

IN ARBITRATION PROCEEDINGS PURSUANT TO SECTION B.10
OF THE FRAMEWORK FOR SPECIAL AGREEMENT ON APPLICATION
OF TECHNOLOGIES AND PRESERVATION OF MARINE CLERK
JURISDICTION OF THE ILWU-PMA
PACIFIC COAST CLERKS' CONTRACT DOCUMENT

C-10-2009

INTERNATIONAL LONGSHORE AND
WAREHOUSE UNION,

Union,

and

PACIFIC MARITIME ASSOCIATION,

Employers.

Re: Appeals from SCAA-0020-2008, SCAA-
0024-2008, SCAA-0003-2009

OPINION AND DECISION

of

JOHN KAGEL

Coast Arbitrator

August 4, 2009

Palo Alto, California

APPEARANCES:

For the Union: Ray Ortiz, Coast Committee Member, Joe Gasparov, Local 63

For the Employers: Jacquie Ferneau, Director, Contract Administration and
Arbitration

ISSUE:

Area Arbitrator Miller reached decisions SCAA-0020-2008 with respect to certain
work to be performed by Marine Clerks and Foremen. He expanded on those decisions in
subsequent implementation decisions. As summarized in SCAA-0024-2008 those
decisions are:

“DECISION

The following shall constitute how work shall proceed at STS-Evergreen.

Item No. 1: Directing the type of chassis and/or bombcarts that are to be utilized by UTR drivers when discharging cargo from the vessel, including a specific steamship line.

The clerk shall direct such described work whether such work function be electronically or otherwise. There shall be no participation by any NBUP (Foremen) within this job function.

Item No. 3: Directing UTR drivers which tophandler and yard spot to go to for discharge and load out.

The clerk shall perform such work electronically or otherwise. There shall be no participation by any NBUP (foremen) within this job function.

Item No. 4: The sequencing and segregation of cargo as it approaches or leaves the hook, including segregating by port of discharge and cargo type.

The clerk shall perform such work electronically or otherwise. There shall be no participation by any NBUP (foremen) within this job function.

Item No. 5: Directing the flow of cargo by telling UTR drivers to change direction under the hook to accommodate port of discharge or cargo type (for example, refrigerated cargo).

The clerk shall direct, check/verify and sequence such cargo. At the Employer's discretion the NBUP (foremen) shall be allowed to only position such cargo under the hook if needed to allow for proper loading.” (Jt. Ex. 6)

The Area Arbitrator in SCAA-0003-2009, a second implementation decision, added:

“It has become obvious that the Employer has allowed NBUP (foremen) to perform **checking** at the STS-Evergreen Terminal after the introduction of ‘new’ technology. What has occurred subsequent to the technology is that the technology does not perform all of the job functions under the jurisdiction of the Union.

It is disingenuous of the Employer to contend that the function of **checking** was not raised at SCAA-0020-2008. That record and its exhibits clearly establish that the Section of the PCCCD that includes **checking** was made a part of the record." (Jt. Ex. 7, bold type in original)

The Employers maintain that that issue was not raised in SCAA-0020-2008.

The issue is here whether the above decisions should be confirmed or nonconfirmed.

DISCUSSION:

Jurisdiction:

The items in question arose out of the application of OCR and GPS technology and the Employer no longer ordering Hatch Clerks. These particular items generally involve situations where the OCR and/or GPS, either through human error or malfunction of the technology, create exceptions to what is expected that the technology will accomplish.

This case is arbitrated under the terms of the PCCCD. As such, in accordance with long standing precedent which the Parties have not amended in subsequent Agreements, Clerk jurisdiction is to be preserved even from *de minimus* intrusions, and agreements with other Bargaining Units are not relevant to the interpretation of the PCCCD.

However, this case being heard under Technology Framework B.10 allows the Coast Arbitrator to hear and assess the credibility of the witnesses. The Area Arbitrator stated he gave no weight to what he found to be conflicting testimony of Clerks and Foremen, notwithstanding his responsibility to make findings as required for the

application of the Agreement as to work performed both before and after the introduction of technology. The testimony before the Coast Arbitrator has been taken into account as is required in making the rulings set forth below in interpreting Section 1 of the PCCCD and the Technology Framework as they apply in this case.

Application to Items in Question:

Item No. 1: Directing the type of chassis and/or bombcarts that are to be utilized by UTR drivers when discharging cargo from the vessel, including a specific steamship line.

If a bombcart or chassis is brought under the hook which would not allow the safe discharge of cargo, the Foreman can direct the UTR Driver to get out of line, and the Foreman will call the problem to the attention of the Supercargo.

Item No. 3: Directing UTR drivers which tophandler and yard spot to go to for discharge and load out.

Marine Clerks provide the information of where the UTR Operator is to go for discharge and load out after the UTR Driver's initial assignment

Item No. 4: The sequencing and segregation of cargo as it approaches or leaves the hook, including segregating by port of discharge and cargo type.

Sequencing is for Marine Clerks to perform under Section 1 of the PCCCD. On load out the Foreman can observe the container that comes under the hook for proper stowage such as applying cones and for other stowage reasons. The Foreman can direct the stow of the container, and if there is a deviation from the stow plan in doing so, notify the Supercargo. Or the Foreman can direct the UTR Driver from under the hook if in his professional judgment the container cannot be stowed then, and so advise the Supercargo.

To do so neither violates Section 1 of the PCCCD nor is contrary to SCAA-22-2007 in that the Foreman is not directing flow of cargo, is not checking contrary to PCCCD Section 1, nor is performing work that technology is to perform. In such instances the Foreman is directing the stowing of cargo as done before the technology in question. Based on this record such stowage direction shows there has been no shifting of work away from traditional Marine Clerks' work in violation of the Technology Framework even if this issue was before the Area Arbitrator in the first hearing in this case.

With respect to discharge under Item 4, see Item 1.

Item No. 5: Directing the flow of cargo by telling UTR drivers to change direction under the hook to accommodate port of discharge or cargo type (for example, refrigerated cargo)

Foremen can direct a change of direction under the hook for proper stowage.

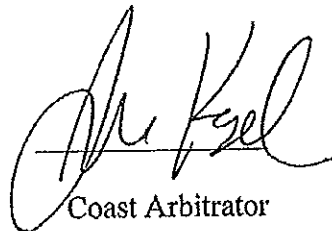
Communications:

Nothing was shown that Foremen and Supercargoes cannot communicate directly with one another as to conditions concerning both of their functions as to load out and discharge. The above states the responsibilities of each raised in this case; their communications for many reasons, not the least of which may be safety, are an essential part of each of their work. (See PCCCD Section 1.254)

DECISION:

SCAA-0020-2008, SCAA-0024-2008 and SCAA-0003-2008 are modified as

stated above.



Mr. Keel
Coast Arbitrator

<p>IN THE MATTER OF A CONTROVERSY</p> <p>BETWEEN</p> <p>PACIFIC MARITIME ASSOCIATION</p> <p>AND</p> <p>INTERNATIONAL LONGSHORE AND WAREHOUSE UNION LOCAL 63</p> <p>Re: Implementation of Awards SCAA-0020-2008 & SCAA-0024-2008</p>	<p>SCAA-0003-2009</p> <p>Opinion and Decision</p> <p>of</p> <p>David Miller Area Arbitrator</p> <p>February 4, 2009</p> <p>Long Beach, California</p>
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The hearing was held at 9:15 AM on February 4, 2009 at 300 Oceangate, 12th Floor, Long Beach, California. Each party was afforded full opportunity for examination and presentation of relevant arguments, documents, and testimonies of witnesses. A Certified Shorthand Reporter was in attendance and recorded a transcript of the hearing.

APPEARANCES:

FOR THE EMPLOYERS:

Jacqueline Ferneau
Tim Kennedy
Pacific Maritime Association

FOR THE UNION:

Joe Gasperov
ILWU Local 63

ALSO PRESENT:

R. Dickey, PAG
B. Johnson, PAG
R. Finlay, Local 63
R. Maynez, Local 63
M. Ponce, Local 63
A. Diaz, Local 63
S. Jebaranathan, EMS
F. Mazzecca, EMS
R. Childs, EMS
P. Sierra, PAG
A. Baddeley, SSAT
H. Holman, PMA
J. Gonzalez, PMA

ISSUE:

Whether the Employer, Ports of America, hereafter PAG, is in compliance with awards SCAA-0020-2008 and SCAA-0024-2008.

BACKGROUND:

A hearing was held on October 8, and October 14, 2008 in regards to an alleged violation of the PCCCD as claimed by the Union. The decision of SCAA-0020-2008 reads:

1. THE EMPLOYER, STS-EVERGREEN, IS FOUND IN VIOLATION OF THE PCCCD BY ALLOWING NBUP (FOREMEN) TO PERFORM MARINE CLERKS WORK.
2. THE EMPLOYER, STS-EVERGREEN, SHALL ASSIGN THE JOB FUNCTIONS DESCRIBED IN JOINT EXHIBIT NO. 4 TO MARINE CLERKS IMMEDIATELY.

On December 10, a hearing was held as it pertained to a claim by the Union that PAG was not implementing SCAA-0020-2008. As a result of that hearing, the following decision of SCAA-0024-2008 was delivered to the parties:

THE FOLLOWING DECISION IS INTENDED TO GIVE THE PARTIES SPECIFIC GUIDANCE AND CLARITY TO HOW WORK ASSIGNMENTS RELEVANT TO SCAA-20-2008 SHALL BE IMPLEMENTED.

DECISION

THE FOLLOWING SHALL CONSTITUTE HOW WORK SHALL PROCEED AT STS-EVERGREEN.

ITEM NO. 1: DIRECTING THE TYPE OF CHASSIS AND/OR BOMB CARTS THAT ARE TO BE UTILIZED BY UTR DRIVERS WHEN DISCHARGING CARGO FROM THE VESSEL, INCLUDING A SPECIFIC STEAMSHIP LINE.

THE CLERK SHALL DIRECT SUCH DESCRIBED WORK WHETHER SUCH WORK FUNCTION BE ELECTRONICALLY OR OTHERWISE. THERE SHALL BE NO PARTICIPATION BY ANY NBUP (FOREMEN) WITHIN THIS JOB FUNCTION.

ITEM NO. 3: DIRECTING UTR DRIVERS WHICH TOP HANDLER AND YARD SPOT TO GO TO FOR DISCHARGE AND LOAD OUT.

THE CLERK SHALL PERFORM SUCH WORK ELECTRONICALLY OR OTHERWISE. THERE SHALL BE NO PARTICIPATION BY ANY NBUP (FOREMEN) WITHIN THIS JOB FUNCTION.

ITEM NO. 4: THE SEQUENCING AND SEGREGATION OF CARGO AS IT APPROACHES OR LEAVES THE HOOK, INCLUDING SEGREGATING BY PORT OF DISCHARGE AND CARGO TYPE.

THE CLERK SHALL PERFORM SUCH WORK ELECTRONICALLY OR OTHERWISE. THERE SHALL BE NO PARTICIPATION BY ANY NBUP (FOREMEN) WITHIN THIS JOB FUNCTION.

ITEM NO. 5: DIRECTING THE FLOW OF CARGO BY TELLING UTR DRIVERS TO CHANGE DIRECTION UNDER THE HOOK TO ACCOMMODATE PORT OF DISCHARGE OR CARGO TYPE (FOR EXAMPLE, REFRIGERATED CARGO).

THE CLERK SHALL DIRECT, CHECK/VERIFY AND SEQUENCE SUCH CARGO. AT THE EMPLOYER'S DISCRETION THE NBUP (FOREMEN) SHALL BE ALLOWED TO ONLY POSITION SUCH CARGO UNDER THE HOOK IF NEEDED TO ALLOW FOR PROPER LOADING.

The instant dispute pertains to Items No. 1 and No. 4 above in SCAA-0024-2008 and the Union's claim is that PAG is not implementing the Arbitrator's award and in failing to implement the award PAG is using gimmicks or subterfuge in violation of Section 18.1 (Good Faith Guarantee).

DISCUSSION:

UNION:

The Union's contention is that Items No. 1 and No. 4 described above in SCAA-0020-2008 and clarified later in SCAA-0024-2008 have not been implemented. It is the Union's claim that PAG, as it relates to Item No. 1, continues to allow NBUP (foremen) to participate within the job functions of a marine clerk by **checking** container numbers and matching such containers to a chassis or bombcart under the crane.

The Union contends that within Item No. 4, PAG is allowing NBUP (foremen) to perform **checking** of container numbers for the purpose of sequencing and segregating on the dock before hoisting.

EMPLOYER:

The Employer contents that SCAA-0020-2008 and SCAA-0024-2008 have been implemented as ordered by the Area Arbitrator. The Employer relies upon the fact

that PAG no longer allows a NBUP (foreman) to verbally communicate with a UTR driver as it pertains to Item No. 1 of SCAA-0024-2008. Instead the NBUP (foreman) now matches the container being discharged with equipment (bombcart/chassis) then calls the supercargo to inform the supercargo of the discrepancy.

In addressing Item No. 4 above, the Employer contends that the NBUP (foremen) matches cargo on the dock with the sequencing and segregation paperwork and if such cargo is out of sequence a clerk is informed of the discrepancy.

RATIONALE FOR DECISION:

This hearing was the third hearing addressing the same issue. In SCAA-0020-2008 PAG was found in violation of the PCCCD as described in the award by allowing NBUP (foremen) to perform marine clerks' work. The Employer was ordered to assign such job functions to the marine clerks.

The parties were in disagreement as to the implementation of the subject award (SCAA-0020-2008) and referred the issue of proper implementation to the Area Arbitrator. As a consequence, SCAA-0024-2008 was published on December 22, 2008 which provided details as to how Items No. 1 and No. 4 should have been implemented. At the hearing of February 4, 2009, there was confusion between the parties as to proper implementation.

At the February 4, 2009 hearing, this Arbitrator allowed both parties broad liberality in presenting evidence in the support of their respective positions. This included evidence which was irrelevant to the implementation of the December 22, 2008 decision.

I found the Employer's witness, Robert Dickey's testimony to be without credibility. Mr. Dickey's testimony was evasive and he failed to respond to direct questions.

In conclusion, the job functions in dispute are described within the PCCCD and protected within the Technology Framework A-4, which reads:

A-4. In consideration for the modification and elimination of certain marine clerks' work that may occur as a result of technology, any new marine clerks' work created by the introduction of technology shall be assigned to marine clerks at a terminal and, thereafter, such assignment shall be construed as having the same effect as if it were an addition to section 1 of the PCCCD at that terminal. All work created by technology or modified by technology that is functionally equivalent to the work of the marine clerks within their traditional union jurisdiction, shall be assigned to marine clerks and remain marine clerks' work. It is further agreed that:

A) New technologies shall be implemented in accordance with traditional union jurisdiction set out in section 1 of the PCCCD.

B) All traditional marine clerk's work, including work modified by any technology, shall be assigned to marine clerks in accordance with section 1 of the PCCCD.

C) All work created by technology, including the operating of such technology, that is functionally equivalent to traditional marine clerks' work shall be assigned to marine clerks.

D) Technologies shall not be used to shift traditional union jurisdiction to non-bargaining unit employees or facilities. Bargaining unit jobs may be eliminated only as a result of labor-saving devices and technologies and not as a means to achieve labor cost savings by using a cheaper work force or subcontractor.

The above section as stated in previous awards protects Union jurisdiction as it pertains to job functions that remain at STS-Evergreen after technology was initiated.

It has become obvious that the Employer has allowed NBUP (foremen) to perform **checking** at the STS-Evergreen Terminal after the introduction of "new" technology. What has occurred subsequent to the technology is that the technology does not perform all of the job functions under the jurisdiction of the Union.

It is disingenuous of the Employer to contend that the function of **checking** was not raised at SCAA-0020-2008. That record and its exhibits clearly establish that the Section of the PCCCD that includes **checking** was made a part of the record.

On February 10, 2009, I visited the Evergreen Terminal with all parties in attendance for the purpose of observing the longshore operations which are the subjects of the instant dispute.

At the time of my visit, the Employer appeared to be in full compliance with my December 22, 2008 decision.

The following decision modifies and supports my verbal order of February 4, 2009.

DECISION

1: Based upon the testimony and evidence at the February 4, 2009 hearing, the Employer (PAG) was utilizing NBUP (foremen) to perform marine clerks' work as alleged by the Union. Therefore, the Employer is found in violation of failing to implement SCAA-0020-2008 and SCAA-0024-2008.

The Employer shall continue to abide by the work practices viewed by this Arbitrator on February 10, 2009, which is in compliance with SCAA-0024-2008.

2: As to the Union's alleged claim of a violation of the PCCCD Section 18.1 by the Employer, this Arbitrator will hold such decision in abeyance, without prejudice to the parties.

/s/ David Miller

David Miller
Area Arbitrator
Southern California

Dated: February 12, 2009

<p>IN THE MATTER OF A CONTROVERSY</p> <p>BETWEEN JAN 09 2009</p> <p>PACIFIC MARITIME ASSOCIATION</p> <p>AND</p> <p>INTERNATIONAL LONGSHORE AND WAREHOUSE UNION LOCAL 63</p> <p>Re: Implementation of Award SCAA-0020-2008</p>	<p>SCAA-0024-2008</p> <p>Opinion and Decision</p> <p>of</p> <p>David Miller Area Arbitrator</p> <p>December 10, 2008</p> <p>Long Beach, California</p>
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The hearing was held at 1:35 PM on December 10, 2008 at 300 Oceangate, 12th Floor, Long Beach, California. Each party was afforded full opportunity for examination and presentation of relevant arguments, documents, and testimonies of witnesses. A Certified Shorthand Reporter was in attendance and recorded a transcript of the hearing.

APPEARANCES:

FOR THE EMPLOYERS:

Tim Kennedy
Jacqueline Ferneau
Pacific Maritime Association

FOR THE UNION:

Joe Gasperov
ILWU Local 63

ALSO PRESENT:

R. Dickey, PAG
B. O'Roark, PAG
C. Halbert, PMA
D. Schulman, PAG
J. Francis, TraPac
E. Kalnes, TraPac
A. Otto, LBCT
S. Jebanantham, EMS
C. Lindsay, PMA
R. Finlay, Local 63
A. Diaz, Local 63
J. Spinosa, Local 63
M. Ponce, Local 63
J. Mascola, Local 63
R. Jacobelly, Local 63
F. North, Local 94
N. Grgas, Local 94
R. Alba, Local 94

ISSUE:

Whether Ports America Group, hereafter PAG, has implemented award SCAA-0020-2008 in accordance with the PCCCD.

DISCUSSION:

The Union's claim is that PAG has failed to correctly and/or fully implement the award as it pertains to Items 1, 3, 4, and 5 described on page seven of the award. Those items read:

- 1) *Directing the type of chassis and/or bombcarts that are to be utilized by UTR drivers when discharging cargo from the vessel, including a specific steamship line.*
- 3) *Directing UTR drivers which tophandler and yard spot to go to for discharge and load out*
- 4) *The sequencing and segregation of cargo as it approaches or leaves the hook, including segregating by port of discharge and cargo type*
- 5) *Directing the flow of cargo by telling UTR drivers to change direction under the hook to accommodate port of discharge or cargo type (for example, refrigerated cargo).*

The Union maintains that PAG is still allowing NBUP (foremen) to perform the job functions that were awarded to the clerks.

It is the Employer's contention that they are implementing the award to the best of their ability and that only isolated instances are occurring.

There was an abnormal amount of questions and answers asked and responded to by this Arbitrator. This dialogue was essential because of the indistinctness of the Union's claim to the four (4) items of the decision and the Employer's evasive response to how they would implement the award.

At no time did this Arbitrator become an advocate for either party. This Arbitrator only attempted to acquire relevant information in the attainment of a proper decision.

OPINION:

The record is clear that the parties were not willing to obtain agreement within the LRC process as to what specific job functions and by what methods such functions

would be assigned to marine clerks. The parties' divergence on implementation of the award is therefore properly under the authority of this Arbiter to render a decision as it pertains to implementation based on the evidence submitted and in accordance with the PCCCD.

The testimony of Robert Dickey, Labor Relations Manager for PAG, (Transcript Pages 53-75) and again during questions and answers at the conclusion of the hearing shall be considered. All four items of job functions were clarified during this testimony and some of Dickey's positions were modified during the question and answer period.

It is concluded that the Employer is offering as a resolution work functions that are less than that of the award's intention. It is also obvious that the Union is seeking job functions that are greater than those entitled.

The following decision is intended to give the parties specific guidance and clarity to how work assignments relevant to SCAA-20-2008 shall be implemented.

DECISION

The following shall constitute how work shall proceed at STS-Evergreen.

Item No. 1: Directing the type of chassis and/or bombcarts that are to be utilized by UTR drivers when discharging cargo from the vessel, including a specific steamship line.

The clerk shall direct such described work whether such work function be electronically or otherwise. There shall be no participation by any NBUP (Foremen) within this job function.

Item No. 3: Directing UTR drivers which tophandler and yard spot to go to for discharge and load out.

The clerk shall perform such work electronically or otherwise. There shall be no participation by any NBUP (foremen) within this job function.

Item No. 4: The sequencing and segregation of cargo as it approaches or leaves the hook, including segregating by port of discharge and cargo type.

The clerk shall perform such work electronically or otherwise. There shall be no participation by any NBUP (foremen) within this job function.

Item No. 5: Directing the flow of cargo by telling UTR drivers to change direction under the hook to accommodate port of discharge or cargo type (for example, refrigerated cargo).

The clerk shall direct, check/verify and sequence such cargo. At the Employer's discretion the NBUP (foremen) shall be allowed to only position such cargo under the hook if needed to allow for proper loading.

SCAA-0024-2008

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December 10, 2008

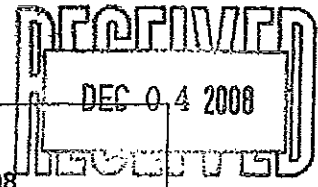
/s/ David Miller

David Miller
Area Arbitrator
Southern California

Dated: December 22, 2008

1/12/2009

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<p>IN THE MATTER OF A CONTROVERSY</p> <p>BETWEEN</p> <p>PACIFIC MARITIME ASSOCIATION</p> <p>AND</p> <p>INTERNATIONAL LONGSHORE AND WAREHOUSE UNION LOCAL 13</p> <p>Re:</p> <p>Issue No. 1: Should this issue be heard under Section 17 of the Technology Framework?</p> <p>Issue No. 2: Whether Ports America Group has violated the PCCCD by allowing other than marine clerks to perform clerks' work.</p>	<p>SCAA-0020-2008</p> <p>Opinion and Decision</p> <p>of</p> <p>David Miller Area Arbitrator</p> <p>October 8, 2008</p> <p>And</p> <p>October 14, 2008</p> <p>Long Beach, California</p>
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The hearing was held at 1:15 PM on Wednesday, October 8, 2008 and at 1:25 PM on Tuesday, October 14, 2008 at 300 Oceangate, 12th Floor, Long Beach, California. Each party was afforded full opportunity for examination and presentation of relevant arguments, documents, and testimonies of witnesses. A Certified Shorthand Reporter was in attendance and recorded a transcript of the hearing.

APPEARANCES:

FOR THE EMPLOYERS:

Tim Kennedy
Jacqueline Ferneau
Pacific Maritime Association

FOR THE UNION:

Joe Gasperov
ILWU Local 63

ALSO PRESENT:

J. Volt, PMA
R. Dickey, Ports America
L. Swietlikowski, PMA
M. Yarall, EMS
S. Jebanathan, EMS
R. Clark, EMS
E. Alexander, ILWU Local 94
M. Gargas, ILWU Local 94
G. Mitre, ILWU Local 13
M. Mitre, ILWU Local 13
A. Diaz, ILWU Local 63
J. Mascola, ILWU Local 63

R. Finlay, ILWU Local 63
J. Otis, APMT

ISSUES:

Issue No. 1: Whether this hearing is under the jurisdiction of the framework or only that of Section 17 of the PCCCD.

Issue No. 2: Whether Ports America Group, hereafter PAG, has allowed non-bargaining unit personnel, hereafter NBUP (foremen), to perform work functions within the PCCCD at the STS-Evergreen Terminal.

ISSUE NO. 1:

DISCUSSION:

Both parties agreed that the merits and substance of issue would be argued regardless of which grievance procedure (Section 17 and/or Framework) was selected as the forum for this dispute. Both parties also agreed that the argument as to merits would not be modified or dependent on the procedure.

The Employer is reliant upon the facts that this dispute began with the steps of the technology framework and during these procedures the Union raised the questions of work functions being performed by NBUP (foremen).

The Union's position is that they have the right to raise a Section 17 dispute independent of the framework at the moment of discovery and that such claim should be processed under Section 17 of the PCCCD and not be subject to the framework.

OPINION:

Employer Exhibit No. 1, C-20-06, is relevant to this issue and text from this award reads:

BENCH DECISION:

At the conclusion of the hearing the Coast Arbitrator stated:

'I agree with the Employers' position in this case that if there is a work assignment issue which arises, it was not discovered initially, that the place to bring it is under B-3, not under 17.'

The reason for that is ... that the Framework itself is specific to technology and was adopted after [Section] 17 had been in place for who knows how many years.

[The Framework] is essentially a special process for these kinds of claims, and the reason for that is what the Parties bargained, when they bargained for centralized review by the CLRC twice, for the Area Arbitrator to get involved, then the Coast Arbitrator. ... So these cases need to be brought under B3.

This does not deprive, in my view, the Union of any jurisdictional right, because the same issue is present, whether it's under 17 or it's under B-3, namely, whether Section 1 has been violated.

The question is just how you get to the answer. ... (Tr. 33-34)

The above award is consistent with the facts of this dispute. This Coast Award shall serve as guidance in determination of whether this dispute is proper under the technology framework of the PCCCD.

DECISION

ISSUE NO. 1

This issue shall be adjudicated under the technology framework of the PCCCD.

ISSUE NO. 2:

DISCUSSION:

The Union's (Local 63) contention is that similar job functions in dispute have previously been decided by this Arbitrator in awards that remain in effect and JPLRC agreements as to the scope of this work.

Within SCAA-0046-2006, the Union brings attention to the following rationale of the award.

OPINION:

The predominance of evidence submitted by the clerks is convincing when applied in a logical and reasonable manner in awarding the work in dispute to clerks.

When Section 1 of the PCCCD is taken into consideration in conjunction with past arbitrations and JPLRC meetings the work in question is indisputably that of clerks.

It is obvious that directions given as to the flow of cargo must be preserved as traditional work of clerks.

DECISION:

The direction of what chassis and or bomb-carts that is to be utilized by UTR drivers when discharging cargo at PCT Berth 245 Long Beach shall be assigned to marine clerks.

In addition, the Union (Local 63) submitted award SCAA-0022-2007, involving the Employer MTC which is now doing business as Ports America Group, and within this decision the Union was upheld in its assertion that MTC (PAG) was allowing NBUP (foremen) to perform clerks' work.

In JPLRC Meeting of October 1, 2008 and contained within those minutes is the Employer's response to the claim of Local 63 as it pertains to this issue.

In response to the Union's above-listed jurisdictional claims, the Employers maintained that verbal instructions to UTR operators, from other than a marine clerk for the purpose of carrying out work plans generated by a marine clerk, does not violate marine clerks' jurisdiction.

The Union submitted the following sections of the PCCCD to support their position:

1.251 Clerk. *An employee responsible for performing any or all of the following clerical functions related to receiving, delivering, checking, tallying, yard and/or cargo area inventorying (including containers), sorting, spotting and inspecting cargo and/or containers for the purpose of taking and recording exceptions, including the recording of necessary notations and the keeping of such records as may be required by the individual employer.*

1.25122 *Also, tallying cargo on the dock, or if required by the individual employer, tallying special cargo aboard vessels, segregating by ports of discharge and cargo type; spotting cargo; marking cargo by vessel, port, reference number and number of packages.*

1.25123 *Also checking, segregating, spotting and tallying cargo from water carrier to dock or carrier on discharge; spotting, checking and tallying cargo to water carrier from carrier or dock on loadout.*

1.12 *When an employer desires to have clerks' work performed in the dock area, clerks shall be employed to do it.*

1.22 However, when any such work is to be done, employees covered by this Contract Document, clerks' Part Supplements and Working Rules, shall be used.

1.23 Employers will not exercise their option as to whether or not work is to be performed as provided in Section 1.21 as a subterfuge to have workers other than employees covered by this Agreement perform such work. It shall be a subterfuge for an employer to assign to or arrange for others to perform work of clerks as provided by this Agreement. ILWU will not use the understanding that such work to be done as described in Section 1.22 as a subterfuge to require the employer to place unnecessary men on the job.

The above sections have been submitted time after time to support the Union's position as it pertains to a claim of NBUP performing job functions that are depicted within those sections of the PCCGD.

The Employer submitted Sections 1.1 and 15.2 of the PCWB&FA which read:

1.1 The Employers recognize the Walking Bosses and Foremen as direct supervisory representatives of the Employers in the performance of all cargo handling stevedoring activities covered under the Pacific Coast Longshore Contract Document. They shall have the responsibility and authority to supervise, place or discharge individuals and to direct the work and activities of longshore workers on the job in a safe, efficient and proper manner. They shall perform their customary duties in accordance with this Agreement and the directions of their Employers with due respect to the interests and requirements of the job and their Employers. The customary duties assigned herein to Walking Bosses/Foremen shall not be assigned to others. It is the intent of this Agreement to preserve the existing work of employees covered herein.

15.2 With regard to the local agreements, it is agreed that any provisions of this Coast Agreement supersede local agreements, and that any provisions of the local agreements which are in conflict with this Coast Agreement shall be changed as a result of the execution of this Agreement.

The Employer presented on their behalf, Frank North, Secretary Treasure of Foremen's Union Local 94. It is North's testimony that the foremen are not represented by the Coast committee and that they (foremen) are independent and maintain their own self-governing Coast and negotiating committee.

In support of SCAA-0046-2006, the Union submitted minutes from JPLRC meetings of October 17, 2007, November 21, 2007, and August 20, 2007.

OPINION:

There were a total of 82 exhibits submitted 39 by each party and four joint exhibits. The extensive amount of exhibits and testimony within the record has been carefully reviewed.

The presentation of the Union is persuasive in that they have met their burden of proof that PAG is allowing NBUP (foremen) to perform clerks' work. This claimed work is described within Joint Exhibit No. 4 and is agreed by both parties to be what job functions are in dispute. Those items read:

- 1) *Directing the type of chassis and/or bombcarts that are to be utilized by UTR drivers when discharging cargo from the vessel, including a specific steamship line.*
- 3) *Directing UTR drivers which tophandler and yard spot to go to for discharge and load out*
- 4) *The sequencing and segregation of cargo as it approaches or leaves the hook, including segregating by port of discharge and cargo type*
- 5) *Directing the flow of cargo by telling UTR drivers to change direction under the hook to accommodate port of discharge or cargo type (for example, refrigerated cargo).*

The Employer's attempt to interject the foremen's agreement is rejected. This rejection is governed by instructions given to all arbitrators and contained within CLRC Meeting No. 17-79.

This direction is affirmed by Coast Arbitrator Kagel in C-9-07. The text that pertains to this issue reads:

Further, as many cases have held, to the extent the Employers seek to rely on contractual arrangements with other bargaining units, arbitrators under the PCCCD are, as the Area Arbitrator held, bound to interpret the latter only.

It is understood by this Arbitrator that each technology arbitration must be decided on specific facts at that terminal and within that port. In the instant dispute, the Union makes no claim that OCR readers on the cranes are in violation of the PCCCD. Instead the Union's arguments are that regardless if clerks are eliminated because of technology, the Employer does not have the right to assign what clerks' work remains to a NBUP (foremen).

The Employers presented no compelling argument that the work in dispute is not

covered within the PCCCD. It was the presumption of the Employers that the job functions in dispute were existent in a collective bargaining agreement (Foremen's) other than the PCCCD.

Framework Section A-4-d reads:

d) Technologies shall not be used to shift traditional Union jurisdiction to non-bargaining unit employees or facilities. Bargaining unit jobs may be eliminated only as a result of labor-saving devices and technologies and not as a means to achieve labor cost savings by using a cheaper work force or subcontractor.

This section of the framework is relevant to this dispute based on the facts submitted. The technology at STS-Evergreen when working replaced the requirement of a clerk to verify container numbers. However, the technology within the OCR readers does not provide any direction to UTR drivers as it pertains to the issues argued in this dispute. Instead the Employer has chosen to allow NBUP (foremen) to give verbal direction as it relates to the flow of cargo.

It is the Employer's responsibility subsequent to the introduction of the technology to ensure that the clerk work that remains shall be performed by clerks and not a subcontractor (foremen) as described in A-4-d.

The testimony of clerks who testified for the Union and the foremen for the Employers contradicted each other as to past job functions performed and therefore are given no weight in reaching a final decision.

This dispute is the type of dispute Coast Arbitrator Kagel perceived in his decision of C-20-06. The substance of issue is that a Section 17 violation was discovered by the Union at some point in the framework procedure. As per the Coast Arbitrator, this issue is simply a question of how you get to the answer.

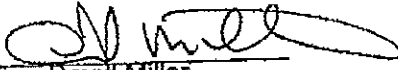
In summary, the clerks have proven through numerous exhibits that the job functions in question are properly that of marine clerks. The record supports the fact that the issue of NBUP (foremen) performing clerks' work after technology was implemented has been decided in past decisions in the LA/LB harbor. These decisions are not exact but are similar in nature. However, this decision has been attained by means of the specific facts and evidence submitted within this hearing.

DECISION:

1. The Employer, STS-Evergreen, is found in violation of the PCCCD by allowing NBUP (foremen) to perform marine clerks work.
2. The Employer, STS-Evergreen, shall assign the job functions described in joint exhibit No. 4 to marine clerks immediately.

SCAA-0020-2008

9 October 8, 2008 and October 14, 2008



David Miller
Area Arbitrator
Southern California

Dated: December 3, 2008

12/4/2008

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