

COAST LONGSHORE DIVISION

INTERNATIONAL LONGSHORE & WAREHOUSE UNION

Robert McEllrath

Ray Familathe

Ray Ortiz, Jr.

Leal Sundet

April 14, 2010

TO: All Clerks' Locals

RE: C-02-2010

Brothers and Sisters:

Enclosed is a copy of Coast Arbitration Award C-02-10. The decision provides important guidance as to the contractual limitations on Superintendents at marine terminal facilities.

Coast Arbitration Award C-02-10 states that Superintendents can observe an operation either physically on the spot or through the use of technology. However, C-02-2010 reaffirms that in the day-to-day interaction with Marine Clerks, Superintendents are limited contractually as to how they oversee the work of Marine Clerks. The decision also suggests what we need to do is effectively pursue grievances in this context.

Most significantly, C-02-10 states that, while Superintendents can observe an operation and relay what they observe to Marine Clerks, problem solving is our work. On this point, Coast Arbitrator Kagel stated that Superintendents may call problems or concerns to the attention of Marine Clerks but that "determining what do to next is for Marine Clerks" (C-02-10, page 4). Moreover, "If the Marine Clerks have questions they can ask them but in their normal work they would be required to determine what to do about the situation and issue the appropriate directions to resolve it" (C-2-10, pages 4-5). Coast Arbitrator Kagel also noted in C-02-10 that the Employers recognize this limitation: "The Employers acknowledge that Superintendents bypassing Marine Clerks and giving directions themselves violate the PCCCD since such direction is reserved to Marine Clerks" (C-02-10, page 2). Thus, C-02-10 draws a line between the work of Superintendents and Marine Clerks, and we need to ensure that Superintendents do not cross that line into the traditional "brain work" that is the function of a Marine Clerk.

One of the Union's contentions in C-02-10 dealt with the pervasive assignment of Superintendents and its impact on Marine Clerks. However, the specific facts of this "micromanaging" claim were not sufficiently documented in the Coast Arbitrator's mind. On that point, Coast Arbitrator Kagel provided some guidance for future grievances: "Issues concerning whether the Employer has pervasively assigned such a large number of Superintendents to solely check computer screens with the result that their observations do not give Marine Clerks the opportunity to do their normal work and thus displacing them requires a much more specific record as to specific dates and situations" (C-2-10, page 5). Anyone seeking



Memo to all Clerk Locals
April 14, 2010

to press similar "micromanaging" claims must document what is going on, including "specific dates and situations," so that there is sufficient evidence to support the claim.

Finally, note that the Coast Arbitrator kept his decision in C-02-10 narrow: "This decision deals solely with whether Superintendents can use technology and inform Marine Clerks of their observations which information the Marine Clerks may use in doing their work Nothing in this decision deals with specific claims, if any, that the Employer's employment and pervasive assignment of Superintendents otherwise violates or does not violate the PCCCD" (C-2-10, page 5). Thus, C-02-10, by order of the Coast Arbitrator, is a limited decision.

Please review the enclosed award, and let us know if you have any questions.

In Solidarity,

THE ILWU COAST LABOR RELATIONS COMMITTEE



Ray Ortiz, Jr.
Coast Committeeman



Leal A. Sundet
Coast Committeeman

Enclosure

ac:opeiu29/afl-cio

IN ARBITRATION PROCEEDINGS PURSUANT TO SECTION B.10
OF THE FRAMEWORK FOR SPECIAL AGREEMENT ON APPLICATION
OF TECHNOLOGIES AND PRESERVATION OF MARINE CLERK
JURISDICTION OF THE 2008-2014 ILWU-PMA
PACIFIC COAST CLERKS' CONTRACT DOCUMENT

C-02-2010

INTERNATIONAL LONGSHORE AND]
WAREHOUSE UNION,]
]
 Union,]
 and]
]
 PACIFIC MARITIME ASSOCIATION,]
]
 Employers.]
]
Re: SCAA-1-10 Superintendents]

OPINION and DECISION

of

JOHN KAGEL
Coast Arbitrator

April 6, 2010

Palo Alto, California

APPEARANCES:

For the Union: Leal Sundet, Ray Ortiz, Coast Labor Relations Committee

For the Employer: Rich Marzano, Coast Director, Contract Administration and
Arbitration

ISSUE:

Whether SCAA-1-10, issue 2, should be affirmed or vacated?

BACKGROUND:

Superintendents at PAG have screens that through computer programs allow them
to view what is occurring in the yard and at the vessel or vessels. In doing so
Superintendents can detect irregularities which they report to Marine Clerks as requiring

PMA - LR

correction. In some instances they have bypassed Marine Clerks and given direction themselves for such corrections. Generally, Superintendents have three computer screens, one of which may be used for email (Jt. Ex. 2 p. 230); Marine Clerks have two or three screens. Both use the same computer programs to view the yard and vessel operations.

The Employers acknowledge that Superintendents bypassing Marine Clerks and giving directions themselves violate the PCCCD since such direction is reserved to Marine Clerks. (*E.g.* Jt. Ex. 2, p. 68) The Union maintains that the Superintendents viewing the screens and calling Marine Clerks' attention to irregularities the Superintendents believe they see amount to "micro-managing" that usurps the "brainwork" that Marine Clerks are required to bring to the job to direct the flow of cargo—"their historic role of determining operational solutions in the face of unanticipated mishaps." (Tr. 15)

DISCUSSION:

November 2002 Letter of Understanding:

In November 2002 the Parties' agreed in a Letter of Understanding (LOU):

"During the course of the ILWU-PMA 2002 Negotiations the Parties reached agreement on various provisions and procedures regarding the implementation of technologies and their impact on marine clerks under the PCCCD. Such provisions and procedures are set forth in the Framework For Special Agreement On Application Of Technologies and Preservation Of Marine Clerk Jurisdiction (referred to as the 'Framework'). The purpose of this letter is to confirm our understanding that nothing in the Framework reduces or expands the established Contract language and practices regarding management's right as to the direction of marine clerk supervisors by management, the determining of

overall business operations, and the setting of business and operational priorities.” (Jt. Ex. 2, Er. Ex. 5)

After the introduction of technology Marine Clerks perform work by viewing programs on two or three screens that allow them to see what is going on in the yard and to give directions as necessary. Superintendents can view the same programs and if they also see situations requiring that directions need to be given they advise Marine Clerks of the situation for the Marine Clerks.

The Area Arbitrator wrote:

“...PAG has created a subterfuge by allowing superintendents to mimic the work functions of Section 1 of the PCCCD that gives such work checking/monitoring to marine clerks. It is further concluded by me that PAG has not introduced technology that eliminates the need for a clerk to monitor/check each cargo move on a computer screen.

The argument of the Employer that they have the right to direct and supervise clerks is rejected based on the history of such wording and how it has been recognized by the Parties. It is the long standing practice within the industry for Employers to set parameters and give direction to clerks on how work shall commence, be modified during a shift and how such work shall be concluded. I find the actions of the Employer at WBCT to be disingenuous in allowing superintendents to become the ‘extra clerk or an ‘extra set of eyes’ to monitor/check each and every movement of cargo under the pretext of supervision and direction...” (Jt. Ex. 2)

The evidence presented at the Coast level as well as in the Area transcript introduced at the Coast shows that the historic practice of Management direction to Marine Clerks has not been confined to directions at the beginning and end of the shift or to mid-shift programmatic modifications. Superintendents would oversee the operation from where they were and if “something didn’t look right” would call the Supercargo and

ask about what was observed, impliedly seeking correction if required, through Marine Clerk direction. (Tr. 73-74, 129, Jt. Ex. 2 p. 167) Accordingly, the record and the Agreement support that Superintendents can observe the operation either physically on the spot or by technology as the LOU allows and to carry out their functions as they did before the introduction of technology. To hold otherwise negates the Parties' agreement that "practices regarding management's right as to the direction of marine clerk supervisors by management" would continue after the introduction of technology.

Marine Clerk Work:

While Superintendents can observe the operation and relay what they observe to Marine Clerks the practices preserved in the LOU for the latter is what to do with the Superintendents' observations. An example in the Coast record was that a Superintendent observes trucks in the exception area. After advising the Marine Clerk of that fact the Superintendent then identified why the trucks were there because of custom cans on their backs and then tells the Marine Clerk to take them to a particular top handler and what row to deck them in. (Tr. 98, 106-107)

The LOU draws the line between the work of Superintendents and that of the Marine Clerks. The above example is not a shift in the day's operational plan. It is an incident occurring within the overall plan that was implemented by Management. In that example a Superintendent asking Marine Clerks why trucks were in the exception area is within the practices of Superintendents preserved to them by the LOU. But determining what to do next is for Marine Clerks. If the Marine Clerks have questions they can ask

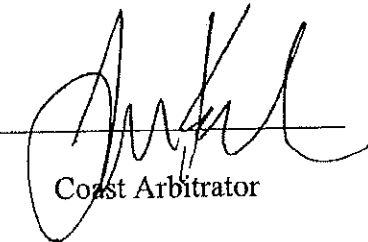
them but in their normal work they would be required to determine what to do about the situation and issue the appropriate directions to resolve it. (See Tr. 24, 41)

“Micro-Managing:”

The issue raised in this case involved what Superintendents can do with respect to technology as opposed to what work is reserved solely for Marine Clerks. Issues concerning whether the Employer has pervasively assigned such a large number of Superintendents to solely check computer screens with the result that their observations do not give Marine Clerks the opportunity to do their normal work and thus displacing them requires a much more specific record as to specific dates and situations. General testimony was introduced concerning whether there might, or might not, be such a situation. (E.g. Jt. Ex. 2, pps. 51, 53, 54, 81, 91, 231) This decision deals solely with whether Superintendents can use technology and inform Marine Clerks of their observations which information the Marine Clerks may use in doing their work.

DECISION:

1. Awards SCAA-1-2010 and SCAA-2-2010, the latter dealing with the implementation of SCAA-1-2010, are vacated.
2. Nothing in this decision deals with specific claims, if any, that the Employer's employment and pervasive assignment of Superintendents otherwise violates or does not violate the PCCCD.


Coast Arbitrator

<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: An Alleged Section 1 Violation as it Pertains to Clerks Work Described in the PCCCD.</p>	<p>SCAA-0001-2010</p> <p>Opinion and Decision</p> <p>of</p> <p>David Miller Area Arbitrator</p> <p>November 4, 2009 & November 5, 2009</p> <p>Long Beach, California</p>
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The hearing was held at 9:05 AM on November 4, 2009 at 2001 John Gibson Blvd, San Pedro, California and 10:55 AM on November 5, 2009 at 300 Oceangate, 12th Floor, 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 transcripts of the hearings.

APPEARANCES:

FOR THE EMPLOYERS:

Jacquie Ferneau
Pacific Maritime Association

FOR THE UNION:

Joe Gasperov
ILWU Local 63

ALSO PRESENT:

R. Dickey, PA
A. Diaz, Local 63
J. Spinosa, Local 63
M. Gould, Local 63
P. Trani, Local 63
G. Califano, Local 63
T. Sklavos, Local 63
P. Aguirre, Local 63

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ISSUES:ISSUE NO. 1:

Whether the Union has expanded the scope of the instant issue as it was described during the provisions of the technology framework.

ISSUE NO. 2:

Whether Ports America Group, hereafter PAG, is in violation of the framework and PCCCD as it pertains to NBUP performing clerks work described in the Master Agreement.

DISCUSSION ISSUE NO. 1:

The Employer asserts that the issue in dispute is not the same as presented at previous framework meetings and the Union has today expanded the issue.

The Union contends through exhibits that the issue in dispute was all inclusive and that the issue was unambiguous during framework meetings.

OPINION:

The Employer raised the above issue at the beginning of the hearing and claimed that the Union had expanded the scope of the issue.

The instant issue is defined in Union Exhibit No.2, which states that there has been an assignment of marine clerk work to superintendents. This exhibit illustrates that the Union asserts that the work in question was related to the loading and discharge of cargo to and from the vessel and involved superintendents performing, specifically the work and functions of monitoring the computer system to facilitate the flow of cargo.

This was work that was described as new work related to technology by the Employers' own documents, and was stated by the Employers that this work would be performed by clerks. Union Exhibit No. 2 which was the Employer Technology Letter dated January 27, 2006 stated on Page 6, Item 2 that new work for clerks would be that a clerk would review, monitor, and adjust work queues. This same exhibit, on Page 10, Item 5, states that clerks would perform such work during the operation.

In the Employer letter dated February 15, 2006, which was in response to questions asked by the Union, the Employer again states that some new work for clerks would be to review, monitor, and adjust work queues during the work shift.

In addition, the Employer made a claim at the hearing that the Union never presented argument at any technology meeting about work described in Section A.5 of the framework which describes terminal control centers. This argument is rejected as it was the Employers who classified the area where vessel clerks were performing their work

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as that of a terminal control center as shown by the Union in the Employer letter dated July 24, 2006, Item VI (Union Exhibit No. 7).

Upon review of the testimony and evidence submitted, I find that the Employer has failed to support their claim with any facts that merit consideration pertaining to their claim.

The issue as described by the Union in the March 16, 2007 letter and presented at this hearing is the issue that shall be decided.

DECISION:

The Employer's claim is hereby denied.

DISCUSSION ISSUE NO. 2:

The Union asserts that superintendents are performing work functions described in Section 1 of the PCCCD at WBCT in Los Angeles. It is the Union's contention that within the terminal control center for vessel operations clerks are given the assignment to monitor/check on computer screens the movement of cargo to and from the vessel and the container yard.

It is claimed by the Union that adjacent to the work stations of the clerks, superintendents have matching multiple computer screens that emulate the clerk's computer screens.

The Union asserts that superintendents in real time monitor/check the movement of cargo and perform the same job function of the clerk. It is at this time when a cargo move is about to be made in error that the superintendent alerts the clerk of an impending needed correction or as claimed in testimony such superintendent makes the correction.

The Employer's position is that management has the right to direct clerk supervisors. In addition, the Employer submitted Employer Exhibit No. 5 in support of their position.

During the course of the ILWU-PMA Negotiations, the Parties reached agreement on various provisions and procedures regarding the implementation of technologies and their impact on marine clerks under the PCCCD. Such provisions and procedures are set forth in the Framework For Special Agreement on Application Of Technologies and Preservation of Marine Clerk Jurisdiction (referred to as the "Framework"). The purpose of this letter is to confirm our understanding that nothing in the Framework reduces or expands the established Contract language and practices regarding management's right as to the direction of marine clerk supervisors by management, the determining of overall business operations, and the setting of business and operational priorities.

I believe that this accurately sets forth the understanding reached in

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negotiations. I would ask that you sign a copy of this document for our file and retain a copy for your file.

The position throughout the hearing of the Employer is that the Employer has a contractual right to monitor/check cargo operations in real time as a consequence of directing clerk supervisors.

OPINION:

This Arbitrator made two visits to WBCT, the first was on November 4, 2009 and the second was on December 11, 2009. The first visit was impromptu and therefore the parties were not prepared to give me a presentation that was planned to support each other's position.

What I viewed as established by the Union on the record was superintendents within a few feet of clerks in the terminal control center monitoring and checking each ship and yard cargo move.

On my second visit, I viewed each terminal control center at WBCT. They included the office above the M&R shop, Berth 126 Marine Building, and the trailers at Berth 100. At each site, the Employer had installed multiple computer screens to be utilized by superintendents that mirrored that of the clerks.

It is my finding that PAG has created a subterfuge by allowing superintendents to mimic the work functions of Section 1 of the PCCCD that gives such work checking/monitoring to marine clerks. It is further concluded by me that PAG has not introduced technology that eliminates the need for a clerk to monitor/check each cargo move on a computer screen.

The argument of the Employer that they have the right to direct and supervise clerks is rejected based on the history of such wording and how it has been recognized by the Parties. It is the long standing practice within the industry for Employers to set parameters and give direction to clerks on how work shall commence, be modified during a shift, and how such work shall be concluded. I find the actions of the Employer at WBCT to be disingenuous in allowing superintendents to become the "extra clerk" or an "extra set of eyes" to monitor/check each and every movement of cargo under the pretext of supervision and direction.

The testimony of clerks with experience and knowledge at WBCT as it pertains to this issue was forthright and provides persuasive evidence as it pertains to superintendents performing clerks work.

In contrast, Employer Witness, Robert Dickey's testimony is found to be without knowledge to the every day operation at WBCT. I find Dickey's trepidation as it pertains to PAG's relationship with outside customers to be more significant to him than compliance with the written words of the Master Agreement.

A section of the PCCCD that is relevant to this issue is found within the Framework

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agreement under section 5a-b and those sections read:

For the free flow of information to and from a terminal, the Employers shall establish a terminal control(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 clerks work covered by Section 1 of the PCCCD. The monitoring and access of documentation, information and data at a terminal to perform clerks' 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, additions, deletions, 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 imputing 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.

In conclusion, the written words of the applicable Sections of the PCCCD and the above described Framework Section must be binding on all parties and the employer cannot ignore its obligation to such by allowing other than marine clerks to perform the work functions assigned within the Master Agreement. Therefore the following decision is hereby rendered.

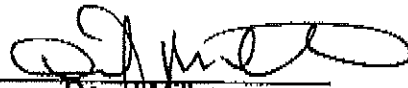
DECISION:

- 1) PAG at WBCT is found in violation of the PCCCD and framework as described in this hearing.
- 2) PAG shall turn off all superintendents computer screens in the identified areas immediately and they shall remain off.
- 3) Any questions or clarification as to the above order shall be addressed by the Area Arbitrator.

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November 4, 2009 & November 5, 2009



David Miller
Area Arbitrator
Southern California

Dated: January 21, 2010

<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: Implementation of Award SCAA-0001-2010</p>	<p>SCAA-0002-2010</p> <p>Opinion and Decision</p> <p>of</p> <p>David Miller Area Arbitrator</p> <p>January 22, 2010</p> <p>Long Beach, California</p>
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The hearing was held at 2:30 PM on January 22, 2010 at 300 Oceangate, 12th Floor, 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 transcripts of the hearings. I received electronically a transcript of this hearing on January 25, 2010.

APPEARANCES:

FOR THE EMPLOYERS:

Tim Kennedy
Pacific Maritime Association

FOR THE UNION:

Joe Gasperov
ILWU Local 63

ALSO PRESENT:

R. Dickey, PA
J. Femeau, PMA
R. Merial, PMA
S. Trombly, PAG
R. Molinero, PAG
R. Johnson, PAG
M. Ponce, Local 63
R. Olson, Local 63
P. Peyton, Local 63
M. Podue, Local 63

BACKGROUND:

Award SCAA-0001-2010 was given to the parties on January 21, 2010. The decision reads:

- 1) *PAG at WBCT is found in violation of the PCCCD and framework as described in this hearing.*

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January 22, 2010

- 2) *PAG shall turn off all superintendent computer screens in the identified areas immediately.*
- 3) *Any questions or clarification as to the above order shall be addressed by the Area Arbitrator.*

At approximately 11:00 AM January 22, I was called by the Union and a conference call began with PMA in attendance. I then gave clarification to the parties as it pertained to Items No. 2 and No. 3 of the decision. In addition, I explained what could be accomplished if the parties agreed to meet in a JPLRC meeting.

The above recommendation was rejected by the Employer and the Employer requested a formal hearing.

DISCUSSION:

The Union asserts on January 22, 2010 that Business Agents at the work site were informed by WBCT Management that the computers identified in Item No. 2 of the award would remain turned on under certain circumstances. At approximately 10:30 AM the Union suggested that the Employer meet with the Union and identify what the computers would be utilized for. This suggestion was turned down by the Employer.

The Employer maintains that they have implemented the award by removing superintendent access to the computer screens related to the issue. It is further stated by the Employer that all applications and programs unrelated to technology remain in place and are not subject to item No.2 of the award.

OPINION:

The decision of SCAA-0001-2010 was solely based on the facts and evidence submitted at that hearing.

It is the framework that gives clear direction to the Employer to disclose, exchange, and explain all information as it relates to introduction of new technology. There was no evidence submitted at the November 4, and 5 hearing to persuade this Arbitrator that any other usage other than what was discussed on the record of the computers at issue was considered.

The burden of presenting new technology and subsequent ramifications to marine clerks is referenced throughout the Framework Section of the Master Contract and it is the obligation of the Employer to divulge such information. It is the right of the Union to inquire, to hear, and to use such information to reach consensus or to disagree.

I find the position of the Employer to be based on evidence that was not presented at the original hearing and there has been no attempt by the Employer to present such relevant information in the proper forum.

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Therefore, the verbal decision given to the parties on January 22, 2010 is hereby affirmed in writing.

DECISION:

- 1) The Employer (PAG) is found guilty of not implementing Item No. 2 of SCAA-0001-2010 in violation of Section 17.57 of the Master Agreement.
- 2) If the Employer continues to not implement Item No. 2, then Section 17.282 of the Master Agreement may be used.



David Miller
Area Arbitrator
Southern California

Dated: January 25, 2010