

Interview with John Xifares (JX)
[NOTE: Last name pronounced X-i-far-iss]
Interviewer: Janice Fleuriel (JF)
Date: 9/22/06

The Working Waterfront Festival [WWF]
Logger/Transcriber: Janice Fleuriel

(NOTE: Any verbatim transcription is in quotes; otherwise, light transcription)

INDEX (minutes:seconds)

[NOTE: This interview brings an important perspective on loss/weakening of the unions which he sees as a decline for fishermen, seafood workers, lumpers]

- 00:00: JF: Tape intro; JX retired superior court judge; Before that, lawyer; Born New Bedford April 14, 1936; Family background from Greece and in New Bedford fishing; Fished one summer college, tended bar, knew fishermen; Became lawyer for fish lumpers, seafood workers, teamsters who represented fishermen about 10-12 year period at one point; Co-council for health and welfare funds and pension funds for those unions
- 03:00 Started personal injury law, suits by fishermen, became labor lawyer, including fishermen and their funds;
- 05:05 Around 66, 67, involved collective bargaining negotiations for lumpers with employer association for fishing boats, the Seafood Producers Association, since gone; One strike over establishment of multi-employer pension plans, got created; Represented until late '83 when became judge Nov. '83. Started representing seafood workers probably '69 or '70, 2 or 3 sets negotiations, occasional grievances to arbitration
- 07:12 Very bad strike seafood processors 1981, union broken, funds lost, employers in various industries probably bolstered by Reagan/Air Traffic Controllers strike; Lumpers side, health insurance fund, gone, believe pension still exists for retirees collecting, Jim Dwyer would know; Fishermen's union before he was involved, Teamsters took over '70 or '71, involved in those collective bargaining negotiations, grievances on behalf of membership, co-council for health and welfare, pension funds.
Gone, on bench, disastrous strike '86
- 09:50 Loss of funds not progress; Also loss of control over work schedule, lumpers now 24-7, not progress; Vessels couldn't leave Sundays; Joint safety committee used to check boats before go out; Shift hours not being followed on boats; Fewer crew, scallops boats used to have 11, safety and health issue
- 13:00 Doesn't think regulations are reason for not doing shifts, would be pleased to hear otherwise, unhealthy even if it's response to restrictions on days; Doesn't take credit for putting pensions, etc., in place, just lawyer/spokesman for them;
- 16:08 Started many days at auction, find out what happening; City ordinance about all landings having to use auction, probably not because of Commerce Clause Constitution; Remembers a promotional fund, small amount coming out of gross

- stock, help finance people at auction, promotion, legislative affairs; New Bedford Seafood Council, very effective marketing '50s, '60s.
- 19:24 Trips to Washington with my counterpart from management, union people, boat people, negotiating Hague Line, Canadian situation; Different from Studs Magnuson 200 mile limit
- 20:15 Fishermen treated as employees originally, revenue ruling change late '70s, close to '80 changed to self-employed, very unfortunate'
- 23:45 '81 seafood workers' strike very sad, tragic, strike began either late spring or that summer, broken by November, complete decimation
- 26:00 Was also longshoremen union lawyer, involved drafting that health and welfare, pension funds; Probably one of favorite achievements, pension fund for longshoremen, helped them pass a vote to put funds there, people need them later; Longshoremen employer usually 3rd party like Maritime Terminal, New Bedford, shipping agents arranged unloading, etc.;
- 29:49 Growth to containerization versus break bulk cargo brings fewer ships to New Bedford, can't handle the larger ships and container storage; Worked as longshoreman one summer; Lumpers employers are vessels; Not sure why lumpers still employees, fishermen not; Seafood workers employer is plant they work for;
- 32:53 As lawyer, represented many unions; Always wanted serve as judge; Got clients in law practice mainly by referrals/reputation;
- 34:36 Work as a judge civil litigation, criminal matters, combination; Fishing industry matters as a judge every once in a while, some corporate issues like among owners of one boat; Same laws apply to all of us, also specific ones related maritime, fishing; What makes a good judge
- 37:12 Lack of employee benefits not a positive development from 25 years ago; Boats today better, safer; Real great concern for what's happening to people in seafood processing houses, not progress at all, decline; Hope unions will come back, people would exercise rights to organize under federal law; It's difficult.
- 40:55 Visitors should know of great contribution men and women who work in industry make, impact on Greater New Bedford economy; Should be informed of what are the present working conditions, average income, how many people work on fish vessels, most people not interested; Vessels shares system when he was involved and today; "Shackers" (term for rookies when he fished); Can't remember origin of "lumper"
- 45:59 Asking about JF background, discussing Brockton connections
- [End of interview]

00:00: JF: Tape intro; Lawyer?

JX: Retired superior court judge; before that, lawyer;

JF: Background?

JX: Born New Bedford April 14, 1936; Father and mother immigrant from Greece. Mother's father John, who named after, lobster fisherman out of New Bedford about 1920 to 1940, in Newport before that. Raised in New Bedford and New Haven. Dad used to own several bars here on waterfront, couple fishing boats.

Went fishing one summer in college, probably 3 trips. Scalloping, vessel named [sp? Lewis L. Thibeau], long gone, dad owned it. He owned another boat, [?sp D.S.L. Burke], probably long gone.

Then tended bar at his bar, became acquainted with a lot of people, fishermen came in.

After law school, became lawyer for the 3 unions—fish lumpers, seafood workers, teamsters who represented fishermen about 10-12 year period at one point. Co-council for health and welfare funds for each of those unions, provided health insurance for worker, spouses, children. Co-council for pension funds for each, pensions for retirees and surviving spouses.

03:00 JF: Intent to come back after law school and work in fishing industry.

JX: No. Basically, intent to come back and practice law New Bedford. Ended up doing fishing industry work. 60s, one area of practice was personal injury suits by fishermen. Ended up being labor lawyer, including fishermen and their funds.

JF: What was co-council for the funds?

JX: Those days, management lawyers for employers and I would be co-council.

JF: What would legal work involve?

JX: For example, RISA legislation 1973 affected employee benefit plans, had to amend number of plans to comply. Make sure complied with regulations Dept. of Labor, IRS, go to monthly meeting, listen to issues, so forth.

05:05 JF: Was there much conflict?

JX: First group privilege to represent fish lumpers, around 66, 67. Involved collective bargaining negotiations with employer association for fishing boats, the Seafood Producers Association, since gone.

Reasonable conflict. One strike, forget year, issue was establishment of multi-employer pension plan. Did not have one. Result, pension plan created. Memory is there was health and welfare plan. Represented them until late '83 when became judge Nov. '83.

Think started representing seafood workers probably '69 or '70, until went to bench. Involved 2 or 3 sets negotiations. In all these, occasional grievances, not too many, go to arbitration. Involved in their health and welfare fund, pension.

07:12 Disastrous, unfortunate, very bad strike 1981. Employers basically emboldened, in my opinion, because air traffic controllers labor dispute federal government/Pres. Reagan involved in. Very serious dispute. My view, emboldened many employers various industries to take on unions. Disastrous strike, union broken, no longer exists. Believe health and welfare fund, pension funds gone.

- Lumpers side, health insurance fund, gone, believe pension still exists for retirees collecting, not sure if exists for new people. Jim Dwyer would know, I've been away too long.
- Fisherman's side, before I was lawyer, summer I went fishing, fishermen were organized that year I think by, independent in those days, New Bedford Fishermen's Union I think '57 or '58. That point I was still tending bar while I went to college. They were there, Seafarer's International Union involved with them, and Teamsters took over in, let's think, probably '70 or '71. Can't remember exact date. I was involved in those collective bargaining negotiations, grievances on behalf of membership, co-council for health and welfare, pension funds. I was gone, on bench, disastrous strike '86. Disastrous may not be right term.
- 09:50 JF: Get impression still hurts people, hear about it.
- JX: Hurst because when one is suggesting today great progress in New Bedford fishing industry, "I most respectfully would dissent strongly." With all difficulties, at least people who worked had health insurance, whether unloading, wording in fish house, harvesting fish. Also had pension funds, need for retirements.
- My understanding, not current because I've been long gone, don't think any exist other than ones carrying out payment benefits for retirement long past.
- Other issue some interest historically, when collective bargaining agreement with fish boats, based on how many days fish, so many days ashore to rest, be with families. Vessels could only be unload Monday-Friday, had to get in port before auction, get unloaded. I'm informed by Mr. Dwyer now it's 24-7, any hour day or night phone rings, on call go unload vessel. I don't think necessarily progress, most respectfully.
- Likewise, from a fishing point of view, vessels could only Monday through Saturdays, not Sundays. Safety point of view, there was joint management safety committee, go out make sure life rafts, EPIRBs, those aspects. Had circumstances where work 6 hours on, 6 off. Not so sure taking place today. Informed it's not, that's what I'm told. Then, typical scallop boat 11-handed, skipper, mate, cook, 8 crew. Not so sure that's taking place today. Also would concern me from health and safety point of view. You may know more about that.
- 13:00 JF: From what people said, it's not, also because government regulations come into play.
- JX: Government regulations affect harvesting, when can go. Not so sure any impact on what crew size should be. Don't have circumstance where remuneration inadequate, it's quite good, particularly scalloping. Don't think issues of underhanded breaking watches have anything to do with fishing days, conservation issues, would be curious to hear argument to contrary, would be pleased to be persuaded to contrary.
- JF: My sense is that when only have so many days out, don't feel like can take time out to sleep. Have to ask again.
- JX: I'm not so sure that's in the long run healthy.
- JF: Oh no, nobody thinks it's healthy.
- JX: Last thing you want to do is see some young crew member injured.

- JF: Yeah, all seem to think not healthy. So those are the kinds of issues you helped put in place, quality of life things?
- JX: Not necessarily me, basically unions, business agents, I was just lawyer. Think put in place by rank and file union officials who in most instances were fish lumpers and workers, some instances fishermen. Wouldn't give myself credit for putting it in effect.
- JF: So you weren't necessarily in on negotiations.
- JX: I was involved, participated all of them during those years.
- JF: As lawyer would you be person who spoke for the group?
- JX: Basically collective bargaining, whether fishing industry, high tech company, principal spokesmen tends to be council. Person who represents union or management. Caucus[?] with team, also participate, but council principal spokesperson.
- JF: Would have had to spend lot of time talking with people?
- JX: Those days very familiar with industry aspects, because exposure to various aspects.
- 16:08 Those days, day would begin I'd stop by fish auction on way to office, have cup coffee, schmooze people, find out what's going on, so forth. Maybe couple days a week, actually more often.
- JF: That was when anyone could squeeze in?
- JX: Yeah, next door to Wharfinger building. There was a public area, think everyone could go in [chuckles]. I used to, maybe because of my involvement. Think it was open to public.
- JF: There was a separate area for captains?
- JX: Area where bidding, dealers were. Think area for skipper, etc., and the public.
- JF: That place really did seem to be the heartbeat.
- JX: There's a city ordinance, probably not constitutional. Don't think was ever litigated, may have been. Required all landings come through auction. How got passed, created... In my view, not so sure would say it back then, but constitutionality issue because of Commerce Clause Constitution, because product interstate commerce. Feds might be able to do something, obviously not getting involved in that, but local government probably not authority. No idea when that was passed.
- JF: But nobody seems to care? Because of the culture at the time?
- JX: Auction... There used to be another jointly... By the way health and welfare funds jointly trusted, employee trustees and employer trustees. Called jointly trusted Taft Hartley funds under Taft Hartley act.
- Also in my memory, promotional fund, something to do with small amount coming out of gross stock, help finance people at auction, used for promotion, legislative affairs.
- Then had New Bedford Seafood Council, very effective. Visit various food editors, bring them in, expose them to products, whole marketing thing. Took place '50s, '60s.
- 19:24 One of difficult issues back about '79 or '80, remember making several trips to Washington with my counterpart from management, union people, boat people,

- negotiating Hague Line, this whole Canadian situation. Made couple trips. They went more often.
- JF: Was that the 200 mile limit?
- JX: NO 200 mile limit is Studds Magnuson, different situation.
- 20:15 Another issue historical effect most people probably don't recall, for fishermen. Fishermen treated as employees originally. Special federal revenue rule, they were employees, pay their contributions social security, FICA, matching by employers. Revenue ruling change sometimes late '70s, close to '80. Prior to that there'd be withholding, then became self-employed. Resulted in guy on boat paying both ends, 6.5 as employee, 6.5 as employer. Self-employed pay about 13 to 14%. Very unfortunate.
- JF: So became both?
- JX: No. Treated for IRS purposes as self-employed. In my view, unfortunate development. Just as one might be consultant. Tax change by tax court or IRS. Probably haven't heard discussion before.
- JF: One person last year talked about problem ran into because of it, but didn't get into bigger issue.
- JX: Yeah. Can't remember exactly when happened.
- JF: So then was upon the individual fishermen to...
- JX: Yeah. Subject self-employment tax, all these other issues.
- JF: Were you still union lawyer?
- JX: Yeah, think so. '80 or '81. I left end '83 for bench. Still representing teamsters.
- JF: Would you have gotten involved, making sure they knew how to handle it?
- JX: Accounting issue. Remember faintly industry pushing against, no one wanted. But how IRS interpreted tax laws as related to fishermen.
- JF: They didn't have strong enough lobby?
- JX: Probably not a lobby, just the status of the law.
- 23:45 JF: Like to ask fishermen if any memories that stand out? Wondering if you have any specific incidents?
- JX: Not necessarily. Had some stress, occasional stress. '81 seafood workers' strike very sad, tragic. Whole place went non-union, lost health, pensions. Pretty sad for the people.
- JF: Today lots of immigrants those jobs. Would that have affected who willing to work?
- JX: Those days predominantly Portuguese, Cape Verdean ancestry, children of immigrants, well-paid. Tried to recollect for this interview, files long gone. Very unfortunate circumstance.
- JF: And how did it all happen? Did it all end in a day?
- JX: Strike began either late spring or that summer. Broken by November. Long, tough strike. Union lost. Complete decimation.
- JF: Like a slow death from there, or just go away one day?
- JX: Probably a slow death best way to categorize it.
- 26:00 JF: So today, longshoreman have a union.
- JX: Longshoremen?
- JF: Yeah.
- JX: I was council to them.

JF: They've held on to theirs as I understand it?

JX: Local 1413 and 1465, guys who unload ships. Still exist. Isn't much shipping coming into port in my opinion. Scott Lang, who practice with me, is their lawyer, now local mayor.

I was involved with drafting that health and welfare, pension funds. Probably one of my favorite achievements, pension fund for longshoremen.

JF: How come?

JX: Nothing's more important... Longshoremen very interesting hard work. Used to be lot of older guys, many may do something else in addition, not enough work. Can't remember when it was, but instead of so much an hour, under a national labor agreement. IN other words, longshoremen subject to international labor agreement under ILA, New York Shipping, etc., some portion of dollars have to be put into funds. One time, diverting, portion to employer, portion to employee. I rendered opinion, "Guys you can't do that," has to go into pension fund. Some resistance at time. Remember being at meeting, at their hall. Like everyone, only think of the present. Maybe only 24 cents an hour, some would say I'm gonna earn less money. Able prevail, vote, created pension fund. Many years later, some still getting. Maybe not lot of money, but 75 year old widow, retired gentleman...

JF: And they're still thanking you.

JX: No reason to thank me. I was just union's business agent at time. [Chuckles]. I don't need any thanks. Remember being involved, look back, say good thing they did this.

JF: Now who is longshoreman employer? Ship?

JX: For longshoremen then, sure same today. Historically it's not ship who are employer, usually a 3rd party that ship contracts with when come into port. For example, assume Maritime Terminal over there still unloads. Employer who hired longshoremen would be Maritime. Used to be guy named Mickey Finkle[?] also in this business, like agents, also a guy named Robert[?], like shipping agents, arrange bring vessels in port, make sure gets unloaded, gets sent by rail or a truck.

29:49 JF: But not much activity down there I don't think.

JF: Interviewed longshoremen last year, in union, said problem now lot of vessels so big can't fit, go to New York and places.

JX: One issue shipping industry, have to examine growth containerization versus break bulk cargo. Cargo that's in the hold [hole?]. Worked as longshoreman one summer 50 years ago or whatever. Tough work [chuckle]. And know from days as lawyer.

Break bulk cargo, you go into hole, it comes up, goes ashore. Containerization, what you see on end of trucks. They're on vessel, whatever's in there is in there, need places on land to store them. New Bedford those days, probably today, tend get break bulk, don't necessarily have container capacity. And he's correct, vessels much bigger.

JF: Everything he described did sound like break bulk.

JX: Yes.

JF: Lumpers, their employers?

JX: Fishing vessels.

- JF: As would be fishermen?
JX: Yes, although as said earlier, treated as independent contractors. Seaman within meaning of Jones Act, God forbid they got injured.
JF: Why would lumpers and fishermen have ended up different?
JX: Good question. Why lumpers employees for IRS purposes, fishermen self-employed? Don't know answer. Good question [chuckles].
JF: If ask, probably do lumpers disservice.
JX: Always better off being treated as employee.
JF: Producers, whoever they work for is their employer.
JX: Yes. Whatever plant they work for.
- 32:53 JF: Was judgeship a hard decision when opportunity to step out of this kind of work?
JX: Those days, as lawyer, represented people in men's apparel industry New England, United Auto Workers 3 or 4 plants New Bedford, Teamsters all the other people they had, bricklayers, firefighters, 3 or 4 police unions, utility guys at power plant.
Looking back, don't know if was difficult decision, always wanted to serve as judge, opportunity came.
JF: When labor lawyer, private practice? How got clients?
JX: Private practice.
JF: And people knew about you?
JX: Law practice to some extent, whether personal injury, domestic relations, estate planner, combination of hopefully having good reputation and other people refer individual clients and organizations to you.
JF: So word of mouth?
JX: Yeah.
- 34:36 JF: So your work as a judge was whatever came up?
JX: Yeah. Served in New Bedford District Court for 4 years, Superior Court for 12. Broad base, civil litigation, criminal matters, combination.
JF: Did you ever come across things related to fishing industry?
JX: Every once in a while. Not that often. You'd get a personal injury case, someone injured on vessel. Concurrent jurisdiction if person injured, U.S. District Court, Mass. Superior Court. You'd have that on occasion.
You'd have... Remember some dispute, one shipyards Fairhaven, can't remember details.
Might have corporate dispute, 3 people who own a fishing vessel, like other businesses.
Not much related to fishing industry.
JF: Interesting that from your perspective, the same laws that apply to anyone else apply to fishing.
JX: Same laws apply all of us. Specific ones related maritime, fishing. They have whole conservation issues that apply, serious concern to them.
JF: Can be easy to get tunnel vision.
JX: We all do. Whatever our frame of circumstances, daily environment.
JF: Is that a hallmark of good lawyer, remember to take those blinders off?

- JX: Hopefully good judge is someone with open mind, willing get educated by people who appear, applies facts, follows law, tries make intelligent decision.
- 37:12 JF: Sort of got into this, but from your experience things better off now or worse off?
- JX: Think frankly, lack of employee benefits not a positive development from 25 years ago. Serious problem with regards health insurance all industries. Not limited fishing. Very difficult out there live in a family without health insurance. Same analogy, defined benefit pension plans complete decline across board in the U.S. Don't think is a positive step, whether steel industry or fishing industry.
- JF: [Talking about former employer's switch from pension to ESOP, happened resign at time when shares high. Felt riskier.]
- JX: Yeah. Sure.
- Obviously boats better, safer. From what read in newspaper, festival brochure, have real great concern for what's happening to people in seafood processing houses. Many immigrants, vulnerable. Wonder what wages are, doubt if have employee benefits. Don't think that's progress at all, would characterize as decline.
- JF: Ever foresee a time when groups not unionized get unionized again?
- JX: Optimist. At some point, hope would exercise rights to organize collectively under federal law of U.S. Organize, develop collective bargaining agreements that would require them to have reasonable wages, hours, working conditions. Will it happen? It's difficult.
- JF: Does it just take the right person? Or did they figure we lost?
- JX: Probably folks there now were not there when took that hit. National Labor Relations Act, principal law that applies to collective bargaining, combination of that, Wagner Act, Taft Hartley Act, [?] Griffin Act principal laws. Very difficult for trade unions. Even if filed petitions for representation, get people sign cards, get election going, there are issues of unfair labor practices, very difficult from my experience.
- 40:55 JF: What would want festival visitors to come away understanding?
- JX: Should know of great contribution men and women who work in industry make, impact it has on Greater New Bedford economy. Should be informed of what are the present working conditions, average income, how many people work on fish vessels. Same thing with lumpers, processing. Sure it won't be. Most people not interested, frankly.
- JF: Interesting, some comes out with fishing vessels in terms of shares, interesting to people
- JX: What is the current...how is gross stock cut up these days?
- JF: You mean like 40-60?
- JX: 25 years ago, from my memory and hopefully not in error. Gross stock 100%, 1 or 2 % to employee benefit fund for health insurance, 1 or 2 % to employee benefit fund for pension, something to promotion fund, can't remember. Then cut up I think, 65% to crew, 35% to boat, 10% of boat went to skipper, some amount to engineer (may have come from crew) and to cook. Fuel and grub out of crew share.
- JF: Sounds similar to how scalloping settlement sheet I saw worked.

JX: How scallops were then. May be a few other issues now. Draggers think 60-40 those days.

JF: Hear can differ by vessel. Because no union?

JX: Because no union. When labor agreement, always in there how gross stock cut up. Haven't seen settlement sheet 25 years.

JF: Some crew get full, some partial, depending on how long working.

JX: That's what's happening now? Those days, had shackers. I was a shacker summer I went fishing. Didn't get full share because rookies. Sick most of time anyways [chuckles], then you did a little work. After 2, 3 or 4 trips, probably get a share. Depends how productive you were

JF: They were called shackers?

JX: Yeah.

JF: Never heard term.

JX: Curious, know origin of word lumper? Should ask Jimmy. I used to know. Has something to do I think with Nova Scotia or Canada, Newfoundland. Knew it once.

JF: Interesting on settlements, once I saw nothing about benefits.

JX: Those days came out of it. Completely gone I assume.

JF: Thank you so much.

JX: Not sure if helpful.

JF: Yes, nothing from this perspective that I know of so far.

45:59 JX: Give me your background before I leave. Tell me about...

JF: From Brockton, lived there through high school.

[Talking about Brockton connections, he used to work that court sometimes because it's a circuit court]

[End of interview; still talking, shut tape off]