



INTERNATIONAL LONGSHORE & WAREHOUSE UNION COAST LONGSHORE DIVISION

Robert McEllrath Ray Familathe Frank Ponce De Leon Cam Williams

April 13, 2017

**VIA FACSIMILE: (415) 576-3297
(And First Class Mail)**

Jim McKenna, President and CEO
Pacific Maritime Association
555 Market Street, 3rd Floor
San Francisco, CA 94105

Re: Use of Former Arbitrators in the Grievance Machinery

Mr. McKenna:

Today, in a Clerk Technology arbitration before the Northern California Arbitration Panel in San Francisco, SSA brought in former arbitrator David Miller as a consultant and witness. Local 34 objected to Mr. Miller's participation in this and any other arbitration on the following grounds:

- Mr. Miller served for many years as an area arbitrator for Southern California;
- It is inherently improper and unfair for one party to use a former arbitrator in this manner (note also on this point that it is our position that this has the intent or effect of creating the impression on the arbitration panel that such party's position must be correct since a former arbitrator is supporting or endorsing it);
- Use of a former arbitrator in this manner undermines the integrity of the arbitration system as well as the integrity of the arbitrators (we further believe that this creates the appearance, if not the reality, that arbitrators, even current ones, can later be "bought" by a party to endorse and promote its arbitration positions; this, in turn, puts improper pressure on the parties to compete for the support and favor of an arbitrator, beyond winning a particular case, for possible later partisan use; it also creates the general impression that arbitrators as a group can be bought and impugns their integrity and neutrality);
- Mr. Miller sued the ILWU and International President Robert McEllrath to undo the current arbitration system that all the arbitration panels are presently part of;

- Mr. Miller's presence at today's arbitration is clearly a provocation and an intended offense against the Union; and
- The clear message of Mr. Miller's presence is that SSA and the employers control the system and have general power over the Union and its members in an unfair way (we add here that the clear message also suggests that the Employers, by their superior financial means, can unfairly manipulate the arbitration system by hiring a former arbitrator as a "ringer").

Local 34 then made a motion to complete today's hearing with the exclusion of Mr. Miller so that the CLRC could address this procedural question. The hearing was adjourned with the Northern California Arbitration Panel indicating that it would await a continuation date and location. Currently, the Employers are insisting that the hearing be rescheduled at PMA's offices so that they can ensure Mr. Miller's presence, whom they insist upon using as a consultant and a witness.

It has also come to our attention that, at the request of one of the parties, Mr. Miller is being cited as a witness in a Section 13.2 hearing (reference SPSC-0006-2017). We understand that Mr. Miller is not a percipient witness and instead is being called to testify with respect to his prior role as an area arbitrator under the PCL&CA. The hearing is taking place at 9:00 a.m. Monday, April 17, 2017.

The Coast Parties have an established policy against allowing testimony by a PCL&CA arbitrator in any proceeding. They have successfully filed joint objections in legal proceedings to prevent the taking of testimony sought from a PCL&CA arbitrator, relying on California law. In this regard, California Evidence Code Section 703.5 prohibits testimony by current and former arbitrators:

"No person presiding at any judicial or quasi-judicial proceeding, and no arbitrator or mediator, shall be competent to testify, in any subsequent civil proceeding, as to any statement, conduct, decision, or ruling, occurring at or in conjunction with the prior proceeding, except as to a statement or conduct that could (a) give rise to civil or criminal contempt, (b) constitute a crime, (c) be the subject of investigation by the State Bar or Commission on Judicial Performance, or (d) give rise to disqualification proceedings under paragraph (1) or (6) of subdivision (a) of Section 170.1 of the Code of Civil Procedure."

None of the stated exceptions apply here; so this statute bars Mr. Miller from being called as a witness.

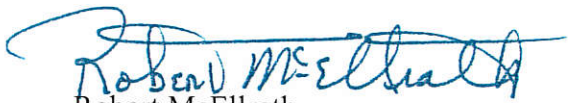
These matters demand the CLRC's immediate attention. By this letter, the Union motions that the parties agree that former area arbitrators shall not participate in any manner at any hearings or proceedings under the PCL&CA at the local or coast levels. Further, the Union demands that the Coast Parties issue a joint letter to Arbitrator Mascola prohibiting testimony from Mr. Miller in

the 13.2 matter referenced above. In addition, we demand that the CLRC send a general letter to all arbitrators stating these policies.

Please respond with the employers' position by close of business Friday, April 14, 2017. If we do not receive a response, we will assume that the parties are in disagreement and will schedule the matter for arbitration before the Coast Arbitrator.

Sincerely,

THE COAST COMMITTEE



Robert McEllrath
International President



Ray Familathe
International Vice President



Frank Ponce De Leon
Coast Committeeman



Cam Williams
Coast Committeeman

cc: Stephen Hennessey, PMA
John Ochs, APM Terminals
Bob Johnson, Total Terminals International
Darrin DelConte, PCMC
Sal Ferrigno, SSA Terminals
Robert Dickey, Ports America
Bal Dreyfus, Matson Navigation Company
William Furer, Hapag-Lloyd
George Lang, Everport Terminal Services
Sean Lindsay, International Transportation Service
Sean Marron, Yusen Terminals
Robert Stephens, American President Lines