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5 Challenges Facing The NY-NJ Port Authority

By **Linda Chiem**

Law360, New York (January 29, 2016, 8:21 PM ET) -- As The Port Authority of New York and New Jersey faces new labor headaches amid several ambitious multibillion-dollar transportation infrastructure projects, it'll face intense pressure to keep the momentum going on crucial bridge, tunnel and airport improvements, experts say.

The bistate agency was caught by surprise Friday when some 4,000 members of the International Longshoremen's Association walked off the job, effectively shutting down marine terminals in New York and New Jersey. The labor fight comes as the Port Authority contends with a full plate of projects such as the \$4 billion redevelopment of LaGuardia Airport and the \$1.5 billion Goethals Bridge replacement project.

And experts say they're closely watching what the agency's next steps will be as it checks off key items in its **capital program**, prepares for an upcoming change in leadership and navigates its new labor woes.

Here, Law360 highlights five challenges facing the Port Authority.

Transitioning Under New Leadership

Eyes are on the Port Authority to see who will be picked as the agency's first chief executive, a newly created position that would eliminate the role of the executive director that oversees the Port Authority's operations and implements the policies and initiatives of the agency's governing board of commissioners. The governors of New York and New Jersey each appoint six members to the Port Authority's board of commissioners, subject to state Senate approval.

The new CEO position is a result of a 2014 panel recommendation to do away with the current power-sharing structure under which the governor of New Jersey gets to pick the chairman of the board and the deputy executive director, while the governor of New York chooses the vice chairman and the executive director.

The agency has spent nearly a year searching for a CEO and in November said that it would take more time to **cast a wider net for candidates**, spurring current executive director Patrick Foye to pull his name from the hat and vow to resign in 120 days.

Experts say they're worried about leaving a leadership void for too long in the spring, when Foye has indicated he'd resign, without a firm answer for who will keep the momentum going on the high-profile projects the agency already has underway.

"If and when Pat Foye leaves — he's a fabulous guy and did a great job and he was a personal and professional pleasure for me to work with — that interim period between the pending selection of a new CEO and their start date is crucial," said Jeffrey Moerdler, a Mintz Levin Cohn Ferris Glovsky & Popeo PC attorney and former Port Authority

commissioner. "You can't let any of the operations or capital projects lose momentum in the interim."

Restoring Confidence In the Agency

The Port Authority has long been in the spotlight as one of the region's most influential agencies, overseeing a network of bridges and tunnels linking New York and New Jersey in one of the most heavily used systems in the nation. In addition, it operates major airports such as John F. Kennedy International Airport and Newark-Liberty International Airport, as well as marine ports and bus terminals and owns the World Trade Center site.

The agency's critics have called it out for being drunk with power and rife with political patronage, making it a frequent **target of reform-minded lawmakers** keen to see it reined in and its management ranks streamlined.

And it hasn't been able to avoid the taint of scandal. There was the George Washington Bridge scandal, in which two ex-Port Authority officials and an aide to New Jersey Gov. Chris Christie allegedly orchestrated the shutdown of several lanes on the bridge in September 2013 to exact political revenge on the mayor of Fort Lee, New Jersey. More recently in September 2015, a federal investigation into allegations that the now-former chiefs of United Airlines Inc. and the Port Authority **traded favors for mutual benefit** further shook the agency.

Coming out from **under the shadows of those scandals**, instilling solid leadership and refocusing on its main mission will be a necessary undertaking to restoring confidence in the agency, especially as it teams up with other partners on significant infrastructure projects, such as the estimated **\$24 billion construction** of a new third tunnel under the Hudson River, experts say.

"They really need to restore their own credibility," Fred R. Wagner, a partner with Beveridge & Diamond PC, said. "It's not been portrayed favorably and the leadership has detracted from its reputation. If it's going to be trusted with billions of potential dollars for project development, they have to convince the federal government and stakeholders that they are an entity that can be trusted with that scope of work."

Managing the Gateway Project

With fanfare and momentum building for construction of the third tunnel under the Hudson River, the Port Authority will face pressure to pull its weight in the multiagency project.

That third Hudson tunnel is a crucial part of the long-in-the-works set of rail infrastructure improvements spearheaded by Amtrak, called the Gateway Project, intended to ease the bottleneck along the Northeast Corridor between Newark, New Jersey, and New York City.

In November, New York and New Jersey leaders announced a **funding pact** in which the federal government pledged to cover 50 percent of the cost and stakeholders agreed to create the Gateway Development Corp. under the umbrella of the Port Authority to spearhead a financing plan and oversee construction of the massive passenger rail project.

Under the deal, the federal government's 50 percent share of funding will come from the U.S. Department of Transportation and Amtrak, which owns the two existing century-old tunnels and most of the rail lines in the Northeast Corridor. New York and New Jersey pledged to come up with a funding plan that would cover the remaining half of the project cost.

Getting the Hudson tunnel project back on track has been among the top priorities for transportation stakeholders since Christie in 2010 canceled an earlier tunnel plan called ARC

or Access to the Region's Core claiming New Jersey couldn't afford to pay 70 percent of the project's then-\$14 billion price tag.

"They've lost eight years and it's taken two terms to get it," Wagner said. "Now there's real urgency, there's support and there's a desire to get it funded but the feds need a plan in place to substantiate that support."

Navigating Labor Troubles

One of the more immediate challenges facing the agency is tackling a new set of labor woes and unclogging the gridlock at its New York City-area ports after thousands of longshoremen staged a surprise walkout on Friday for reasons that still weren't made clear as of early Friday evening.

The Port Authority owns Port Jersey-Port Authority Marine Terminal, Brooklyn-Port Authority Marine Terminal, Elizabeth-Port Authority Marine Terminal, Howland Hook Marine Terminal and Port Newark. They make up the largest port complex on the East Coast and the third largest in the nation.

The work stoppages involving members of the International Longshoremen's Association spell headaches for more than just the Port Authority, with widespread disruptions stemming from containers remaining unmoved and unloaded, freight and commercial trucks backing up and goods and cargo sitting idle.

"As the agency that oversees the largest port complex on the east coast, we strongly urge the ILA members to return to work immediately and resolve their differences after they return," the Port Authority said in a statement on Friday. "In the meantime, Port Authority Police are actively working to ensure public safety for all of the stakeholders at the port."

Facilitating Efficient Port Operations

Looking further ahead, the Port Authority will also have to come up with more efficient ways to accommodate the increased traffic that's expected to reach its ports when the more than \$5 billion expansion of the Panama Canal is completed this year, allowing for larger post-Panamax ships to make their way to the East Coast.

The Port Authority has already put up \$1.3 billion for its Bayonne Bridge "Raise the Roadway" Navigational Clearance Project in preparation. It calls for raising the Bayonne Bridge — which connects Bayonne, New Jersey, with Staten Island, New York — from its current 151 feet to 215 feet, allowing for larger and seemingly more efficient cargo ships to pass through.

In connection to that, pressure has been building for more efficient movement of goods from the ports as cargo volumes continue to climb, just as a growing labor movement to classify drivers calling on the ports as employees, rather than independent contractors, gains steam.

"Some proponents of this concept believe that by making these drivers employees, the companies will be able to pay them more and also be responsible for ensuring more modern equipment is being used," said Prasad Sharma, a regulatory and government affairs partner with Scopelitis Garvin Light Hanson & Feary PC. "I think what that misses is that quite a number of these drivers do not want to be employees. As pressure ratchets up to reclassify these drivers — involuntarily — they just drop out of the business."

The ports will need to look at ways to be more efficient and be ready to move drivers out of the ports more quickly, he added.

--Editing by John Quinn and Patricia K. Cole.

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