IN THE MATTER OF A CONTROVERSY BETWEEN PACIFIC MARITIME ASSOCIATION AND INTERNATIONAL LONGSHORE AND WAREHOUSE UNION LOCAL 13 Re: UC- M199-08 as it Pertains to Tire Repair at Trapac Terminal	SCAA-0032-2009 Opinion and Decision of David Miller Area Arbitrator July 22, 2009 Long Beach, California

The hearing was held at 1:05 PM on July 22, 2009 at 320 Golden Shore, Suite 300, Long Beach, California. Each party was afforded full opportunity for examination and presentation of relevant arguments, documents, and testimonies of witnesses. A Certified Shorthand Reporter was in attendance and recorded a transcript of the hearing.

APPEARANCES:

FOR THE EMPLOYERS:	Lee Swietlikowski Pacific Maritime Association
FOR THE UNION:	Dan Imbagliazzo ILWU Local 13
ALSO PRESENT:	H. Dong, Local 13 M. Mascola, Local 13 R. Rubio T. Kennedy, PMA C. Halbert, PMA M. Outland, PCMC C. Wallace, PMA, retired M. Booth, OTS M. Main, Local 13 T. Hebert, Local 94 D. Draskovich, Local 13 M. Williams, Local 13 C. Viramontes, Local 13 M. Hernandez, Local 13 A. Blanco, Local 13 J. Reskusic, Local 13 P. Ciolino, Local 13 J. Spinosa, Local 63

ISSUE:

Whether Trapac Terminal is in violation of the PCLCD and LA/LB Mechanics Port Supplement by allowing tire repair work on chassis to be performed by NBUP off-dock.

BACKGROUND:

On July 7, 2009, this Arbitrator discussed procedures relative to the instant issue by conference call with the involved parties. This decision was followed by a July 8, 2009 letter to the JPLRC giving guidelines to the parties as to procedures that pertain only to the instant issue. The presentation of both parties and their concurrence (Transcript pg 352) that the record is complete and each presentation was not impeded is supported on the above referenced page of the transcript.

DISCUSSION:

There were numerous exhibits and an exorbitant amount of testimony. Most of the evidence was comparable to what was presented in the two past hearings on this subject. Within the opinion portion of this award, this Arbitrator makes reference to exhibits and or testimony that was relevant to this issue. However, what was significant in this hearing was the testimony of Rudy Rubio, past International Vice President. Within Rubio's testimony are his uncontradicted statements that the 1978 agreement eliminated sections of the agreement that gave the Employer exceptions (options) as to the employment of longshoremen to perform specific job functions.

In addition, Rubio testified that it was the intention of the Union to secure M&R work in 1978 negotiations. However, at that time, another labor group was performing such M&R work under contracts with PMA members.

It is Rubio's testimony that the only exception in the 1978 Agreement to mechanic job functions was Section 1.8. It is undisputed between the parties that Trapac is not subject to any exceptions that exist within Section 1.8 and 1.81 of the current Agreement.

In summary, it was Rubio's testimony that 'new' terminals (i.e. Trapac) were obligated as per wording of the Master Agreement to employ ILWU mechanics to perform any and all mechanic job functions on equipment listed within the relevant sections of the PCLCD.

It is noted that the Employer submitted Employer Exhibit No. 27, a decision and order of the NLRB dated June 22, 1981. It is further noted that the Employer objected in C-4-09 that this Arbitrator relied on an NLRB issue in reaching a decision in SCAA-0029-2007.

OPINION:

This hearing and its subject matter is essentially the same issue and argument presented within awards SCAA-0019-2008 and SCAA-0024-2009. The position of both parties as in the above hearings is fundamentally the same and what is foremost in the

instant hearing is the complete presentation of relevant exhibits and material witnesses by both parties as so ordered by this Arbitrator in the July 8, 2009 letter to the JPLRC.

The issue in dispute has been decided in the Union's favor in SCAA-0043-1986 (Arbitrator Love's Award), SCAA-0019-2008, and SCAA-0024-2009. At each previous hearing, this Arbitrator has allowed the parties a complete hearing on what is now documented and is perceptibly that of the same issue and the only disparity is the name of the Employer accused of the violation.

The Employers when requested by the Arbitrator to offer what evidence presented in the instant hearing, would persuade this Arbitrator to modify the previous awards on this subject answered, that "C-4-09" was the document that would offer such guidance (Transcript pg 350).

Within C-04-09, Coast Arbitrator Kagel states that the Area Arbitrator made an error by rejecting uncontradicted testimony as it pertained to bargaining history. In addition, further error by the Area Arbitrator was made when I did not take the following into consideration. 'When the agreement is not clear then other sources such as how the parties formed the words during bargaining should have been considered'.

It is with certainty that Kagel award C-4-09 vacated Awards SCAA-0029-2007 and SCAA-0001-2009 based on specific facts and testimony presented at that hearing.

It is unambiguous that Arbitrator Kagel did not vacate the above awards based on the Employer's position that all mechanic work functions when required are at the option of the Employer whether to be performed on dock by the Union or off-dock by NBUP.

In support of this Arbitrator's opinion on the essence of C-4-09 the following text is taken from the above award.

> *This case involved the off-lease of Hanjin chassis at Long Beach. As the Union points out, this case is confined to that issue. How Section 1 provisions regarding cargo handling equipment apply in other cases under other circumstances are not decided herein as that provision of the LOU requires future cases to be determined on their own facts.*

In the instant case there was material testimony from Union officials present at the various contract negotiations that is in direct contradiction to testimony from Employer witnesses who made claim in previous hearings that the Union was attempting to extend jurisdiction during negotiations.

Union Exhibit No. 14 (Attachment 'A') confirms the parties understanding that any and all contract proposals at 2002 bargaining, concerning issues of technology and jurisdiction shall not be used or referenced to in any arbitration. In addition, there is testimony by Ray Ortiz (Transcript Pg 166) that the parties made a verbal agreement alike to the above written agreement during 1999 negotiations.

Therefore this Arbitrator can reject the evidence that prohibits consideration of contract

proposals or take into consideration the conflicting testimony presented by the parties as it pertains to past negotiations. Regardless of which means is considered it is my opinion that the Employer's presentation in regards to the above subject has failed to persuade this Arbitrator as to their claim of the Union's attempt to expand jurisdiction during past negotiations. The creator of documents (union) during negotiations clearly has a greater comprehension of such documents intent, than the party who is merely the recipient of such documents.

The job function in dispute and agreed to by the parties (Transcript Pgs 360-363) is when the Employer makes a decision to replace a tire on a chassis the Union mechanic removes the tire from the chassis and replaces such with a pre-mounted tire on a rim that such pre-mounting was allowed to be performed off-dock by NBUP.

The job function of taking damaged tires off chassis rims and re-mounting with good tires is that of the Union. The Union is entitled to perform the complete removal of tire from chassis, tire from rim, install tire on rim and attach to chassis.

There is no ambiguity as it pertains to the status of the chassis' in this dispute. These chassis' and the maintenance and repair of such are referenced within Section 1 and specifically Section 1.74 of the PCLCD.

The Employer is reliant upon their hypothesis that the above described job function, at the Employer's option, can be taken off-dock at any time and performed by NBUP. The above position of the Employer is implied numerous times within the record by various individuals.

An example of the true intent when the parties are in agreement that the Employer has an "option" and how such intent is properly put into the written agreement is made evident within Section 1.211 (Transcript pages 180-196).

> *1.211 Carriage of cargo between docks by barge or rail or by trucks on public roads **may** be assigned to longshoremen.*

The above section reveals the methodology that has been utilized in the past when the objective of the parties is to have a true definition of "option" as it pertains to the employment of longshoremen to a specific job function.

This Arbitrator cannot ignore the written words of the Master Agreement. What I must do is apply those words to each situation. In the instant case, my finding is that the Union has prevailed through evidence and testimony that is supported by the Master Agreement.

The Employer is again reminded of their obligation to preserve such job functions on the dock and employ the Union to perform the aforementioned job functions. The preservation of such work cannot be avoided by moving it off-dock without violating the Master Agreement.

DECISION:

The tire work at Trapac Terminal described in this case shall be performed by the Union no later than August 27, 2009.

David Miller
Area Arbitrator
Southern California

Dated: August 17, 2009

ATTACHMENT "A"

(JX #14)

INTERNATIONAL LONGSHORE & WAREHOUSE UNION
AFL-CIO

1188 FRANKLIN STREET
SAN FRANCISCO
CALIFORNIA 94109
(415) 775-0533
(415) 775-1302 FAX

JAMES SPINOSA, President
ROBERT McELLRATH, Vice President
WESLEY FURTADO, Vice President
JOE IBARRA, Secretary-Treasurer

July 16, 2002

Joseph Miniace
President and CEO
Pacific Maritime Association
550 California Street
San Francisco, CA 94104-1006

LETTER OF UNDERSTANDING
Negotiations – Protection on Use of Proposals re Technology and Jurisdiction

Dear Joe:

This will confirm that the Parties have agreed that any and all contract proposals concerning the issues of technology and jurisdiction that may be rejected or modified in the course of 2002 contract negotiations shall not be used or referred to in any arbitration or legal proceeding for any purpose, including but not limited to any assertion that rejected or modified contract proposals reflect the Parties' understanding or intent as to particular contract language that may ultimately be agreed to by the Parties concerning such matters. The purpose of this agreement is to allow the Parties to present and explore the full range of ideas and possibilities concerning this very complex area without limitation and without concern that such proposals and discussions may be used against them in future arbitrations or legal proceedings.

Yours truly,

James Spinosa,
International President

Understanding confirmed:

Joseph Miniace,
President and CEO
Pacific Maritime Association
Dated: July 16, 2002

RAM/cwa39521