

<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>Regarding elimination of Chief Supervisor at TraPac Terminal Port of Los Angeles</p>	<p>SCAA-0042-2006</p> <p>OPINION AND DECISION</p> <p>of</p> <p>David Miller Area Arbitrator</p> <p>August 22, 2006</p> <p>Long Beach, California</p>
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The hearing was held at 1:07 P.M. on Tuesday, August 22, 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.

APPEARANCES:

FOR THE EMPLOYERS: Richard Clark
Pacific Maritime Association

FOR THE UNION: Joe Gasperov
ILWU Local 63

ALSO PRESENT: N. Uruburu, TraPac
A. Diaz, Local 63
M. Harding, SSA

BACKGROUND:

This hearing is a result of C-06-06 and within that decision of Coast Arbitrator Kagel the Employer shall continue to employ a Chief Supervisor pending the Area Arbitrators ultimate decision.

It was agreed by all parties that this hearing shall be considered as a **new and complete hearing**. The parties were instructed that any past exhibits, testimony and any other relevant evidence would be considered at this hearing.

DISCUSSION:

Employer:

The Employer's contention is that the requirement of a chief supervisor has been eliminated because of new technologies at the TraPac Terminal and that those functions of a Chief Supervisor have been significantly reduced.

It is the position of the Employer that the following sections of the PCCCD allow the Employer the discretion to determine if a Chief Supervisor is employed. In addition, the

Employer states that the **framework for technologies** provides for the elimination of the Chief Supervisor.

Those sections read as follows:

15.1 There shall be no interference by the Union with the Employers' right to operate efficiently and to change methods of work and to utilize mechanical, electronic or other laborsaving devices and to direct the work through employer representatives while explicitly observing the provisions and conditions of this Contract Document protecting the safety and welfare of the employees and avoiding speedup. "Speedup" refers to an onerous workload on the individual worker; it shall not be construed to refer to increased production resulting from more efficient utilization and organization of the work force, introduction of labor-saving devices or removal of work restrictions.

15.2 The employer shall not be required to hire unnecessary clerks. The number of clerks necessary shall be the number required to perform an operation in accordance with the provisions of Section 15.1, giving account to the contractual provisions for relief.

1.2515 The practice of direction of supervisors by management is recognized and shall not be disturbed. The direction of the flow of cargo to or from a ship by supercargoes or supervisors is recognized.

1.253 Chief supervisor. An employee who is assigned to direct work of supervisors; provided, however, that the individual employer shall have the right to determine whether or not a chief supervisor need be employed if 1 or more supervisors are employed.

Employer Exhibit No. 8 (JCLRC-17-61) was submitted and the relevant text reads:

(4) The Committee agrees that under the terms of the clerks' agreement the employer determined whether or not Chief Supervisors are to be employed, or if management personnel shall direct the work of Supervisors.

(5) In the exercise of these rights, in cases where an individual employer has regularly employed and continues to employ a Chief Supervisor or Chief Supervisors, the employer shall not make determination for the sole purpose of replacing such union employees with management representatives. Where an individual employer has regularly employed and continues to regularly employ Chief Supervisors, and determines to reduce their number or eliminate them, he may do so under the procedures as set forth in the October 18, 1960 Memorandum, or, in the alternative, notify the union of his determination and the reasons therefore and the union shall have the right to submit such decision to grievance for the purpose of determining whether such decision is in violation of this total clarification."

Employer witness Scott Axelson a TraPac employee testified to Employer Exhibit No. 11 and the information contained demonstrates the fact that the responsibility of a Chief Supervisor has been reduced because of technology.

Union:

The Union maintained that the job functions currently being performed by Chief Supervisor Hermenegildo are the equivalent of those performed by Elmo Smith before his retirement and in fact have become greater than before.

Within Union Exhibit No. 1 Hermenegildo testified as to all the job functions listed and to his job responsibility during the work shift.

The Union brought attention to the agreed to fact that technology at TraPac has reduced the amount of clerks employed. Therefore, it is the Union's position that Sections 15.1 and 15.2 are being fully utilized by the Employer without interference from the Union. However, this does not provide the Employer with the right to eliminate the Chief Supervisor and assign those job functions to management.

In support of their position the Union submitted Awards SC-115-68, SC-70-83 and made reference to Employer Exhibit No. 8 (JCLRC-17-61) to maintain that these awards and agreements protect the employment of a Chief Supervisor.

OPINION:

This Arbitrator will not consider Union Exhibit No. 2 in attainment of a final decision. This letter was not considered in the first hearing, contrary to the Employers allegation submitted at the coast level and will again not be considered.

Also, Employer Exhibit No. 12 will not be considered based on the fact it is not relevant to the issue in dispute.

The instant issue is a claim processed through Section 17 of the PCCCD by the Employers. This claim as presented by the Employers and supported by the record implies that technology has replaced and/or reduced the functions of a Chief Supervisor at TraPac. There is nothing within the PCCCD that prohibits the Employer in pursuance of such grievance as presented.

It is hereby noted that this record makes no mention of any coast technology meetings or has this Arbitrator received any letter from the parties with intent to arbitrate within the technology framework.

It is thereby concluded absent a timely letter of intent as per the technology framework this issue must be decided as per the past practice of the industry. Therefore, this Arbitrator shall abide by the JCLRC guidelines and Section 17 of the PCCCD and render a final decision based on the facts and evidence put into the record.

The Employer has failed to persuade this Arbitrator that technology has replaced any of the functions listed within Union Exhibit No. 1. The Union witness Hermenegildo, current Chief Supervisor, during testimony was specific and knowledgeable as to the exact functions that are performed on a daily basis at TraPac. Employer witness Axelson was

not convincing and stated that he found it hard to believe that Hermenegildo performed certain functions claimed by Hermenegildo (Tr. Pg. 79).

There is nothing on the record by the Employer to dispute the job functions described in Union Exhibit No.1. The Employer alleges that technology has replaced functions of a Chief Supervisor however; no such evidence was submitted to sustain such claim.

Past arbitrations and JCLRC agreements establish that the employer cannot replace a Union Chief Supervisor with management.

This Arbitrator is convinced that the elimination of the Chief Supervisor at TraPac would permit management to assume the functions of the Chief Supervisor.

DECISION:

The Employer's motion to not employ a Chief Supervisor at TraPac is denied.

/s/ David Miller

David Miller
Area Arbitrator Southern California

Dated: December 18, 2006

position. The Area Arbitrator in SCAA-0028-2004 found for the Union but the case was remanded to him by the Coast Arbitrator in Award C-06-06. In SCAA-0042-2006 the Area Arbitrator reaffirmed his prior decision:

"The Employer has failed to persuade this Arbitrator that technology has replaced any of the functions listed within Union Exhibit No. 1. [An exhibit listing the duties of the retired Chief Supervisor and the current one showing the duties to be the same.] The Union witness Hermenegildo, current Chief Supervisor, during testimony was specific and knowledgeable as to the exact functions that are performed on a daily basis at TraPac. Employer witness Axelson was not convincing and stated *that he found it hard to believe that Hermenegildo performed certain functions claimed by Hermenegildo* (Tr. Pg. 79).

There is nothing on the record by the Employer to dispute the job functions described in Union Exhibit No. 1. The Employer alleges that technology has replaced functions of a Chief Supervisor however; no such evidence was submitted to sustain such claim.

Past arbitrations and JCLRC agreements establish that the employer cannot replace a Union Chief Supervisor with management.

This Arbitrator is convinced that the elimination of the Chief Supervisor at TraPac would permit management to assume the *functions of the Chief Supervisor.*" (Jt. Ex. 2, pps. 3-4)

PCCCD PROVISIONS:

1.24 Definitions of jobs within the 4 basic classifications are not to be construed to set up specialization or to restrict utilization of men, or to curtail flexibility under the Contract Document. ...

1.2515 The practice of direction of supervisors by management is recognized and shall not be disturbed. ...

1.253 *Chief supervisor.* An employee who is assigned to direct work of supervisors; provided, however, that the individual employer shall have the right to determine whether or not a chief

supervisor need be employed if 1 or more supervisors are employed. ...

17.261 Any decision of ... an Area Arbitrator claimed by either party to conflict with this Agreement shall immediately be referred at the request of such party to the Joint Coast Labor Relations Committee (and, if the Joint Coast Labor Relations Committee cannot agree to the Coast Arbitrator, for review). The ... Coast Arbitrator, shall have the power and duty to set aside any such decision found to conflict with the Agreement and to finally and conclusively determine the dispute. It shall be the duty of the moving party in any case brought before the Coast Arbitrator under the provisions of this Section 17.261 to make a prima facie showing that the decision in question conflicts with this Agreement, and the Coast Arbitrator shall pass upon any objection to the sufficiency of such showing before ruling on the merits." (Jt. Ex. 1)

The JCLRC issued an interpretation of the above Agreement language in 1961.

including:

"... In ...cases where an individual employer has regularly employed and continues to employ a Chief Supervisor or Chief Supervisors, the employer shall not make his determination for the sole purpose of replacing such union employees with management representatives. Where an individual employer has regularly employed and continues to regularly employ Chief Supervisors, and determines to reduce their number or eliminate them, he may do so under the procedures as set forth in the October 18, 1960 Memorandum, or, in the alternative, notify the union of his determination and the reason therefor and the union shall have the right to submit such decision to grievance for the purpose of determining whether such decision is in violation of this total clarification." (Er. Ex. 4)

DISCUSSION:

Review of Area Arbitrator Decision:

The Employers maintain that the Area Arbitrator ignored the right of the

Employer to determine its staffing, its ability to operate in an efficient manner including whether or not to employ a Chief Supervisor as provided in Sections 1.24 and 15.1 and 15.2 of the PCCCD, its right to not place unnecessary Clerks on the job as provided in Section 1.23 of the Agreement and its right to direct Supervisors under Section 1.2515.

Notwithstanding those provision, JCLRC-17-61 placed a limitation on their application with respect to the Chief Supervisor position, namely that after regularly employing a Chief Supervisor the Employer could not eliminate that position solely to replace him or her with a Management representative.

The primary thrust of the Employers is that they disagree with the Area Arbitrator's findings of fact including his credibility determinations. Their assertions include that functions of the Chief Supervisor listed by the Union no longer exist or had been greatly reduced because of the substantially reduced number of supervisory Clerks and the way they are assigned as testified to by the Employer's witness. Yet, the Area Arbitrator rejected that testimony on the basis that he found the Union's witness to be more familiar with the functions of the job in question. The record of both hearings were before the Area Arbitrator and the staffing was discussed in both. Also discussed in both were issues concerning what the Chief Supervisor did and what occurred when a Chief was no longer utilized, as presented by both Parties.

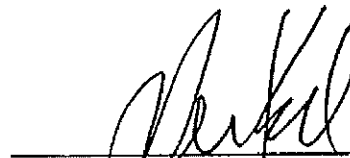
The Employers have presented a prima facie claim of a PCCCD violation since it believes the record shows that the Area Arbitrator has not abided by its provisions as interpreted by the JCLRC. However, they cannot prevail in ultimately establishing their

violation because the Employers' claims are based solely on their view of the facts that are contrary to those found by the Area Arbitrator. Examination of the records of both Area Arbitrator hearings show that each Party presented its facts and the Area Arbitrator found those presented by the Union more conclusive. Since he was required to find facts and make credibility findings as he did in this case, that there are contrary factual presentations in the record does not diminish his award. This is not a case, contrary to the Employers' assertion, where the Area Arbitrator ignored facts; he had them presented to him and from two hearings determined that notwithstanding the changed number of Clerks and reconfiguration of assignments of them that the functions performed by the Chief Supervisor still existed and to not have one would have those functions devolve solely to Management as barred by the JCLRC ruling.

As already held in this case: "An Area Arbitrator's decision under the PCCCD, other than under the Technology Memorandum of Understanding, cannot be [successfully] appealed on the basis of disagreement with the factual determination of the Area Arbitrator." (Award C-06-06)

DECISION:

The appeal of SCAA-42-2006 is denied.



Coast Arbitrator