

July 1, 2014

Mr. James C. McKenna
President and CEO
Pacific Maritime Association
555 Market Street, Third Floor
San Francisco, CA 94105

Mr. McKenna:

LETTER OF UNDERSTANDING
Proper Application of Section 13 of the PCL&CA to Discrimination Complaints

The Parties recognize that the PCL&CA protects longshore workers, marine clerks, and casual workers against discrimination based on a limited number of protected categories and takes appropriate corrective actions when those individuals or others in relation to them engage in discrimination based on the same protected categories. One of the ways the PCL&CA accomplishes these objectives is through procedures designed to promptly investigate allegations of these kinds of discrimination. These protected categories and the ILWU/PMA general nondiscrimination policy are contained in Section 13.1, PCL&CA. Section 13.2 and Section 13.3 contain two distinct procedures for handling complaints filed pursuant to Section 13.1.

In order for a complaint to be proper under Section 13.1, the complaint must be based on at least one of the categories specifically protected by and delineated in Section 13.1. This means that discrimination based on an unprotected category is not a violation of the PCL&CA, with the sole exception that “favoritism or discrimination in hiring or dispatching or employment” is a contract violation that is prohibited by Section 8.43, which is addressed through the regular Section 17 grievance and arbitration procedure. Additionally, in order for a complaint to be proper under Section 13.1, the discrimination complained of must relate to employment covered by the PCL&CA.¹

The Section 13.2 procedure is limited to complaints by bargaining unit employees, PMA member companies, PMA, or longshore and marine clerk ILWU locals alleging discrimination in relation to PCL&CA covered employment by individuals on the basis of one or more of the protected categories specifically listed in Section 13.2; provided however, that the Section 13.2 procedure does not apply to complaints covered by the Section 13.3 procedure. Complaints filed pursuant to the Section 13.2 procedure can be brought against longshore workers, marine clerks, casual workers, walking bosses/foremen, superintendents, managers, outside truck drivers, vendors, contractors, other employees of PMA member companies (such as ILWU-represented guards), etc., but such complaints can only be brought by longshore workers, marine clerks, casual workers, PMA, the longshore and marine clerk ILWU locals, and employers covered by the PCL&CA. Walking bosses/foremen, superintendents, managers, outside truck drivers, vendors, contractors, other employees of PMA member companies (such as ILWU-represented guards), PMA staff, union staff, etc., do not have standing to file a complaint under the Section 13.2 procedure. Complaints alleging a violation of Section 13.1 with regard to individuals

¹ The geographic scope of Section 13.1 includes places where longshore workers, marine clerks, and casual workers are employed, as well as other locations, such as joint dispatch halls, training sites, and other locations, but only when the activity that occurs there is reasonably related to employment covered by the PCL&CA.

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who do not have standing to file a complaint themselves can be filed by anyone with standing to file a complaint under the Section 13.2 procedure. Further, each of the Parties has standing to file or respond to any appeal under the Section 13.2 procedure. General incidents of harassment, including “hostile work environment,” do not violate Section 13.1 unless such incidents arise in connection with PCL&CA covered employment and involve one of the protected categories listed in Section 13.2. When an Arbitrator or Coast Appeals Officer determines that a complaint does not meet the above criteria, he or she must dismiss it. Arbitrators may dismiss complaints without holding a hearing only when it is clear on the face of the complaint that the Section 13.2 criteria have not been met. Such dismissals may be appealed to the Coast Appeals Officer. No remedies of any kind, including discipline and penalties, can be imposed without a finding that Section 13.1 was violated. Neither Arbitrators nor the Coast Appeals Officer can order any remedies after finding no violation of Section 13.1 or otherwise dismissing a complaint.

The Section 13.3 procedure is limited to complaints against an institutional party (such as a joint committee, PMA, the union, or a PCL&CA covered employer) and cannot be brought against individuals (such as specific management or union representatives, coworkers, or other persons). The Section 13.3 procedure is limited to complaints about actions that tangibly affect the terms and conditions of PCL&CA covered employment and is not intended for “hostile work environment” also known as “harassment” claims. The Section 13.3 procedure is to be used for any of the categories specifically protected by and delineated in Section 13.1 if the complaint alleges that a contractual provision or rule is discriminatory as written or as applied, or if the discrimination claim seeks elevation, registration, or selection for casual status. Otherwise, the Section 13.3 process is to be used only for complaints based on the categories specifically listed in Section 13.3 and not for other categories or for other contract violations. Prior to scheduling a hearing under Section 17.4, the Joint Port Labor Relations Committee is directed to review a complaint to determine if it meets the above criteria. JPLRCs may dismiss complaints without holding a hearing only when it is clear on the face of the complaint that the criteria have not been met. Before dismissing complaints on their face, JPLRCs are encouraged to meet with grievants to give them the opportunity to cure the deficiencies in their complaints. Such dismissals may be appealed pursuant to Section 17.42. In addition, any disagreement by the JPLRCs as to whether the matter is a proper 13.3 claim shall be immediately referred to the CLRC. The CLRC’s determination on whether the matter is a proper 13.3 claim shall be final and binding with no further appeal. Unless agreed to by the CLRC, no Arbitrator other than the Coast Arbitrator has authority to decide any matter arising under Sections 13.3, 17.41, 17.42, or 17.43. The remedies for violations of the types of Section 13.1 complaints that are handled through the Section 13.3 procedure are not disciplinary in nature and neither the “Letter of Understanding ‘A’ ILWU-PMA Equal Opportunity Policy & Procedures,” the “Letter of Understanding ‘B’ ILWU-PMA Special Grievance/Arbitration Procedures for Resolution of Complaints RE Discrimination and Harassment Under Section 13.2, PCL&CA,” nor the “Letter of Understanding ‘C’ Guidelines for Remedies and Penalties in Cases of Discrimination, Harassment & Retaliation Under The Special Section 13.2 Grievance Procedures” apply to Section 13.1 complaints brought under the Section 13.3 procedure. Complaints processed through the Section 13.3 procedure are intended to provide contractual remedies, such as elevation, registration, and selection, as compared to the disciplinary nature of some of the remedies available through the Section 13.2 procedure. No remedies of any kind can be imposed without a finding that Section 13.1 has been violated.

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Finally, intra-union factional quarrels over intra-union political disputes and union business that have nothing to do with PCL&CA covered employment are not covered by Section 13.1 and are not subject to resolution under either one of the procedural mechanisms contained in Section 13.2 or Section 13.3. Likewise, there is nothing contained in Section 13.1 and its subsections that permits an individual complaint challenging sections of the PCL&CA with which an individual has a general disagreement.

Sincerely,

/s/ Robert McEllrath

Robert McEllrath
International President

Understanding confirmed:

/s/ James C. McKenna

James C. McKenna
President & CEO
Pacific Maritime Association

Dated: 03/03/15