

According to Local 13 Bulletin #35-15, effective 8-8-15 "the Employers" violated Section 13.3 of the PCLCD, when they unilaterally and prematurely removed 63 "qualified" crane drivers, including Carlos Meza #130862, from the Supplemental Crane Board, allegedly using the "Local 13 Crane Training Supplement" as their justification.

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 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 hall crane boards 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, just like the \$55 per day paid to the dayside steady men.

The Employers have been gimmicking the pay given to steady men for years by paying the dayside steady men \$55 per day, under the table.

The "Local 13 Crane Training Program" is their latest gimmick, and a subterfuge that violates the Section 18.1 Good Faith Guarantee, and places restrictions on longshoremen that are in conflict with the provisions of the February 20, 2015 Memorandum of Understanding, as ratified by both PMA and the Union.

The alleged "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.

That being said; item 2 of the Local 13 Crane Training Agreement states:

"Individuals currently on the qualified list (who have 200 hours or more at the date of ratification or upon July 1, 2015) shall remain eligible to take crane jobs for a period of one (1) year from the date of ratification as long as the Crane Training program continues to train at a pace of one hundred (100) students per year and may be extended only by mutual agreement."

Local Bulletin #35-15 states:

“Effective Saturday August 8, 2015 the only individuals that will be eligible to check-in on the Supplementary Crane Board are those individuals that are currently in the Crane Training Program and have successfully completed the Transtainer portion of training.”

Effective August 8, 2015 the Employers unilaterally removed 63 qualified crane drivers from the Supplemental Crane Board in violation of item 2 of the Local 13 Crane Training Agreement.

Section 13.3 of the PCLCD states:

“Grievances and complaints alleging that a contractual provision or rule is discriminatory as written or as applied, ... are to be filed and processed with the Joint Port Labor Relations Committee (JPLRC) under the grievance procedures in Section 17.4 of the PCLCA.”

Section 24.2 of the PCLCD states;

“All other restrictions on the employer or longshoremen that are in conflict with the provisions of this Agreement are null and void. There will be no unilateral “hip pocket” working or dispatching rules.”

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.”

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.

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, 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.”

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, and paying the day side steady men \$55 per day under the table are clear violations of Section 4.32 and the Addenda, and constitutes fraud against the benefits that asses all hours paid.

No assessments being paid for the extra crane hours, or the \$55 per day paid to the day side steady men, has Coast wide significance as it relates to the low man out dispatch system as well as qualifying and paying for vacations, holidays, and medical benefits funding.

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** 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.

As we see it, the Employers have 2 choices:

1. Live up to the agreement to leave the qualified crane drivers on the Supplemental Crane Board for the next year, like they agreed to; agree to pay all crane drivers the \$55 per day currently paid to the steady men; agree to pay all Skill III drivers 10 hours at Skill III when they work other than Skill III jobs; and agree to do the same for all the other ILWU Locals covered by the PCLCD, or;
2. Stop paying the \$55 per day to the steady men, and the guaranteed crane pay to the hall crane board when they work other than a crane job, Monday through Friday, and send everything back to the CLRC to be properly negotiated and included in the PCLCD.

For the Employers to continue doing what they are doing constitutes an ongoing violation of Sections 4.31, 13.3, 18.1, 24.2 and the Guarantees, Skilled Rates For All Longshoremen And Clerks Addenda of the PCLCD.

An injury to one is an injury to all.

Workers Checked - in on Board : *Supplementary Crane*

From : 1/1/2015 To : 8/15/2015

Shift : *Day*

130020	130095	130126	130131	130137	130382	130783	130862
131018	131384	35838	36502	37387	37764	37812	37920
38433	38735	38797	38836	38871	38873	38885	38896
38911	39025	39042	39060	39091	39142	39192	39448
39761							

Total Workers : 33

Workers Checked - in on Board : *Supplementary Crane***From : 1/1/2015****To : 8/15/2015****Shift : *Night***

130020	130095	130116	130126	130131	130220	130382	130383
130871	131018	131137	131479	131607	38094	38433	38633
38735	38854	38858	38870	38871	38873	38880	38911
39024	39060	39088	39091	39142	39646		

Total Workers : 30

day through Friday and for all hours worked on the first shift on Saturday, Sunday, and Agreement Holidays.

4.152 *Second Shift.* The second shift hourly rate (1.333333 times the basic straight time hourly rate) shall be paid for the first 8 hours worked on the standard second shift as set forth in Section 2.41, Monday through Friday. The overtime rate (1.5 times the basic straight time hourly rate) shall be paid for work in excess of 8 hours, for work outside the standard 8-hour second shift Monday through Friday, and for all hours worked on the second shift on Saturday, Sunday, and Agreement Holidays.

4.153 *Third Shift.* The third shift hourly rate (1.6 times the basic straight time hourly rate) shall be paid for the first 5 hours worked on the standard third shift, as set forth in Section 2.41, Monday through Friday. The third shift overtime rate (1.8 times the basic straight time hourly rate) shall be paid for work in excess of 5 hours, for work outside the standard 5-hour third shift, Monday through Friday, and for all hours worked on the third shift on Saturday, Sunday, and Agreement Holidays.

4.2 Training Rates of Pay.

4.21 The hourly rate of pay for training shall be the employee's straight time rate as established under Sections 4.13 through 4.132.

4.3 Skill Rates.

4.31 Wages to be called Skill Rates shall be paid for types of work specified in Section 4.32.

4.32 The straight time Skill Rates are derived by adding a skill differential to the straight time hourly rate payable under Sections 4.13 through 4.132.

Effective Date:

	6/28/08	7/4/09	7/3/10	7/2/11	6/30/12	6/29/13
Skill I:	\$33.58	\$34.08	\$35.08	\$36.08	\$37.08	\$38.08

Guidelines For Remedies, CLRC Policy on ADA Compliance and Reasonable Accommodation and CLRC Agreement on USERRA) with the exception of those types of grievances and complaints described in Section 13.3.

13.3 Grievances and complaints alleging that a contractual provision or rule is discriminatory as written or as applied, as well as discrimination claims seeking elevation, registration or selection for casual status, and discrimination claims based on disability, protected family care or medical leave status, veteran status, political affiliation, marital status, membership or non-membership in the Union, or activity for or against the Union or absence thereof, are not to be filed under the Special Section 13.2 Grievance Procedures, but instead are to be filed and processed with the Joint Port Labor Relations Committee (JPLRC) under the grievance procedures in Section 17.4 of the PCLCA. Likewise, requests for "reasonable accommodation" for disabilities recognized under state or federal law will not be processed under the Special Section 13.2 Grievance Procedures but instead must be brought to the local JPLRC pursuant to separate procedures established for such requests. (See *ILWU-PMA Handbook - Special Section 13.2 Grievance Procedures and Guidelines For Remedies, CLRC Policy on ADA Compliance and Reasonable Accommodation and CLRC Agreement on USERRA*.)

SECTION 14

CRANES

14.1 This section relates to the employment of longshoremen on the Pacific Coast waterfront in the driving of certain cranes and in the operation of certain other mechanical tools.

14.2 Definitions.

der this Section 17.8, the issue shall be processed immediately through the grievance procedure, and to the Area Arbitrator, if necessary.

17.86 The rules and penalties provided hereinabove shall be applicable to fully registered longshoremen and, except where a more stringent rule or penalty is applicable pursuant to Section 17.861, to limited registered longshoremen and to nonregistered longshoremen.

17.861 More stringent rules and penalties than those provided hereinabove that are applicable to limited registered longshoremen or to nonregistered longshoremen or to both such groups may be adopted or modified by unanimous action of the Joint Coast Labor Relations Committee and, subject to the control of such Committee so exercised, more stringent rules and penalties applicable to limited registered men or non-registered men or to both groups that are provided in existing and future local joint working, dispatching, and registration rules and procedures or by mutually agreed practices shall be applicable.

SECTION 18

GOOD FAITH GUARANTEE

18.1 As an explicit condition hereof, the parties are committed to observe this Agreement in good faith. The Union commits the locals and every longshoreman it represents to observe this commitment without resort to gimmicks or subterfuge. The Employers give the same guarantee of good faith observance on their part.

24.2 All joint working and dispatching rules shall remain in effect unless changed pursuant to Section 15. All other restrictions on the employer or longshoremen that are in conflict with the provisions of this Agreement are null and void. There will be no unilateral "hip pocket" working or dispatching rules.

24.3 The parties agree that all arbitration decisions and rulings of the Labor Relations Committees with respect to provisions of the Contract that are not changed or modified in this Agreement, remain in effect; the foregoing is subject to the right of either party, by motion in the Joint Coast Labor Relations Committee, to seek a review or reopening of any such decision or ruling during the term of this Agreement. If there is disagreement on any proposal to change or modify such decision or ruling, the issue of whether the decision or ruling is in accordance with this Agreement may be submitted to the Coast Arbitrator for decision.

IN WITNESS WHEREOF, the parties hereto have signed this Contract Document effective as of July 1, 2008.

*Pacific Maritime
Association*
on behalf of its members

*International Longshore
and Warehouse Union*
on behalf of itself and each
and all of its longshore locals
in California, Oregon, and
Washington and all employees
performing work under the
scope, terms, and conditions
of this Agreement.

/s/ James C. McKenna
/s/ Craig Epperson
/s/ Steve Hennessey
/s/ Thomas Edwards

/s/ Robert McEllrath
/s/ Ray Ortiz, Jr.

Excepting as provided in this Document, men or gangs who leave or refuse to start or continue any work because of a picket line shall be paid for their actual working time only, including travel time and transportation costs as prescribed by local working or dispatching rules.

In order to minimize any further delay to an operation which has been picketed, the local dispatching hall shall make every effort to furnish men or gangs in accordance with employer orders immediately after the picket line is lifted, or as soon thereafter as possible.

SCHEDULING OF MEETINGS

Letter of Understanding dated July 1, 1984

With regard to the revision of Sections 12.31 and 12.311 in the 1984 negotiations:

“The Union pointed out the above understanding could present a problem in ports where three 8 hour shift operations occur under the local agreements. In such situations the start of an 8 hour shift could overlap the time period of a scheduled meeting.

“The parties agreed that if the three 8-hour shifts present a problem, it would have to be accommodated so that all members of a local are given the opportunity to attend their scheduled meeting.”

GUARANTEES, SKILLED RATES FOR ALL LONGSHOREMEN AND CLERKS

Memorandum of Understanding, July 16, 1996

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 No. SC-29-94, between individual employees or local Union officials and individual member companies shall be considered a Contract violation. Employer(s) found guilty of violating this provision shall be denied manpower at that terminal where the violation occurred. First offense — 24 hours loss of manpower; second offense — 48 hours loss of manpower. Any disagreements involving guilt or assessment of a penalty shall be subject to the Contract grievance machinery.

STEADY SKILLED MEN

CLRC No. 14, October 11, 1966 (Item 1)

The Employers inquired as to what the Union had in mind in implementing the "Steady Skilled Man" provision of the new Agreement.

There was considerable discussion following which the Employers stated they would discuss this matter further and be prepared to talk about it again in the afternoon session.

The Employers stated they reviewed the matters discussed at the morning session and feel the following proposal will meet the needs of both parties:

1. A guarantee to skilled men regardless of category at a minimum of 173 hours per month at the 25¢ differential shall be paid to steady employees. Such guarantee shall be paid irrespective of how long an individual is retained during any month as a steady skilled man; provided, however, that should such steady skilled man be released for cause during any month, the guarantee shall be prorated over the period such employee was retained as a steady man;
2. Should a steady man be upgraded, he will receive the applicable higher skill differential for the balance of the shift regardless of the period of time of utilization on the equipment carrying the higher differential;

LOCAL 13 CRANE TRAINING PROGRAM

Dated February 20, 2015

For the modifications to establish an Advanced Crane Training Program, provide expedited training processes and ensure that Skilled III Crane jobs are filled by Trained/Certified individuals, the Union demands an agreement on the following package:

1. That the Parties agree to the Proposed ILWU-PMA Crane Training Program attached.
2. That PMA commits to train a minimum of 250 crane operators immediately, at a pace of no less than 100 per year.
3. PMA shall commit to the purchase of four (4) crane simulators (*Vortex*) for the ILWU-PMA Crane Training Program and immediately train a Local 13 member as a jointly agreed to Head Crane Simulator Instructor. For the purpose of further expedited training, the Parties shall explore the possibility of night training.
4. PMA and its member companies shall commit and provide equipment for training (Transtainers and Hammerheads) on a daily basis, and students shall not be subject to cancellations due to equipment shortages. Such training for students shall be scheduled for consecutive days of training.
5. That each PMA member company designate a minimum of four (4) steady operators, per terminal, to assist in the Hammerhead Production segment of the training program. Shifts assisting the training program do not count towards a steady crane operator's 20 shift cap.
6. A Letter of Understanding that all those who initiate training will either complete (pass or fail) training within ninety (90) days from the date of orientation.
7. Training – CY training will continue at a minimum pace of 12 students per month until a sufficient number of competent longshoremen are available.

MODIFICATION TO THE SUPPLEMENTARY BOARD

The Parties agree to modify the following changes to the Supplementary Crane Board, thus amending Labor Relations Committee Minutes SCLB-006-1985, SCLB-027-1989 and SCLB-054-2005 and any subsequent minutes pertaining to the Supplementary Crane Board:

1. That check-in privileges for the Supplementary Crane Board shall be granted to individuals signed-up by seniority on the crane training list that after the third (3rd) day of the ILWU-PMA Crane Training Program in which a student has demonstrated the ability to safely operate a transtainer in accordance with the standards set forth in the Program,

the student shall be “Recognized” for check-in privileges for the Supplementary Crane Board. (Expedited training process)

2. Individuals currently on the qualified list (who have 200 hours or more at the date of ratification or upon July 1, 2015) shall remain eligible to take crane jobs for a period of one (1) year from the date of ratification and as long as the Crane Training Program continues to train at a pace of one hundred (100) students per year and may be extended only by mutual agreement. Upon ratification or by July 1, 2015 (which comes first) the qualified list shall be capped without any future additions. If the Employer fails to complete the training of an individual student within the 90 days of orientation, or training drops below the 100 per year pace, the qualified list shall no longer be utilized. The new Crane Training Program shall be instituted no later than July 1, 2015. These issues shall not be arbitrable.

Exception: If through no fault of the PMA (force majeure), the 100 per year pace cannot be maintained or a student cannot complete training within the 90 days of orientation, the qualified drivers shall remain eligible for dispatch for crane work. The employer shall be required to provide Local 13 with advanced notice of any failures to keep with the pace or the 90 day requirement. Scheduling conflicts, lack of equipment or other administrative mishandlings shall not be considered to be outside of the PMA’s control.

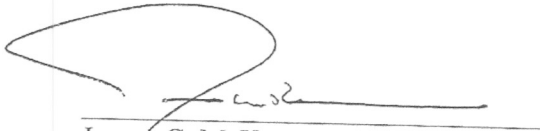
3. The check-in privileges for the Supplementary Crane Board shall be valid for up to a period of ninety (90) days in which, within such time, the student should have been moved through the Crane Training Program in its entirety. The student shall also be checked-in his/her primary board, but the first obligation shall be to cover work from the Supplementary Crane Board.
4. If a student successfully passes the Crane Training Program, all crane hours attained on the Supplementary Crane Board shall count towards the required hours needed on the B-Crane Board for certification and eligibility to move to the A-Crane board upon the quarterly reviews.
5. Upon successful completion of the Crane Training Program, the individual trained shall be obligated to check-in on the appropriate Crane board for a period of one (1) year and 1300 hours.
6. If a student fails the Crane Training Program, the student is no longer “Recognized” for Supplementary Crane Board check-in privileges and thus removed from the list.
7. The Supplementary Crane Board shall only exist during the period in which the Crane Training Program is training students.

For the establishment of an Advanced Crane Training Program and modifications to the Supplementary Crane Board listed above, the Parties have reached an agreement on the following:

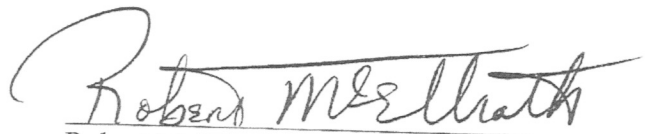
All individuals checked in on the A and B Crane Boards shall be paid at the equivalent Crane Operator prevailing daily rate of pay, Monday through Friday, regardless of the job they work in accordance with 14.521. This is a make whole payment if individuals work other than a crane job. This is not a guarantee payment.

The Employers agreed that immediately following agreement on a coastwise Memorandum of Understanding (MOU) they would revert to past practice of ordering crane operator manning of 2 men per machine. The Employers agreed to lift all restrictions on labor orders currently in place for weekends, 2nd and 3rd shifts, and holidays.

Finally, PMA shall agree to drop ALL outstanding PIT complaints.



James C. McKenna
President and CEO
Pacific Maritime Association



Robert McEllrath
International President
International Longshore and Warehouse Union

Day	Training	Details
1	Orientation	General course overview, view training videos, review PCLCD Section 9.4 and 9.41 (subject to negotiations), review PCMSC Crane operation rules, discuss crane operator's responsibilities, and common names/types. A video presentation of the following items: Cranes, cell guides (high and low), over-height spreaders, cargo hook, boat spreader, chain legs, plugs, pocket twenties, twin twenties, deck lids and guides, ships gear, partial bays and 53' containers. Floating the Load shall be explained as well as a video presentation. Discuss cranes bypass modes and the safety procedures required when in use. During terminal visits all students must boom down, walk the hammerhead crane, trolley to the end of the boom and back reach.
2	Transtainer	Familiarization of the controls. Students will learn to hoist, gantry, stack pile properly with no overlaps, cross travel, deliver containers, and follow safety protocols.
3	Transtainer	Same as day 2. The student must complete a performance evaluation. The student shall demonstrate the ability to stack pile properly with no overlaps, cross travel, sort and deliver containers, and follow all safety protocols.
4	Crane Simulator	Familiarization of the controls. Emphasis on catching the swing of the crane, explanation of cell locations on vessels, trimming of the beam to vessel, flipper control, gantry, trolley, and hoist etc. Discharge 40' container to bombcart.
5	Crane Simulator	Discharge of 40' on deck containers to bombcart. Emphasis on catching the swing and maintaining an arc within predetermined parameters (ideal path). All moves shall be monitored for minor hits, major-hits and catastrophic collisions.
6	Crane Simulator	Discharge and loading 40' containers below deck to bombcart. Emphasis on catching the swing and maintaining an arc within predetermined parameters. The student must complete a three hour performance evaluation. The evaluation shall consist of discharging a bay of 50 x 40' containers from on deck to bombcarts. Each successful move shall result in 2 points. Each major hit shall result in a deduction of 2 points. Any catastrophic collision shall result immediate removal from training. Individual must have 70 points to pass.
7	Crane Simulator	Videos and class on common abnormalities that occur while operating a Hammerhead crane including the following at a minimum: locked cones, ship list and trim, overheight containers, flat racks, general cargo, etc. (the above scenarios shall be simulated during the next five days.) Discharging and loading of 40'/20' containers on deck, instructor shall randomly lock-up cones on deck. Load and discharge 40' containers from below deck, utilizing high/low cell guides (double cycle).
8	Hammerhead non-production	Familiarization of the controls. Student must boom down the crane, gantry and line up on a predetermined spot. Emphasis on catching the swing of the beam. Trolley with 40' and 20' container from bombcart over the water and land in predetermined spot on the dock as well as the bombcart.
9	Hammerhead non-production	Same as day 8 with the addition of landing on a chassis.
10	Hammerhead non-production	Same as day 9 with the addition of stopping in safety lane to simulate removal of cones.
11	Crane Simulator	Discharge container in single stack configuration without using flippers. Discharge on deck 45' containers and below deck twin twenties. Discharge and flip lids.

Day	Training	Details
12	Crane Simulator	AM: Loading of pocket twenties below deck. PM: Loading a complete bay below deck from bombcarts and chassis. Student must load in the cells as directed by the instructor/plan. All movement shall be evaluated for minor hits, major hits and catastrophic collisions.
13	Crane Simulator	Discharge of 40' and twin 20's containers to chassis and bombcarts per the vessel plan. Introduction of out of the ordinary operational scenarios shall include: poor weather, containers that have off-center weights, locked-up cones on deck, listing and trim changes, removing hatch covers of which at least one shall have a dog locked, pocket twenties, and one over-height container requiring over-height spreader.
14	Crane Simulator	Instructor will concentrate on operations in which it was identified the student was having difficulties. Practice simulator test scenarios.
15	Crane Simulator	AM: The student must complete a four hour performance evaluation. The evaluation shall consist of discharging 25 x 40' containers from on deck (20 to bombcarts and 5 to chassis). Remove single hatch cover, discharge 18 x 40' containers from below deck to bombcarts. Discharge 2 x 20' containers to bombcarts. Load 20 x 40' containers from bombcart to below deck, and cover a single hatch. Load 25 x 40' containers on deck (20 bombcarts and 5 chassis). Each successful move shall result in 2 points. Each minor hit will result in a deduction of .5 points and each major hit shall result in a deduction of 2 points. Any catastrophic collision shall result in the immediate removal from crane training program. Individual must have 125 points to pass. PM: The student must complete a two hour performance evaluation. The evaluation shall consist of discharging 60 x 40' containers from on deck to bombcart. Each successful move shall result in 1 point. The student must obtain 48 points to pass.
16	Hammerhead non-production	Landing of containers/flat racks of various sizes to bombcarts and chassis. Student shall also pick up and gantry with safety rack and utilize the over-height spreader on the safety rack. Student must demonstrate that they have control of the spreader and the ability to float the load.
17	Hammerhead in production	Students shall work in production with the Joint Trainer (Joint Trainer will be selected from the Terminals Steady Workforce). The student exposed to all aspects of the loading and unloading including but not limited to the following: Discharge and loading 20', 40' and 45' containers on deck, discharge hatch covers to dock. Discharge and load forty foot containers below deck, discharge and load twin 20's, pocket 20's, partial bays on deck and below deck (up and over the inshore stacks). Students must be at the controls a minimum of 4 hours per day.
18	Hammerhead in production	Students shall work in production with the Joint Trainer (Joint Trainer will be selected from the Terminals Steady Workforce). The student exposed to all aspects of the loading and unloading including but not limited to the following: Discharge and loading 20', 40' and 45' containers on deck, discharge hatch covers to dock. Discharge and load forty foot containers below deck, discharge and load twin 20's, pocket 20's, partial bays on deck and below deck (up and over the inshore stacks). Students must be at the controls a minimum of 5 hours per day.

Day	Training	Details
19	Hammerhead in production	Students shall work in production with the Joint Trainer (Joint Trainer will be selected from the Terminals Steady Workforce). The student exposed to all aspects of the loading and unloading including but not limited to the following: Discharge and loading 20', 40' and 45' containers on deck, discharge hatch covers to dock. Discharge and load forty foot containers below deck, discharge and load twin 20's, pocket 20's, partial bays on deck and below deck (up and over the inshore stacks). Students must be at the controls a minimum of 5 hours per day.
20	Hammerhead in production	Students shall work in production with the Joint Trainer (Joint Trainer will be selected from the Terminals Steady Workforce). The student exposed to all aspects of the loading and unloading including but not limited to the following: Discharge and loading 20', 40' and 45' containers on deck, discharge hatch covers to dock. Discharge and load forty foot containers below deck, discharge and load twin 20's, pocket 20's, partial bays on deck and below deck (up and over the inshore stacks). Students must be at the controls a minimum of 5 hours per day.
21	Hammerhead in production	Students shall work in production with the Joint Trainer (Joint Trainer will be selected from the Terminals Steady Workforce). The student exposed to all aspects of the loading and unloading including but not limited to the following: Discharge and loading 20', 40' and 45' containers on deck, discharge hatch covers to dock. Discharge and load forty foot containers below deck, discharge and load twin 20's, pocket 20's, partial bays on deck and below deck (up and over the inshore stacks). Students must be at the controls a minimum of 5 hours per day. Students must be at the controls the entire shift less any breaks.

In the Matter of an Arbitration

between

CHARLES BRADY and DANIEL
IMBAGLIAZZO, et al.,

Grievants,

and

ILWU-PMA JOINT COAST LABOR
RELATIONS COMMITTEE,

Respondent.

Re: Coast LRC Referral
SC-23-85

C-10-86

OPINION AND DECISION

of

SAM KAGEL,
Coast Arbitrator

San Francisco, California
August 25, 1986

CLRC MEETING - MAY 31, 1985:

In the minutes of that meeting, the following appears:

"6. SC-23-85 -- Dispatch of Steady Crane
Operators to Non-Crane Jobs, Los Angeles/
Long Beach (Local 13)

"In this referral the steady crane operators
in Los Angeles/Long Beach harbor raise a question
of discrimination and challenge the new Sub-
section 6 on page 246 of the PCLCD which reads
as follows:

"'6. In the acceptance of assignments from
dispatching halls, steady crane operators
may be dispatched only to crane jobs when
insufficient crane operators are available
for dispatch. Steady crane operators may
be dispatched to other available work only
after all Class "A" and Class "B" registered
men have had a work opportunity.'

"This Committee finds no discrimination
in violation of Section 13 of the PCLCD.
This Committee also confirms their under-
standing as set forth in CLRC Mtg. No. 4-85,

Item 18, that Item 7, Addenda, Crane Operators, page 241 PCLCD, and Item 6, page 246 PCLCD were negotiated during the 1984 Coast Contract Negotiations and that this new language supersedes any previous Coast or local agreements and/or understandings.

"This Committee, however, agrees that the intent and purpose of the new Rule 6, as one of the equalization rules set forth in the PCLCD on pages 242 through 250, is to achieve equalization of work opportunity between hall crane operators and steady crane operators. This Committee agrees it will conduct a review and study to determine if the intended objective of the rule is being achieved. If it is determined that it is not, this Committee will then recommend that the problem be considered by the Parties to the Agreement." (Coast Ex. 2, pp. 3-4)

As noted above, the CLRC agreed that the intent and purpose of the new Rule 6 was to achieve equalization of work opportunity between Hall Crane Operators and Steady Crane Operators; and, accordingly, had a review and study conducted to determine if the intended objective of the rule was being achieved. An examination of that study (Coast Exhibit 4) sets forth the basis for the study, and it concludes that the data "... provide no reason to believe that the steady crane operators have been singularly disadvantaged under the work rules of the 1984-1987 PCLCD." But, the question in this case is not equalization but the application of Section 13 to Rule 6.

DISCRIMINATION:

The Grievants in this case contend that there has been discrimination as to the Steady Crane Operators. The provision in the PCLCD (Section 13.1) dealing with discrimination reads as follows:

"There shall be no discrimination in connection with any action subject to the terms of this Agreement either in favor of or against any person because of membership or non-membership in the Union, activity for or against the Union or absence thereof, or race, creed, color, sex, age, national origin or religious or political beliefs." (Tr. 3)

GRIEVANTS' POSITION:

The Grievants' position, in part, is set forth in the following statement by Mr. Imbagliazzo:

"If we were truly talking about equalization and if there were truly a problem with equalization among comparable groups (namely, the hall men and the steady men), then there would be a problem with the number of hours that the people in the hall are getting. But we are talking about comparable groups. The equalization provision in the back of the book says it is between comparable groups.

"I am trying to show that the hall men are getting enough hours, that that is not a problem. Local 13, though, is trying to use equalization instead of what their true purpose is: namely, hard-timing the longshoremen who happen to be steadies. Their purpose is not equalization.

"The hours the hall men are getting are enough. The cap is high. This month, the cap is a hundred ninety-eight hours. That is well over a hundred seventy-six hours. That means the hall men's hours are five percent higher.

"I am trying to demonstrate that the hall men are getting enough hours. There isn't a problem with equalization. It is not a huge problem, because on any given weekday only four or five Steady Operators volunteer at the hall. It is not the same four or five every day. On over-time days, weekends and holidays, the number is higher, because the Employers mark guys 'Home' and they're not on the payroll when they're marked 'Home.'

"It is a common misconception in Local 13 that steadies are always on a payroll. This is another reason why they are disliked. The crane guarantee is not like other steady men's guarantee. A Gearman, for instance, is guaranteed five days work Monday through Friday. A Steady Crane Operator is not. He is guaranteed 176 hours spread over the entire month. That is thirty-one days of availability for about twenty days' pay." (Tr. 21-22)

The Grievants stated the relief that they sought as follows:

"We don't want any Fully-registered Longshoreman to be favored over us. Likewise, we do not want to be favored over any Fully-registered Longshoreman on the Coast. We don't want to volunteer while already on a payroll. We, as an unpopular minority group, ask for your help and protection. We ask that the words 'and Class "B"' in the last sentence of Item 6 on Page 246 of the PCLCD be stricken, because of their obvious discrimination, in any way and/or by any formula you see fit. By doing this, Steady Crane Operators in Los Angeles will enjoy the same privileges all other Fully-registered Longshoremen enjoy. Nothing more, nothing less." (Tr. 45-46)

COAST COMMITTEE'S POSITION:

The spokesperson for the Coast Committee referred to the equalization study and concluded as follows:

"At this time, I would like to quote the final two paragraphs of this study, which are found on Page 3.

"The data in the second table indicate that almost forty-four percent of the steady crane operators have experienced an increase in their average weekly employment for other than their steady employer. This compares favorably with all other studies in the sample; only UTR drivers have an equivalent rate of increase (forty-five percent), and would imply that sufficient work opportunity exists for steady crane operators to increase their work for other employers over the 1983-84 contract year, if they wish.

"The crane operators also have experienced the highest rate of decrease among the steadies studied, twenty-eight percent as compared to an overall average of nineteen percent, but the number of crane operators whose average weekly hours for all employers decreased (fourteen percent) was below the average for all steadies (nineteen percent). Therefore, these data provide no reason to believe that the steady crane operators have been singularly disadvantaged under the work rules of the 1984-87 PCLCD." (Tr. 54-55)

It was after that study that the Coast Committee notified Mr. Brady, et al., that their charge of discrimination was unfounded and that, in the opinion of the JLRC, the new dispatch procedure had not adversely impacted upon the hours of the Steady Crane Operators.

SUMMARY:

This case has nothing to do with equalization of work. It has to do with Limited Registered Class "B" Longshoremen being dispatched before Fully Registered Class "A" Steady Crane Operators.

Section 8.41 of the PCLCD reads as follows:

"First preference of employment and dispatch shall be given to fully registered longshoremen who are available for employment covered by Section 1 of this Contract Document in accordance with the rules and regulations adopted by the Joint Port Labor Relations Committee. A similar second preference shall be so given to limited registered men. The Joint Coast Labor Relations Committee shall be authorized to effectuate such preferences in such manner and for such times and places as it determines in its discretion."

Rule 6 on its face is, per se, discriminatory in view of the unambiguous language of Section 8.41. The fact is that Steady Crane Operators, as Fully Registered Class "A" Longshoremen, have rights to available work over Limited Registered "B" Longshoremen.

While the Coast Arbitrator cannot change a provision of the PCLCD, he has the responsibility of determining whether a provision of the PCLCD, i.e., Rule 6 in this case, is on its face in violation of Section 13. Section 13 is applicable to all provisions of the PCLCD; and, as noted above, available work is to be made available to Fully Registered Class "A" Longshoremen over Limited Registered Class "B" Longshoremen, as provided in Section 8.41. The fact that a Class "A" Longshoreman is a Steady Crane Operator does not deny the application of this principle to Steady Crane Operators.

DECISION:

It is found that the Steady Crane Operators in Los Angeles, with reference to Rule 6, are discriminated against in violation of Section 13 of the Agreement. The Coast Committee is directed to take joint action immediately for the purpose of eliminating that discrimination. The Coast Arbitrator retains jurisdiction over this case. This Decision is not retroactive but is effective upon the Coast Committee reaching an acceptable conclusion on this case.


Coast Arbitrator

IN ARBITRATION PROCEEDINGS PURSUANT TO THE
COLLECTIVE BARGAINING AGREEMENT BETWEEN THE PARTIES

INTERNATIONAL LONGSHORE AND]	
WAREHOUSE UNION,]	C-02-04
]	
]	OPINION AND DECISION
]	
Union,]	of
]	
and]	
]	JOHN KAGEL
]	
PACIFIC MARITIME ASSOCIATION,]	Coast Arbitrator
]	
]	
Employer.]	April 16, 200 3 ⁴
]	
]	Palo Alto, California
Re: Coast LRC Referral No. SC-73-03,]	
appeal of SCAA-0031-2003 <i>re</i> shipboard]]	
whirley cranes, Los Angeles/Long Beach]	

APPEARANCES:

For the Union: Ray Ortiz, Coast Labor Relations Committee Member, ILWU

For the Employers: Thomas Edwards, Director of Contract Administration and
Arbitration, PMA

ISSUE:

Whether the decision of Area Arbitrator Miller in SCAA-0031-2003
should be vacated? (Tr. 3)

AREA ARBITRATOR DECISION:

Area Arbitrator Miller held that pursuant to a local agreement entered into in 1998 at Los Angeles/Long Beach Harbor that Whirley Crane/Winch Operators should receive ten hours pay per shift at the Skill Level III rate as set forth in the Coast Memorandum of Understanding of November 23, 2002.

BACKGROUND:

Local Agreement:

In 1998 four issues were resolved at JPLRC meeting No. 37A-98 for Los Angeles/Long Beach Harbor: The Union agreed to 200 Class B longshoremen to be moved from the day shift to the night shift, relocation of a longshore dispatch hall and a seven-day dispatch. In addition the following was agreed to:

“B. Container Yard Board and Whirley Deck Crane/Winch: The Employers stated that with the establishment of a separate Container Yard (CY) Board for sidehandlers and tophandlers, individuals dispatched from this board will receive nine hours per shift at the 20% skill differential.

The Employers also agreed that all deck Whirley Crane/Winch Operators will also receive nine hours per shift at the 20% skill differential. This agreement will bring consistency to crane operator pay, with all crane operators receiving nine hours per shift at the 20% skill differential.”

In 1995 the PCLCD provided for a 20% skill rate for Portainer/Hammerhead Crane Operator, Shipboard Munck Crane Operator, Shore-based Whirley & Mobile

cranes, Side Pick Operator, Tophandler and Transtainer, among others. It provided for a 10% skill rate for Winch Driver. (Er. Ex. 1) According to the evidence before the Area Arbitrator one reason for the change in the Winch Driver rate and hours at Los Angeles/Long Beach was because Winch Drivers were not taking winch jobs but taking jobs in higher paying categories and the Employers accepted the Union's solution of compensating Winch Drivers in a manner equal to Crane and Tophandler Operators. (Jt. Ex. 3 pps. 8-9)

In 1998 the PCLCD was amended to adopt skill levels rather than straight percentage differences but Winch Drivers remained at Skill I while the other Crane Operators remained at Skill II. (Er. Ex. 2)

In 2002 the Parties' Coast Memorandum of Understanding provided:

"VII. Crane and Skilled Equipment Operators

- A. The following workers shall receive Skill III rate; Portainer/Hammerhead, Transtainer, Strad Driver, Tophandler Driver, Sidepick Operator, Portpacker and Reachstacker and 9.43 equipment operators.
- B. The following workers shall be paid at the Skill II rate: ... ship board Munck crane Operator, shore-based Whirley and Mobile Crane Operators, ... and shipboard Whirleys. ...
- D. Change PCLCD Section 14.521 to read 'one full hour.' ... Equipment Operators in Item '[A]' above who are ordered to a job and who report to work and are turned to shall receive a guarantee of 10 hours' pay at the prevailing rate."

The Area Arbitrator found that the 1998 LA/Long Beach Harbor agreement required that with the 2002 Memorandum of Understanding Winch Drivers there were entitled to be classified at Skill Level III with a guarantee of 10 hours' pay.

No Prima Facie Case Before Coast Arbitrator:

Section 17.261 of the PCLCD provides:

“...[T]he 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.”

Cases C-24-80, C-05-03, C-06-03 (Un. Exs. 1-3) have all held that there is no prima facie showing that an Area Arbitrator decision conflicts with the PCLCD if the issue involved is not of coastwise significance. In fact that interpretation of the Agreement goes back to at least 1974. (Un. Ex. 4) The agreement of meeting 37A-98 and the Area Arbitrator decision applies solely to Los Angeles/Long Beach Harbor, as acknowledged by the Union. (Tr. 32)

The Employers maintain that the issue in this case is of coastwise significance because the Coast Memorandum of Understanding expressly provides that Winch Drivers are Skill II rated. However, they were ten percent skill rated and then Skill Rate I in successive Coast Agreements when the Employers in Los Angeles/Long Beach deviated from them and paid Winch Drivers at twenty percent and then Skill

Rate II with nine hour guarantees to match other Crane Operators without any claim of any PCLCD violation.

The Employers also maintain:

“By the terms of the PCL&CA, it certainly is not a Section 17 grievance machinery requirement to show ‘coastwise significance’ in order to present the matter to the Coast Arbitrator. Under Section 17 of the PCL&CA, the threshold required is a showing that the decision being appealed appears—that is all a prima facie showing requires—to be outside the provisions of the PCL&CA. The Employers have definitely met such a requirement in this instance.

The Coast Arbitrator cannot deny the Employers access to the Contract grievance machinery. The requirement of ‘showing a coastwise significance’ has not been agreed to by the parties in the PCL&CA. the language of Section 17.261 of the PCL&CA sets the threshold for access to the Coast Arbitrator.

The Coast Arbitrator has no authority to modify the Contract. His responsibility is to interpret its terms, not to add or subtract provisions. Coast-level negotiations are where PCL&CA provisions are expanded or contracted.” (Tr. 14)

The difficulty with the Employers’ position is that that was an argument to be made to the Coast Arbitrator in 1974 or in 1980 either in or after Case C-24-80 or in the negotiations of the numerous Coast Agreements since then. But the language of the Agreement concerning a prima facie showing has remained the same except for renumbering to Section 17.261. Given this more than a quarter-century-old interpretation of that language the Employers argument that coastwise significance is not required as part of such a showing is rejected.

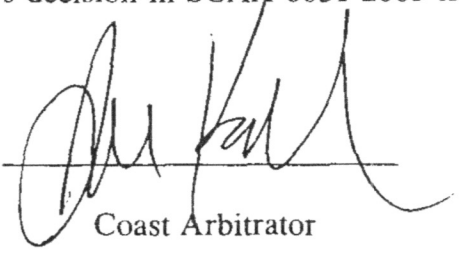
The Employers continued that in practice that issues which appear to have minimal or limited local impact are frequently taken to the Coast Arbitrator such as a

single registration. This is true, but such issues are not circumscribed by a local agreement which has been followed and enforced by local parties, despite the language of two Coast Agreements, and confined to a limited geographic area as found here by the Area Arbitrator.

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 at the 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.

DECISION;

The Employer's appeal of the Area Arbitrator's decision in SCAA-0031-2003 is denied.



Coast Arbitrator