collected and compiled statements from 57 mariners that reported violations of federal work-hour statutes and presented them in book form (the GCMA Yellow Bookö) to the U.S. Coast Guard, the government agency that is supposed to enforce those laws. To our shock and dismay we found that they were so unconcerned and uninterested in the problem both at the District and National level that they never took the first step to investigate any of our complaints for three years!

Since work-hour statutes are Acts of Congressö we turned over our evidence to over 100 of our elected representatives in Congress on February 14, 2003 and followed it up with a visit to many of their offices in Washington. [Refer to GCMA Report #R-350, "Report to Congress." Editorial note: GCMA reports are available on line at www.gulfcoastmariners.org or from the address above.]

"LOWER-LEVEL"

Lower-Levelö is a Coast Guard term used in mariner licensing that refers to all licenses to serve on vessels of less than 1,600 GRT. That includes at least 99% of all towing vessels. While we do not like the term, at least it is a vivid reminder that there is a great similarity between conditions our mariners face working in the towing industry and those working in the offshore oil industry and on small passenger vessels. In fact, it is common for many individuals to work

for part of their careerö in different sectorsö of the marine industry. In the Eighth District, most lower-levelö mariners do not belong to organized labor unions. In fact, most employers and their trade associations like OMSA and AWO go out of their way to picture unions as the villains. Although we are not now and have never been a labor union, we greatly acknowledge support from four major maritime labor unions. This support is what has made it possible for representatives of GCMA to travel to Washington and other distant cities and speak on behalf of our mariners on many issues. [Refer to GCMA Report #R-350 that lists the major issues.]

INSPECTED vs UNINSPECTED

The Coast Guard inspectsö certain vessels such as small passenger vessels and offshore supply vessels but NEVER inspectsö most towing vessels. An inspection is an annual, planned and pre-arranged visit by a Coast Guard inspector (usually an officer) to ensure that a vessel is properly maintained according to a very complete set of regulations. An inspectedö vessel is inspected both in the water and on drydock. An inspectedö vessel is built according to plans that must be approved by Coast Guard Headquarters. The Coast Guard maintains a running history and a public record of an inspectedö vessel throughout its lifetime. No unauthorized changes can be made to the vessel or its equipment during its lifetime. Inspectionö differs from an unannounced boardingö by an armed USCG boarding party or an examinationö of limited extent that may or may not result in the award of an examinationö decal by the boarding officer.

An owner of an uninspectedö vessel such as a tugboat or towboat may chose to build and repair his vessel in his back yard without using a set of plans prepared by a naval architect and using whatever workers or material may happen to be available. While this is not always the case, the obvious difference is one of safetyí your safety! During its lifetime, the Coast Guard may have no occasion to visit an uninspected towing vessel on drydockí and has little if any authority to do anything about unsafe conditions it may observe there or while the vessel is underway. For example, one vessel GCMA Board members visited was operating without any engine room doors whatsoeverí a perfect set-up for a downstream accident. Dozens of inland mariners have drowned in downstream accidents. The vessel was boarded by two USCG Marine Safety Offices and was allowed to proceed. This occurred because towing vessels do not have a comprehensive set of regulations they must observe. Without regulations, as many of our mariners have

discovered, there can be no enforcement.

Many mariners are happy that there are no rules and that there is "no enforcement". They are even happier if the Coast Guard never pays them a visit. Unannounced visits by the Coast Guard can be stressful experiences especially if there is something on your boat that you know isn't quite right! However, in a manner of thinking, living in the towing industry is like living in the "wild west" and, compared to other sectors of the marine industry, the towing industry is unsafe as hell. [Refer to GCMA Report #R-351, "How Safe is the Towing Industry?"]

WHAT "UNINSPECTED" MEANS TO MARINERS

"Uninspected" means unregulated. There are many subtle and not so subtle differences for a mariner who works on an "inspected" vessel compared to an "uninspected" vessel. Neither the towing industry nor the Coast Guard advertises these differences but GCMA does! In fact we have listed more than 70 differences that work to the very great disadvantage of any mariner that works on an "uninspected" vessel. This is why GCMA has toiled tirelessly to try to have Congress give the Coast Guard the authority it needs (but probably doesn't want) to inspect each of the 5,200 uninspected towing vessels in the United States. GCMA needs the support of all mariners working on towing vessels to improve the safety of all tug and towboatmen. [Refer to GCMA Report #R-276.]

LICENSING

With several very narrow exceptions, every operator of every uninspected towing vessel more than 26 feet in length has had to hold a Coast Guard license since 1972. Recently, the term "Operator" gave way to several new terms including: Master of Towing Vessels; Mate/Pilot of Towing Vessels; Apprentice Mate/ Steersman of Towing Vessels. There are significant changes in which new candidates for licenses will obtain these licenses with important dates being May 21, 2003, May 21, 2004 and May 21, 2005. If your license doesn't contain the word "towing" on it, you will not be able to use it on a towing vessel. [Fully explained in USCG NVIC 4-01 (90 pages).]

GCMA has a long-standing connection with Lafourche Merchant Marine Training Services in Larose, LA. If you have any questions about new licensing requirements, call the School Director, Mrs. Teresa Griffin, at (985) 537-1222 for the latest information on towing vessel officer licensing. The school offers an approved licensing course for towing vessel officers.

MANNING OF TOWING VESSELS

The law (Title 46 U.S. Code, Section 8104(h)) says in part: "an individual licensed to operate a towing vessel may not work for more than 12 hours in a consecutive 24-hour period." At the insistence of GCMA, the Coast Guard published G-MOC Policy Letter #04-00 in September 2000 and later revised that letter. This letter defines "work" as well as listing the separate responsibilities of the

company, the employee, and the Coast Guard. [Available as GCMA Report #R-258.]

The law (46 USC 8104(a)) also states that: "An owner, charterer, managing operator, Master, individual in charge, or other person having authority may permit an officer to take charge of the deck watch on a vessel when leaving or immediately after leaving port only if the officer has been off duty for at least six hours within the 12 hours immediately before the time of leaving." We have detailed numerous violations of this law to the Coast Guard. We believe that a violation of this law may have resulted in the Webbers Falls, OK, bridge collision that took 14 lives in May 2002 and await the final NTSB report on that accident. This is an extremely important law that we see constantly violated. We urge our mariners to read it and to refuse to violate it.

The defense that "my boss made me do it" is likely to carry little weight with Coast Guard investigators following an accident. In a letter dated February 18, 2003, Captain D.F. Ryan II, Chief of the Eighth District Marine Safety Division, clearly stated (in part): "it is the responsibility of both the licensed mariner and the maritime company to abide by the maritime laws of the United States. In fact, all licensed mariners must take an oath at issuance that states: I do solemnly swear or affirm that I will faithfully and honestly, according to my best skill and judgment, and without concealment and reservation, perform all the duties required of me by the laws of the United States. I will faithfully and honestly carry out the lawful orders of my superior officers aboard a vessel."

Captain Ryan continues: "This oath does not allow a mariner to ignore the laws of the United States because of a belief that the company may "retaliate." The Master has complete control of the vessel and the duty to ensure the safety of the vessel and its crew. The Coast Guard cannot absolve the Master's responsibility and duty to follow U.S. law because the Master "believes" the company's policy directs them otherwise. Similarly, the company has a responsibility to abide by the laws of the United States."

That puts a towing vessel's Master in the middle and in a very unenviable position. What to do? We recommend that you read GCMA Report #R-346 (Work-hour Abuse, Whistleblower Protection, and Deadhead Transportation) that examines these problems in more detail. We welcome your suggestions.

Towing vessel manning regulations appear in the Code of Federal Regulations at 46 CFR 15.601. These regulations are poorly written and very difficult to grasp because they refer to 16 additional regulations by section number. GCMA has asked for these regulations to be rewritten and clarified but this apparently will not happen soon because the Coast Guard is tied up in more pressing matters of homeland security.

In these regulations, the inland towing industry remains largely unregulated in that there are absolutely no work-hour limitations placed on unlicensed crewmembers including engineers, tankermen, and deckhands. The American Waterways Operators, an industry trade association, in its Responsible Carrier Program (RCP) recommends a 15-hour workday. However, that recommendation like the entire RCP does not have the force of law and is frequently disregarded. Such a recommendation encourages a 95 or 99-hour workweek (depending upon how you read it) and, as

such, is totally unacceptable to GCMA! Compare these work hours: a 99-hour workweek for unlicensed mariners; 84-hours for licensed towboatmen; 68-hours for USCG Search and Rescue personnel; 56-hours for deep-sea mariners with paid overtime; 40-hours for the average shoreside job. That comparison is why we believe our mariners need the protection of the law to prevent exploitation and is why we wrote this issue to Congress in February 2003.

In the offshore industry, manning regulations contain an important break at 100 gross register tons. On vessels greater than 100 GRT, everybody must have a Z-card and the deck crew must be composed of at least 50% certificated Able Seamen. The "quickie" rating of "Able Seaman-OSV" is not recognized on towing vessels because these vessels are NOT offshore supply vessels. The Master is responsible for seeing that every member of the crew is properly licensed and certificated and his license is on the line. It is time for every Master to check every license and document on his vessel! Remember, what the Coast Guard gives, the Coast Guard can also take away and they can be very unpleasant in doing so. [Refer to 46 CFR 15.840]

If you are a licensed Master or Mate/Pilot in the habit of turning catching a few winks by allowing a deckhand to run the boat, you should know that this is NOT an acceptable solution. We respectfully consider that you read GCMA Report #R-204 ("Relinquishing Command of Your Vessel") that should clarify this matter for you once and for all. Your license is at stake.

EMPLOYMENT ISSUES IN THE TOWING INDUSTRY

The Coast Guard has made it clear to GCMA that it does not become involved in labor disputes and labor issues. As citizens and taxpayers, we would expect a government agency to be impartial. Unfortunately, from our experience, we note that the Coast Guard appears to be highly biased in favor of vessel owners. This means that you should not expect the Coast Guard to be on your side because they are not mariner advocates. Coast Guard officials find it much easier to take your license or document than it is to prosecute your employer a few examples to the contrary not withstanding. An average mariner has much less clout with the Coast Guard than does the average employer. To add insult to injury, the Coast Guard's entire "Administrative Law" system is at their beck and call to keep you in line. We have found this system isn't always fair and it doesn't always work! [Refer to GCMA Report #R-323 for an example.]

No matter what you may want to believe, you should never consider the job you have in the towing industry as more than "temporary" employment. This is because in Louisiana and many other states you are what is called an "at will" employee. You can be hired or fired at any time for any reason whatsoever. [Refer to GCMA Report #R-346, "Work-hour Abuse, Whistleblower Protection, and Deadhead Transportation"]

We have witnessed a number of heart-rending cases in the past few years. In one case reported in our GCMA Newsletter an ACBL towing company Master with more than 20 years of service was dismissed for no valid reason we could determine and lost his retirement, insurance, and benefits built up more than two decades. The fact that this

huge towing company is now in bankruptcy says volumes about the quality of its management!

The only adequate defense against "at will" employment is if you have an employment contract with your employer that is written so as to guarantee fairness in hiring, firing, and promotion. While many employers harp on their reputation in fair dealing, few employers in this business voluntarily give their mariners a written and enforceable pledge that they will treat them fairly. The most common way to be treated fairly is to work with other employees in your company to get a contract through the collective bargaining process with your employer. That is what unions are all about! At GCMA we believe that that process is essential to cleaning up the widespread abuses of "lower-level" mariners by this industry.

Some employers take out their frustrations on employees by firing them and then trying to destroy their chances of ever working again for any employer in the industry by "blackballing" them. There are several ways to do this. First, by using an established "credit reporting" service that must comply with provisions of the Fair Credit Reporting Act. If management complies with FCRA, at least you do have a possibility of setting the record straight if you complete the necessary paperwork. Second, at the time of your employment, your new employer must call each of your previous employers for the past two years to check on possible drug abuse. The law (49 CFR 40.25) requires this! We give fair warning that GCMA cannot help you if you break the law. Third, by stabbing you in the back over the phone or in person-to-person contact between management personnel.

Over the years, employers have been so successful in "blackballing" their employees, legally and illegally, that there is a serious personnel shortage of trained, licensed and certificated personnel. To some extent, towing companies have been able to get around this problem by "throwing money at it." Day wages have gone up dramatically in the past few years. But, moving from job to job is only a short-term view of a much larger problem providing permanent, well-paying jobs operating safe equipment owned by companies that are properly managed.

The Coast Guard's licensing system is coming under much-needed scrutiny as a result of new homeland security concerns. In the 1990's the Coast Guard only sent about 10% of its license applications to the FBI for criminal checks. The rate is now 100%. We have reported stories of mariners being caught for fraudulent and altered licenses for years in the GCMA Newsletter. The Coast Guard is now "cleaning up its act" and issuing new Z-cards that will be tougher to obtain. There will be fewer mariners that pass through the gates.

GOALS FOR TOWBOATMAN

There is a difference between GCMA and labor unions that is important to understand. GCMA welcomes its members from mariners from every company to work on improving the entire industry. We estimate there are more than 50,000 lower-level mariners in the United States. A group such as GCMA can develop the necessary political influence to correct laws and regulations that work against our mariners. However, the problems are deeper than the law.

Labor law works with employees of individual companies. To comply with the law requires a great deal of effort to organize employees of each company to negotiate with employers on company issues. Unfortunately, most employers are more concerned with the bottom line than they are with issues that are of paramount importance to their employees and their families.

Missed opportunities. There remains a ground swell of dissatisfaction among towboatmen on the western rivers and Gulf Intracoastal Waterway following the 1998 "Pilots Agree" strike. This was a "grass roots" organization formed by the river pilots. In that strike, an estimated 1,400 licensed Masters and Pilots joined the work stoppage for a number of reasons detailed below. Management of 100 affected companies refused to negotiate with the striking workers and used their superior financial resources and "union busting" tactics to break the strike. Company management was willing to pay whatever was necessary and even to break the law to deny their mariners the right to join a union. The same situation exists today in the Gulf of Mexico. [Refer to GCMA Report #R-352.]

Although GCMA did not exist in 1998, river and inland mariners still carry much of the resentment about how they were treated both by management and the Coast Guard at that time. We receive reports of continued "blackballing" against dissident mariners even today.

These are some of the unresolved "employment" issues that are appropriate and necessary for unions to resolve:

- better pay.
- freedom to chose to be represented by a labor union without employer interference.
- collective bargaining for wages and benefits.
- overtime pay for legal overtime work.
- unsafe manning outside of federal manning regulations.
- comprehensive health and benefit plans for mariners and their family members.
- no break in health coverage when switching jobs.
- industry-wide pension, benefits, vacation pay, sick pay, leave of absence and retirement issues.
- severance pay.
- preserve seniority and prevent changes of benefit programs resulting from corporate mergers.
- restore the cooks on long-haul tows and anchor-handling jobs.
- consider proper meal planning and the effect of proper nutrition on crew health.
- provide reasonable grocery budgets on every boat.
- end blackballing.
- provide sufficient engine room manning; when only one engineer is on board, he is on call 24 hours per day.
- formal training for new engineers.
- correct sources of excessive vibration and noise that deprive crewmembers of their sleep.
- job protection under contract that prevents unjust firing for refusing to perform unsafe and/or illegal operations.
- enough crewmembers on the vessel to eliminate vessel undermanning and "call watches" that interrupt sleep.
- test potable water on a regular basis.
- truthfully market a vessel's horsepower to customers to help eliminate underpowered tows. [Refer to GCMA Report #R-340, "Oversize and Overloaded Tows Cause Safety Problems."]

- operating vessels with a safe horsepower to tow tonnage (or barge) ratio reduces stress on pilots and promotes safety.
- recognize that pilots suffer fatigue, stress, strain, and a shortened lifespan estimated at only 57 years.
- door to door transportation and travel pay to and from the boat wherever it may be located.
- safe, insured transportation to and from the job site when furnished by the employer.
- tell the truth about the towing industry accident rate statistics scandal revealed by the USCG in 1994. [Refer to GCMA Report #R-351, "How Safe is the Towing Industry."]
- companies should fund industry training programs as new equipment and practices are introduced.
- guarantee security of seniority in promotions, lay-offs, rehiring and filling vacancies.
- fixed and written grievance and arbitration procedures.
- reasonable published work rules agreeable to both labor and management.
- stop practices identified as unfair labor practices by the NLRB.
- day-for-day time off.

Following the 1998 work stoppage, management retaliated against many mariners with terminations, demotions, etc. Some of the practices resulted in unfair labor practices that were brought before the National Labor Relations Board with more than \$414,000 recovered for proven violations against individual mariners. (Refer to GCMA Report #R-352, "Unfair Labor Practices in the River Industry are Documented.") Mariners widely criticized the Coast Guard for not strictly enforcing manning statutes for licensed personnel and allowing vessels to operate 24-hour days with only one licensed person on board.

CONCLUSIONS

The towing industry is a rogue industry that clearly requires adequate government regulation. Many of its "accidents" have become legends of stupidity! (Refer to GCMA Report #R-293.) The Coast Guard needs to be given the authority to regulate this sector of the marine industry as it has regulated other sectors for many years. In this regard, the Coast Guard needs to pay at least as much attention to the legitimate concerns of "lower-level" mariners as it does to industry management and trade associations that purport to speak for mariners. Without the independence to act professionally and without adequate knowledge and training to be professionals, holding a Coast Guard license or merchant mariner document is a meaningless exercise in bureaucracy that offers little protection to either our mariners or to the general public.