

<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 Award SCAA-0001-2010</p>	<p>SCAA-0002-2010</p> <p>Opinion and Decision</p> <p>of</p> <p>David Miller Area Arbitrator</p> <p>January 22, 2010</p> <p>Long Beach, California</p>
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The hearing was held at 2:30 PM on January 22, 2010 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 transcripts of the hearings. I received electronically a transcript of this hearing on January 25, 2010.

APPEARANCES:

FOR THE EMPLOYERS:

Tim Kennedy
Pacific Maritime Association

FOR THE UNION:

Joe Gasperov
ILWU Local 63

ALSO PRESENT:

R. Dickey, PA
J. Ferneau, PMA
R. Mercial, PMA
S. Trombly, PAG
R. Molinero, PAG
R. Johnson, PAG
M. Ponce, Local 63
R. Olson, Local 63
P. Peyton, Local 63
M. Podue, Local 63

BACKGROUND:

Award SCAA-0001-2010 was given to the parties on January 21, 2010. The decision reads:

- 1) *PAG at WBCT is found in violation of the PCCCD and framework as described in this hearing.*

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- 2) *PAG shall turn off all superintendent computer screens in the identified areas immediately.*
- 3) *Any questions or clarification as to the above order shall be addressed by the Area Arbitrator.*

At approximately 11:00 AM January 22, I was called by the Union and a conference call began with PMA in attendance. I then gave clarification to the parties as it pertained to Items No. 2 and No. 3 of the decision. In addition, I explained what could be accomplished if the parties agreed to meet in a JPLRC meeting.

The above recommendation was rejected by the Employer and the Employer requested a formal hearing.

DISCUSSION:

The Union asserts on January 22, 2010 that Business Agents at the work site were informed by WBCT Management that the computers identified in Item No. 2 of the award would remain turned on under certain circumstances. At approximately 10:30 AM the Union suggested that the Employer meet with the Union and identify what the computers would be utilized for. This suggestion was turned down by the Employer.

The Employer maintains that they have implemented the award by removing superintendent access to the computer screens related to the issue. It is further stated by the Employer that all applications and programs unrelated to technology remain in place and are not subject to item No.2 of the award.

OPINION:

The decision of SCAA-0001-2010 was solely based on the facts and evidence submitted at that hearing.

It is the framework that gives clear direction to the Employer to disclose, exchange, and explain all information as it relates to introduction of new technology. There was no evidence submitted at the November 4, and 5 hearing to persuade this Arbitrator that any other usage other than what was discussed on the record of the computers at issue was considered.

The burden of presenting new technology and subsequent ramifications to marine clerks is referenced throughout the Framework Section of the Master Contract and it is the obligation of the Employer to divulge such information. It is the right of the Union to inquire, to hear, and to use such information to reach consensus or to disagree.

I find the position of the Employer to be based on evidence that was not presented at the original hearing and there has been no attempt by the Employer to present such relevant information in the proper forum.

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Therefore, the verbal decision given to the parties on January 22, 2010 is hereby affirmed in writing.

DECISION:

- 1) The Employer (PAG) is found guilty of not implementing Item No. 2 of SCAA-0001-2010 in violation of Section 17.57 of the Master Agreement.
- 2) If the Employer continues to not implement Item No. 2, then Section 17.282 of the Master Agreement may be used.



David Miller
Area Arbitrator
Southern California

Dated: January 25, 2010