IN THE MATTER OF A CONTROVERSY BETWEEN PACIFIC MARITIME ASSOCIATION AND INTERNATIONAL LONGSHORE AND WAREHOUSE UNION LOCAL 63 Re: The alleged violation of a non-bargaining unit performing clerks' work as described in Section 1 of the PCCCD at the Matson Auto Lot Berth 60 Long Beach.	SCAA-0020-2006 OPINION AND DECISION of David Miller Area Arbitrator May 5, 2006 And June 6, 2006 Long Beach, California

The hearing was held at 9:30 A.M. on Friday, May 5, 2006 and 1:45 P.M. on Tuesday, June 6, 2006 at the Pacific Maritime Association, 100 West Broadway, Suite 3000, 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.

APPERANCES:

FOR THE EMPLOYERS:	Jacqueline Ferneau Pacific Maritime Association
FOR THE UNION:	Joe Gasperov ILWU Local 63
ALSO PRESENT:	Various others

ISSUES:

Issue No. 1: Whether SSAT is guilty of assigning Section 1 work as described in the PCCCD to workers not covered by the PCCCD at the Matson Auto Lot.

Issue No. 2: Whether the above issue as claimed by the Employer must be processed under the guidelines of the framework for special agreement on application of technologies and preservation of Marine Clerk jurisdiction as described in the PCCCD.

BACKGROUND:

At the first hearing on May 5, 2006 the Employers asked for a postponement because of medical necessity as it pertained to Mr. Mark Harding a participant of the employer group. This request was denied by this Arbitrator based on the fact

that the arbitration would not conclude on May 5, 2006. The hearing was then scheduled to resume on June 6, 2006. The transcript of May 5, 2006 was made available to all parties during the week of May 22, 2006. At the June 6, 2006 continuation of the May 5, 2006 hearing Mr. Harding was present and when asked by this Arbitrator if he had reviewed the transcript of May 5, 2006 the answer was 'yes'.

When questioned by this Arbitrator if they considered their case has been compromised due to Harding's absence on May 5 both Harding and Ms. Ferneau answered 'no'. (Tr. Pg. 294-295)

On June 7, 2006, all parties were ordered to meet at the Matson Auto Lot Berth 60 Long Beach. At the site a complete tour and demonstration was afforded to all parties. Questions by the Arbitrator and the parties were answered and if needed demonstrated by knowledgeable and experienced people.

The information acquired by this Arbitrator during the tour was invaluable and shall be considered in attainment of a final decision.

Union Issue No. 1:

The Union's contention as it pertains to this issue is that SSAT has employed other than PCCCD Clerks to perform various job functions in regards to receiving a variety of cargo at the Matson Auto Lot.

The following exhibits were submitted by the Union to sustain their claim that the issue has been properly processed through Section 17. Exhibit No. 6 dated October 13, 2006 reads:

16. *U.C. #161-05 – SSA MARINE – JURISDICTIONAL VIOLATION – AUTO LOT – 9/6/05 – R. HO, #35744 & M. PALACIOS, #35447*

    The complaint stated that with the implementation of VIN-Sight application to the terminal operating system, someone other than a marine clerk is inputting the driver's paperwork and assigning tracking numbers. This has traditionally been marine clerks' work.

    The Committee agreed to hold over this complaint.

Exhibit No. 5 dated November 10, 2005 reads:

6. *U.C. #161-05 – SSA MARINE – JURISDICTIONAL VIOLATION – AUTO LOT – 9/6/05 – R. HO, #35744 & M. PALACIOS, #35447 (SCCL-0130-2005, 10/13/05, ITEM 16)*

    The Committee agreed to hold over this complaint.

Exhibit No. 4 dated December 15, 2005 reads:

4. *U.C. #161-05 – SSA MARINE – JURISDICTIONAL VIOLATION – AUTO LOT – 9/6/05 – R. HO, #35744 & M. PALACIOS, #35447 (SCCL-0143-2005, 11/10/05, ITEM 6)*

   The complaint states that, with the new computer system installed at Berth C-60, whenever autos enter the terminal for shipment to Hawaii, someone other than a marine clerk is inputting the driver's paperwork and assigning a tracking number. This is marine clerks' work and a Section 1 violation.

   The Employers advised the Committee that this issue concerns the implementation at C-60 of VINSIGHT, new technology. Accordingly, the matter is properly handled under the 2002 MOU, Paragraph VI, Technology Framework.

   The Union stated that someone other than a marine clerk is receiving and delivering automobiles at Berth C-60, and this is a violation of Section 1 of the PCCCD and should be processed using the Section 17 grievance procedures.

   Following discussion, disagreement was reached as to the proper procedure for addressing this complaint. The matter was referred to the Area Arbitrator for resolution .

Union Exhibit No. 7 dated April 25, 2006 is a letter from Gasperov to Ferneau and is in response to a request from Ferneau that the Union be more specific in what work the Union is going to claim at the May 5, 2006 arbitration.

Numerous Exhibits were submitted by the Union to illustrate what a Marine Clerk's job functions were in the past and under the new program and how those functions have been shifted to other than PCCCD Clerks. In addition, the Union claims that other job functions that should be assigned to PCCCD Clerks have been performed by other than PCCCD clerks in the past and present. The Union makes mention of a quote from a past Award of Arbitrator George Love and when appropriate is used as a guidance of authority by Arbitrators. The quotation reads:

'The Union has never agreed that other workers could perform this work. If the Union has slept on their rights, they have not lost their rights.'

The above statement is supported within Union Exhibit No. 40, Kagel Award C-03-05. The following text is taken from that Award and reads:

'The issue of the Employer that the Union had "slept on its rights" was long ago decided in the latter's favor in jurisdiction claims in general.'

In addition, the Union submitted the following past Arbitrations into the record: SC-31-83, C-21-83, SC-48-83, C-7-84, C-7-89, W-41-82, W-61-82 and C-22-82. The position of the Union is that these awards establish that Issue No. 1 has been adjudicated at the Local and Coast levels through numerous hearings.

Employer Issue No. 1:

The Employers assertion is that PCCCD Clerks have not performed the work in dispute in the past. In addition, the Employers claim that the work in question should be regarded as general office work as described in the LA/LB Clerks Port Supplement.

In support of such claims the Employers submitted Exhibits No. 11, No. 12, No. 13 and No. 14. Exhibits 11 and 12 described JPLRC Meetings of March 12, 1998 and March 30, 1998 those minutes pertain to procedures in the Matson Auto Lot. Exhibits 13 and 14 are Awards that involve the Matson Auto Lot.

The Employers rely on the fact that before the current system was activated non PCCCD workers input a portion of the work that the Union is claiming under Section 1. Also, the Employer's position is that under the current system the Union has been assigned the work that preserves clerk jurisdiction.

Exhibit "A" was entered into evidence by the Employers and was a document titled Agreement between Matson Terminals, Inc. and ILWU Local 63 Office Clerical Unit Marine Clerk Association. This exhibit will be addressed in the opinion section of the Award.

Union Issue No. 2:

It is the Union's position that they are contractually correct to pursue a jurisdictional claim through Section 17 and Section 1 of the PCCCD unless prohibited within the text of the PCCCD. The Union is unambiguous as to their contention that there is no written terminology that prohibits the filing of a Section 1 violation on condition that such complaint is filed within the guidelines of the PCCCD and any agreed to local procedures.

Employer Issue No. 2:

The Employer's argument is that the Union was notified under Section "B" (1) of the framework for technology which reads:

1. *When an employer wants to implement new methods of operation based on technological change that affect marine clerks, the employer shall first discuss the issue at a meeting with union officials at the local level.*

After B-1 had been achieved the parties then commenced discussions as per B-2 of the framework. When the above scenario occurs it is the position of the Employer that the Union must follow the framework procedures and the Union is thereby excluded from Section 17 Grievance Procedures as it relates to a Section 1 claim.

OPINION:

The rationale for this decision shall take into consideration the Contract as it is written and the reality that the issue in dispute is innovative in its substance. A logical and sensible decision as to this dispute shall be rendered to provide a method to resolve such issues.

This decision will not take into consideration the submission of an outside agreement (OCU Matson Agreement) but shall be limited to the PCCCD. The CLRC has directed all PMA-ILWU Arbitrators to base their rulings solely on applicable provisions of our Collective Bargaining Agreements. (Source 1979 JCLRC clarifications on Arbitration Procedure and Instructions to Arbitrators) **Note: The OCU Agreement is not a Joint PMA-ILWU Agreement.**

The contention of the Employers that the work in question is general office work is not persuasive given that the work functions viewed on June 7, 2006 are specifically that of PCCCD Marine Clerks.

There was no written text presented from the PCCCD that would prohibit the Union from proceeding forward with a Section 1 claim as provided in the Grievance Procedure. It is this Arbitrators determination that the framework Agreement obviously establishes an action that must be initiated by either party as to their intention to Arbitrate at the local level. It is judicious to consider the technology procedures as a search for facts and information that would allow the parties when VI(B)(8) is attained to provide for a well informed and educated issue to be presented to the Area Arbitrator.

The following demonstrates the procedures that must be followed as outlined by the framework before a hearing can be scheduled with an Area Arbitrator.

> *"The meeting under Section VI.B (1) of the Memorandum of Understanding is to occur when the Employer determines to implement new methods of operations based on technological change in revenue operations." C-02-05, p. 15 (2).*

VI.B (1) "When an employer wants to implement new methods of operation based on technological change that affect marine clerks, the employer shall first discuss the issue at a meeting with union officials at the local level."

VI.B (2) "Following these discussions, the Employers shall submit to the Union, at the Coast Level, a "technology letter" describing the new technologies and the proposed impact on the marine clerks. This letter shall set out the Employers' view as to how existing operations will change as a result of the new technology, how the technology will impact marine clerks, a description of the work that will be performed in connection with the new technology, and an estimate of the number of employees who will be needed to perform that work."

Joint Technology Committee Meetings – 21-day Rule

"When a Technology Letter under Section VI.B.2 is issued, it shall include a date for the Joint Coast Technology Committee to meet 21 days from the date of the issuance of the letter or the nearest weekday that is not a holiday thereafter. The meeting shall be held at 10:00 a.m. at the specific terminal to which the Technology Letter applies provided there is adequate room in the terminal's conference rooms and that the meeting does not disrupt terminal operations." C-2-05, p. 12.

"The technology letter under Section VI. B. (2) may be issued at the conclusion of the VI.B.(1) discussion." C-02-05, p. 15 (3)

VI.B (3) "Within fourteen (14) days of receipt of the Employers' "Technology Letter," the Union shall submit to the Employers, at the Coast level, a letter that sets out the Union's position as to the matters contained in the Employers' letter as well as any claims by the Union concerning PCCCD Union jurisdiction, work opportunity or working terms and conditions that may be affected by any technology-related changes. Or when the Union wants affirmatively to clarify, confirm or preserve PCCCD union jurisdiction, work opportunity or working terms and conditions that have been or may be affected by technology-related changes, it may initiate this special procedure by first submitting to the Employers, at the Coast level, a "Union Claim Regarding Technology/Jurisdiction" describing the Union's claims and positions regarding such matters."

Union Affirmative Jurisdictional Claims – 21-day Rule:

". . . the Employers agreed to the scheduling of Joint Technology Meetings 21 days after the Union raised a Section VI(B)(3) claim, and the date would be included in the Employers' response letter to the Union claim. This agreement was restated at the CLRC meeting on June 15, 2005.

The issue, as raised by the Union, has been resolved." CLRC Meeting No. 21-05, item 1(e), June 15, 2005.

VI.B (4) "Within seven (7) days of the receipt of the Union's position, the Employers will respond by letter to issues raised by the Union concerning jurisdiction, work opportunity or working terms and conditions affected by the technology-related changes."

VI.B (5) "The Parties shall exchange, throughout this procedure, all information needed to understand the issues under review. "

VI.B (6) "Within fourteen (14) days of receipt of the Employers' response letter in Item 4 above, the Coast parties, acting through a Joint Technology Committee, shall discuss the issues raised in the Employers' and Union's letters and negotiate, in good faith, recommendations for the Joint Coast Labor Relations Committee regarding terms and conditions for implementation, including but not limited to manning, work assignments, skill rates, health and safety, and onerous work conditions, Union jurisdiction, training, etc. Each Coast Party may include, in the discussion, individuals with expertise and/or local knowledge of issues raised in the Employers' and Union's letters."

a) PMA Coast offices will coordinate Joint Technology Committee meeting schedules through the local PMA Area offices and the Employer members of their Joint Technology Committees. Pursuant to Section B, Item 6, of the Technology Framework, once the Joint Technology Committee has scheduled its first meeting, subsequent additional Joint Technology Committee meetings shall occur within 7 days of the initial meeting;

b) The Joint Technology Committee will identify specific issues that remain unresolved and in disagreement. Upon request of either party, the CLRC shall be forwarded, within 7 days, the identified issues in a letter prior to being referred to the local area arbitrator pursuant to Section [VI] B. item 8. The Union is entitled under Section VI.B.3. to raise and arbitrate any technology and jurisdictional issue at any later time." CLRC 3-2004, (a)-(b)

Procedural Disputes:

"In the event there is a claim of a violation of MOU Sections VI.(B)(1)-(6), either party may move the claim to the CLRC. In the event the CLRC does not act, or if disagreement is reached within 14 days of the CLRC's receipt of the claim, the aggrieved party is entitled to take the claim to the area arbitrators whose jurisdiction on the claim is limited to the terminal where it arose, and to the resolution of the specific claim before them. Any remedy for violation of the MOU is to be tailored to that specific claim. The specific claim, the tailored remedy, if any, and the reasoning of the arbitrator are to be spelled out with particularity in the Area Arbitrator's decisions. Such decision shall be subject to further review at the discretion of the Parties under MOU Sections VI.B. (9)-(10)." C-2-05, pp. 11-12.

VI.B (7) "The employer shall have the right to implement the new technology thirty-five (35) days after the Coast technology letter in item 2 above is submitted to the Union. "

The Employer may implement the new technology in accordance with Section VI. B. (7) 35 days after the date of the VI. B. (2) letter." (C-02-05, p. 15 (4)).

VI.B (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. "

As noted in bold below VI (B)(8) was modified and clarified by Arbitrator Kagel in Award C-06-05. It is this step in the framework that has a specific timeframe and a specific action that must be adhered to prior to the scheduling of a hearing before the Area Arbitrator.

"1) A timely reference of the disagreement to the Area Arbitrator under Section VI(B)(8) occurs when, within 14 days of the [Coast] disagreement, an unequivocal statement by either Party is made to the other Party and the Area Arbitrator that the disagreement is to be presented to the Area Arbitrator. The best evidence of such a statement is writing such as a letter or fax or e-mail to the other Party and the Area Arbitrator."

"2) The Parties thereafter, along with the Area Arbitrator, must actively pursue that the hearing occur as expeditiously as practicable within the schedules of all concerned. Such hearing does not have to begin within 14 days of the disagreement at the CLRC provided that such notice is given as provided in Paragraph 1 above and reasonable steps are taken by the Parties to secure a mutually-acceptable hearing date before the Area Arbitrator . . . ."

"3) There was no modification of Memorandum of Understanding Section VI (B)(8) by the terms of Item 2(b) of the minutes of CLRC meeting 03-04 . . . ."

"4) Time limits may be extended by mutual agreement of the parties, or by order of the Area Arbitrator after hearing from both parties."

"5) Any issues concerning claimed lack of timeliness under Section VI(B)(8), or preceding provisions, are to be initially presented to the Area Arbitrator, such timeliness issues to be determined on their specific facts." C-06-05, pp. 5-6, (1)-(5).

VI.B (9) "Within fourteen (14) days, the interim decision issued by the Area Arbitrator shall be reviewed by the Joint Coast Labor Relations Committee for confirmation. "

VI.B (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. "

"c) Local technology area arbitration awards not confirmed by the CLRC and referred to the Coast Arbitrator shall be heard at the terminal identified in the Technology Letter."

"d) At the Coast hearing, each party shall be afforded the opportunity to provide a demonstration of the new technology—the Employers with the implemented technology, and the Union with a counterpoint demonstration." CLRC 3-2004, items (c-d)

"The reference in VI. B. 10 to a full and complete hearing then does not allow for first-time introduction of evidence that was not presented to the Area Arbitrator before the Coast Arbitrator. What it does do, contrary to the regular grievance procedure or other dispute resolution procedures in the Agreement cited by the Employers, is allow the Coast Arbitrator to personally hear testimony from witnesses for explanatory and for credibility purposes, to personally observe operations, if that opportunity was an option for the Area Arbitrator, and then to consider anew a new record of the same evidence presented to the Area Arbitrator and considered by the Parties which can include any impeachment based on prior testimony. It is not a paper review, but allows for the full and complete live hearing before the Coast Arbitrator of all of the issues raised and not theretofore resolved, but which are limited to the evidence about those issues, which had been presented to the Area Arbitrator and the CLRC . . . . "Decision: the evidence [to] be presented to the Coast Arbitrator under VI. B.10 is that presented to the Area Arbitrator under VI. B. 8 and considered by the CLRC under VI. B. 9." C-4-2004, p. 8.

VI.B (11) "The new technologies or new methods of operations based on technological changes and all related issues shall be implemented in strict accordance with the agreements of the Coast parties, or the rulings of the Coast Arbitrator. "

It would be unfair to allow the Employer to submit a tech letter and permit such letter to dictate the procedure that the Union must follow to argue the issue. The Union in the instant dispute has not set in motion VI(B)(8).

There are no facts presented into evidence to establish that this dispute achieved VI(B)(8) of the Framework. For that reason it would be logical to regard the issue as dropped by the Union as it pertains to the framework and its relevance to the instant dispute.

It is anticipated that for reason of the complexity of this issue that the parties will arrive at an impasse as it pertains to implementation of this award in total. As stated in the background portion of this Award, a complete tour of the work site was afforded this Arbitrator. The following Employer motion shall be addressed in the decision.

Employer Motion: If the Union is dissatisfied with implementation of such an Award, they may choose to forward the issue to the Arbitrator for further determination as it has in the past. (Tr. Pg. 459-460)

DECISION:

1. SSAT is in violation of assigning Section 1 work of the PCCCD to other than PCCCD Marine Clerks as claimed by the Union.
2. All job functions as claimed by the Union shall be immediately assigned to PCCCD Clerks.
3. Any dispute as to whether a claim of Section 1 work is justly that of the Union's shall be remanded to the grievance procedure and the Area Arbitrator if required.

/s/ David Miller
David Miller
Area Arbitrator Southern California

Dated: July 20, 2006

IN ARBITRATION PROCEEDINGS PURSUANT TO HE
COLLECTIVE BARGAINING AGREEMENT BETWEEN THE PARTIES

INTERNATIONAL LONGSHORE AND WAREHOUSE UNION,	C-20-2006
Union,	OPINION AND DECISION
and	of
PACIFIC MARITIME ASSOCIATION,	JOHN KAGEL
Employers.	Coast Arbitrator
Re: Bench Award re VI.B.3 and Section 17	January 10, 2007
	Palo Alto, California

APPEARANCES:

For the Union: Ray Ortiz, Coast Committee Member, ILWU

For the Employers: Thomas Edwards, Vice President, PMA

ISSUE:

As stated at the arbitration hearing:

> "...[T]he procedural issue is whether...there is a claim concerning Clerks' jurisdiction that arises from a technology introduction as specified in the Technology Framework which is found on page 209 of [the PCCCD], whether that jurisdictional claim is to be raised pursuant to Section VI.B(3) or whether that claim is to be raised under Section 17....
>
> The substantive issue, meaning the issue on the merits, involves Section 1 of the Clerks' agreement, but that has to be

made clear that whether raised under Section VI.B(3) or Section 17, the issue on the merits is the same; namely, whether it was a violation of Section 1 or not with respect to whatever work assignment is involved.

...[T]he minutes of the CLRC meeting 03-04 with reference to item 2-B, particularly the last sentence [reads]:

> 'The union is entitled under Section VI.B(3) to raise to an arbitrator any technology and jurisdictional issue at any later time.'

What happens when there has been a tech change resulting from, ... the preliminary Section B(1) discussions, and then a tech letter, but at least according to the Union the jurisdictional concerns of the Clerks were not readily apparent as a result of that process, and that it later comes to the attention of the Clerks that there has been a violation or at least an alleged violation of Section 1? In that circumstance, given the statement in meeting No. 03-04, [is] whether the Union brings the claim under VI.B(3), or whether it brings it under Section 17.

We're putting aside for the moment at least, any claim that the union was, 'sleeping on its rights' or not sleeping on its rights. We're just saying this is an issue which the Union did not know about, could not reasonably have known about and brings it up there.

The issue of sleeping on its rights is a fact-based situation involved in each case as to whether or not the Union knew or should have known about the claim or whether or not there was some legitimate excuse, even if it knew about it, to have not brought it up, [as to] which none of that is going to be decided here.

The sole issue is whether under those circumstances ... the matter comes up through the B(3) route or through Section 17." (Tr. 4-7)

BENCH DECISION:

At the conclusion of the hearing the Coast Arbitrator stated:

"...I agree with the Employers' position in this case that if there is a work assignment issue which arises, it was not discovered initially, that the place to bring it is under B-3, not under 17.

The reason for that is ... that the Framework itself is specific to technology and was adopted after [Section] 17 had been in place for who knows how many years.

[The Framework] is essentially a special process for these kinds of claims, and the reason for that is what the Parties bargained, when they bargained for centralized review by the CLRC twice, for the Area Arbitrator to get involved, then the Coast Arbitrator. ... So these cases need to be brought under B-3.

This does not deprive, in my view, the Union of any jurisdictional right, because the same issue is present, whether it's under 17 or it's under B-3, namely, whether Section 1 has been violated.

The question is just how you get to the answer. ..." (Tr. 33-34)

DECISION:

1. The bench decision is hereby affirmed.

2. The underlying case is remanded to the Area Arbitrator for consideration in light of this decision. His prior ruling shall remain in effect as an interim ruling. The bench decision in this case presents no view whatsoever concerning the merits of the case before the Area Arbitrator.

Coast Arbitrator