PACIFIC MARITIME ASSOCIATION

Arbitrator's Decision 06/19/1950 Vacation Time Contribution to Pension Fund

ARBITRATION UNDER ILWU-PMA WELFARE FUND AGREEMENT

In the Matter of Controversy

between

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION

And

PACIFIC MARITIME ASSOCIATION

Vacation Time Contribution to Welfare Fund

Decision

June 19, 1950

ISSUE:

The issue between the parties involves the question of contribution to the welfare fund from the employees and employers for vacation payments. Specifically, the employers now deduct a 1% contribution from the employee s vacation pay in California since this is required by law. They are also making a similar deduction in the State of Washington. They ordered a similar deduction in the Sate of Oregon but, because of inadvertence, such a deduction has not been made. Neither in Washington nor Oregon is it required by law that such a deduction be made.

In none of the three States named above have the employers made their contribution of 3 cents per hour, as provided for in the agreement. The employers contend that contributions are to be made only for hours of work and that vacation hours are not hours worked. The union contends that contributions are to be made for all paid hours, and that this would include vacation time.

THE AGREEMENT:

Section 2 of the Supplementary Agreement between ILWU and PMA (Union Exhibit 4) sets up the contributions to be paid tot he Welfare Trust Fund. Section 2 (a) reads as follows:

"By the employers, 3 cents per man hour of wages paid to an employee for an hour of work performed, whether during straight time, overtime, or penalty time, but including time paid for standby, minimum pay or travel time."

Section 2 (b) reads:

"By each employee, 1% of all wages (including standby, minimum pay or travel time) paid him for work performed."

Neither of these sections make any specific reference to moneys paid for earned vacations. The employers contend that the words of Section 2 (a) "& an hour of work performed.." does not include vacations, since they say vacations do not represent a period when work is being performed. The union contends, however, that those words mean "hours paid for" and that the sections include all the time for which the employers make any payment. It then contends that his includes the vacation periods.

DISCUSSION:

As already noted, the sections involved do not include specifically any reference to vacations. Thus there exists an important ambiguity in the agreement between the parties. The parties failed apparently in their negotiations to discuss and decide specifically what contributions if any should apply to vacation time.

The practical situation facing the parties is that in California by law a 1% contribution must be made on vacation pay by the employees to the disability fund. The employers extended this principle to apply to the States of Washington and Oregon, where no law requires such a deduction. As already indicated, the deduction has been made in Washington but by inadvertence was not made in Oregon.

Considering the omission from the agreement of a provision as to vacation time, it is essential to ascertain the intent of the parities from the entire agreement. The agreement indicates that the parties had in mind setting up a welfare fund on a joint basis. That is, the contributions, though varying in amounts, were to be jointly made. The fund is jointly administered. The cost of administration is to be borne jointly. The preliminary negotiations leading up to the details set forth in the Supplementary Agreement constitute additional evidence (Union Exhibit 3) that the intent of the parties was to have a joint set-up.

A reading of Section 2 (a) and Section 2(b) of supplementary Agreement (Union Exhibit 4) establishes the fact that the contributions were to be made on an identical basis by both employers and employees, even though the amounts differed. It is not unreasonable to suggest that if vacation time had been discussed by the parties, since in California a deduction was required by law for vacation time, the principle of

joint contribution would have been maintained uniformly on the coast for both employee and employer. To do otherwise would have resulted in one party to the agreement making a contribution as to vacation time, while permitting the other party to escape his contribution. The is would have been contrary to the basic pattern of the agreement, namely, that of joint contribution to the welfare fund.

Since the agreement is silent as to vacation time, absent the requirement by law of California, it could be argued and with some justice determined that neither the employee nor the employer would have to make any contribution for vacation time. However, since the California law does require a deduction for vacation time, it seems that the only fair alternative is to require equal contributions from both employers and employees, on a uniform basis, in California, Oregon and Washington.

The technical question of whether vacation time is or is not "hours worked" or is or is not "paid hours" need not be finally determined in order to settle the issue before us. The fact remains, however, that aside from the welfare fund payments, employers must make social security payments on vacation time. This is also true as to unemployment insurance payments by the employers, and disability deductions from the employees in such States as have disability insurance laws. As a general proposition, vacation time may be considered earned while working only, and the actual amount of vacation that an employee gets is directly related to the number of days or hours that he actually worked. Thus it cold reasonably be said that vacation time does represent both "hours worked" and "paid hours".

The important problem here is that of administration of the fund. The arbitrator, under Section 5(e) of the trust fund (Union Exhibit 2) may make decisions when a disagreement arises "& over the administration of the fund& " The basis on which contributions shall be paid involved administration of the fund. As already noted, it is the arbitrator s opinion that the intent of the parties, as indicated by the agreements relating to the welfare fund, is inherently based upon one of joint administration and joint contribution. This being so, where one of the parities is required by law to make a contribution (regardless of whether the basis for that contribution is that of "hours worked" or "hours paid" the other party should also be required to make a contribution in the amounts provided for in the agreement between the parties. This seems to be a fair and practical approach to this problem, and would seem best to carry out the intent of the parties.

DECISION:

The arbitrator rules that in California, Oregon and Washington, the employers shall contribute 3 cents per hour and the employees 1 cent to the welfare fund for paid vacation time.

/s/ Sam Kagel