My name is Eric Aldape #37519.

I am representing Carlos Meza #130862 and Lee White #130783 in accordance with the agreement reached at CLRC meeting #21-63, item 2 (h), which states; when a number of individuals are involved, they can select a spokesman.

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, and Lee White, from the Supplemental Crane Board, allegedly using the “Local 13 Crane Training Supplement” as their justification.

Both Carlos and Lee filed Section 13.3 discrimination complaints alleging that a contractual provision or rule is discriminatory as written or as applied.

The “Local 13 Crane Training Program” is called a Tentative Agreement and was allegedly 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 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, 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 JPLRC or 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 13 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 24.1 of the PCLCD 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 hereto."*

Section 24.2 of the PCLCD states;

"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."

Coast Arbitrator Sam Kagel on page 6 of Decision C-10-86 stated:

"Rule 6 on its face is, per se, discriminatory in view of the unambiguous language of Section 8.41" and, "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 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 Sam Kagel on page 1 of his Decision C-11-86 noted:

"In Award C-10-86 dated August 25, 1986, Dispatch of Steady Crane Operators, the Parties to the PCLCD were directed to eliminate Rule 6 on page 246, and Rule 7 on page 241. The Parties have done so."

Arbitrator Kagel then decided what rule should apply for the duration of the present PCLCD. He held:

"…it is concluded that the Rule that was in effect in the 1981-1984 PCLCD should be observed in the present PCLCD."

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, 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 agreement to remove “qualified” crane drivers from the Supplemental Crane Board, and no JPLRC or CLRC agreement regarding the “make whole” guarantee payment hours or changing the assessment payments policy, 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.

No assessments being paid on the guarantee crane hours has Coast wide significance as it relates to the low man out dispatch system, as well as qualifying for, and funding of, vacation, holiday, and medical benefits.

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

The issue of assessments being paid is a CLRC matter, as evidenced by the minutes of CLRC meetings 2-03 and 2-04.

CLRC meeting #2-03, item 2, states;

> *“The Union raised concerns about the Union Negotiating Committee member’s not receiving proper credit for holiday, vacation and other benefits due to insufficient hours in payroll year 2002. The Union stated it would pay the portion of its assessments for pension and welfare eligibility as they have in the past. The Employers agreed to investigate this issue and stated these individuals would not be denied their vacation and holiday benefits in 2003 due to insufficient hours in 2002.”*

CLRC meeting #2-04, item 2, Travel of Registered Longshoremen from Alaska to San Diego states;

> *“Subject to the condition that doing so will not result in ongoing obligation or withdrawal liabilities of any kind, the Committee agreed that a welfare assessment per man-hours worked will be made for the registered Alaska longshoremen, and the monies provided to the Alaska longshore welfare fund will be based on equivalent for welfare coverage in their home ports.”*

The Union provided an unsigned PMA document titled, “Memorandum Agreement of July 1, 2015 concerning Assessments to Provide Los Angeles Crane Operator Make Whole Pay.”

The 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 JPLRC or CLRC Minutes.

The unsigned Agreement appears to be a complicated formula for converting man-hour assessments to tonnage assessments, for unexplained reasons.

Why go to all the trouble of converting a simple payment of 2 hours plus skill differential into tonnage, and why just these crane guarantee payments?

The self-serving document seems to have come from PMA, and the forecasts and calculations utilized are completely controlled by PMA.

We provided a copy of the Agreement to a member of the PMA Board of Directors, who said he had never seen it.

He said he had heard about the payment of guarantee pay to the hall crane drivers, but he said it was assumed these guarantee payments would be paid in hours, just like the guarantee payments made to winch drivers and steady men.

He also said there would be no way to verify the tonnage payments, as the tonnage assessment rates did not change.

We have provided PMA payroll records showing the guarantee payment for a hall crane driver, dispatched as a dockman, who was paid 8 hours at occupation code 005 for working on 5-25-15, and $191.04 with no hours at occupation code 1184 for the 2 hours of guarantee pay plus skill differential.

We requested documentation showing that the assessments were paid on the guarantee payments, and how the payments are reported for benefits qualification purposes, and have received no response to-date.

Joint Records Clerk Ray Pearson told us that Mark Williams and Luke Hollingsworth asked him to attended a Special JPLRC Meeting regarding the “make whole” payments, where he was put in charge of processing the payments of 2 hours plus skill differential going to the Hall Crane Board. He told us that he did not believe that any assessments were being paid.

We do not believe the assessment payments are being made, and this is just a very elaborate con designed to avoid paying assessments on the crane driver make whole payments.

In this case the Rule we are asking to have eliminated is not actually part of the PCLCD, but the PMA and Local 13 are treating it as if it is.

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 JPLRC or CLRC Minutes.

There are only two (2) resolutions available to secure proper compliance:

1. Live up to the agreement to leave the qualified crane drivers on the Supplemental Crane Board for the next year, and agree to pay all Hall crane drivers at all ILWU Locals covered by the PCLCD; 10 hours at Skill III when they work other than Skill III jobs.

2. Throw out the phony “Local 13 Crane Training Agreement” and send everything back to the CLRC to be properly negotiated, ratified, and then included in the PCLCD.

The actions of the Employers constitute ongoing violations of Sections 4.31, 13.3, 18.1, 24.1, 24.2, and the Addenda: Guarantees, Skilled Rates for All Longshoremen and Clerks on page 193 of the PCLCD.

An injury to one is an injury to all.