

UNION COMPLAINT

LRC:

GRIEVANCE:

3930

DATE OF COMPLAINT: 06 - 11 - 2018

DATE OF INCIDENT: [] - [] - []

If multiple dates, please list below.

FOR OFFICE USE ONLY

COMPLAINT NO. 0064 - 2018

RECEIVED 06 - 11 - 2018

LRC DATE [] - [] - []

TIME OF INCIDENT [] BERTH(S) [] GANG # [] NAME OF VESSEL PMA and its member companies JOB CATEGORY []

EMPLOYER SUPERINTENDENT FOREMAN BUSINESS AGENT

Against Employer: Employer: PMA and its member companies

Against Member: Registration # []

First Name []

Last Name []

Section(s) of the Agreement violated, including, but not limited to: PCLCD Sections 2,4,14, Addenda "Crane OP guarantee", pgs 219, 220.

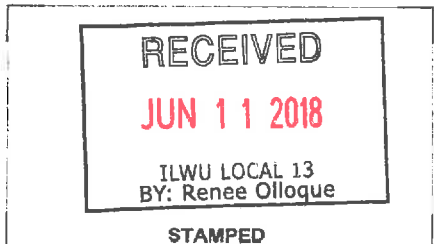
Nature of Incident: (Describe events in detail using additional pages if necessary) See Attached

(Incident is ongoing).

By:

First Name CRANE OPERATORS COMMITTEE

Last Name []



Signature Frank Cracchiolo

Registration # 38082

Signature Ramon Ponce de Leon

Registration # 34782

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

Union Complaint regarding Adjusted Guarantee

Issue:

Since 1997, the maximum daily guarantee for Steady Crane Operators, by virtue of pay raises and consistent with contract bargaining, has been systematically adjusted to the **prevailing hours and wage of Skill III, first shift rate - plus \$55.41**. This practice has been accepted by the PMA, its employers, the Union and its members. This is not a "make whole" payment but a guarantee as defined by the industry.

Therefore, the maximum daily steady crane operators' guarantee shall be continually adjusted to the prevailing hours and wage of Skill III, first shift rate plus \$55.41

Summary

In 1996 the Parties negotiated a Steady Crane Operators' Guarantee. The Maximum Daily guarantee was \$333. This was based off the prevailing, negotiated, Basic Overtime Wage. Specifically adjusted to nine hours times \$37 which equates to \$333. In sequence, the Weekly and Monthly guarantee was calculated to parallel the intent of this standard.

All Crane rated equipment

In 1996, all those who worked in the crane category, as outlined in the PCLCD section 14.21, received nine hours, more specifically, eight hours straight time prevailing rate and 1 hour overtime prevailing rate, for shifts worked. *(Note: from 2002 –present, there is additional one hour overtime paid at the prevailing rate of pay; eight hours straight time and 2 hours overtime Skill III, prevailing rate.)*

Therefore, in 1996, the prevailing daily, first shift wage for those who worked in this category was equated to \$277.59 (8 ST / 1 OT).

Steady Day Crane Operators received guarantee pay as described below.

The 1996 PCLCD, Addenda LA/LB Steady Crane Operators, Section D, Item 1 (d), on page 220 states:

(d) **Payment for Shifts Worked.** The rate of pay for shifts worked shall be at the proper contract rate for time worked or \$333, whichever is greater. Pay for work shall be counted towards the monthly guarantee.

Since the wage, stated above, was \$277.59 an additional guarantee was paid to steady crane operators, each shift worked, at \$55.41 to equal the intent of the language outlined in subsection (d), \$333. (i.e. \$277.59 plus \$55.41 equals \$333). This payment was for first shift on non-overtime shifts because the payment for an overtime shift was \$394.47.

Adjustment Practice

Moreover, in 1997, the maximum guarantee was adjusted by virtue of an hourly pay raise that increased the Day steady crane operator by \$9.50 daily, and that the third shift guarantee is always adjusted to equal **prevailing hours and wage of Skill III, first shift rate plus \$55.41**, establishing a benchmark formula for the Steady Crane Operators Daily Guarantee. This formula is a practice that can be proven. (See chart)

This adjustment is longstanding, concerns a major condition of employment, established to allow cost of living raises, does not violate law or government regulation, happens frequent and repetitious, is detailed to the penny, is a universal acceptance in the industry, and the majority of the steady crane operators know about and rely on it.

The established practice to adjust the daily max guarantee payment for steady crane operators has been neglected by the employers, in that the \$333 payment should have also reflected the adjustment.

Remedy

That the employers' payroll department make the necessary adjustments to the daily steady crane operators' guarantee to meet today's prevailing hours and wages by using the practiced formula of **prevailing hours and wage of Skill III, first shift rate plus \$55.41**, and that;

The employers owe retroactive pay to all those affected, including those who no longer work in the industry but have had offense and neglect to their pay in such regard. More specific that for every payment of the daily steady crane operators' guarantee of \$333 be adjusted in that years' formula. (See; Adjusted Steady Crane Operators' Guarantee - spreadsheet), and that;

All retroactive monies owed to the Pension and Welfare plans are calculated by the plans' trustees, to be paid in full, and that;

The appropriate legal and regulatory penalties, including interest, are awarded as settlement.

From 1996 to 2002	Payroll Year	Sk III		Daily wage	Guarantee	Total Adjusted Guarantee	Difference from \$333
		Hourly	OT				
First Shift was prevailing 8ST / 1OT	(1st Shift) 1996	\$29.22	\$43.83	\$277.59	\$55.41	\$333.00	\$0.00
	(3rd Shift) 1996	\$46.75	\$52.60	\$286.35	\$46.65	\$333.00	\$0.00
	(1st Shift) 1997	\$30.22	\$45.33	\$287.09	\$55.41	\$342.50	\$9.50
	(3rd Shift) 1997	\$48.35	\$54.40	\$296.15	\$46.35	\$342.50	\$9.50
3rd Shift was prevailing 5 / 1	(1st Shift) 1999	\$31.22	\$46.83	\$296.59	\$55.41	\$352.00	\$19.00
	(3rd Shift) 1999	\$49.95	\$56.20	\$305.95	\$46.05	\$352.00	\$19.00
	(1st Shift) 2000	\$31.72	\$47.58	\$301.34	\$55.41	\$356.75	\$23.75
	(3rd Shift) 2000	\$50.75	\$57.10	\$310.85	\$45.90	\$356.75	\$23.75
	(1st Shift) 2001	\$32.22	\$48.33	\$306.09	\$55.41	\$361.50	\$28.50
	(3rd Shift) 2001	\$51.55	\$58.00	\$315.75	\$45.75	\$361.50	\$28.50

From 2002 to present	Payroll Year	Sk III		Daily wage	Guarantee	Total Adjusted Guarantee	Difference from \$333
		Hourly	OT				
First Shift is prevailing 8ST / 2OT	(1st Shift) 2002	\$33.48	\$50.22	\$368.28	\$55.41	\$423.69	\$90.69
	(3rd Shift) 2002	\$53.57	\$60.26	\$388.37	\$35.32	\$423.69	\$90.69
	(1st Shift) 2003	\$33.98	\$50.97	\$373.78	\$55.41	\$429.19	\$96.19
	(3rd Shift) 2003	\$54.37	\$61.16	\$394.17	\$35.02	\$429.19	\$96.19
3rd Shift is prevailing 5 / 2	(1st Shift) 2004	\$34.48	\$51.72	\$379.28	\$55.41	\$434.69	\$101.69
	(3rd Shift) 2004	\$55.17	\$62.06	\$399.97	\$34.72	\$434.69	\$101.69
	(1st Shift) 2005	\$35.48	\$53.22	\$390.28	\$55.41	\$445.69	\$112.69
	(3rd Shift) 2005	\$56.77	\$63.86	\$411.57	\$34.12	\$445.69	\$112.69
	(1st Shift) 2006	\$35.98	\$53.97	\$395.78	\$55.41	\$451.19	\$118.19
	(3rd Shift) 2006	\$57.57	\$64.76	\$417.37	\$33.82	\$451.19	\$118.19
	(1st Shift) 2007	\$36.48	\$54.72	\$401.28	\$55.41	\$456.69	\$123.69
	(3rd Shift) 2007	\$58.37	\$65.66	\$423.17	\$33.82	\$456.99	\$123.99
	(1st Shift) 2008	\$36.98	\$55.47	\$406.78	\$55.41	\$462.19	\$129.19
	(3rd Shift) 2008	\$59.17	\$66.56	\$428.97	\$33.52	\$462.49	\$129.49
	(1st Shift) 2009	\$37.48	\$56.22	\$412.28	\$55.41	\$467.69	\$134.69
	(3rd Shift) 2009	\$59.97	\$67.46	\$434.77	\$32.92	\$467.69	\$134.69
	(1st Shift) 2010	\$38.48	\$57.72	\$423.28	\$55.41	\$478.69	\$145.69
	(3rd Shift) 2010	\$61.57	\$69.26	\$446.37	\$32.32	\$478.69	\$145.69
	(1st Shift) 2011	\$39.48	\$59.22	\$434.28	\$55.41	\$489.69	\$156.69
	(3rd Shift) 2011	\$63.17	\$71.06	\$457.97	\$31.32	\$489.29	\$156.29
	(1st Shift) 2012	\$40.48	\$60.72	\$445.28	\$55.41	\$500.69	\$167.69
	(3rd Shift) 2012	\$64.77	\$72.86	\$469.57	\$31.12	\$500.69	\$167.69
	(1st Shift) 2013	\$41.48	\$62.22	\$456.28	\$55.41	\$511.69	\$178.69
	(3rd Shift) 2013	\$66.37	\$74.66	\$481.17	\$30.52	\$511.69	\$178.69
	(1st Shift) 2014	\$42.48	\$63.72	\$467.28	\$55.41	\$522.69	\$189.69
	(3rd Shift) 2014	\$67.97	\$76.46	\$492.77	\$29.92	\$522.69	\$189.69
	(1st Shift) 2015	\$43.98	\$65.97	\$483.78	\$55.41	\$539.19	\$206.19
	(3rd Shift) 2015	\$70.37	\$79.16	\$510.17	\$29.02	\$539.19	\$206.19
	(1st Shift) 2016	\$45.23	\$67.85	\$497.54	\$55.40	\$552.94	\$219.94
	(3rd Shift) 2016	\$72.37	\$81.41	\$524.67	\$28.27	\$552.94	\$219.94
	(1st Shift) 2017	\$46.73	\$70.10	\$514.04	\$55.40	\$569.44	\$236.44
	(3rd Shift) 2017	\$74.77	\$84.11	\$542.07	\$27.37	\$569.44	\$236.44