



**Pacific Maritime Association
Headquarters**

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November 21, 2012

Via Email and Fax No. 415-775-9783

Mr. Ray Ortiz, Jr., Coast Committeeman
Mr. Leal Sundet, Coast Committeeman
International Longshore and Warehouse Union
1188 Franklin Street, 4th Floor
San Francisco, CA 94109

Re: Employer Position Regarding Area Arbitration SCGM-0009-2012

Dear Messrs. Sundet and Ortiz:

Further to the communication from the Employers to the Union on October 25, 2012, the Employers propose that the Coast Labor Relations Committee vacate Southern California Area Arbitration Opinion and Decision No. SCGM-0009-2012 in connection with Section 13.2 Grievance No. SP-0032-2012, and dismiss the grievance immediately. The award conflicts with both the letter and the spirit of Section 13 and the Employers wish to have no part in implementing this decision.

The Employers' position with respect to this matter continues to be:

1. The purpose of Section 13.2 is not to protect Union officials or Employer representatives from ridicule, and the Special Procedures for Section 13.2 Complaints should not be used for mildly offensive comments about Union officials or Employer representatives, even if those comments are based on a category protected by Section 13.2.
2. The statements that appear on the flyer entitled "Vote!!! Don't Be Shy - Put In The Other Guy" do not amount to discrimination or harassment on the basis of any category protected by the Special Procedures for Section 13.2 Complaint - regardless whether the statements are true or false.
3. The cartoon apparently depicting male Union officials in women's clothing dancing in front of other male Union officials that accompanies the flyer does not amount to discrimination or harassment on the basis of any category protected by the Special Procedures for Section 13.2 Complaint - to the extent that the images of some individuals are based on their sex, gender, or sexual orientation, they are at most mildly offensive.

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4. Any punishment imposed for distributing the flyer and cartoon at the dispatch hall would violate Section 13's prohibition against discrimination in favor of or against any individual because of activity for or against the Union.

The Employers believe this case raises two important issues. The first is whether an arbitrator can find a violation of Section 13.2 and order penalties under Section 13.2 without finding discrimination on one of the eight bases enumerated in Section 13.2. The second is whether an Area Arbitrator can punish an individual for activities that are protected by other parts of Section 13.

In Award SCGM-0009-2012, The Area Arbitrator accepted that the "greater part of the flyer's content [w]as political inter-union satire." Yet he found "no link between the Union and [the Grievant] standing within such as it pertains to the instant issue."

Also, the Area Arbitrator faulted the Accused for "intentionally vilify[ing]" the Grievant and emphasized the Accused's "knowledge and awareness of the guidelines, penalties, and wording within the Pacific Coast Special Grievance Handbook." Yet he mentioned no link between any of the Accused conduct, including conduct "intentionally vilifying" the Grievant, and any of the eight bases enumerated in Section 13.2 and in the Special Grievance Handbook.

With respect to the first issue, under the plain language of Section 13.2, a finding of discrimination on one of the eight bases enumerated in Section 13.2 is necessary both for finding a violation of Section 13.2 and for ordering penalties under Section 13.2.

Recall the CLRC's February 19, 2002 letter to the Coast Appeals Officer clarifying Section 13.2's procedures. In it, the Committee clearly stated, by quoting from Section 13.2, that Section 13.2 is limited to claims "alleging discrimination or harassment (including hostile work environment) in connection with any action subject to this Agreement based on [1] race, [2] creed, [3] color, [4] sex (including gender, pregnancy, sexual orientation), [5] age (forty or over), [6] national origin, or [7] religious or political beliefs, or [8] or alleging retaliation of any kind for filing or supporting a complaint of such discrimination or harassment." If Section 13.2 is limited to claims alleging discrimination or harassment on at least one of the 8 listed bases, then findings of violations of Section 13.2 and discipline imposed under Section 13.2 must require findings of discrimination or harassment on at least one of the 8 listed bases. The Area Arbitrator's decision fails to mention discrimination or harassment on any of those bases.

With respect to the second issue, activities that otherwise would be protected by one provision of Section 13 may lose their protection and be punishable if they violate another provision of Section 13. But those cases require a careful balancing of each affected employee's rights. Otherwise important principles and provisions of the contract are neglected.

This case requires a balancing of the Section 13 rights of workers to engage in Union activities with the Section 13 rights of Union representatives to work in an environment free from harassment on one of the bases covered by Section 13.2. This is particularly true in a situation, such as the present, that involves criticism of Union officials and candidates for Union office.

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Section 13 was not intended to protect Union or Employer representatives from scorn, even if unfair.

The Area Arbitrator not only failed to strike that balance, he ignored the Accused's rights to criticize elected Union officials while extending to the Grievant a right – to be free from false accusations – that is not provided anywhere in the PCL&CA, let alone in Section 13.2.

Accordingly, the Employers further propose the Coast Labor Relations Committee:

1. Notify the Grievant, the Accused, PMA's Long Beach Office, Local 13, the Southern California Area Arbitrator, and the Coast Appeals Officer of its decision to dismiss SP-0032-2012 and vacate SCGM-0009-2012.
2. In the event there currently exists any restrictions on the Accused's dispatch privileges, instruct the Los Angeles/Long Beach JPLRC to immediately reinstate the Accused's dispatch privileges and to implement no disciplinary action against the Accused as a result of SP-0032-2012 and award SCGM-0009-2012.
3. Instruct the Coast Appeals Officer to conduct no further proceedings or to issue any decisions or orders in connection with SP-0032-2012 and award SCGM-0009-2012.

Regards,



Richard Marzano, Coast Director
Contract Administration and Arbitration

cc: S. Hennessey
N. Romanowski