

<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>Whether TraPac Is In Violation Of The Technology Framework Of The 2002 MOU And Section 1 Of The PCCCD.</p>	<p>SCAA-0013-2004</p> <p>OPINION AND DECISION</p> <p>Of</p> <p>David Miller Area Arbitrator</p> <p>June 8, 2004</p> <p>San Pedro, California</p>
---	--

The hearing was held at 11:01 AM. on Tuesday, June 8, 2004 at the Marine Clerks Local 63 Memorial Hall 350 West 5th Street, San Pedro, 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
Pacific Maritime Association

FOR THE UNION: Joe Gasperov
ILWU Local 63

ALSO PRESENT: J. Tousseau, Local 63
A. Diaz, Local 63
T. Tobin, MTC
S. Lindsay, MTC
S. Axelson, TraPac

ISSUE:

Whether TraPac is in violation of the 2002 MOU and Section 1 of the PCCCD by assigning the registering (i.e. inputting) of WhereNet Electronic Tags and assigning tag numbers to equipment into a computer by someone other than a Marine Clerk.

BACKGROUND:

Employer Exhibit No. 1 was submitted and confirms disagreement was reached at the JCLRC Meeting of April 7, 2004 as it pertains to this issue.

The parties agreed to refer this issue to the Area Arbitrator pursuant to Section VI, Item (B) (8) of the technology framework.
Union Exhibit No. 4 reads as follows:

GLOSSARY

RTLS	Real Time Locating System
RTLS TAG	A wireless device attached to a UTR, chassis, Top Handler, Side Handler, Pick-up Truck, and other terminal equipment.
WHEREPORT	A proximity communication device that is used to trigger RTLS tags to transmit an alternate "blink".
RESOURCE	Any piece of equipment (Top Handler, Side Handler, Trans, UTR) that can have a tag attached to.

The following glossary of terms is provided by this Arbitrator.

I.S. – Information Services. These are non-bargaining people employed by TraPac.

WhereNet – Name of the vendor who has developed a system to track the movement of cargo.

WhereTag – The tag that is affixed to all cargo handling equipment. Each tag is a radio frequency transmitter with its own unique identification number.

Married – The system will respond as to the location of the tag and as a consequence determine the location of the equipment. This occurs when the WhereTag is attached to the equipment.

OCR – Optical Character Recognition. This is basically a camera connected to a computer that can read a container number. Note: The OCR has not been installed and is not an issue as of this date.

DISCUSSION:

The Union's position is dependent on the following sections of the PCCCD:

1.13 Documentation work performed by clerks as of July 1, 1978 shall continue to be performed by clerks. In the event that new documents are developed which replace existing documents, then clerks shall be assigned to perform work on such new documentation. If computer remoter terminals, electronic or mechanical devices are introduced to replace existing or new documentation, then clerks shall be assigned to perform work on such new equipment for that portion of the work which is recognized as being covered by Section 1. In any event, such work shall not be assigned to non-clerks off dock.

1.131 When any work described in Section 1 is performed by computer remote terminals, electronic, or mechanical devices, the necessary operation of such devices shall be performed by clerks for only the portion of the work which is recognized as being covered by Section 1. The intent is to preserve the traditional work of clerks as provided by the Agreement.

1.251 **Clerk.** An employee responsible for performing any or all 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 notation and the keeping of such records as may be required by the individual employer.

1.25121 Receiving and spotting cargo on the dock from land or water carriers (spotting cargo on the dock shall be deemed to include the marking of dock floors); checking marks on cargo; measuring cargo and marking ship and discharge points on cargo; receiving; delivering and consolidating empty containers and chassis; delivering cargo carriers; checking marks on delivery order against cargo; performing clerks' work under the terms of this Contract Document in connection with the handling or moving of palletized or boarded cargo or cargo in containers, or other cargo equipment.

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.

In addition, the Union submitted Section VI (A) controlling principles which reads:

A. Controlling Principles

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

1. The Employers shall guarantee all registered marine clerks covered under the PCCCD a full opportunity to work as marine clerks and such clerks shall not be subject to item 11, Supplement 1-A. Nothing in this Agreement will restrict transfer(s) between longshore and clerk's registered lists in accordance with Supplement II. The term, "full work opportunity to work as a marine clerk", shall mean assignment of clerk work, in five (5) of seven (7) days in any payroll week, at the prevailing supervisory skill rate, for all registered clerks checked into the hall. The work opportunity provided in this particular provision shall extend for the period ending with the clerk's retirement and shall not be subject to reduction or elimination, including by subsequent contract negotiations.
2. All traditional marine clerk work modified by any technology shall be assigned to marine clerks in accordance with section 1 of the PCCCD as modified herein.
3. Work assignments may be discontinued to the extent they become unnecessary as a result of technology.
4. In consideration for the modification and elimination of certain marine clerks' work that may occur as a result of technology, any new marine

clerk's 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 clerks' 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.
- e. 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.

The Union's position is the work in dispute was bargained and agreed to by the parties in the 2002 MOU.

In the Unions' claim it is clear that the violation occurs when the WhereTag is married to the cargo moving equipment by inputting this information into the computer.

The Employers position is that the Union is attempting to expand it's jurisdiction by demanding the work in question.

In addition, the Employer's rely on the fact that Marine Clerks have never performed this work.

OPINION:

The complete record has been carefully reviewed by this Arbitrator.

During this hearing a large amount of the presentation was not relevant to this issue.

The parties are reminded that the "new" technology procedures for Arbitration do not release the parties from their obligation to attempt in good faith to resolve disputes before seeking arbitration.

It was recognized by the parties that the amount of work in dispute represents approximately ten minutes.

There is no uncertainty on behalf of this Arbitrator that "new" technology has been introduced by the Employer.

The Employers witness Axelson, a TraPac manager, testified on Page 77 of the transcript as follows:

BY MR. GASPEROV:

Q AND IS THIS TECHNOLOGY BEING IMPLEMENTED TO REPLACE THE SPOTTING OF CARGO THAT'S CURRENTLY BEING DONE MANUALLY AT YOUR TERMINAL?

A IT'S A PIECE OF THAT, YES. LIKE YOU SAID, IT'S DEPENDENT ON O.C.R. AND OTHER THINGS.

It is further understood that the introduction of new technology does not release the Employer from their obligation to assign such work to Marine Clerks.

The work in question has been created by "new" technology.

This work shall be construed as if it were an addition to Section 1 of the PCCCD at the TraPac Terminal.

All work related to yard planning as bargained in the 2002 MOU must be assigned to Marine Clerks.

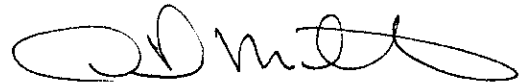
It is determined by this Arbiter that the work in dispute is the first step by the Employer to introduce a "new" technology to locate cargo on its terminal.

This Arbitrator is obligated to interpret the 2002 MOU as it is written.

Therefore, the following decision is hereby rendered.

DECISION:

1. TraPac Terminal is in violation of the 2002 MOU and Section 1 of the PCCCD by assigning the inputting of WhereNet tags and equipment into a computer by non-marine clerks.
2. Work as described above that has been completed shall be reentered by Marine Clerks.
3. Any future inputting of the work identified shall be performed by Marine Clerks.



David Miller

Area Arbitrator Southern California

Dated: June 21, 2004