

<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: Alleged violation of the PCCCD by TraPac as it pertains to yard planning.</p>	<p>SCAA-0029-2006</p> <p>OPINION AND DECISION</p> <p>of</p> <p>David Miller Area Arbitrator</p> <p>July 27, 2006</p> <p>Long Beach, California</p>
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The hearing was held at 1:50 P.M. on Thursday, July 27, 2006 at 920 West Harry Bridges Boulevard, Wilmington, 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:

Jacque Ferneau
Pacific Maritime Association

FOR THE UNION:

Joe Gasperov
ILWU Local 63

ISSUE:

Whether TraPac is in violation of the PCCCD by not assigning yard planning work to Marine Clerks.

BACKGROUND:

The joint exhibits submitted confirm that the disputed issue in accordance with Section 6-B-8 of the Technology Framework is properly before this Arbitrator.

UNION:

The Union presented Joint Exhibit No. 2 and within is six (6) job duties and functions described as follows:

1. *The work and functions of assigning a "YP" code to yard work;*
2. *Empty parameters;*
3. *Yard Profile;*
4. *Terminal Holds;*
5. *Planning the particular place in the yard that containers will be discharged to a vessel; and*
6. *Planning the particular place in the yard empties will be loaded to the vessel.*

An additional issue was raised at an April 11, 2006 JPLRC meeting as it relates to the printing of a UTL list. This issue will be addressed in this award and referred to as Item No. 7.

It is the Union's contention that Page 211, Sub-section (e) (i) is incumbent upon the parties to observe. That section reads:

i) Yard Planning Operations

Marine clerks shall be assigned yard planner duties and functions generally identified as directing and executing the flow of cargo, planning and determining the particular place or area on a terminal dock or container yard facility where cargo is to be placed or relocated and involving the preparation, confirmation, distribution and reconciliation of all documents required by the employer for such work, including the input of data or the utilization of computer programs. It is understood that the practice of direction of supervisors by management is recognized and shall not be distributed.

The Union also brings attention to the fact that marine clerks did not perform yard planning at TraPac prior to the 2002 Agreement. It is the position of the Union that clerks perform the same functions now as before the new Agreement notwithstanding the new language that assigns such work to clerks as it pertains to yard planning.

Union Exhibit No. 4, Award SCAA-0029-2005 is claimed by the Union to be similar in its substance and the decision makes clear the job functions of marine clerks as it relates to yard planning. Also, Union Exhibit No. 7, Kagel Award C-10-04 was submitted to support that Section 4.A.e.i. is not dependent on new technology for its application.

An additional issue was raised by the parties as to the printing of a U.T.L. list. On the record, the parties agreed (Tr. Pg. 75-78) that marine clerks would print and utilize the list to perform their work.

The Employer's response to the claims of the Union is that the Union has failed to observe protocol as it pertains to the filing of such complaints. After an extensive explanation that was not relevant to the instant issue the Employer submitted Employer Exhibit No. 5 a letter dated April 24, 2006 and within this letter is the position that they are reliant upon. The letter reads:



Pacific Maritime Association Headquarters

April 24, 2006

Via Messenger Service and Fax No. 415-775-1302

Mr. James Spinosa, International President
 Mr. Robert McElrath, Vice President
 Mr. Ray Ortiz, Jr., Coast Committeeman
 Mr. Joseph Wenzel, Coast Committeeman
 International Longshore and Warehouse Union
 1188 Franklin Street, 4th Floor
 San Francisco, CA 94109

Re: Employer Response to Union Disagreement Letter of April 17, 2006 -
 Yard Planning - TraPac Berth 136, Los Angeles

Gentlemen:

The Employers are in receipt of the Union's letter dated April 17, 2006, referring to the Coast Labor Relations Committee (CLRC) a claim that the TraPac facility in Los Angeles has assigned to non-marine clerks the following job duties and functions:

1. The work and functions of assigning a "YP" code to yard work;
2. Empty Patrollers;
3. Yard Profile;
4. Terminal Holds;
5. Planning the particular place in the yard that containers will be discharged to a vessel; and
6. Planning the particular place in the yard empties will be loaded to the vessel.

The Employer's position regarding this matter was discussed at the Joint Coast Technology Committee meeting on April 11, 2006. As stated by the Employers at that meeting, TraPac is not in violation of the Technology Framework, nor has the Employer assigned to non-bargaining unit personnel work or functions associated with traditional marine clerk work or functions at the terminal. The Employer has assigned yard planning duties contemplated by the Technology Framework to the marine clerks, as required under Section A(4)(c)(i). Those remaining job duties that are not currently being performed by marine clerks are duties not contemplated by the negotiations and the agreement to be marine clerks' work. The yard planning duties and functions assigned to marine clerks, and described in Section A(4)(c)(i), are specific and furthermore, the language preserves the practice of management directing supervisors.

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Messrs. Spinosa, McEllrath, Ortiz, Jr., and Wenzl
International Longshore and Warehouse Union
April 24, 2006
Page 2 of 2

The specific claims regarding the work at TraPac, as contained in the Union's letter, shall be processed accordingly as outlined in the Addenda, Technology Framework, Page 209, PCCCD.

Very truly yours,

/s/ Thomas Edwards

Thomas Edwards, Vice President
Contract Administration and Arbitration

cc: G. Anderson, Clerks' Technology Coordinator, ILWU Local 52
CSC-A
S. Axelson, TraPac
F. Pisano, TraPac
M. Portt, TraPac
J. Rosselle
A. Merrick
J. McKenna
C. Epperson
T. Kennedy
J. Ferneau
A. Hathaway
R. Clark
R. Marzano

On the record it is acknowledged by the parties that a typo appears in Item 5 and it should read *discharged from a vessel*.

The Employer admits that vessel planners for TraPac are located in Austin, Texas. It was testified to by Axelson that TraPac employee's in Austin direct personnel in LA as to where containers are to be positioned.

OPINION:

In rendering a final decision Union Exhibit No. 11 (letter dated April 9, 1990) and Pages 53-59 of the transcript shall be considered irrelevant and shall be disregarded in attainment of a final decision.

It is important to note that the hearing transpired at the TraPac facility and therefore this Arbitrator had the opportunity to view the functions in dispute.

The Exhibits that are convincing are the text of 4.e.i. of the framework. That section is unambiguous. The following words of Arbitrator Kagel from C-10-04 are considered a guiding authority and read:

While, as the MOU states and as decided previously, the impact of the implementation of new technologies under the MOU is to be determined on a terminal-by-terminal basis, IV, that does not apply to IV.A.4.e.i. which is not dependent on new technology for its application.

It has become evident that the Employer's intention is to hinder hearings at the local level and attempt to maneuver all disputes to be conducted at the coast level. The record is clear that the Employer's presentation is based on theory and no attempt was made to support such theory with evidence.

This instant issue is not based on new technology. Instead it is a negotiated section of the Agreement that assigned yard planning functions to the Union in exchange for the Employers' right to introduce new technology.

The Employer's argument in Item 1 was that they were only directing Clerks in regards to necessary work to be performed. However what were witnessed was clearly job functions that should be contractually assigned to Marine Clerks.

In addressing Items 2 and 4 the exhibits and testimony have been carefully reviewed and the Union has satisfied their burden of proof that the Employer has failed to abide by the wording of the Agreement. There is nothing within the Employers presentation upon which relief may be granted.


It is startling to perceive TraPac's effort to avoid their contractual obligations so described in Items 5 and 6 and confirmed within the PCCCD by assigning those job functions of work to non-bargaining workers in Austin, Texas. The assignment of such work cannot be avoided by allowing such work to be performed in Austin, Texas without resulting in a violation of the PCCCD.

The text of 4 (e) (i) is definite in its implication that Marine Clerks shall be assigned the yard planning functions that are required to be performed. It is unconvincing of the Employer to take a position on the record that in their personal opinion they have conformed to that section of the Agreement without the offer of proof.

In conclusion, the presentation of the Employer is not persuasive in totality.

DECISION:

1. TraPac is guilty of violating the PCCCD by assigning yard planning functions to non-bargaining unit personnel.
2. TraPac shall assign immediately to Marine Clerks the job functions described in Joint Exhibit No. 2, Items No. 1, 2, 4, 5, and 6.
3. Items 3 and 7 shall be considered resolved.



David Miller
Area Arbitrator Southern California

Dated: September 6, 2006

IN ARBITRATION PROCEEDINGS PURSUANT TO THE
COLLECTIVE BARGAINING AGREEMENT BETWEEN THE PARTIES
TECHNOLOGY FRAMEWORK B(10)

INTERNATIONAL LONGSHORE AND WAREHOUSE UNION,	}	C-03-2007
	}	
	}	OPINION AND DECISION
	}	
Union,	}	of
and	}	
	}	JOHN KAGEL
	}	
PACIFIC MARITIME ASSOCIATION,	}	Coast Arbitrator
	}	
Employers	}	March 27, 2007
	}	
	}	Palo Alto, California
Re: Alleged violations of the PCCCD by TraPac as they pertain to yard planning	}	

APPEARANCES:

For the Union: Ray Ortiz, Coast Committee Member, Joe Gasperov, President,
ILWU Local 63

For the Employers: Jacquie Ferneau, Director, Pacific Maritime Association

ISSUES:

The Employers have invoked a Framework Section B.10 hearing with respect to
four issues presented to and decided by Area Arbitrator Miller in SCAA 0029-2006 that
Marine Clerks shall be assigned:

"1. The work and functions of assign[ing] a 'YP' code to
yard work; ...

"1. The work and functions of assign[ing] a 'YP' code to yard work; ...

4. Terminal Holds;

5. Planning the particular place in the yard that containers will be discharged [from] a vessel;

6. Planning the particular place in the yard empties will be loaded to the vessel." (Tr. 8, Jt. Ex. 8, Jt. Ex. 2)

AGREEMENT PROVISIONS:

**"FRAMEWORK FOR SPECIAL AGREEMENT
ON APPLICATION OF TECHNOLOGIES
AND PRESERVATION OF
MARINE CLERK JURISDICTION
Item VI November 23, 2002
Memorandum of Understanding**

A. Controlling Principles

The Employers shall have the right to implement technologies that may affect marine clerks, subject to the following controlling principles....

4....

It is further agreed that:...

c) In exchange for the Employers' right to introduce new technologies, the following work and functions shall be assigned to marine clerks at all facilities covered by the PCL&CA

i) Yard Planning Operations.

Marine clerks shall be assigned yard planner duties and functions generally identified as directing and executing the flow of cargo, planning and determining the particular place or area on a terminal dock or container yard facility where cargo is to be placed

or relocated and involving the preparation, confirmation, distribution and reconciliation of all documents required by the employer for such work, including the input of data or the utilization of computer programs. It is understood that the practice of direction of supervisors by management is recognized and shall not be disturbed....

B. Procedure for Implementation of New Technologies

The following procedures shall be used related to implementation of technologies and preservation of Marine Clerk jurisdiction and other PCCCD contractual rights affected by technologies....

8. Within fourteen (14) days of discussion by the Joint Coast Labor Relations Committee and/or implementation of the new technology, the issues raised by either party may be presented to the Area Arbitrator who shall issue a prompt interim decision, which shall be implemented....

10. If confirmation of the Area Arbitrator's interim decision is not reached by the Joint Coast Labor Relations Committee, the issue shall immediately be referred to the Coast Arbitrator for final resolution. The Coast hearing shall be a full and complete hearing of all issues raised by either party...." (Jt. Ex. 1)

FRAMEWORK SECTION B.10 PROCEDURE:

Under Section B.10 a Party is entitled to a "full and complete hearing of all issues raised by either party." The Coast Arbitrator is to determine those issues from the record before him with the difference from a normal appeal from an Area

Arbitrator that the Coast Arbitrator can make independent credibility resolutions of witness testimony and is not bound by those of the Area Arbitrator. The Coast Arbitrator decision also substitutes for the Area Arbitrator decision. The issues and evidence presented to the Coast Arbitrator must be that presented to the Area Arbitrator and to the CLRC, but the record before the Area Arbitrator need not be referred to unless, as in this case, the Parties agree (Tr. 20) or it needs to be referred to with reference to credibility. The CLRC has determined that the Coast Arbitrator can, if requested, make a site visit, accompanied by the Parties. None was requested here.

YP CODES

DISCUSSION:

YP Codes are given to containers that are to be premounted for special handling such as inspection by government agencies or at the request of a shipper. Whether the latter will be done and when the former will be done is at the discretion of Management. (Tr. 50) A Manager who makes those decisions lists them on a computer and sends the list to both accounting to charge for the special handling and to a Marine Clerk. The accounting aspect is not in dispute here. At the Marine Clerk's terminal a function key turns gold in color and when punched by the Marine Clerk sends and prints instructions to the yard to mount the listed containers and to route them.

Framework A.4.e.i provides that Marine Clerks in their yard planner duties "execute the flow of cargo" and "determine the particular place on a ...container yard

facility where cargo is to be relocated ... including the input of data" for the preparation of documents for those purposes. But "the practice of direction of supervisors by management is recognized and shall not be disturbed." (*See also* PCCCD §1.2515, Letter of Understanding Re: Marine Clerks' Technology Framework, 11/1/02)

The Employers' position is that the YP code does not determine the particular place or location of where cargo is to be located. A.4.e.i. allots more than plotting yard location to Marine Clerks. It is broader than that, and includes "executing the flow of cargo." Execution of that flow, including how particular containers are to be handled, such as premounting them, falls within the functions of Marine Clerks according to that provision. Accordingly, the designation of containers Management decides to premount and the documentation to do so is to be done by Marine Clerks including the inputting of that data as required by A.4.e.i. That a TraPac Manager enters data into the computer is not the exercise of managerial discretion in terms of what containers to mount and when to mount them, nor directions to supervisors, which is what 4.A.4.e.i reserves to Management. But the record establishes that in doing so Management has effectively done Clerk's work, the pushing of one button by a Marine Clerk being a way to move the process onwards rather than originate it as the Agreement requires.

The required Management decision is made with respect to each request for inspection or special handling as the Manager determines without any participation of Marine Clerks. The executing of those decisions, including inputting the identifiers of containers to have the special handling into the computer system, is for the Marine

Clerks, pursuant to the communication of the management decisions to the Clerks. That communication can be by any means Management decides including a listing on a computer. The inputting of that communication, if it comes in that form, by the Marine Clerks is not rekeying within the meaning of Framework A.5.a as such a listing from Management is not "information" transmitted to or from "external sources" within the meaning of that provision.

DECISION AS TO YP CODES:

The inputting of container identification for special handling is to be done by Marine Clerks pursuant to Framework A.4.e.i.

CONTAINER HOLDS

DISCUSSION:

Requests from shippers or governmental agencies to hold containers in the yard are made to Management which decides whether to grant the requests. A Manager then enters a code into the computer system which prevents the container from leaving the gate. A Manager then does the same thing to clear the hold.

The Employers maintain that a container hold does nothing concerning its location except to prevent it from going out the gate; it can be moved throughout the yard. In addition, the Employers maintain that pursuant to the L.A./Long Beach Supplementary Agreement (Jt. Ex. 8, Er. Ex. 10) and practice at TraPac that such

work is clearly office work, even if done by Superintendents (Tr. 107), not that of Marine Clerks.

Similar to the YP Codes these entries into the computer system involve the execution of flow of cargo, in this case preventing it from flowing from the terminal,. The decision to hold or release is made by Management, as is its purview under A.4.e.i. The performance of the work, including the entries into the computer system, is that reserved to Marine Clerks under that provision. A.4.e.i, as a principal part of the 2002 PCCCD, supersedes the local cited agreement; there is no language in A.4.e.i that shows that it is subservient to a previously-enacted local agreement. And, references to what either Party may have intended by agreement to A.4.e.i are not relevant given that the Parties have agreed that bargaining history cannot be used in arbitrations concerning the interpretation or application of the Technology Framework. Accordingly, the language of A.4.e.i. must be applied as written, as it is here.

DECISION:

The inputting of container holds and releases into the computer system is to be done by Marine Clerks pursuant to Framework A.4.e.i.

PLANNING PARTICULAR PLACE IN THE YARD THE CONTAINERS WILL BE
DISCHARGED FROM A VESSEL; PLANNING THE PARTICULAR PLACE IN
THE YARD EMPTIES WILL BE LOAD TO THE VESSEL

DISCUSSION:

Particular places in the yard are designated as the initial spot where containers discharged from a vessel are to be placed to ground and the specific location where grounded empties are to be loaded are also designated. These locations are selected by non-Bargaining Unit vessel planners.

“The determination of the particular place or area on a terminal dock or container yard facility where cargo is to be placed or relocated” is to be assigned to Marine Clerks under the specific language of A.4.e.i. While the Employers maintain that a specific container has not been assigned to a specific spot, TraPac assigns the specific spot to which discharged containers will begun to be placed and the direction from that spot that subsequent containers are to be placed. (Tr. 172-173)

The Employers maintain in essence that the practice of direction of supervisors by Management has been to designate the specific locations in question. While A.4.e.i acknowledges that Management in its directions can indicate the general parts of the terminal where the containers or empties are to be placed, either coming from or going to a vessel, the specific location by the clear language of A.4.e.i must be determined by Marine Clerks. To hold otherwise would be to negate that language, and the bargain

which the Parties struck, which an arbitrator cannot do under the PCCCD. (Section 17.62)

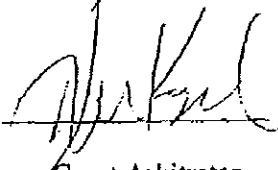
Other Employers' arguments are reasons why they would prefer that others than Marine Clerks would make the determinations in question. There was no showing, for example, that Marine Clerks were not capable of planning locations for containers being offloaded in the necessary sequence to avoid crane bumps or the loading of empties in the proper sequence or that an "additional" "point of failure" is created by when Marine Clerks do the work and vessel planners, barred from doing it by A.4.e.i, are not doing it. That there are vessel planner supplements which were negotiated by some Employers before the Framework which ceded the work in question to Bargaining Unit Clerks do not show that non-Bargaining Unit vessel planners can, after the Framework was agreed to, continue to do the work in question here when the Parties agreed it would be done by Marine Clerks as the Framework unequivocally provides. That that work is called yard planning rather than vessel planning makes no difference given the specific, agreed-to definition of what yard planning consists in A.4.e.i.

Finally, this decision is consistent with Award C-10-04 where similar Employers' arguments were made and rejected. Management determines which empties are to be loaded to a vessel by other than a specific place or area (Tr. 153-155); the execution of that determination is for Marine Clerks.

DECISION:

Planning the particular place in the yard containers will be discharged from a vessel and planning the particular place in the yard empties will be loaded to the vessel in terms of determining the specific locations involved is work to be performed by Marine Clerks pursuant to the terms of Framework A.4.e.i.

The above decisions are hereby affirmed. The Coast Arbitrator retains jurisdiction in the event any issue arises concerning the interpretation or application of these decisions.


Coast Arbitrator