

<p>IN THE MATTER OF A CONTROVERSY</p> <p style="text-align: center;">BETWEEN</p> <p>PACIFIC MARITIME ASSOCIATION</p> <p style="text-align: center;">AND</p> <p>INTERNATIONAL LONGSHORE AND WAREHOUSE UNION LOCAL 63</p> <p>Re: An Alleged Section 1 Violation as it Pertains to Clerks Work Described in the PCCCD.</p>	<p style="text-align: center;">SCAA-0001-2010</p> <p style="text-align: center;">Opinion and Decision of David Miller Area Arbitrator</p> <p style="text-align: center;">November 4, 2009 &amp; November 5, 2009</p> <p style="text-align: center;">Long Beach, California</p>
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The hearing was held at 9:05 AM on November 4, 2009 at 2001 John Gibson Blvd, San Pedro, California and 10:55 AM on November 5, 2009 at 300 Oceangate, 12<sup>th</sup> 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.

APPEARANCES:

FOR THE EMPLOYERS:                    Jacquie Ferneau  
Pacific Maritime Association

FOR THE UNION:                         Joe Gasperov  
ILWU Local 63

ALSO PRESENT:

R. Dickey, PA  
A. Diaz, Local 63  
J. Spinosa, Local 63  
M. Gould, Local 63  
P. Trani, Local 63  
G. Califano, Local 63  
T. Sklavos, Local 63  
P. Aguirre, Local 63

ISSUES:ISSUE NO. 1:

Whether the Union has expanded the scope of the instant issue as it was described during the provisions of the technology framework.

ISSUE NO. 2:

Whether Ports America Group, hereafter PAG, is in violation of the framework and PCCCD as it pertains to NBUP performing clerks work described in the Master Agreement.

DISCUSSION ISSUE NO. 1:

The Employer asserts that the issue in dispute is not the same as presented at previous framework meetings and the Union has today expanded the issue.

The Union contends through exhibits that the issue in dispute was all inclusive and that the issue was unambiguous during framework meetings.

OPINION:

The Employer raised the above issue at the beginning of the hearing and claimed that the Union had expanded the scope of the issue.

The instant issue is defined in Union Exhibit No.2, which states that there has been an assignment of marine clerk work to superintendents. This exhibit illustrates that the Union asserts that the work in question was related to the loading and discharge of cargo to and from the vessel and involved superintendents performing, specifically the work and functions of monitoring the computer system to facilitate the flow of cargo.

This was work that was described as new work related to technology by the Employers' own documents, and was stated by the Employers that this work would be performed by clerks. Union Exhibit No. 2 which was the Employer Technology Letter dated January 27, 2006 stated on Page 6, Item 2 that new work for clerks would be that a clerk would review, monitor, and adjust work queues. This same exhibit, on Page 10, Item 5, states that clerks would perform such work during the operation.

In the Employer letter dated February 15, 2006, which was in response to questions asked by the Union, the Employer again states that some new work for clerks would be to review, monitor, and adjust work queues during the work shift.

In addition, the Employer made a claim at the hearing that the Union never presented argument at any technology meeting about work described in Section A.5 of the framework which describes terminal control centers. This argument is rejected as it was the Employers who classified the area where vessel clerks were performing their work

as that of a terminal control center as shown by the Union in the Employer letter dated July 24, 2006, Item VI (Union Exhibit No. 7).

Upon review of the testimony and evidence submitted, I find that the Employer has failed to support their claim with any facts that merit consideration pertaining to their claim.

The issue as described by the Union in the March 16, 2007 letter and presented at this hearing is the issue that shall be decided.

#### DECISION:

The Employer's claim is hereby denied.

#### DISCUSSION ISSUE NO. 2:

The Union asserts that superintendents are performing work functions described in Section 1 of the PCCCD at WBCT in Los Angeles. It is the Union's contention that within the terminal control center for vessel operations clerks are given the assignment to monitor/check on computer screens the movement of cargo to and from the vessel and the container yard.

It is claimed by the Union that adjacent to the work stations of the clerks, superintendents have matching multiple computer screens that emulate the clerk's computer screens.

The Union asserts that superintendents in real time monitor/check the movement of cargo and perform the same job function of the clerk. It is at this time when a cargo move is about to be made in error that the superintendent alerts the clerk of an impending needed correction or as claimed in testimony such superintendent makes the correction.

The Employer's position is that management has the right to direct clerk supervisors. In addition, the Employer submitted Employer Exhibit No. 5 in support of their position.

*During the course of the ILWU-PMA Negotiations, the Parties reached agreement on various provisions and procedures regarding the implementation of technologies and their impact on marine clerks under the PCCCD. Such provisions and procedures are set forth in the Framework For Special Agreement on Application Of Technologies and Preservation of Marine Clerk Jurisdiction (referred to as the "Framework"). The purpose of this letter is to confirm our understanding that nothing in the Framework reduces or expands the established Contract language and practices regarding management's right as to the direction of marine clerk supervisors by management, the determining of overall business operations, and the setting of business and operational priorities.*

*I believe that this accurately sets forth the understanding reached in*

*negotiations. I would ask that you sign a copy of this document for our file and retain a copy for your file.*

The position throughout the hearing of the Employer is that the Employer has a contractual right to monitor/check cargo operations in real time as a consequence of directing clerk supervisors.

#### OPINION:

This Arbitrator made two visits to WBCT, the first was on November 4, 2009 and the second was on December 11, 2009. The first visit was impromptu and therefore the parties were not prepared to give me a presentation that was planned to support each other's position.

What I viewed as established by the Union on the record was superintendents within a few feet of clerks in the terminal control center monitoring and checking each ship and yard cargo move.

On my second visit, I viewed each terminal control center at WBCT. They included the office above the M&R shop, Berth 126 Marine Building, and the trailers at Berth 100. At each site, the Employer had installed multiple computer screens to be utilized by superintendents that mirrored that of the clerks.

It is my finding that PAG has created a subterfuge by allowing superintendents to mimic the work functions of Section 1 of the PCCCD that gives such work checking/monitoring to marine clerks. It is further concluded by me that PAG has not introduced technology that eliminates the need for a clerk to monitor/check each cargo move on a computer screen.

The argument of the Employer that they have the right to direct and supervise clerks is rejected based on the history of such wording and how it has been recognized by the Parties. It is the long standing practice within the industry for Employers to set parameters and give direction to clerks on how work shall commence, be modified during a shift, and how such work shall be concluded. I find the actions of the Employer at WBCT to be disingenuous in allowing superintendents to become the "extra clerk" or an "extra set of eyes" to monitor/check each and every movement of cargo under the pretext of supervision and direction.

The testimony of clerks with experience and knowledge at WBCT as it pertains to this issue was forthright and provides persuasive evidence as it pertains to superintendents performing clerks work.

In contrast, Employer Witness, Robert Dickey's testimony is found to be without knowledge to the every day operation at WBCT. I find Dickey's trepidation as it pertains to PAG's relationship with outside customers to be more significant to him than compliance with the written words of the Master Agreement.

A section of the PCCCD that is relevant to this issue is found within the Framework

agreement under section 5a-b and those sections read:

For the free flow of information to and from a terminal, the Employers shall establish a terminal control(s) at each marine container facility.

a) *Terminal Control Center(s).*

*A Terminal Control Center is a place(s) within a dock or terminal staffed by marine clerks where all documentation and/or electronic information/data and archived information for cargo and/or cargo equipment shall be accessed, and/or transmitted to and from external sources by marine clerks to perform clerks work covered by Section 1 of the PCCCD. The monitoring and access of documentation, information and data at a terminal to perform clerks' work shall be through the Center. This information shall include all documentation whether in the form of paper, electronic methods and any other technologies to perform work within the clerk's jurisdiction. All corrections, additions, deletions, adjustments, manipulations, and operationally necessary confirmations to the information/documentation or data within the clerk's jurisdiction shall be done there. However, there shall be no re-keying of information except as required by the employer.*

b) *Terminal Control Operations.*

*A Marine Clerk Supervisor(s) shall be assigned the following work and functions consistent with Section 1 of the PCCCD; specifically, accessing computer systems related to the terminal operations for the purpose of imputing and/or receiving data into the computer system as well as making any corrections, additions, deletions, adjustments and manipulations to such data per established practice at each terminal for all vessel, train and gate operations at the terminal and throughout all loading and unloading operations starting at a point in time per the established practice at each terminal. Any of the above data that comes from non-bargaining unit personnel must be administered through the Marine Clerk Supervisor.*

In conclusion, the written words of the applicable Sections of the PCCCD and the above described Framework Section must be binding on all parties and the employer cannot ignore its obligation to such by allowing other than marine clerks to perform the work functions assigned within the Master Agreement. Therefore the following decision is hereby rendered.

DECISION:

- 1) PAG at WBCT is found in violation of the PCCCD and framework as described in this hearing.
- 2) PAG shall turn off all superintendents computer screens in the identified areas immediately and they shall remain off.
- 3) Any questions or clarification as to the above order shall be addressed by the Area Arbitrator.

/s/ David Miller

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David Miller

Area Arbitrator

Southern California

Dated: January 21, 2010