UNION COMPLAINT

LRC: [X] GRIEVANCE: [ ]

3930

DATE OF COMPLAINT: 12 - 01 - 2015

DATE OF INCIDENT: 11 - 24 - 2015

If multiple dates, please list below.

FOR OFFICE USE ONLY

COMPLAINT NO. 0074 - 2015

RECEIVED 12 - 01 - 2015

LRC DATE

TIME OF INCIDENT	BERTH(S)	GANG #	NAME OF VESSEL	JOB CATEGORY

EMPLOYER	SUPERINTENDENT	FOREMAN	BUSINESS AGENT

Against Employer: Employer:

Against Member: Registration No.

LUKE HOLLINGSWORTH & LOCAL 13 LRC

First Name

Last Name

Section(s) of the Agreement violated, including, but not limited to: 13.3

Nature of Incident: (Describe events in detail using additional pages if necessary) [X] See Attached

SEE ATTACHED

By:

First Name ERIC

Last Name ALDAPE

RECEIVED
ILWU LOCAL 13
Port of Anchorage
STAMPED

Signature

375179
Registration No.

Signature

Registration NO.

Union complaints (LRC) must be filed within 30 days of the incident. GRIEVANCES MUST BE FILED WITHIN 45 DAYS after the discovery or no more than 90 days after the alleged violation occurred (whichever period is shorter). CONSTITUTION-ARTICLE III-SECTION 8-RULE D

TM/CUG-AR rev3.0 081211

Sleeping on Contract Rights does not abrogate those rights.

According to numerous Arbitrations including C-12-27b-72, and C-07-96, "sleeping on one's rights which are clearly and concisely defined in the Master Agreement does not mean that those rights cannot be invoked at any time during the term of the agreement."

The question of whether or not Local Supplements are required to have an equalization formula related to the the earnings of hall men versus steady men was resolved by the Coast Arbitrator in his Award dated July 5th, (Bloody Thursday) 1972, in Decision A. Equalization of Hours: "The Employer shall be limited to working his steady men a maximum of any 22 days per calendar month."

And, according to the Supplemental Decision to the Award of July 5, 1972, dated July 11, 1972, **the decision applies to "local agreements in Northern California and Southern California to such categories as gearmen, coopers, sweepers, etc. contained in those local PMA-ILWU longshore agreements."**

The issue of 22 shifts was again addressed in the Coast Arbitration Decision dated March 27, 1973, and the Supplementary Opinion and Decision dated March 13, 1974, as follows:

> "The issue in this case, therefore, is whether the Arbitrator's decision of July 5, 1972, has accomplished reasonable equalization between steady men and hall men. It is incumbent, therefore, upon the moving party (in this case) the "Union") to establish that reasonable equalization has not resulted before suggesting that the Arbitrator's original decision of July 5, 1972, be modified or that the Arbitrator adopt a new equalization formula as proposed by them."

According to Arbitrator Miller's Decision SCAA-0001-2014, the rationale of Kagel in 1972 is still applicable. He ruled: "The Employer shall be limited to working steady men to **22 days per calendar month** in the following categories: CY Heavy Lift, UTR, and Rail Pusher."

Luke Hollingsworth, Local 13 LRC Representative, was asked why the **22 shift per calendar month** did not apply to the Bulk Supplement, Sweeper Supplement, Gear Supplement, and the Lines Supplement, and he was asked to look at the 1972 Kagel Decision.

On November 24, 2015, Luke's response that he did not read the Decision, that he was going with "because it only applies to skill jobs"; constitutes discriminatory application of a rule based on activity for or against the union, or absence thereof, in violation of Section 13.3 of the PCLCD.

Hall men working under the Bulk Supplement, Sweeper Supplement, Gear Supplement, and the Lines Supplement, are entitled to the 22 shift equalization formula, based on **a regular calendar month**, as ordered by the Coast Arbitrator Sam Kagel and by Area Arbitrator Miller.

The Steady Crane Operator Calendar has nothing to do with equalization, it is discriminatory, a subterfuge, and a gimmick that eliminates the 29th, 30th, and 31st day of each month, by creating 13 four week months, allowing steady men to work 29 more days per year.

According to the Coast Arbitrator; **"It is incumbent, upon the moving party (in this case the "Union") to establish that reasonable equalization will be maintained before suggesting that his original decision of July 5, 1972, be modified or that the Arbitrator adopt a new equalization formula as proposed by them."** Failing to do so constitutes discriminatory application of a rule, and discrimination based on activity for or against the Union, or absence thereof.

This discrimination complaint is about the principle of equalization of work opportunity between hall men and steady men, the quid quo pro for allowing steady men to be employed.