

<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: Unilateral Reduction of the Skill Rate of Six Clerks as alleged in UC-0001-2017.</p>	<p>SCAA-0015-2017</p> <p>Opinion and Decision</p> <p>Of</p> <p>Southern California Area Arbitration Panel</p> <p>Ron Merial, Chair Person Mark Mascola Walter Daugherty</p> <p>May 23, 2017</p> <p>San Pedro, California</p>
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The hearing was held at 9:00 a.m. on Tuesday, May 23, 2017, at 530 W. 5<sup>th</sup> 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: Phillip Tabyanan, Pacific Maritime Association  
Jeremy Bridges, Pacific Maritime Association

FOR THE UNION: Joe Gasperov, ILWU Local 63

ALSO PRESENT: C. O'Neil, PMA  
L. Swietlikowski, PMA  
J. Mastroianni, PMA  
C. Lindsay, PMA  
P. Trani, ILWU Local 63  
A. Diaz, ILWU Local 63  
R. Maynez, ILWU Local 63  
J. Otis, APMT  
J. Beghin, LBCT  
M. Grant, SSA  
L. Wurzer, PAG  
K. Shaw, EMS  
S. Fresenius, Trapac

WITNESSES: Mr. Dane Jones, ILWU Coast Technology Committee  
Mr. Randy Whitman, ILWU Coast Technology Committee

Mr. Frank Riley, ILWU Coast Technology Committee  
Ms. Rebecca Schlarb, ILWU Local 63  
Mr. Mike Podue, ILWU Local 63

ISSUE:

Is the Employer guilty of the Union Complaint UC-0001-2017?

If so, what shall be the remedy?

BACKGROUND:

At the beginning of the hearing, the Employers raised a procedural issue, arguing that the matter should be heard under the PCCCD Technology Framework rather than Section 17. The parties agreed to present argument and evidence concerning both the procedural issue and the substantive issue.

The parties met on June 30, 2015 pursuant to Section B (1) of the Framework for Special Agreement on Application of Technologies and Preservation of Marine Clerk Jurisdiction, Item VI, November 23, 2002 Memorandum of Understanding (Technology Framework) to discuss the new technologies that were to be implemented at Long Beach Container Terminal (LBCT). On August 25, 2015, Mr. Bridges (Bridges) submitted a New Technology Letter. On September 8, 2015, the Union responded to the letter. On September 15, 2015, the first B (6) meeting was held. The parties met on October 14, 2015, October 26, 2015, November 8, 2015, December 21, 2015, January 8, 2016, February 9, 2016, March 3, 2016, March 9, 2016, and April 6, 2016 pursuant to B (6) of the Framework.

On December 21, 2015, Mr. Mike Podue (Podue) was hired as a steady 30% clerk by LBCT to begin necessary training of the required job functions and duties as outlined within the March 9, 2016 Letter of Understanding Re: Implementation of Automated Stacking Cranes, Automated Guided Vehicles and Semi-Automated Ship to Shore Cranes – Long Beach Container Terminal LLC – Port of Long Beach, (“LOU Re: Automation”), Item 8. Item 8 reads:

*Marine clerks, paid at 30% shall be assigned to monitor and resolve in the Terminal Operating System exceptions for any cargo being handled by automated container handling equipment. (CHE) Such clerks shall resolve any and all exceptions for any working vessel, but shall not be required to perform the work of other clerks or supervisors. There shall be the equivalent of one such clerk for each working vessel.*

On January 8, 2016, Mr. Dane Jones (“Jones”) sent an email to Mr. John Beghin (Beghin) containing the draft LOU Re: Automation, Item 8, which did not reference the pay rate but reference was made to the clerk title “Automation Chief Supervisor”. On February 27, 2016, Beghin sent an email to Jones wherein Beghin notes his agreement with Item 8 of the LOU Re: Automation.

On March 7, 2016, Ms. Rebecca Schlarb ("Schlarb") was hired as a steady 30% clerk by LBCT to begin necessary training of the required job functions and duties as outlined within Item 8 of the LOU Re: Automation.

On March 9, 2016, Jones sent an email to Bridges, Mr. Steve Fresenius ("Fresenius") (Fresenius was then employed by PMA), Beghin, and Mr. Anthony Otto ("Otto") with a draft LOU Re: Marine Clerk Pay Rate, asking them to advise him if there were any additional edits to be affected. None of the addressees responded to this email. Jones sent a follow-up email on March 15, 2016, with the LOU Re: Automation attached asking the Employers to advise him if there were any changes and/or concerns.

On April 7, 2016, LBCT had its first vessel operation utilizing the new technology. The LOU Re: Automation was fully implemented.

On December 18, 2016, the Union alleged that LBCT violated the March 2016 agreement between the parties, specifically Item 8 of the LOU Re: Automation, by reducing the skill rate and hours for the Clerks working the automation at LBCT. LBCT reduced the Clerks' wage rate from 30% to 25% and reduced the paid hours from twelve to ten, resulting in the filing of UC-0001-2017. At the hearing, the Union dropped the issue of the reduction in work hours as a component of its grievance.

On January 4, 2017, the Union submitted Complaint UC-0001-17 alleging LBCT violated Section 1 and its subsections, Section 2 and its subsections, Section 4 and its subsections, Section 18, and the LOU Re: Automation. The parties met in Meeting SCCL-0002-2017, January 13, 2017 wherein the Employers' position was that the dispute emanates from the implementation of technology and should be considered by the Joint Coast Labor Relations Committee ("JCLRC") pursuant to the Technology Framework.

The parties again met on January 26, 2017 in Meeting SCCL-0007-2017 wherein disagreement was reached as to whether UC-0001-2017 should be processed through the Technology Framework or Section 17 of the PCCCD.

This issue was discussed in CLRC Meeting 07-17, Item 14, on January 31, 2017. Item 14 reads:

*The Employers stated Section VI (B) (6) of the Framework requires that recommendations of the Technology Committee be referred to the JCLRC. It is improper for the JPLRC to adjudicate UC-01-2017 under Section 17 of the Agreement since the matter was considered during a Section VI (B) (6) meeting and the recommendations emanated from the implementation of technology and automation at the Long Beach Container Terminal, LBCT. The Employers note that the local Union now seeks to impose new wage rates, new categories, and new working conditions based on some unsigned document, never before referred to the JCLRC.*

*The Employers motioned that the Committee agree to direct the local parties to refer their recommendations to the CLRC for review in accordance with*

*Framework or pursuant to Coast Arbitration C-2-05 this procedural issue be arbitrated under Section VI (B) (8) of the Framework.*

*The Union noted that the Employers' disagreement did not emerge from the procedures of the Technology Framework. The parties agreed on the contractual provisions, already existed, that were applicable to the implementation of technology at LBCT. The parties relied upon Framework Section VI (A) (2) and VI (A) (4) to implement new methods of operation, and there were no recommendations to forward to the JCLRC. The only disagreement emerging from the Technology Framework for Long Beach Container Terminal identified holds and releases, which is a separate matter. The matter of the Employers' breach of agreement is appropriately addressed under Section 17 of the PCCCD.*

The CLRC agreed this matter may be submitted to the Area Arbitration Panel for it to decide whether or not the dispute falls under Section 17 or the Technology Framework.

The JPLRC agreed to refer the threshold issue to the Area Arbitration Panel ("Panel") to decide whether or not the dispute falls under Section 17 or the Technology Framework. The parties also agreed that they would present their substantive case immediately following its argument regarding their threshold issue.

#### EMPLOYER POSITION:

The tentative agreement (LOU Re: Automation) reached by the JCTC is simply a recommendation of terms and conditions contained in the PCCCD that are modified as a result of technology. Such changes to the terms and conditions result from non-traditional job requirements/duties, jurisdiction, manning, skill rates, which are not contained in Section 1 of the PCCCD as a result of the new technology. Pursuant to the Technology Framework, Section VI (B) (6), such recommendations of the JCTC must be referred to the JCLRC for its approval. The JCTC does not have the authority to modify any terms or conditions contained in the PCCCD.

Item VI (B) is titled, Procedures for Implementation of New Technologies and reads:

*The following procedures shall be used related to implementation of technologies and preservation of Marine Clerk jurisdiction and other PCCCD contractual rights affected by technologies. Any changes in methods of operation not based on technologies shall be addressed under Section 15.*

Item VI (B)(6) reads:

*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 letter and negotiate in good faith, recommendation 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.*

The Union should have made its claim in (B) (6) or (B) (3). It is procedurally improper for the Union to file a grievance under Section 17 regarding an issue that clearly emanated from the Technology Framework. These types of claims must be handled in accordance with Section (B) (8) (a) and (10) of the Technology Framework that provide for review by the CLRC and the potential for review by the Coast Arbitrator.

Although the terms and conditions contained in the LOU Re: Automation were fully implemented on or about April 16, 2016, the CLRC is required by the Technology Framework to either approve or disapprove the JCTC recommendations. This was not done in this case. Altering or modifying the terms of the contract, specifically Section 4.35 of the PCCCD is the sole authority of the CLRC and is required pursuant to Section (B) (6) of the Technology Framework.

LBCT did not resort to a gimmick or subterfuge when it attempted to gain consensus with its side of the CLRC. LBCT is obligated to follow the terms and conditions of the PCCCD. The skill rate of pay and the number of hours paid to clerks performing the work functions contained in Item 8 of the LOU Re: Automation must be paid at the 25% rate of skill to be within the language contained in Section 4 of the PCCCD. LBCT is not acting in bad faith; it is abiding by the terms and conditions contained in the PCCCD.

The Employers made the following motions regarding the substantive dispute:

1. LBCT did not resort to a gimmick or subterfuge as outlined in UC-0001-2017, specifically regarding Section 18 of that complaint.
2. If the Panel were to find LBCT guilty of some subterfuge or gimmick that the determination of the penalty be sent back to the JPLRC for discussion and determination.

#### UNION POSITION:

There is no disagreement between the parties that CLRC minutes do not exist regarding the implementation of any technology on the West Coast since the Technology Framework was negotiated in 2002. The Employers own witness confirms this fact. There have been agreements that were signed by the JCTC during the (B) (6) process. These agreements were not forwarded to the CLRC as recommendations that had to be formally approved by the CLRC. There have been numerous agreements made by the JCTC that are not signed but are essentially verbal agreements made by the JCTC during framework discussions. In the history of the Framework, there has never been a recommendation or a Joint Coast referral sent to the CLRC for its approval.

There was no new skill rate negotiated. That is a completely false statement made by the Employers. The 30% skill rate is contained in the PCCCD. The Union did not negotiate a new skill rate outside the PCCCD.

The Employers failed to submit any such claim/disagreement to the CLRC. If they had it would be on the record. It is not on the record because the issue before the Panel today was never referred to the CLRC, which is contrary to their argument today. The Employers insist the LOU Re: Automation should have been forwarded to the CLRC for its approval yet they have failed to provide any documentation to support this claim.

The new technology was implemented on April 7, 2016. Approximately eight months later, the Employers unilaterally reduced the pay rate and amount of hours paid to those that were hired to perform the work described in the LOU Re: Automation, Item 8. This is a violation of the PCCCD.

The Employers failed to file a claim to the CLRC pursuant to B (8). They chose to implement the new technology on April 6, 2016, and paid the 30% skill rate in accordance with the LOU Re: Automation. They have breached the agreement to pay the 30% wage rate for the Clerks at LBCT charged with resolving issues in the terminal operating system for cargo being handled by automated container handling equipment, specifically Item 8 of the LOU Re: Automation.

Item 8 of the LOU Re: Automation lies at the core of the dispute before the Panel today. Item 8 reads:

*Marine clerks, paid at 30% shall be assigned to monitor and resolve in the Terminal Operating System exceptions for any cargo being handled by automated container handling equipment (CHE). Such clerks shall resolve any and all exceptions for any working vessel, but shall not be required to perform the work of other clerks or supervisors. There shall be the equivalent of one such clerk for each working vessel.*

The Union requests that the Panel find that the Employers have breached the agreement to pay the 30% wage rate for the clerks at LBCT charged with resolving issues in the Terminal Operating System for cargo being handled by automated container handling equipment. The Union further requests that the Panel order that the Employers immediately reinstate the 30% wage rate and that the Employers be ordered to make the 6 AC Clerks whole from December 18, 2016, through the date that the 30% wage rate is reinstated for these Clerks.

#### DISCUSSION:

The issue before the Panel relates to whether or not an agreement was reached pursuant to the unsigned March 9, 2016 Letter of Understanding Re: Implementation of Automated Stacking Cranes, Automated Guided Vehicles and Semi-Automated Ship to Shore Crane – Long Beach Container Terminal LLC - Port of Long Beach. This document summarizes the parties understanding culminating from numerous Technology Framework Section B (6) meetings.

Section "B" of the Technology Framework is titled: Procedure for Implementation of New Technologies. Item (B) (6) states:

*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.*

On April 7, 2016, LBCT fully implemented its new technology as described in the LOU Re: Automation.

On December 18, 2016, LBCT violated the March 2016 agreement between the parties, specifically Item 8 of the LOU Re: Automation by reducing the skill rate and hours for the Clerks working the automation at LBCT. LBCT reduced the Clerks' wage rate from 30% to 25% and reduced the paid hours from twelve (12) to ten (10), resulting in the filing of UC-0001-2017. As noted above, the matter regarding the reduction in hours is not currently before the Panel.

Section B (7) of the Technology Framework reads:

*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.*

Section B (8) of the Technology Framework reads:

*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.*

The language contained in Section B (8) is clear in that either party may present an issue to the Panel within fourteen (14) days of either discussion by the JCLRC and/or the implementation of the new technology.

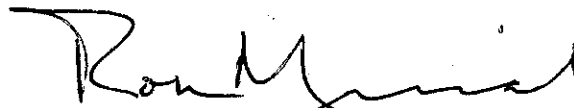
The Employers' claim, made approximately 8 months following the implementation of the technology, does not comply with B (8). It is therefore the Panel's conclusion that this matter is properly heard and decided under Section 17 of the PCCCD. As such, the Employers' motion that the dispute outlined in UC-0001-0017 be processed by the JCTC pursuant to the Technology Framework is denied.

Turning to the substantive dispute, the record is clear that both sides of the CLRC were aware of the agreement made by the JCTC. The tacit agreement of the CLRC regarding past agreements and/or recommendations is clearly the established past practice as to the CLRC's role and functions under Section B (6) of the Technology Framework. For there is no evidence indicating that formal discussions were had and/or agreements reached by the CLRC on prior agreements made by the JCTC.

No evidence of any technological change affecting the work of the employees covered by Item 8 of the March 9, 2016 agreement following its implementation is found. Had such evidence been presented the matter ostensibly would fall under the Technology Framework dispute resolution process. Again, no such evidence was presented, instead the matter before the Panel simply involves a unilateral change in the skill rate paid to the employees under Item 8 of the LOU Re: Automation. By unilaterally changing this skill rate, the Employers have breached the agreement to pay the 30% wage rate for clerks at LBCT charged with resolving issues in the Terminal Operating System for cargo being handled by automated container handling equipment. The following decision is therefore issued.

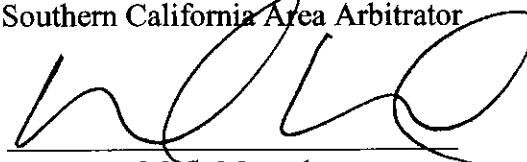
## DECISION:

1. This matter is properly heard and decided under Section 17 of the PCCCD. As such, the Employers' motion that the Joint Coast Technology Committee pursuant to the Technology Framework process the dispute outlined in UC-0001-0017 is denied.
2. The Employers have breached the agreement to pay the 30% wage rate for clerks at LBCT charged with resolving issues in the Terminal Operating System for cargo being handled by automated computer handling equipment.
3. The Union's motion that the Employers immediately reinstate the 30% wage rate for these six clerks is granted.
4. The Union's motion that the Employers make these six clerks whole from December 18, 2016 through the date the 30% wage rate is reinstated for these clerks is granted.
5. The Employers' motions are denied.



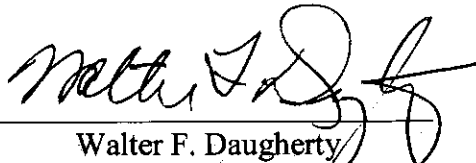
Ron Merial

Southern California Area Arbitrator



Mark Mascola

Southern California Area Arbitrator



Walter F. Daugherty

Southern California Area Arbitrator

Dated September 6, 2017