



Harborco

General Instructions

Harborco, a newly formed national consortium, is interested in building and operating a deep-water port off the coast of Seaborne. The consortium's members are drawn from a variety of enterprises, most of which are diversified among a number of commercial activities. Harborco is prepared to participate in the financing, construction, and operation of the port. It has already engaged in some preliminary planning and design work, but it cannot proceed without a license issued by the Federal Licensing Agency (FLA).

The Project

The deep-water port proposed by Harborco would be the first of its kind on the East Coast. It would be located in Seaborne at the estuary of the Banksedge River. Like the European seaport Rotterdam, it would accommodate a new generation of large cargo ships and supertankers – ships believed to be especially cost-effective in transporting raw materials and goods.

The deep-water port would be based on an artificial island of roughly nine square miles, created with fill from the dredging of the access channel. The island would be connected to the shore by a network of highways, railroads, and pipelines. Onshore, an Air-Sea-Cargo Center (ASCC) would be developed, along with major connections to existing highways, railroads, and pipeline networks. Substantial infrastructure would be needed to accommodate an intermodal freight terminal of this sort. Most of the industrial plant and ancillary facilities would be located on the island. While components of the port could be operational as early as five years after construction begins, the port's full development might not be completed until 20 years later. The projected cost of the port is roughly \$4 billion (in current dollars).

The Parties

Harborco is excited about the prospect of a deep-water port on the East Coast. It believes such a port could generate substantial profits within ten years after operations begin. (Harborco bases its projections on an independent study by Transport Associates, Inc., which concluded that such a port could be economically viable under several possible scenarios.) In addition, Harborco believes the local, regional, and national economies could benefit from a port, which would dramatically reduce the transport costs of imports and exports. Several other parties, however, have an interest in the deep-water port and Harborco's application for a license.

The Environmental League: This coalition of environmental interest groups is generally opposed to any development of coastal areas, especially development that threatens the fragile ecosystems, adds to air and water pollution, increases waste disposal problems, and increases health and safety risks. The League is worried that Harborco's proposed port would seriously damage the environment of Seaborne and destroy the basic Banksedge River ecology.

Local Federation of Labor Unions (The Unions): The Unions are generally pleased that new development is being considered for Seaborne. They anticipate hundreds of new jobs will be created in both the short and long run. They will argue strongly, however, that these jobs should be reserved for local union members. (This local federation is affiliated with the National Federation of Labor Unions.)

Other Ports in the Region: The four other ports in the region are not pleased with Harborco's proposal. They expect to lose a substantial amount of business to the new port, if it is constructed. They are extremely skeptical of Harborco's claim that all regional ports will share in the economic benefits generated by the new port.

Federal Department of Coastal Resources (DCR): This Cabinet-level agency created during the Reagan Administration has a dual mandate: (1) to help realize the economic potential of the nation's coastal resources, and (2) to preserve the environmental integrity of the nation's coastal areas. The DCR would like to see a deep-water port established somewhere on the East Coast, and has the resources and authority to subsidize such a port.

Governor Sherwood (of Seaborne): Governor Sherwood is in her second gubernatorial term and is eager to promote development in her state. She is sensitive, however, to the needs of organized labor, a powerful political constituency, and is therefore eager to see that unions share in the benefits of the port.

The Licensing Process

Harborco submitted an application just one month ago for FLA review. While aware of other parties' interest in its proposal, Harborco expected little difficulty in the licensing phase of this project.

The FLA, however, has recently been criticized by several members of Congress for failing to consider the "broader public interest" in its previous licensing determinations. Consequently, the FLA is now very sensitive to the level of political support surrounding each application it reviews.

In this case, the FLA will not approve Harborco's application unless it is clear that there is substantial support for the project. Therefore, the FLA has decided that it will approve Harborco's proposal ONLY IF Harborco can muster the support of at least four other parties. (The FLA would prefer to see all five parties support a Harborco application, but it will grant a license even if only four lend their support.)

Two parties, however, can exercise some veto power. Harborco can veto any proposal in this negotiation (since no other party is capable of initiating the development). In addition, the Federal DCR can veto any project that requires a federal loan or loan guarantee.

The Issues

Preliminary discussions have taken place between Harborco and representatives of the five key parties. As a result of these conversations, Harborco has identified five issues that seem to be of concern to all or some of the parties. A general description of the issues is provided below; more detailed information is provided in each party's Confidential Instructions.

Issue A: Industry Mix

The deep-water port itself is only part of the development Harborco has planned. The construction will attract a variety of industries seeking access to the port. These industries will either lease or purchase land on the artificial island and onshore, and they will eventually generate the bulk of the revenues associated with the new port.

Harborco has initially requested the freedom to develop any industry mix it chooses. This means that it could choose to develop (or encourage) any type of industry or plant, including oil refineries, steel mills, or a resource recovery plant. The environmentalists, however, have argued that strict limits should be placed on the industry mix allowed in the area; they are asking that only relatively "clean" industries such as high-tech production plants be allowed.

As a result of this controversy, three options have surfaced in the discussions between Harborco and the environmentalists.

Option A1: Primarily dirty – No industry would be excluded, but the mix would probably be dominated by oil refineries, petrochemical plants, steel productions plants, and a resource recovery plant.

Option A2: Clean/Dirty – Would exclude the dirtiest industries, but would allow a limited number of moderately dirty plants (including food-processing plants).

Option A3: All clean — Would be limited to only clean industries such as high-tech production industries; dirty plants would be excluded.

Air pollution, water pollution, and waste disposal would vary with the industry mix selected. Regardless of the industry mix, all industries would conform to existing federal and state pollution regulations.

Issue B: Ecological Impact

The dredging of the access channel, creation of the island, and general construction activity could seriously disrupt existing ecologically delicate areas both onshore and offshore. The damage would include the alteration of nesting habitats, a reduction in natural tidal flushing, the destruction of wetlands, serious land erosion, adverse impacts on existing fisheries, and substantial subsurface geologic impacts (caused by drilling and dredging).

Harborco admits that the new deep-water port would create some damage to the ecological setting, but it also claims that such damage would be within the limits defined by federal and state regulations. Environmentalists, however, counter that the damage would be excessive and that Harborco has no right to disrupt the area.

In light of these arguments, three outcomes are possible:

Option B1: Some harm to ecology – This would involve unremedied disruption to the ecology. Fish and animal nesting habitats would be altered (or effectively destroyed), valuable wetlands would disappear, water temperatures and currents would change, and certain types of aquatic flora and fauna would be destroyed. All this would take place within federal and state impact mitigation guidelines.

Option B2: Maintain or repair ecological balance – This would involve special precautions to divert construction and dredging activity (where possible) from the most ecologically delicate or important areas. But it would also include the relocation or recreation of habitats destroyed by unavoidable dredging and construction.

Option B3: Improve the ecological setting – Like the previous option, this would include special efforts to bypass delicate areas during construction and dredging. But it would also include a variety of other efforts to improve the local environment. Environmentalists propose ongoing fishery management and wildlife protection, creating new and larger protected wetland areas, an active anti-erosion program, and constructing and operating a small waste-treatment facility to treat effluents flowing into the estuary from the Banksedge River.

Issue C: Employment Rules

Construction and operation of the deep-water port is expected to generate hundreds of new jobs in the community in both the short and long run. These jobs can be distributed among potential employees in one of three ways:

Option C1: Unlimited union preference – Jobs would be reserved for local union workers, where appropriate. This would enable local union members to claim as large a share of the new jobs as possible.

Option C2: Union quota of 2:1 – Limited preference could be given to union members where the ratio of union to nonunion workers would not fall below 2 to 1.

Option C3: Union quota of 1:1 – The ratio of union to nonunion workers would not be less than 1 to 1.

Option C4: No union preference (unrestricted hires). Harborco would be free to hire whomever it chooses. In this scenario, most workers would probably be nonunion, enabling Harborco to maintain its hiring flexibility and to reduce its expected wage costs. In addition, new workers might be drawn from outside Seaborne.

Issue D: Federal Loan

The newly created Federal Department of Coastal Resources (DCR) has a mandate to promote economic use of coastal areas, while preserving their environmental integrity. It can provide a substantial loan (or guarantee private borrowing) to help cover construction and operating costs of the port over the next 20 years.

Harborco estimates that the total cost of developing the port will be roughly \$4 billion, and it has requested \$3 billion in guaranteed loans. However, the DCR will insist on certain aspects of port design before it will contribute to the port. Four options appear possible:

Option D1: A \$3 billion loan (at 15% interest) over the next 20 years

Option D2: A \$2 billion loan (at 15% interest) over the next 20 years

Option D3: A \$1 billion loan (at 15% interest) over the 20-year period

Option D4: No federal loan

Issue E: Compensation to Other Ports in the Region

Harborco believes the new port will generate significant economic growth both inside and outside the state. It contends that the entire regional economy will be improved by the port, and that the other four major ports on the Eastern Seaboard will benefit from this growth.

The other ports, however, expect to suffer a substantial loss of traffic once the new port begins operation. They have estimated the present discounted value of their losses to be roughly \$600 million, representing losses for 10 years after the new port begins operation. They think Harborco should compensate them for these losses.

In light of this conflict, five possible options are up for consideration.

Option E1: Harborco pays \$600 million (or 100% compensation) in current dollars to the other ports.

Option E2: Harborco pays \$450 million (or 75% compensation).

Option E3: Harborco pays \$300 million (or 50% compensation).

Option E4: Harborco pays \$150 million (or 25% compensation).

Option E5: Harborco makes no compensation to the other ports.

Though the ports would be free to spend this money as they wished, they could use these funds to make changes that would enable them to serve more effectively as feeder ports for the new deep-water port.

The Negotiation

Harborco has already submitted a license application to the FLA, which proposes the following:

- * A primarily dirty industry mix (Option A1),
- * Some harm to the ecology (but within federally and state-prescribed limits) (Option B1),
- * No special preference for union workers (Option C4),
- * A \$3 billion loan from the DCR (Option D1), and
- * No compensation payments to other ports (Option E5).

Harborco is free to submit changes to its proposal at any time during the licensing review process, but it is anxious to have its application approved as is.

In an attempt to muster support for its current proposal, Harborco has invited all the key

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parties to a meeting at the Ritz-Carlton Hotel. Its stated objective for the meeting is to seek a negotiated agreement among all parties to ensure unanimous support for its proposal. (Of course, Harborco needs the support of only four other parties in order to secure a license.)

Mechanics of the Negotiation

All five parties have agreed to attend the meeting, and are seated at the negotiating table. The FLA representative opens the meeting and explains the procedures that the negotiating session will follow. Each party has seen a copy of Harborco's current FLA application.

The discussion may progress in any direction, but Harborco will be searching for a proposal that will win enough votes for FLA approval. Anyone can suggest alternative proposals, but Harborco's concurrence is needed for any proposal to be adopted.

Three formal voting rounds are scheduled for the meeting. The first will take place 15 minutes after the meeting begins, the second after 40 minutes of discussion, and the third after 85 minutes of discussion. Additional votes may be taken at any point during the meeting, but at least three voting rounds must take place. (There is of course one exception: if a project receives sufficient votes for FLA approval early in the meeting, the parties may choose to forgo subsequent voting rounds.)

The FLA representative will administer the three scheduled voting rounds. If Harborco cannot decide on a revised project to propose at the time of a formally scheduled vote, the participants must vote on the original Harborco proposal.

Voting is done by a show of hands. Once a proposal is passed (i.e., receives supporting votes from at least four of the five other parties), the votes are binding and parties cannot renege on their promise of support. The parties are free, however, to explore improvements in the agreement that either benefit the supporting parties or entice the non-supporting party to vote for the agreement. If the parties to the original agreement do not unanimously support proposed improvements, the original agreement stands.

Negotiations must stop at the end of the meeting. If no agreement is reached (i.e., if no proposal receives at least four votes in addition to Harborco's), the FLA will reject Harborco's application for a license.



Harborco

Confidential Instructions for the Union Negotiator (From the Union Executive Committee)

We are very excited about the job creation potential of a deepwater port in Seaborne. As you are well aware, the volume of trade and overall economic activity in this state has declined dramatically over the last five years. Without a major boost in economic activity, we will face extensive layoffs in the very near future.

We must not appear too eager, however, to support this project. Harborco's initial proposal leaves much to be desired from the union's perspective. Of the five issues scheduled for discussion at this meeting, four are of direct concern to us: employment rules, industry mix, federal loans, and compensation to other ports. The fifth issue – ecological impact – is not of direct importance, but may prove instrumental in securing allies.

Scoring

In order to help you plan your negotiation strategy, we have constructed a special 100-point scoring scheme to illustrate which negotiable outcomes are of greatest and least importance to us. Under this scheme, the most preferred set of outcomes is worth 100 points to us; the least preferred is worth zero. Compromising on one or more issues is worth somewhere between 0 and 100 points, depending upon how each of the issues is resolved.

The use of points may seem artificial and abstract. For the purposes of this negotiation, it enables us to combine our several interests – new jobs for our members, new members for our unions, and increased credibility for our organization – into a single "currency." This, in turn, allows us to compare the potential gains and losses associated with different issues.

In addition, the points allow us to compare the benefits (or costs) of a negotiated agreement to our alternatives. In this case, it would be worthwhile for us to support an agreement if it yields at least 50 points. But any agreement worth fewer than 50 points would be worse than no agreement at all. We do not dare support an agreement that does not explicitly benefit our members.

This case was written by Denise Madigan and Thomas Weeks under the supervision of Professor Lawrence Susskind (M.I.T.), Assistant Professor David Lax and the Negotiation Roundtable. Copies are available from the Teaching Negotiation Resource Center (TNRC), online at www.pon.org, by email: tnrc@law.harvard.edu, or by telephone at 800-258-4406. This case may not be reproduced, revised or translated in whole or in part by any means without the written permission of the Teaching Negotiation Resource Center Coordinator, Program on Negotiation at Harvard Law School, 501 Pound Hall, Cambridge, MA 02138. Please help to preserve the usefulness of this case by keeping it confidential. Copyright © 1984, 1988, 1989, 1994, 1995, 1996, 2007, 2014, 2018 by the President and Fellows of Harvard College. All rights reserved. (Rev. 9/18)

Your task is to try to earn as many points as possible in this negotiation. This is not being greedy – it simply means that we want to further our legitimate interests as far as possible. We will support any agreement worth at least 50 points, but we certainly hope you will do much better.

Employment Rules

We are obviously most concerned about the distribution of new jobs created by the port. We would like to see Harborco guarantee that all jobs for which union workers are qualified will be offered to union workers at union wages. We are strongly opposed to letting Harborco sidestep the union by employing non-union or out-of-state workers.

We have assigned the following points to this issue:

- * unlimited union preference = 42 points
- * union quota of 2:1 = 35 points
- * union quota of 1:1 = 25 points
- * no union preference = 0 points

Note that winning this issue is worth 42 points – almost half of the points possible in this negotiation.

We have assigned fairly high values to the two compromise positions for two reasons. First, any union presence will help prevent Harborco from introducing labor-saving technologies into the port over time. Second, once the union has a foothold in the port, no matter how small, organizing the rest of the port should be less difficult than if we were not on site. Unfortunately, Harborco probably realizes the same, and is therefore likely to argue strongly against any preference for the unions.

Federal Loan

The federal loan is important to us for two reasons. First, the project has a far greater chance to get off the ground (i.e., receive FLA approval) if federal dollars are involved. Second, the long-term success and stability of the project is likely to be enhanced if the federal government makes a substantial investment in the project. (Private investors may be more willing to participate in the project if they see federal involvement, and the federal government may be less willing to abandon the project in the future if it has a great deal of money sunk into the port.)

We have therefore assigned the following points to this issue:

- * \$3 billion = 30 points
- * \$2 billion = 20 points
- * \$1 billion = 10 points
- * No loan = 0 points

Industry Mix

This issue is important to us because it will determine the number and types of jobs created for our workers. We have assigned it fewer points than the preceding two issues because it is based on very uncertain projections.

- * clean/dirty = 20 points
- * primarily dirty = 15 points
- * all clean = 0 points

Of the three types of industry mix being discussed, the clean/dirty mix is the best option from the union's perspective. This mix will probably involve food processing and light manufacturing plants – both of which would create jobs that are typically unionized. In addition, the jobs created by these kinds of plants tend to result in fewer health hazards than posed by dirty-industry jobs.

The all-dirty mix is second best in our minds. It would create far fewer jobs for union workers and would involve work environments that are far less comfortable and far more hazardous than those in the clean/dirty industries. It is still preferable to the all-clean industry mix (which would create the fewest number of union jobs).

Compensation to Other Ports

This is a tricky issue for us. Our first allegiance is to our local members, and so we would rather not see the profits of the new port threatened by massive payments to out-of-state ports.

On the other hand, we must answer for our conduct to the national union – an organization which (need we remind you?) provided us with considerable financial assistance during our last strike three years ago. The national union is obviously concerned about the local unions at the other ports; they fear these other local unions will face substantial layoffs if the ports are denied compensation.

We have therefore assigned the following points to the compensation issue, but with the stipulation that these points remain absolutely confidential:

- * \$150 million = 8 points
- * \$300 million = 6 points
- * \$450 million = 4 points
- * \$600 million = 2 points
- * No compensation = 0 points

In short, we favor some (but not too much) compensation. You should avoid publicly opposing large compensation payments, since our national organization might become very displeased.

Ecological Impact

This last issue is not one that concerns us directly, and so we have assigned no points to it. We are willing to let the environmentalists worry about the environment.

Still, you may want to treat this issue with caution, since we do not want to antagonize potential allies. In addition, we may be able to use this issue strategically since the other parties do not know that this is not important to us.

* * * * *

We've attached a one-page scoring sheet is attached that summarizes the points we have assigned to each issue and outcome. This information is CONFIDENTIAL! Do not show this score sheet to anyone. You may convey some or all of the information verbally to a mediator, but do not let him or her see your scoring sheet.

Good luck. We're confident that you will negotiate an extremely valuable agreement for us.

Confidential Score Sheet for the Union Negotiator

Issue/Option	Total Points	1st vote	2nd vote	3rd vote
A: Industry Mix	(20)	_____	_____	_____
1. primarily dirty	15			
2. clean/dirty	20			
3. all clean	0			
B: Ecological Impact	(0)	_____	_____	_____
1. harm	0			
2. maintain & repair	0			
3. improve	0			
C: Employment Rules/ Distribution	(42)	_____	_____	_____
1. unlimited union preference	42			
2. union quota 2:1	35			
3. union quota 1:1	25			
4. no union preference	0			
D: Federal Loan	(30)	_____	_____	_____
1. \$3 billion	30			
2. \$2 billion	20			
3. \$1 billion	10			
4. no federal loan	0			
E: Compensation to Other Ports	(8)	_____	_____	_____
1. Harborco pays \$600 million	2			
2. Harborco pays \$450 million	4			
3. Harborco pays \$300 million	6			
4. Harborco pays \$150 million	8			
5. Harborco pays no compensation	0			
A through E: TOTAL (your goal)	(100)	_____	_____	_____

MINIMUM NEEDED FOR AGREEMENT = 50. This is also your score if no agreement is reached.

Confidential Summary of Points for the Union Negotiator

Your name: _____

Group #: _____

Did Harborco get an agreement? (circle one) YES NO

If "yes" who signed (or voted for) the agreement? Federal DCR
Union
Other Ports
Governor
Environmentalists

If your group reached agreement, please describe the agreement and identify the number of points it generated:

ISSUE:	OUTCOME	POINTS
A. Which industry mix was agreed to?	_____	_____
B. Will Harborco harm, maintain and repair, or improve the ecology?	_____	_____
C. Will unions receive preference? How much? Unlimited? 2:1? 1:1?	_____	_____
D. How much in loans will DCR guarantee? (amount)	_____	_____
E. How much compensation will other ports receive? (amount)	_____	_____
TOTAL POINTS GENERATED BY AGREEMENT: (ADD ITEMS A THROUGH E)		_____

APPENDIX: A Discussion of the Scoring System for the Union Negotiator

We have several interests in today's negotiation. We'd like to see as much union preference guaranteed as possible. We'd like to see an industry mix that creates the most union jobs. We'd also like to see the federal government make a major commitment to this project.

This is clearly a complex negotiation for us. Several issues are being discussed, and a variety of outcomes are possible. We may win unlimited union preference or we may have to settle for special quotas. We may succeed in negotiating a clean/dirty industry mix or we may face an all-clean industry mix. We may be excluded from an agreement (and end up facing a project with no concession to organized labor), or there might be no agreement at all.

Therefore, we have decided to use points in our instructions to indicate how different agreements serve (or harm) our overall interests. Under the 100-point scoring scheme described in the instructions, an agreement worth 100 points would be the best agreement you could negotiate. In contrast, an agreement worth zero points would be the worst possible agreement. (Note that an agreement worth zero points may have a "non-zero" effect on us, i.e., it may involve net costs or net benefits. It is assigned zero points only because it reflects "zero gains" over the worst possible outcome.)

Differences in points can tell you which issues (or specific outcomes) are most worth arguing for. For example, in this negotiation we are most concerned about the employment rules issue and have therefore assigned it 42 out of 100 possible points. We would not want to end up with our worst outcome (no union preference) on this issue.

In contrast, we are least concerned about the ecological impact issue and have therefore assigned it zero points. None of the outcomes described in this issue would have a direct effect on us.

Because we will be evaluating you on the basis of your score in this negotiation, you should examine your score sheet closely when planning your negotiating strategy. But remember, you should not vote for any project worth fewer than 50 points.

Do not, under any circumstances, show your score sheet to any other player. You may try to express the strength of your interest to other players, but you should not let them see your actual score sheet. They will have to trust you to give them accurate information about your preferences – just as they would if this were a real-world negotiation.

Finally, resist the temptation to compare your score with the scores of other parties in the negotiation. A score of 75 points may mean more (or less) to you than to other parties. While your bottom line is 50 points, theirs may be 40 or 80. Their bottom lines depend on their valuation of the alternatives to agreement – a psychological factor that makes comparison across parties difficult to interpret.