

IN THE MATTER OF A CONTROVERSY

BETWEEN

John Seixas, #133130

AND

Angelo Andrikos, #130044

ISSUE: Involving an Alleged Section 13.2 PCL&CA
Violation, Discrimination, Harassment, and/or
Retaliation—Special Grievance—SP-0032-2015

SCGM-0001-2016

OPINION AND DECISION
OF

JAN R. HOLMES
ARBITRATOR

Long Beach, California

February 9, 2016

A formal hearing was held at 9:00 AM, on Tuesday, February 9, 2016 at the Pacific Maritime Association Offices, Long Beach, CA. The parties were afforded a full opportunity to present witnesses, evidence, and arguments. A certified court reporter was present to provide a transcript of the hearing.

GRIEVANT:

John Seixas, #133130

FOR THE GRIEVANT:

Luke Hollingsworth, ILWU Local 13

ACCUSED:

Angelo Andrikos, #130044

FOR THE ACCUSED:

Michael Plante, ILWU Local 13

FOR PMA:

Shanika Gunesekera, Pacific Maritime Association
Eric Kalnes, Pacific Maritime Association

FOR THE UNION:

Mike Dimon, ILWU Local 13

BACKGROUND

This hearing was scheduled in accordance with Coast Labor Relations Committee Meeting of February 25, 2015, directing Arbitrator Holmes to review and act on outstanding grievances filed under the special Section 13.2, PCL&CA provisions subsequent to the expiration of the Master Agreement on July 1, 2014. Special Grievance SP-0032-2015 was filed by Mr. John Seixas against Mr. Angelo Andrikos for alleged discrimination and harassment that occurred on December 8, 2015. The Arbitrator reviewed the initial grievance and denied a hearing to Mr. Seixas dated January 5, 2016 (Joint Exhibit 1). Mr. Seixas appealed that decision in a timely manner and Coast Appeals Officer Rudy Rubio granted a hearing in the letter dated February 9, 2016. The grievance was considered timely.

ISSUE

Is Mr. Angelo Andrikos, #130044 guilty of a violation of Section 13.2, PCL&CA, as charged by Mr. Seixas in SP-0032-2015, for discrimination and harassment? If so, what remedy shall be assessed?

GRIEVANT'S POSITION

This Section 13.2, PLC&CA grievance is proper before the Arbitrator. The Coast Appeals Officer remanded the issue to the parties to schedule a full hearing. The fact that the accused escalated the Prohibited Conduct to social media falls under the requirement that the behavior be reasonably related to employment under the terms of the PCL&CA. Mr. Andrikos' verbal harassment occurred on the job and the grievant felt threatened and intimidated. This complaint is for sexual harassment and creating an environment where it is hostile to further work with Mr. Andrikos. Mr. Andrikos extended the Prohibited Conduct to social media to bring into question Mr. Seixas' sexual orientation by implying that he was a homosexual. The language of Section 13.2, PCL&CA, Item 3, paragraph 1 supports that Mr. Andrikos' behavior was verbal harassment. He made a false accusations about Mr. Seixas' sexual orientation. Mr. Andrikos, on two prior occasions, made physical and nonverbal threats against Mr. Seixas. In an incident, on the job, that occurred one and one-half years ago after an internal Union grievance was handled, Mr. Andrikos responded to Mr. Seixas' desire to inform him of a safety issue when acting as a foreman by threatening in an almost explosive way to say, "Don't talk to me!" On a more recent occasion, approximately four months ago, when Mr. Seixas said "hello" to Mr. Andrikos, Mr. Andrikos blocked his movement and spit on the ground. Mr. Seixas is afraid to work around Mr. Andrikos, and is afraid for his safety. Though there is nothing in the language of the Special Procedures that includes cyberbullying, this grievance is because of the escalation of problems on the job to the point where Mr. Andrikos made accusations that Mr. Seixas was homosexual. Mr. Seixas did not file grievances in the first two incidents as he was hoping that Mr. Andrikos' behavior toward him would improve and not continue to escalate. In the second incident, Mr. Seixas did call the business agent, but asked that he let the issue go. Mr. Seixas has observed that Mr. Andrikos also sexually demeans others and is explosive at the dispatch hall (Transcript Page 72). Mr. Seixas is fearful of asking him to stop because of the behavior he has seen from Mr. Andrikos (Transcript Page 74).

The Grievance Handbook, page 2 states that "Discrimination and harassment can take many form. Certain actions or even words can constitute discrimination and harassment. As a general matter, it is a violation of this Policy for anyone to treat another in a way that is threatening, intimidating, embarrassing or offensive, or denies a person equal treatment and opportunities because of his or her sex, race or other unique characteristics..." Further, Verbal Harassment is "Racial or sexual jokes, name-calling, using slurs, derogatory terms, belittling remarks or abusive language related to a person's gender, race, or other defining characteristics." The abusive language by Mr. Andrikos against Mr. Seixas was done in such a manner to suggest a false accusation of sexual orientation. The non-verbal cues may have started on the job, but were exacerbated on the internet. This case does not focus on cyberbullying, but uses the social media as proof that Mr. Andrikos' actions have only begun to escalate. Mr. Andrikos' escalations and his physical harassment are threatening and intimidating (Transcript Pages 32-34).

The Facebook post was read by Mr. Seixas when he arrived at the hall on December 8, 2015. The dialog started with a comment that another longshoreman made on Facebook against the President of the United States. Mr. Seixas felt that the comment was not respectful. Mr. Andrikos took exception to a comment Mr. Seixas made to a mutual friend. Then Mr. Andrikos made an extremely personal statement to Mr. Seixas. Mr. Andrikos brought the complaint to an open forum in front of other longshoremen who read Mr. Andrikos' post that said, "Hey John, when was the last time you saw the union presidents dick. Don't ever question what another man does in his life to provide food

table for his family and stop being a fucking rat. Also, when was the last time you saw your dick." Mr. Andrikos humiliated Mr. Seixas with this Facebook post. Mr. Seixas interpreted the comments literally and not figuratively. On two occasions in the past, Mr. Seixas prevented Mr. Andrikos from getting into a fight on the job where he would have had the possibility of getting a year off of work. Mr. Andrikos' behavior is explosive, which made Mr. Seixas fearful that he would be Mr. Andrikos' next target. Mr. Seixas did not file complaints in the two incidents that he witnessed because Mr. Andrikos' anger was directed at others and not him. The behavior is considered Prohibitive Conduct. Mr. Seixas does not want to run in to Mr. Andrikos at dispatch and this has caused undue financial burdens on his family. Mr. Andrikos' behavior is an escalation of Prohibited Conduct that he has already shown against Mr. Seixas. His bullying on the internet is directly related to the Grievance Handbook because he makes accusations that Mr. Seixas is a closet homosexual and that he is a rat (Transcript Page 53). This derogatory name-calling has bled into other areas in the workplace, as Mr. Seixas was recently called the Union president's "boy toy."

Coast Appeals Officer Mr. Rudy Rubio moved this grievance back to the parties into a Section 13.2, PCL&CA grievance because this type of behavior is properly heard under Section 13.2, PCL&CA. These situations are damaging to the morale and productivity of workers. The effects of cyberbullying have been recognized in court cases and the fact that there is no current agreement between the parties does not absolve either party of their responsibility in these situations. Mr. Andrikos' behavior in cyberspace stems from his behavior on the waterfront and it is the escalation that confirms his lack of integrity. Mr. Andrikos' current escalations do not provide Mr. Seixas with a safe environment to work in due to Mr. Andrikos' unpredictable behavior. Not finding guilt and assessing a penalty in this case would give a free pass to everyone who is disgruntled with those sitting on committees, etc. within the Union to take to the internet and bash those individuals. Mr. Seixas has tried to do all that he can concerning this individual. Mr. Andrikos is known to be violent and unpredictable and there is a chance that he will cause further damage to Mr. Seixas, especially after he has reached out and filed a Section 13.2 PCL&CA grievance. By being proactive, Mr. Andrikos can get the help he needs to stop engaging in Prohibited Conduct that the Arbitrator has the power to mandate.

This case is not about social media or social bullying, but rather an escalation of behavior. It was through social media that Mr. Andrikos escalated his behavior, and it is not the case that this issue revolves solely around the Facebook post (Transcript Page 88). The verbal harassment occurred on the job and social media was only used to prove that the Prohibited Conduct escalated off the job (Transcript Page 91). Mr. Andrikos was found guilty of a prior Section 13.2 PCL&CA grievance and was given seven days off, suspended, and was required to sign a document stating that he would not engage in Prohibited Conduct again. Mr. Andrikos has failed to abide by that agreement. The grievant asks that Mr. Andrikos be found guilty of a violation of Section 13.2, PCL&CA, however, the progressive discipline not be applied, but that he be given the minimum penalty as required under the Policy in this case.

ACCUSED'S POSITION

This grievance is not proper under Section 13.2, PCL&CA. This is the wrong forum to hear the grievance. The Facebook post that Mr. Andrikos posted was done off site on personal time. The Accused has the right of free speech. Mr. Andrikos' comment did not significantly touch the workplace. Hearing this grievance under Section 13.2, PCL&CA is an abuse of the procedures. Mr. Seixas had other avenues to have his grievance heard and didn't pursue those avenues. Mr. Seixas' credibility is called into question due to inconsistencies.

Further, Mr. Seixas did not meet the standard of proof in this case. The grievance should be dismissed. By supporting the Grievant's interpretation of social media as an extension of the workplace would open the parties up to all sorts of misguided grievances which would expand

conducting a full and fair hearing within the specific limited time frames stipulated under the language of the Special Grievance Handbook and Section 13.2, PCL&CA.

There was no dispute as to what was said in the Facebook interaction; though the Accused's representative held that the entire conversation was not presented in writing in the hearing, it appeared to the Arbitrator to be complete in explaining this situation. The interaction started with a Facebook video post about President Obama, continued with a mutual friend calling the President a derogatory name. Mr. Seixas made a comment to that friend asking him where he was at the Union march. Then Mr. Andrikos made his comments against Mr. Seixas. Mr. Andrikos alleged that he was passionately defending that individual from Mr. Seixas' implication that the mutual friend was a "scab" when he made the derogatory comments against Mr. Seixas.

The Arbitrator found that Mr. Andrikos' comments on Facebook against Mr. Seixas were extremely crude, rude, and demeaning. There was no mention in the hearing that Mr. Andrikos was sorry that he made the comments, only that due to his right to free speech he had the right to make them, and that the defending a fellow longshoreman from essentially being called a "scab" by Mr. Seixas, and that the comments he made on Facebook did not extend to reasonably relate to the workplace. It was noted that Mr. Andrikos had been found guilty of a previous Section 13.2, PCL&CA violation and signed an agreement not to engage in Prohibited Conduct in the future. He was also assessed seven days of work, suspended, for that violation. The Accused's representative argued that everyone, including Mr. Seixas, knows how Mr. Andrikos is: passionate, rudely speaking to others, abrasive, etc. However, as argued by the Grievant, that is no excuse for treating "another in a way that is threatening, intimidating, embarrassing or offensive..." and engaging in Verbal Harassment with name-calling using slurs, derogatory terms, belittling remarks, or abusive language related to a person's gender, race, or other defining characteristics (Grievance Handbook, Page 2). Allegations that Mr. Seixas was taking the comments out of context and that he should not have taken it literally was an attempt to minimize his comments (Transcript Pages 65-67). It did not appear to the Arbitrator that Mr. Andrikos was defending their mutual friend in the postings as he alleged (Transcript Page 66). Mr. Andrikos did escalate the comments in the Facebook post by adding inflammatory comments against Mr. Seixas. Such language is not "passionate," as argued by the Accused, escalating the derogatory comments.

It is clear to the Arbitrator that this grievance was brought forth in good faith by Mr. Seixas remained calm during all of his testimony. However, the Arbitrator is required to rule on the language as written. A determination must be made as to whether the derogatory comments that were made on Facebook by Mr. Andrikos against Mr. Seixas were a violation of Section 13.2, PCL&CA, whether the two previous incidents Mr. Seixas cited against Mr. Andrikos on the job extended the alleged Prohibited Conduct, and whether any such violations met the criteria of being considered in connection with any action subject to the terms of the Pacific Coast Longshore & Clerk's Agreement (the PCLCA or Agreement) (including at work sites, joint dispatch halls, training sites, and other locations, when reasonably related to employment covered under this Agreement)" (Grievance Handbook, Page 1, Item 1). First, the fact that Mr. Seixas believed that he was in the dispatch hall when he actually read the Facebook post does not extend the behavior to be considered reasonably related to the workplace. Mr. Andrikos was not in the hall at the time and clearly these words were spoken to Mr. Seixas (Transcript Page 60). The Arbitrator is restricted by the language of the Agreement. Mr. Andrikos was not guilty of engaging in Prohibited Conduct due to the fact that the postings on Facebook were not reasonably related to employment covered under the Agreement. The Facebook posting was not considered "in connection with any action subject to the terms of the Pacific Coast Longshore & Clerk's Agreement (the PCLCA or Agreement) (including at work sites, joint dispatch halls, training sites, and other locations, when reasonably related to employment covered under this Agreement)." Further, the two previous incidents on the job did not extend

jurisdiction as stipulated by the CLRC. If a dispute happens on the job, the individuals should deal with it then and there. To include allegations of cyberbullying in the language of the Agreement would be to rewrite the Contract, which the parties did not agree to. Frequently in the workplace there are individuals that you don't like, but you cannot extend the 13.2 PCL&CA provisions to posts on Facebook.

Mr. Seixas is well aware of how Mr. Andrikos is and that the language used is his normal language. Mr. Andrikos felt that Mr. Seixas' comment against the other longshoreman in the post, calling in to question where he was when the Union marched in San Pedro, was almost like calling him a scab, which is one of the worst insults on the waterfront. Mr. Andrikos was just defending this longshoreman. Mr. Andrikos was passionate about defending the individual in this case. This grievance is not under the jurisdiction of the Arbitrator under Section 13.2, PCL&CA. What occurred on December 8, 2015 took place off the work site, on personal time, away from the job, dispatch hall, training site, or any other locations that could be reasonably related to employment. There is not a significant connection to the work site to allow Section 13.2, PCL&CA jurisdiction. Also, free speech is protected under both State and Federal laws.

The language of Section 13.2 PCL&CA points to work sites, joint dispatch halls, training sites, and other locations when reasonably related to employment covered by this Agreement (Special Grievance Handbook, Page 1). The actions have to significantly touch the work environment directly. Facebook is not one of these sites. Disputes and comments that happen off the work site are not applicable to Section 13.2, PCL&CA, so there is no jurisdiction. It would not be appropriate to expand the language of the Contract to cover Facebook postings because, most importantly, the Coas Parties did not negotiate that language, and this would cause a lot of problems. When longshoremen are at their homes, in a bar, and other such places, the language of Section 13.2, PCL&CA does not apply. It is an abuse of the procedure that Section 13.2 PCL&CA was intended for. Mr. Seixas has other remedies available if he was offended by Mr. Andrikos' conduct. The law is clear; individuals have the freedom of speech and that right does not go away because individuals work on the waterfront and a grievant wants to call this a Section 13.2 PCL&CA violation. This grievance should be dismissed.

DISCUSSION

The Arbitrator thoroughly reviewed the transcript, arguments, and testimony in this case. One of two previous incidents on the job Mr. Seixas cited where he was involved with Mr. Andrikos was when Mr. Seixas was elevated to boss and Mr. Andrikos picked up his replacement. Mr. Seixas reported that he had problems with the heavy lift he was driving, had the mechanics fix it, and was concerned that it would happen again, so he approached Mr. Andrikos to inform him that if it caused problems, he could red-tag it. Mr. Andrikos responded with, "Don't talk to me" in an explosive manner. This incident occurred approximately one and one-half years ago, after a Union trial in which Mr. Andrikos was involved. The second incident took place about four months ago when after Mr. Seixas said "hell" to Mr. Andrikos in a polite tone, he proceeded to walk to work and Mr. Andrikos stepped out from behind his car and spit on the ground in front of Mr. Seixas and then spun around and walked back behind the car (Transcript pages 38-39). These two incidents were well over 15 days ago; one over one and half years ago and the other four months ago. In neither of the incidents did Mr. Andrikos' behavior appear to have been based on or because of any of Mr. Seixas' protected categories, i.e. his gender, sex, or sexual orientation. It appeared that the behavior was a result of a dispute regarding a Union/Union business. Accordingly, Section 13.2 PCL&CA charges would not have been proper in these instances at the time, and in the present case, the dates of the alleged Prohibited Conduct violations of Section 13.2, PCL&CA do not have the same opportunity to "sit on their rights" claimed by Mr. Seixas, as they may possibly have in other situations. The Arbitrator is charged

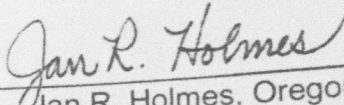
current action of the Facebook posting, as they were untimely and Mr. Andrikos' actions were not based on or because of one of Mr. Seixas' protected categories.

Going forward, such decision does not imply that Mr. Andrikos should continue in the manner in which he has behaved in the past. He must be made aware that the penalties for any kind of retaliation against Mr. Seixas for having filed this Section 13.2, PCL&CA grievance or anyone testifying at or representing someone at such a hearing shall be severe. The minimum penalty established by the parties for retaliation is thirty days off work and the requirement to attend Diversity Training without pay and an even more severe penalty may be assessed. Further, it should be noted that retaliation can take many forms and may include retaliation taking place at other venues not considered in this decision, such as Facebook postings, places away from the job site, etc. Any retaliation for having filed this grievance shall result in very serious penalties against Mr. Andrikos.

Accordingly, the following decision is hereby rendered.

DECISION

1. Mr. Andrikos, #130044, is not guilty of violation of Section 13.2, PCL&CA in this instance due to the fact that comments made against Mr. Seixas on Facebook on December 8, 2015 were not at work sites, joint dispatch halls, training sites, and other locations, when reasonably related to employment covered under this Agreement, as charged in Special Grievance SP-0032-2015.
2. Mr. Andrikos shall not engage in any form of retaliation against the individual filing this grievance, anyone representing a party at this hearing, and/or against anyone called to testify at this Section 13.2, PCL&CA hearing.


Jan R. Holmes, Oregon Area Arbitrator

Dated February 19, 2016

NOTICE OF RIGHT TO APPEAL

Please be advised that this decision is final and binding on all parties unless an appeal is timely filed with the Coast Appeals Officer. Any Party may file such an appeal. To do so, you must completely fill out the appropriate sections of the enclosed Appeal Form and file it according to the instructions on the last page within fifteen (15) calendar days from the date the Area Arbitrator mailed his/her decision to you. The deadline for filing an appeal in this case is **5:00 PM Saturday March 5, 2016**. **Your appeal must be received by the Coast Appeals Officer by this date and time.**

The Coast Appeals Officer will promptly review any appeal that may be filed. Any Party may file a Response or Opposition to the Appeal within ten (10) calendar days of when the Coast Appeals Officer received the appeal. The Coast Appeals Officer will not hold a hearing, but will rule on the appeal based solely on the written record of the hearing (the transcript of the hearing and its exhibits) and the decision received from the Area Arbitrator. The Coast Appeals Officer will promptly advise the Parties in writing of his/her ruling, which will be final and binding and without further appeal, including the Coast Labor Relations Committee or the Coast Arbitrator.