

<p><b>IN THE MATTER OF A CONTROVERSY</b></p> <p><b>BETWEEN</b></p> <p><b>PACIFIC MARITIME ASSOCIATION</b></p> <p><b>AND</b></p> <p><b>INTERNATIONAL LONGSHORE AND WAREHOUSE UNION LOCAL 63</b></p> <p><b>Whether Security Guards Employed At Long Beach Container Terminal Are Performing Marine Clerks Work At The Out-gate.</b></p>	<p><b>SCAA-0017-2004</b></p> <p><b>OPINION AND DECISION</b></p> <p><b>Of</b></p> <p><b>David Miller Area Arbitrator</b></p> <p><b>June 28, 2004</b></p> <p><b>Long Beach, California</b></p>
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The hearing was held at 3:15 P.M. on Monday, June 28, 2004 at 1171 Pier "F" Avenue, 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  
Pacific Maritime Association

**FOR THE UNION:** Joe Gasperov  
I.L.W.U. Local 63

**ALSO PRESENT:** Art Merrick, LBCT  
Anthony Otto, LBCT  
Joe Mascola, ILWU Local 63

**ISSUE:**

Whether LBCT is in violation of the 2002 MOU and Section 1 of the PCCCD by having a security guard verify the container and chassis number by visually checking a monitor in the guard booth. This alleged violation occurs at the out-gate.

**BACKGROUND:**

Joint Exhibit No. 6 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.

This Arbitrator ordered all parties to be in attendance at the site of the dispute.

Preceding the hearing, a complete tour and demonstration was afforded to all parties.

Questions and comments regarding this issue have been taken into consideration by this Arbitrator.

During the tour and demonstration the following was observed by this Arbitrator.

The truck driver stops at the security booth. The driver inserts a buck slip into a barcode reader which results in a computer screen in the security booth to be populated with the container number and chassis number. The guard verifies the numbers on the screen and the trucker exits the terminal. If the numbers are incorrect, the trucker is instructed to return to see a Marine Clerk. When asked by this Arbitrator the guard stated, 'I verify that the trucker is taking what the computer says he is supposed to get.'

At the conclusion of the tour and demonstration the hearing commenced with all parties in attendance.

UNION:

The Union's contention is obvious and unambiguous as it pertains to this issue.

It is claimed by the Union that the security guard is performing work functions that have been agreed to by the parties in the 2002 MOU and Section 1 of the PCCCD.

The Union claims that the following Sections of the 2002 MOU and Section 1 of the PCCCD shall apply to this issue.

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 in to 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 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 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.

- ii. Rail Planning Operations. Marine clerks shall be assigned rail planner duties and functions generally identified as directing and executing the flow of cargo, planning and determining the particular place or area on a rail car 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.
5. For the free flow of information to and from a terminal, the Employers shall establish a terminal control center(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 clerk's 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, addition, deletion, 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 inputting 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.
6. All work and functions that are to be performed as part of any port security measures that may be mandated by law or regulation shall be

performed by marine clerks to the full extent such work and functions are covered by Section 1 of the PCCCD.

7. In further consideration for the modification and elimination of certain marine clerks work that may occur as a result of technology, the Employers agree to increase pension benefits and provide other economic enhancements for retirement to both marine clerks and longshoremen (see Section II – "Pension" this MOU).

Sections of the PCCCD that apply are 1.13, 1.131, 1.23, 1.251 and 1.25121.

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 remote 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.

1.23 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.

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.

1.25121 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.

EMPLOYER:

This Arbitrator is somewhat puzzled by the Employers position.

The Employers position is that the security guard is only performing the same duties as in the past.

What is most important to this Arbitrator is the record made by Ms. Ferneau and Mr. Merrick as it relates to this issue.

Transcript Pg. 18, Ln 15 – 19

Ms. Ferneau: It's a screen that has the a container number on it. To be perfectly honest, it doesn't have to be there. But when we look at what the guard was doing before in terms of paperwork and verifying that a marine clerk has seen this--

Transcript Pg. 19, Ln 9 – 13

Mr. Merrick: The system verifies.

Mr. Miller: That's fine, but then obviously we don't need a security guard.

Ms. Ferneau: Or you don't need the container on the screen.

Transcript Pg. 30, Ln 1 – 10

Mr. Merrick: For clarification purposes, the O.C.R. reads about 60 percent of the containers and chassis coming through. They get the green light to proceed to the security shack. Yes, there is a container number and chassis number on there, but it doesn't have to be there now. That was put there originally in the test phase to see that everything was reading everything correctly, and we weren't missing anything. We could pull that switch on that tomorrow.

Transcript Pg. 32, Ln 1 – 5

Merrick: The only thing he does is turn him around if there is a problem. And if that screen bothers anybody – which I don't recall it being a major issue – but if it is, that container number and chassis number be taken out because there is no need for it.

OPINION:

It is quite evident to this Arbitrator that the parties have established a position as it relates to the 2002 MOU and Section 1 to the PCCCD of non-cooperation.

However, this Arbitrator is limited strictly to the application and interpretation of the Agreement as written.

The facts presented in this issue are clear and understandable.

It is the opinion of this Arbitrator that the violation of the 2002 MOU and Section 1 of the PCCCD transpires the instant LBCT activates the monitor in the guard booth to verify/check container and chassis numbers.

DECISION:

LBCT shall not operate the monitor at the out-gate as witnessed in this dispute.



David Miller

Area Arbitrator Southern California

Dated: August 13, 2004