



3930

UNION COMPLAINT

LRC: ☒GRIEVANCE: ☐

DATE OF COMPLAINT: 08 - 18 - 2015

DATE OF INCIDENT: 08 - 18 - 2015

If multiple dates, please list below:

FOR OFFICE USE ONLY

COMPLAINT NO. 33 - 2015
RECEIVED 08 - 18 - 2015
LRC DATE

TIME OF INCIDENT BERTH(S) GANG # NAME OF VESSEL JOB CATEGORY

EMPLOYEE SUPERINTENDENT FOREMAN BUSINESS AGENT

Against Employer: Employer:

Against Member: Registration No. - SEE BELOW

First Name

Last Name

Section(s) of the Agreement violated, including, but not limited to:

13.3, 17.125, 17.15, 17.23, 18.1, 24.2

Nature of Incident: (Describe events in detail using additional pages if necessary) ☒ See Attached

COMPLAINT AGAINST: MARC GALLARDO # 35880

SCOTT PAINE # 130671

MIKE DIMON # 131324

STEVE CANNONE # 131343

JOAN SEIXAS # 133130

NATURE OF INCIDENT: SEE ATTACHED

By:

First Name

Last Name

ERIC
ALDAPPE

RECEIVED

AUG 18 2015

ILWU LOCAL 13
BY: Luci Prieto
STAMPED

Signature

Signature

Union complaints (LRC) must be filed within 30 days of the incident. GRIEVANCES MUST BE FILED WITHIN 45 DAYS after the discovery or no more than 90 days after the alleged violation occurred (whichever period is shorter). CONSTITUTION-ARTICLE III-SECTION 4-RULE C

Registration No.

Registration No.

PAGE 1 OF

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On Tuesday, August 18, 2015, the Local 13 Grievance Committee continued to process dispatch rule violations, in the form of chiseling complaints, filed by members against other members.

Section 17.125 states it is the duty of the JPLRC: "To investigate and adjudicate any complaint against any longshoreman whose conduct on the job, or in the dispatching hall, causes disruption of normal harmony in the relationship of the parties hereto or the frustration and/or violation of the provisions of the working or dispatching rules or of this agreement."

Section 17.15 states: "The grievance procedure of this agreement shall be the exclusive remedy with respect to any disputes arising between the Union or any person working under this Agreement or both, on the one hand, and the Association or any employer acting under this Agreement or both, on the other hand, and no other remedies shall be utilized by any person with respect to any dispute involving this Agreement until the grievance procedure has been exhausted."

Section 17.23 states; "If the grievance is not settled as provided in Section 17.21 or Section 17.22 or does not arise on the job, it shall be referred to the Joint Port Labor relations Committee which shall have the power and duty to investigate and adjudicate it."

Section 18.1 states: "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."

Section 24.1 states; "No provision or term of this Agreement may be amended, modified, changed, altered, or waived except by a written document executed by the parties here to."

Section 24.2 states; "There will ne no unilateral "hip pocket" working or dispatching rules."

The unilateral investigation and adjudication of JPLRC Dispatch rules is discriminatory application of Sections 17.125, 17.15 and 17.23, and prohibited by Sections 18.1 and 24.2 and Section 13.3.

There is no Section of the PCLCD that allows the Union or the Employer to take wages that have been earned. The JPLRC can agree to fines, but not fines equal to wages earned. The JPLRC can give time off, but they cannot take money earned for work performed under the PCLCD, that is a violation of the LMRDA.

I request a Section 17.41 hearing, with a court reporter, in order to present my claim of Section 13.3 discrimination.

SECTION 13**NO DISCRIMINATION**

13.1 There shall be no discrimination in connection with any action subject to the terms of this Agreement (including at work sites, joint dispatch halls, training sites, and other locations, when reasonably related to employment covered by this Agreement) either in favor of or against any person because of membership or nonmembership in the Union, activity for or against the Union or absence thereof, race, creed, color, sex (including gender, pregnancy, sexual orientation), age (forty or over), national origin, religious or political beliefs, disability, protected family care or medical leave status, veteran status, political affiliation or marital status. Also prohibited by this policy is retaliation of any kind for filing or supporting a complaint of discrimination or harassment. *(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).*

13.2 All grievances and complaints alleging incidents of discrimination or harassment (including hostile work environment) in connection with any action subject to the terms of this Agreement based on race, creed, color, sex (including gender, pregnancy, sexual orientation), age (forty or over), national origin, or religious or political beliefs, or alleging retaliation of any kind for filing or supporting a complaint of such discrimination or harassment, shall be processed solely under the Special Grievance/Arbitration Procedures For The Resolution of Complaints Re Discrimination and Harassment Under The Pacific Coast Longshore & Clerk's Agreement *(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) 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.

17.11 The parties shall establish and maintain, during the life of this Agreement, a Joint Port Labor Relations Committee for each port affected by this Contract Document, 4 Joint Area Labor Relations Committees, and a Joint Coast Labor Relations Committee. Each of said Labor Relations Committees shall be comprised of 3 or more representatives designated by the Union and 3 or more representatives designated by the Employers. Each side of the committee shall have equal vote.

17.12 The duties of the Joint Port Labor Relations Committee shall be:

17.121 To maintain and operate the dispatching hall.

17.122 To exercise control of the registered lists of the port, as specified in Section 8.3.

17.123 To decide questions regarding rotation of gangs and extra men.

17.124 To investigate and adjudicate all grievances and disputes according to the procedure outlined in this Section 17.

17.125 To investigate and adjudicate any complaint against any longshoreman whose conduct on the job, or in the dispatching hall, causes disruption of normal harmony in the relationship of the parties hereto or the frustration and/or violation of the provisions of the working or dispatching rules or of this Agreement. The application of this Section 17.125 shall not negate the procedure for penalties as provided for in Section 17.7.

17.126 To carry out such other functions as are assigned to it herein or by the parties, directly or through the Joint Coast Labor Relations Committee.

17.13 There shall be a Joint Area Labor Relations Committee for each of the 4 port areas (Southern California, Northern California, Columbia River and Oregon Coast Ports, and Washington). Such Committee shall investigate and adjudicate

cate grievances not settled at the local level. The Area Joint Labor Relations Committee step may be eliminated by agreement at the area level or may be bypassed by agreement at the port level.

17.14 The Joint Coast Labor Relations Committee shall function in the administration of this Agreement as provided herein and shall investigate and adjudicate grievances as provided herein.

17.141 All meetings of the Joint Coast Labor Relations Committee and all arbitration proceedings before the Coast Arbitrator shall be held in the City and County of San Francisco, State of California, unless the parties shall otherwise stipulate in writing.

17.15 The grievance procedure of this Agreement shall be the exclusive remedy with respect to any disputes arising between the Union or any person working under this Agreement or both, on the one hand, and the Association or any employer acting under this Agreement or both, on the other hand, and no other remedies shall be utilized by any person with respect to any dispute involving this Agreement until the grievance procedure has been exhausted.

17.151 Any dispute in which the Association or the Union asserts that any dispatching hall is dispatching employees who were not entitled to be dispatched or who were dispatched out of sequence as to other persons entitled to priority dispatch shall be subject to prompt resolution through the grievance procedure of the Agreement when a complaint is filed by either party with the Joint Port Labor Relations Committee. If such complaint is not resolved within 7 days from the date of filing, the matter shall be referred to the Area Arbitrator whose decision shall be final and binding. The grievance procedure shall then be deemed "exhausted."

17.16 Pending investigation and adjudication of such disputes work shall continue and be performed as provided in Section 11.

17.2 Grievances arising on the job shall be processed in accordance with the procedure hereof beginning with Section 17.21. Other grievances as to which there are no specific provisions herein shall be processed in accordance with the provisions hereof beginning with Section 17.23.

17.21 The gang steward and his immediate supervisor, where the grievance is confined to 1 gang, or any 1steward who is a working member of an affected gang where the grievance involves more than 1 gang or a dock operation, shall take the grievance to the walking boss, or ship or dock foreman in immediate charge of the operation.

17.22 If the grievance is not settled as provided in Section 17.21, it shall be referred for determination to an official designated by the Union and to a representative designated by the Employers.

17.23 If the grievance is not settled as provided in Section 17.21 or Section 17.22 or does not arise on the job, it shall be referred to the Joint Port Labor Relations Committee which shall have the power and duty to investigate and adjudicate it.

17.24 In the event that the Employer and Union members of any Joint Port Labor Relations Committee shall fail to agree upon any question before it, such question shall be immediately referred at the request of either party to the appropriate Joint Area Labor Relations Committee for decision.

17.25 In the event that the Employer and Union members of any Joint Area Labor Relations Committee fail to agree on any question before it, such question shall be immediately referred at the request of either party to the Area Arbitrator for hearing and decision, and the decision of the Area Arbitrator

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.

SECTION 22

TERM OF AGREEMENT AND ITEMS OPEN TO REVIEW
DURING TERM OF AGREEMENT
WELFARE AND PENSION PLANS
MODIFICATION

SECTION 23

SECTION 24

with a carbon copy of such information to the PMA Treasurer in San Francisco.

SECTION 22

TERM OF AGREEMENT AND ITEMS OPEN TO REVIEW DURING TERM OF AGREEMENT

22.1 This Agreement shall remain in effect—unless terminated in accordance with other provisions in the Agreement or unless the termination date is extended by mutual agreement—until 5:00 p.m., July 1, 2014, and shall be deemed renewed thereafter from year to year unless either party gives written notice to the other of a desire to modify or terminate the same, said notice to be given at least 60 days prior to the expiration date. Negotiations shall commence within 10 days after the giving of such notice.

SECTION 23

WELFARE AND PENSION PLANS

23.1 The parties hereto have agreements on the subjects of Welfare and Pensions for longshoremen covered by this Agreement as set forth in the ILWU-PMA Welfare Agreement, as amended, and the ILWU-PMA Welfare Fund—Declaration of Trust as amended, the ILWU-PMA Pension Agreement, as amended, and the ILWU-PMA Pension Fund—Declaration of Trust, as amended.

SECTION 24

MODIFICATION

24.1 No provision or term of this Agreement may be amended, modified, changed, altered or waived except by a written document executed by the parties hereto.

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.