



FOREMEN'S UNION

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To: ILWU Local 94 members

From: Local 94 Officers

Danny Miranda, President

Edward Alexander, Vice-President

George Kuvakas, Secretary-Treasurer

Date: May 25, 2010

Re: Further Update Regarding Ongoing Struggles With PMA Over Steady Foremen

This is a follow-up to the memorandum we sent to you on March 12th, to alert you to further developments in our ongoing struggle with PMA to protect the integrity of our dispatch hall, and the right of Local 94 members to decide for themselves whether or not to go steady, and whether or not to stay steady.

Due to the importance of these issues, we ask that you read the remainder of this memorandum thoroughly and carefully.

As you know, in May, 2009, PMA violated its Steady Foremen Guarantee Agreement with Local 94, which provided that steady foremen would be paid 50, 60, 72 or 84 hours per week, depending on the number of days a foreman worked in a week. In response to PMA's breach of contract, a number of foremen voluntarily resigned their steady positions and checked in to the joint dispatch hall for dispatch. PMA filed a complaint with Area Arbitrator David Miller, who issued the following decision, SCAA-20-2009, on June 2, 2009:

"Issue No. 1: The Union and its officers are found guilty of concerted action as it pertains to the steady resignation of May 2, 2009.

Issue No. 2: The officers and members of Local 94 shall fill steady positions as per past practice immediately."

On June 3, 2009, Area Arbitrator Miller issued a follow-up decision, SCAA-0021-2009:

"ILWU Local 94 and its officers are found guilty of not implementing award SCAA-0020-2009 in violation of Sections 17.44, 3.2, 15 and 18 of the PCWB&FA."

The officers of Local 94 strongly disagree with those awards and have been engaged in a protracted struggle to defend our Local against what we believe is a frontal assault by PMA on our dispatch hall, and the rights of foremen to decide for themselves whether or not to go steady.

Four developments have occurred since we sent the last update on this struggle on March 12th, as follows:

1. Coast Arbitrator rules SCAA- 20-09 implemented, but rejects Local 94 appeal as untimely. The memorandum we sent on March 12th urged Local 94 members to apply for steady positions posted by employers from whom foremen had resigned in May, 2009. We sent that memorandum because in earlier attempts to appeal these Awards to the Coast Arbitrator, he made it clear that he would not review the merits of the Awards until Local 94 members had applied for all open steady positions from which foremen had resigned.

Despite our reluctance to interfere with foremen's right to decide for themselves whether to apply for those steady positions, we sent the March 12th memorandum urging members to apply for the positions so the Coast Arbitrator would review Area Arbitrator Awards 20 and 21-09.

In our March 12th memorandum we informed members that the Area Arbitrator had stated that the foremen who applied for the steady positions should be the foremen who had resigned. So that is who we asked to apply – to comply with the Coast Arbitrator's direction, and to get on to our appeal of the merits.

On March 30, we had a hearing before the Area Arbitrator and showed him that Local 94 members had, in fact, applied for the open steady positions as he had directed, and then we put on our case explaining why the Area Arbitrator Awards 20 and 21-09 were wrong.

The Coast Arbitrator issued his decision on April 8th. He ruled that the Union had, in fact, complied with the Area Arbitration Awards, and we could therefore appeal the merits. But he didn't reach the merits after all, because he ruled that we had appealed too late. This is very disappointing because the Union had been trying in good faith to implement the Area Arbitrator's Awards for months, but without directly asking foremen to apply for steady positions – because we believe that doing so violates the members' rights to decide for themselves whether to apply for steady positions.

2. District Court confirms Awards 20 & 21-2009. In February, PMA filed a lawsuit asking the federal court to judicially confirm Awards 20 and 21-09. A hearing was held on this lawsuit on May 24th, and at that hearing the Court said it would confirm the Awards, although we haven't seen the Judge's decision yet. The officers, in consultation with the International President are considering our options in response to this expected ruling.

3. PMA's further Complaint to the Area Arbitrator about implementation of SCAA-20-2009. Despite the Coast Arbitrator's ruling that we had implemented SCAA-20-2009, PMA has returned to the Area Arbitrator complaining that Local 94 officers and member are no longer implementing this Award.

The basis for their complaint is that some foremen who had filled steady positions have since resigned from those positions, and some foremen who had applied for steady positions have withdrawn their applications.

That means PMA is now claiming that Award 20-09 not only required foremen to apply for the positions from which foremen had resigned in May, 2009, but those foremen had to stay in those positions as well. In other words, PMA claims foremen can't resign from steady positions once they have started.

This is an even stronger attack on our dispatch system and an even stronger attack on the foremen's right to decide for himself or herself whether to apply for a steady position, and whether to stay in a steady position.

A hearing on PMA's complaint was held on May 20th, and we were shocked to learn that the Area Arbitrator appears to agree with PMA on this. After this hearing the Area Arbitrator ordered that the hearing resume on June 1st, at which time he ordered the parties to return with evidence of

1. All steady orders placed properly by the Employer that are active as of June 1, 2010;
2. All Local 94 Foremen who apply for such posted positions beginning on May 21, 2010 and ending on June 1, 2010;
3. The parties shall keep a joint record of each foreman who applied in person and who in management spoke to such foremen. A record of each interview shall be maintained as to date, time, and location;
4. There shall be no gimmickry by the Union in arranging members to apply by seniority or any Other fixed sequence decided in advance by the Union.
5. The applicants shall be diverse as per the Local past practice.

We will appear on June 1st and continue the hearing on this complaint by PMA.

4. Area Arbitrator Award SCAA-18-2010 (PAG). As you will recall, Area Awards 20 & 21-09 did not apply to Ports of America (PAG), because foremen had not resigned from PAG in May, 2009. PAG had laid off all of its foremen.

When PAG subsequently advertized for steady foremen, Local 94 officers did not interfere in any way with the right of foremen to decide for themselves whether to apply for those positions or not. Local 94 complied with past practice and posted the positions, and then got out of the way. Whether foremen applied for steady positions or not, or accepted steady positions or not was between the individual foreman and PAG.

No foremen applied for the PAG steady positions. This may have been because PMA had in early 2009 revoked the Foreman's Steady Pay Guarantee that PMA had and Local 94 had previously agreed to. Or it may have been because foremen preferred the benefits of working from the dispatch hall. Whatever the reason, no foremen applied for those open PAG positions.

PMA filed a complaint with the Area Arbitrator, claiming that Local 94 had violated our coastwide contract and the Local Port Supplement by "failing to provide or allow applicants for steady positions at PAG." A hearing was held on April 15th and on May 11th, the Area Arbitrator issued his Award SCAA-18-2010, in which he ruled that:

- 1) the Union and its officers are found guilty of concerted and deliberate action as it pertains to preventing applicants from steady positions at PAG, and
- 2) The Union shall immediately cease such action and re-establish the Local past practice as it pertains to this issue.

The officers believe this Award is wrong and will appeal it to the Coast Arbitrator. We believe the Area Arbitrator has gone far beyond what our contracts with PMA allow. Award No. 18-10 assumes that Local 94 has an affirmative duty to provide PMA employers with however many steady foremen the employers want. This Award also assumes that Local 94 can order foremen to apply for and accept a steady position.

Both of those assumptions conflict with the Coast Arbitrator's explicit Order that Local 94 cannot interfere with the decision of any foreman to go steady or not to go steady. If allowed to stand, Award No. 18-10 will go a long way towards destroying our dispatch hall.

But our contract says that we can't appeal this Award No. 18-10 without first implementing it. Unlike Area Award SCAA-20-2009, this Award does not order officers and members of Local 94 to fill steady positions. It orders us to "reestablish the Local past practice."

In response to and in full compliance with both Award No 18-2010, and with the Area Arbitrator's orders concerning the June 1st hearing regarding implementation of Award No. 20-2009, discussed above, the officers of Local 94 hereby give the following notice:

THE OFFICERS OF LOCAL 94 HEREBY REAFFIRM THAT THEY WILL NOT INTERFERE IN ANY WAY WITH THE DECISION OF ANY INDIVIDUAL FOREMAN TO GO STEADY OR NOT TO GO STEADY.

LOCAL 94 WILL CONTINUE TO POST OPEN STEADY POSITIONS AND URGE FOREMEN TO DECIDE FOR THEMSELVES WHETHER TO APPLY OR NOT TO APPLY FOR THOSE POSITIONS, AS IS OUR PAST PRACTICE.

If you have any questions or comments on any of the above, please do not hesitate to contact the officers noted below.

In Solidarity,

Local 94 Officers

Danny Miranda, Edward Alexander & George Kuvakas