



## 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 Negotiator for Other Ports (From the Association of Eastern Seaboard Ports)**

We are very dubious about the benefits Harborco claims we will realize from this new deepwater port. In fact, our analysts suggest that we will suffer substantial losses over the first ten years of the new port's operation. In particular, the largest of our ports will suffer a 25 percent decline in gross revenue while the three smaller ports will each lose about 10 percent of their gross revenue. Our total loss will thus be close to \$600 million (in current dollars).

We are not, in principle, completely opposed to the idea of a deepwater port on the East Coast. We do not believe any such project should be allowed to undermine existing port operations.

We are sending you to this meeting for two reasons. First, we hope that your participation may help derail the negotiations and prevent Harborco from securing enough support for its FLA application. Secondly, if Harborco is able to muster enough support for its own proposal, we hope you can increase the costs facing the new port (thus minimizing its competitive advantage) and win some compensation for us in the process.

### **Scoring**

In order to help you plan your negotiating strategy, we have constructed a special scoring scheme to illustrate which negotiable outcomes are of greatest and least importance to us. Under this scheme, our most preferred outcome (no agreement at all) is worth 150 points. If, however, an agreement seems imminent, you still have an opportunity to score up to 100 points by negotiating certain aspects of the port's design.

The use of points may seem artificial and awkward to you. For the purposes of this negotiation, it enables us to combine our several interests – protecting our current business, preserving opportunities for growth, securing federal funds for our own projects – into a single "currency." This, in turn, allows us to compare the potential gains and losses associated with different issues.

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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](http://www.pon.org), by email: [tnrc@law.harvard.edu](mailto: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)

In addition, the points allow us to compare the benefits (or costs) of the negotiated agreement to our alternatives. In this case, it would be worthwhile for us to support Harborco's proposal only if it yields at least 31 points to us. Any proposal yielding fewer than 31 points would not be worth our support. (We would rather try to sue for compensation later.)

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 would like to see Harborco's bid for a license fail, but if an agreement seems unavoidable, we would support any project worth at least 31 points. (Some compensation is better than none.) But 31 points is the bare minimum we can accept. We certainly hope you will do much better.

### **Compensation to Us**

This is by far the most important of the negotiable issues. Our largest port will lose roughly 25 percent of its business once the new port begins operation. The smaller ports, which are more specialized, will lose 10 percent. We would need a total of \$600 million (in current dollars) to compensate us for our anticipated losses. We have assigned this issue the following points:

|  |             |
|--|-------------|
| * \$600 million (100% compensation for our losses) | = 60 points |
| * \$450 million (75% compensation)                 | = 45 points |
| * \$300 million (50% compensation)                 | = 30 points |
| * \$150 million (25% compensation)                 | = 15 points |
| * No compensation                                  | = 0 points  |

Of course, you should worry about this issue and those that follow only if agreement seems inevitable. (Note: If an agreement worth more than 31 points does seem inevitable, you should vote in favor to insure that the agreed compensation will be paid.)

### **Federal Loan**

We would like to see little or no federal financing in this project. The less money DCR contributes to this project, the less likely it is that the project will succeed. (In fact, Harborco probably cannot afford to go ahead with the port unless there is at least some federal money involved.)

In addition, we are currently in the process of applying for federal loans to finance renovations in our own building and operations. (To date, the DCR has contributed very little money to our ports.) The less money DCR spends on this project, the more it will have to spend on other ports like our own. You should therefore argue that DCR would

be better off allocating its funds across several projects rather than concentrating its resources on Harborco's one *risky* venture.

We have assigned the following points to this issue:

- \* No loan = 18 points
- \* \$1 billion = 13 points
- \* \$2 billion = 8 points
- \* \$3 billion = 0 points

### **Employment Rules**

We are not big fans of organized labor, but we do think that any new port should face the same labor costs we face. (Our ports are completely unionized.) If Harborco succeeds in keeping organized labor out of its port, it will face significantly lower labor costs than we face. Furthermore, in the absence of unions, the new port may be able to install a wide range of laborsaving technologies (including large-scale containerization). This would allow the new port to realize even lower production costs, making it even harder for us to retain our own business (or compete for new business).

We are therefore in the awkward position of favoring union preference on this project. We would rather not publicly champion the cause of organized labor, because our arguments may be turned against us later in our own labor negotiations. We want to prevent Harborco from realizing any unfair competitive advantage.

We have assigned the following points to this issue:

- \* unlimited union preference = 12 points
- \* union quota of 2:1 = 8 points
- \* union quota of 1:1 = 6 points
- \* no union preference = 0 points

You may note that the difference is greatest between no union preference and the union quota of 1:1. This is because we feel that once the unions are allowed on site, Harborco will have a difficult time introducing large-scale labor-saving technologies. In addition, it will only be a matter of time before the bulk of Harborco's work force is unionized.

### **Industry Mix**

This is a difficult issue for us to weigh, because we have to rely on very uncertain projections. We would like to see Harborco's freedom to develop industries constrained as much as possible. The more restricted the industry mix, the less competitive Harborco will be.

On the other hand, we should be wary of advocating these kinds of restrictions, because we may wish to expand our own operations in the future.

Given our conflicting interests here, and the fact that compensation is a more important and immediate concern, we have assigned the following points to this issue:

- \* all clean = 10 points
- \* clean/dirty = 4 points
- \* primarily dirty = 0 points

The point spread reflects the fact that we would like to prevent Harborco from developing food- processing plants that could compete with our own.

### **Ecological Impact**

This last issue is of very minor concern to us, relative to the other issues up for discussion. Though we would like to see Harborco face additional costs associated with improving the ecology, we do not care enough to assign points to this issue.

Nevertheless, you should probably treat this issue with caution, for we do not want to antagonize potential allies. Perhaps we can use this issue strategically, since the other parties may not realize that this issue is not important to us.

\* \* \* \* \*

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

Good luck. We're confident that you will either succeed in derailing an agreement, or negotiate an extremely valuable agreement for us.

**Confidential Score Sheet for OTHER PORTS**

| Issue/Option                                 | Total Points | 1st vote | 2nd vote | 3rd vote |
|--|--------------|----------|----------|----------|
| <b>A: Industry Mix</b>                       | <b>(10)</b>  | _____    | _____    | _____    |
| 1. primarily dirty                           | 0            |          |          |          |
| 2. clean/dirty                               | 4            |          |          |          |
| 3. all clean                                 | 10           |          |          |          |
| <b>B: Ecological Impact</b>                  | <b>(0)</b>   | _____    | _____    | _____    |
| 1. harm                                      | 0            |          |          |          |
| 2. maintain & repair                         | 0            |          |          |          |
| 3. improve                                   | 0            |          |          |          |
| <b>C: Employment Rules/<br/>Distribution</b> | <b>(12)</b>  | _____    | _____    | _____    |
| 1. unlimited union preference                | 12           |          |          |          |
| 2. union quota 2:1                           | 8            |          |          |          |
| 3. union quota 1:1                           | 6            |          |          |          |
| 4. no union preference                       | 0            |          |          |          |
| <b>D: Federal Loan</b>                       | <b>(18)</b>  | _____    | _____    | _____    |
| 1. \$3 billion                               | 0            |          |          |          |
| 2. \$2 billion                               | 8            |          |          |          |
| 3. \$1 billion                               | 13           |          |          |          |
| 4. no federal loan                           | 18           |          |          |          |
| <b>E: Compensation to<br/>Other Ports</b>    | <b>(60)</b>  | _____    | _____    | _____    |
| 1. Harborco pays<br>\$600 million            | 60           |          |          |          |
| 2. Harborco pays<br>\$450 million            | 45           |          |          |          |
| 3. Harborco pays<br>\$300 million            | 30           |          |          |          |
| 4. Harborco pays<br>\$150 million            | 15           |          |          |          |
| 5. Harborco pays<br>no compensation          | 0            |          |          |          |
| <b>A through E:<br/>TOTAL (your goal)</b>    | <b>(100)</b> | _____    | _____    | _____    |

**MINIMUM NEEDED FOR AGREEMENT = 31**

**Remember:**

- \* If negotiations fail and no port is built, you earn 150 points.
- \* If negotiations succeed and a port is built, you can earn anywhere between 31 and 100 points, provided you vote in favor. If you vote against a final proposal worth more than 31 points, your points for that outcome will be discounted by .8 for uncertainty.
- \* If a bad port is built (worth less than 31 points) – over your objections – you can still earn 31 points by withholding your support and challenging the port in court.

**Confidential Summary of Points for Other Ports**

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:**

| <b>ISSUE:</b>   | <b>OUTCOME</b> | <b>POINTS</b> |
|---|----------------|---------------|
| 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)

\_\_\_\_\_

If total exceeds 31 points and Other Ports voted "no," multiply by 0.8: \_\_\_\_\_

**If no agreement was reached, points = 150.**

\_\_\_\_\_

## **APPENDIX: A Discussion of the Scoring Scheme for the Other Ports' Negotiator**

We have several interests in today's negotiation. Our first preference is to see the negotiations end with no agreement. If agreement seems inevitable, we would like to see Harborco's competitive advantage limited by being forced to hire union workers and restricted to an all-clean industry mix. We'd also like immediate and full compensation for our projected losses.

This is clearly a complex negotiation for us. Several issues will be discussed, and a variety of outcomes are possible. There may be no agreement, or there may be one that gives Harborco its maximum competitive advantage. If agreement is reached, we may lose or compromise on compensation.

Therefore, we have decided to use points in our instructions to indicate how no agreement or different agreements serve (or harm) our overall interests. Under the scoring scheme described in the instructions, no agreement would be worth 150 points – the best possible outcome. If the other parties appear to be approaching agreement, then an agreement worth 100 points would be the best we could do. In contrast, an agreement worth zero points would be the worst possible outcome. (Note that an agreement worth zero points may have a "non-zero" effect on us, i.e., may involve net costs or net benefits. It is assigned zero points only because it reflects "zero gains" over the worst possible outcomes.)

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 compensation issue and have therefore assigned it 60 out of 100 possible points. We would not want to end up with our worst outcome on this issue (no compensation), if the port were approved. In contrast, we are least concerned about the ecological impact issue and therefore assigned it zero points. None of the ecological impact outcomes would have much of an 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 agreement worth fewer than 31 points (if you vote for an agreement at all). Supporting such a project would cost us more than we could gain.

Do not, under any circumstances, show your score sheet to any other player. You may try to express the strength of your interests to other players, but you should not show them 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.