On September 4, 2015, I wrote to Local 13, and sent a carbon copy to the JPLRC, requesting the Hall Crane Board Equalization Review for the 1st quarter of 2015, per page 207, Item C, of the Los Angeles/Long Beach Crane Operators Addenda.

In response to my request to the Hall Crane Board Equalization Review I was provided a copy of the Special LA/LB JPLRC meeting, SCLB-0012-2015, titled Elevation From Secondary To Primary Crane Board, for the 4th Quarter of 2014.

I explained to the Local 13 secretary that I requested the Equalization Review on page 207 of the Addenda, and she had given me the Hall Crane Board Review from page 205, which is related to advancement from the secondary crane list to the primary crane list.

The secretary said she would relay my request, and Mark Williams responded with a letter dated September 30, 2015, which I received on October 7, 2015.

Mark's letter states: "This letter is to confirm that the JPLRC minutes SCLB-0012-2015 are the only minutes responsive to your Information Request dated September 4, 2015."

Failure to provide the contractually required Hall Crane Board Equalization Review combined with the implementation of the new Local 13 Crane Training Agreement, aka the "Make Whole" Agreement, constitutes discrimination in violation of Section 13.3 of the PCLCD, as these rules are discriminatory as written or as applied.

The Hall Crane Board Equalization Review claims to address the principle of equalization as follows:

> *"Equalization: The hours of the certified Class A crane driver checked in on the primary board the first 2 weeks of the 13 week period will be divided into the total crane hours that are dispatched through the hall. This review will be used to see what impact this new formula is having on equalization of hours."*

The "new formula" replaced the original equalization formula, from the 1975 PCLCD, which is still in the contract on pages 201 thru 203.

The "new formula" consists of: changing the Maximum Hours Limitation to a maximum of 20 shifts per four PMA payroll weeks and creating a calendar of 13 four consecutive payroll week periods for each 52-weeks, published by PMA, for calculating the maximum shift limitation.

The Steady Crane Operator Calendar published on PMA's website, is not 13 four consecutive payroll weeks for each 52-weeks, it is 14 four consecutive payroll weeks for 56-weeks, and neither is the same as PMA's 53 week payroll calendar.

The fact that the Steady Crane Operator Calendar starts in week 10 of the PMA payroll calendar makes it impossible to compare hall man-hours and steady man-hours.

Plus, steady man-hours are not available like the hall man-hours. Any longshoreman can go into Ray's office and check on any hall man's hours, but the steady men's hours are not available. Steady men's hours are secret.

The "new formula" allows steady men to get paid 28 days, each 4 week period of the 13 four consecutive payroll week periods.

The "new formula" allows a steady man to get paid every day, of every month, for 56 weeks each year.

Steady men now get 5 days of work each week for 4 weeks, for a maximum 20 shifts, plus 2 days of guaranteed bump pay each week for 4 weeks, for 8 shifts of bump pay every four consecutive payroll weeks, or a total of 28 paid shifts every 28 days, for 56 weeks per year.

The "new formula" has nothing to do with equalization, it is a subterfuge and a gimmick designed to allow steady men to work another 29 days per year.

By eliminating the 29th, 30th, and 31st day of each month, and creating 13 four week months, the steady men now get another 29 days of pay per year.

What impact is this "new formula" having on equalization of hours?

The formula must be having some sort of impact because the Steady Union Officials decided to negotiate what they call the "Make Whole" Agreement, also known as the "Local 13 Crane Training Program", which gives the Hall Crane Drivers on the Primary Crane Board, and the Secondary Crane Board crane pay when they work other than crane jobs, Monday thru Friday.

The "Local 13 Crane Training Program" is a Tentative Agreement signed the same day as the PCLCD Memorandum of Understanding, February 20, 2015, but it was **NOT** included in the MOU.

The "Local 13 Crane Training Agreement" is **not** signed by any Local 13 Officers, or any PMA members of the LA/LB JPLRC, was **not** printed in the Dispatcher as part of the MOU, was **not** put into the Los Angeles/Long Beach

Crane Operator Addenda of the PCLCD, and has **not** been mentioned in any CLRC Minutes.

The “Local 13 Crane Training Program” is a subterfuge created to give more hall work to the steady men, who as of August 8th can take jobs ahead of the 63 qualified but not trained men who were removed from the Supplemental Crane Board, while attempting to buy off the Primary Crane Board with a guarantee of 10 hours of crane pay Monday thru Friday, if they work other than crane jobs.

The Local 13 Crane Training Agreement changes the wages, hours, and working conditions of both the hall crane drivers and the steady crane drivers, but is not in the PCLCD or the Local Port Supplement.

Because of their activity for or against the union, or lack thereof, the Employers have been gimmicking the pay given to steady men by paying the dayside steady men $55 per day, without reporting any hours.

Paying the Hall crane drivers the 2 hours extra that crane drivers get, plus the difference between Skill III crane pay and Skill I or Skill II pay, in dollars, with no hours associated, just like paying the dayside steady men $55 per day with no hours associated, are clear violations of Section 4.32 and the Addenda on page 193 Guarantee, Skilled Rates For All Longshoremen and Clerks, and constitutes fraud against the benefits plan which asses hours paid.

Failing to report the Make Whole crane hours has Coastwise significance as it relates to the low man out dispatch system as well as qualifying and paying for Coastwise benefits like vacations, holidays, medical benefits, and retirement benefits.

PMA has the LA/LB Crane Board Make Whole as part of their 2015/2016 Coastwise Assessment rates on the PMA website. The PMA assessment changes allow the Employers to pay 16 cents for $72.16 worth of benefits because there are no hours reported.

The Employers report the guarantee payments to the steady men as hours so the steady men will get credit toward their vacation, holidays, health benefits, and retirement benefits, and discriminate against the hall men, who do not get paid hours and do not get the credit toward their vacation, holidays, health benefits, or retirement benefits.

The “Local 13 Crane Training Agreement” is **NOT** part of the PCL&CA. The Tentative Agreement is **not** signed by any Local 13 Officers, or any PMA members of the LA/LB JPLRC, was **not** part of the MOU, was **not** put into the Los Angeles/Long Beach Crane Operator Addenda of the PCLCD, and has **not** been mentioned in any CLRC Minutes.

Coast Arbitrator Sam Kagel in his Decision C-10-86 stated:

> *"Rule 6 on its face is, per se, discriminatory in view of the unambiguous language of Section 8.41", "Section 13 is applicable to all provisions of the PCLCD", and "Rule 6 in this case, is on its face in violation of Section 13."*

And on page 7 of C-10-86 found:

> *"The Coast Committee is directed to take joint action immediately for the purpose of eliminating that discrimination."*

Coast Arbitrator John Kagel in his Decision C-02-04 makes it clear that in order to claim conflict with the Agreement there must be a prima facie showing that the language in dispute conflicts with the PCLCD, and according to past practice have "coastwise significance."

Decision C-02-04 is an Employer appeal of Award SCAA-0031-2003, which they lost, wherein the Union claimed, "compensation for winch operators should be equal to top-handler and crane operators listed in Section VII of the M.O.U. dated November 23, 2002."

The Union wanted 10 hours for winch drivers based on the 1998 LA/LB JPLRC agreement that winch drivers would be equal in hours and skill pay to that of crane drivers, giving Winch Drivers 9 hours at 20% skill differential to; "bring consistency to crane operator pay, with all crane operators receiving nine hours per shift at the 20% skill differential."

The Employers asserted that the 2002 MOU clearly defined the rates equipment operators are to be paid and, the 1998 JPLRC agreement from meeting No. 37A-98 was negated by the new MOU.

The Decision in C-02-04 states on page 6;

> *"Moreover, given the evidence before the Area Arbitrator provided here and his decision, his interpretation of the local agreement in question linking Winch Drivers to other designated equipment which is now paid Skill Level III is not inappropriate given how the language of that agreement was drafted in the minutes of the JLLRC Los Angeles/Long Beach Harbor meeting 37A-98."*

The Union won, and the Employers were directed to pay winch drivers in LA/BA Harbors 10 hours at skill level III (30%), and to make whole all longshoremen who worked as winch drivers; "from November 23, 2002 as to skill III (30%) and from February 1, 2003 as to hours of pay."

The Union won because of the documented JPLRC agreement.

In this case there is no documented JPLRC agreement and no CLRC agreement.

In this case the agreement to pay Local 13 Hall crane drivers Skill III crane pay when they work Skill II or Skill I jobs, and not report hours, is a violation of Section 4.31 which states:

> *"Wages to be called Skill Rates shall be paid for types of work specified in Section 4.32",*

And the Addenda titled; Guarantees, Skilled Rates For All Longshoremen And Clerks which states:

> *"Employees shall be paid at the appropriate shift and skill rates of pay in accordance with Sections 2 and 4, PCL&CA, and the provisions herein. Individual side agreements, including paid hours in excess of the PCL&CA, as defined by Area Arbitration SC-29-94, between individual employees or local Union Officials and individual member companies shall be considered a Contract violation."*

Award SC-29-94 says, Employers must pay according to the contract:

> The question was, *"Does the Employer have the right to enter into agreement with individual clerks to pay them the skill rate of 20% for 10% skilled classified work?"*
>
> The answer was, *"The PCCCD is clear and unambiguous in regard to the job description of supervisors (Section 1.252) and the wages to be paid for the work performed in that job classification (Section 4.32).*
>
> *The issue in question is not negotiable, unless executed under Sections 24.1 and 24.2."*

However, according to C-02-04:

> "…*given the evidence before the Area Arbitrator provided here and his decision, his interpretation of the local agreement in question linking Winch Drivers to other designated equipment which is now paid Skill Level III is not inappropriate given how the language of that agreement was drafted in the minutes of the JLLRC Los Angeles/Long Beach Harbor meeting 37A-98."*

Based on the fact that there is no JPLRC or CLRC agreement regarding the "make whole" guarantee payment hours, the Employers are required to follow the agreement as written.

Therefore, paying the Hall crane drivers the 2 hours extra that crane drivers get, plus the difference between Skill I or Skill II and Skill III crane pay in dollars, with no hours associated, is a clear violation of Section 4.32 and pages 193-194 of the Addenda, and constitutes fraud against the benefit plans which rely on man-hour assessments.

As can be seen from the attached PMA paystub, no hours are being reported for the guarantee crane hours paid, and that has Coast wide significance as it relates to the low man out dispatch system, as well as qualifying for, and funding of, vacation, holiday, medical benefits and retirement benefits.

The Employers apparently think because they have been getting away without reporting hours on the $55/day paid to steady dayside crane drivers, for the last 15 years, they can get away without reporting hours on the new guarantee payments to the hall crane drivers.

In this case the agreement to pay Local 13 Hall crane drivers Skill III crane pay without reporting any hours, when they work Skill II or Skill I jobs, is a violation of Section 4.31 which states:

> *"Wages to be called Skill Rates shall be paid for types of work specified in Section 4.32",*

and the Addenda titled Guarantees, Skilled Rates For All Longshoremen And Clerks, which states:

> *"Employees shall be paid at the appropriate shift and skill rates of pay in accordance with Sections 2 and 4, PCL&CA, and the provisions herein. Individual side agreements, including paid hours in excess of the PCL&CA, as defined by Area Arbitration SC-29-79, between individual employees or local Union Officials and individual member companies shall be considered a Contract violation."*

Additionally, the failure to do the Hall Crane Board Equalization Review clearly conflicts with the current language on page 207, as well as the intent of the original equalization language, which is still in the PCLCD, on pages 201 thru 203.

Coast Arbitrator Sam Kagel in his Decision C-11-86 noted the Parties were directed to eliminate the Rule that was in conflict, and he decided which rule should apply for the duration of the PCLCD as follows:

Rule 6 (page 246) and Rule 7 (page 241 of the PCLCD having been eliminated, the following Rule shall now be applicable in the PCLCD:

> *"In the acceptance of assignments from the dispatching halls, Steady Crane Operators shall be limited to working no more than a total of six (6) work shifts in any calendar month."*

The current language of item C on page 207 of the Addenda is part of the subterfuge and gimmicking of the principle of equalization, which was and is, the quid pro quo for the Union agreeing to steady men in the early 1970's.

The current discriminatory equalization language needs to be eliminated from the Addenda, and the original, 1975 Harry Bridges', equalization language found on pages 201 thru 203 of the 2008 – 2014 PCLCD should apply for the duration of the present PCLCD.

PMA should be ordered to stop discriminating against the Hall Crane Drivers and report the hours paid under the Make Whole Agreement, for benefits purposes; after the "hip pocket" Agreement has been properly ratified and added to the MOU.

If PMA members want to lie and steal from each other, regarding how they fund benefits, that is their problem, but when the fail to give credit for hours paid under the contract, they are stealing from longshoremen, that is my problem.

An injury to one is an injury to all.