

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION

AFFILIATED WITH THE CONGRESS OF INDUSTRIAL ORGANIZATIONS

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December 16, 1948

MEMORANDUM

TO: ALL PACIFIC COAST LONGSHORE AND SHIPClerks LOCALS

FROM: RESEARCH DEPARTMENT

RE: QUESTIONS AND ANSWERS ON THE 1000 HOUR CLAUSE IN THE NEW AGREEMENTS

The 1000 hour clause is a new provision and many questions have already arisen concerning it. The present memorandum is an attempt to answer these questions and to anticipate others. A copy of the clause as it appears in the new longshore agreement, is attached. The language in the Clerks' agreement is almost precisely the same.

What is the purpose of the 1000 hour provision?

longshoremen and clerks of a time and one half overtime differential for night and week-end work.

The purpose of the 1000 hour provision is to conform to the Wage and Hour Law while at the same time avoiding a major shake-up in the traditional payment to

The 1000 hour provision was an Employer demand. Why did we accept it?

The clause benefits the Employers because they do not have to pay statutory overtime after 40 hours' work in any work week as would be required by the Wage and Hour Law as recently interpreted by the United States Supreme Court.

One of the important reasons for accepting the clause was that the Employers have the right to lay a man or a gang off after 40 hours' work and they told us in negotiations that they would have to do that since they would not pay the statutory overtime after 40 hours. This would have meant that at least in some ports new men would have been added to the registration list.

Under the 1000 hour deal, men may be worked up to 12 hours in any one day or up to 56 hours in any one week without being knocked off the job. This is because under the 1000 hour provision of the Wage and Hour Law, the Employer does not pay statutory overtime until after 12 hours in a day or 56 hours in a week.

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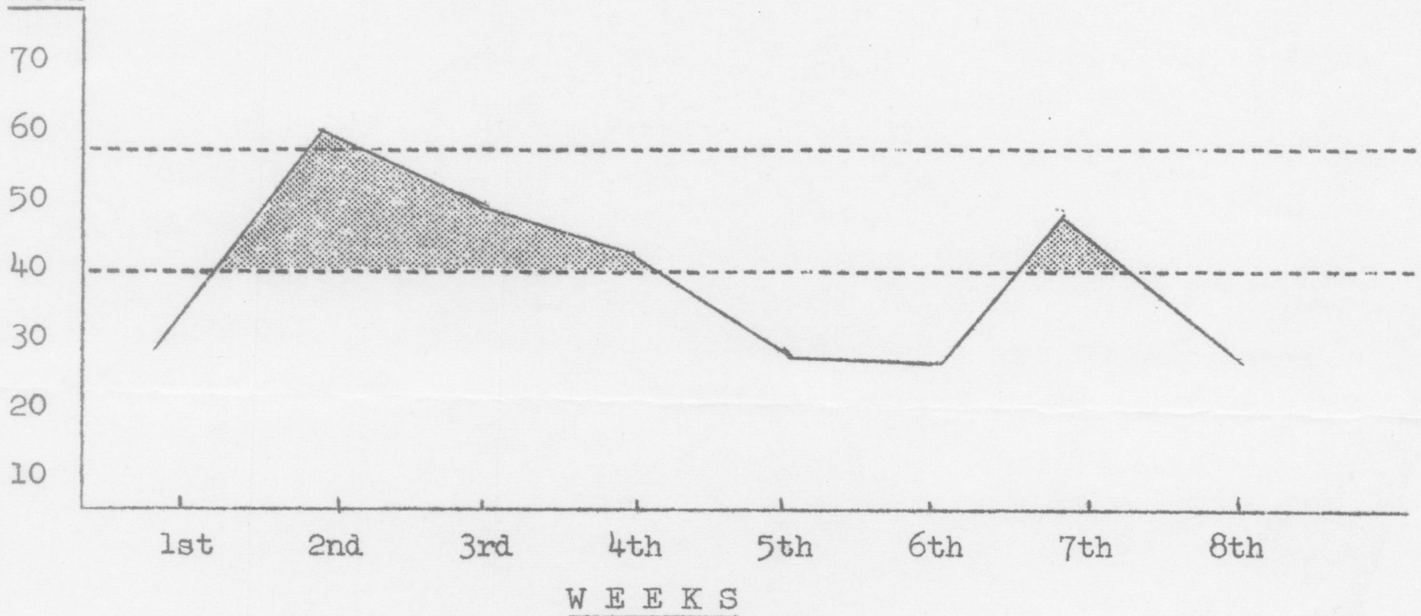
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In the longshore industry, which fluctuates considerably from week to week, the 1000 hour provision will permit the men to work more than 40 hours in some weeks and these weeks will help to make up for the short weeks of less than 40 hours. Work opportunity would have been seriously curtailed in some ports if the employers had knocked off the men after 40 hours.

To protect work opportunity the Union insisted on this paragraph: "In applying this provision, it is agreed that the over-all work opportunity to longshoremen of a port shall not be reduced and present methods of equalization of work opportunity and earnings interfered with."

The chart below will show what we mean. Without the 1000 hour provision, the Employer would have to pay statutory overtime for the 2nd, 3rd, 4th and 7th weeks. But the Employers said they wouldn't pay the statutory overtime, so the men would be laid off after 40 hours in each of these weeks. All the work indicated by the shaded portion of the chart would be lost.

Hours
of
Work
per
Week



Under the 1000 hour provision, statutory overtime is payable only in the 2nd week and only for hours over 56. Thus the 2nd, 3rd, 4th and 7th weeks, when there is more than 40 hours' work, can counterbalance the 1st, 5th, 6th and 8th weeks when there is less than 40 hours' work.

How many men are affected by the 1000 Hour Provision?

Not very many men will be affected because the 1000 hour limitation applies only in the case of men who put in 1000 hours for a single employer.

As longshore work goes, there will be few men affected outside of such small ports as Coos Bay and Stockton where there is only one employer. Among the Clerks, a larger proportion will be affected because of the considerable number of preferred clerks who work steadily for one employer. Some monthly clerks will not be affected because they are supervisors and hence exempt from the Wage and Hour Law. The same is true of walking bosses when paid on a monthly basis.

What is the certification which is required under the Wage and Hour Act?

The law provides that a Union and an employer may agree to a 1000 hour provision in the agreement only if the union is the bona fide representative of the workers. This fact must

be certified to by the National Labor Relations Board. ILWU has obtained such certification. A copy is attached. This covers Clerks as well as Longshoremen.

This certification is entirely separate and apart from the certification for collective bargaining purposes provided for by the Taft-Hartley Law. In order to secure certification for purposes of the 1000 hour provision, a union does not have to comply with Taft-Hartley.

How are the 26 weeks figured?

The clause provides that a man shall not work more than 1000 hours in 26 weeks, or an average of about $38\frac{1}{2}$ hours per week. The 26 weeks provision applies to any period of 26 consecutive

weeks during the life of the agreement. The provision became effective at 8 a.m. Monday, December 6, 1948. The first period of 26 weeks will be from that time to 8 a.m. Monday, June 13, 1949. The second period of 26 weeks, however, does not begin on June 13, 1949. It begins on December 13, 1948 and runs to June 20, 1949; the third period runs from December 20, 1948 to June 27, 1949; and so on.

What happens if a man works more than 1000 hours in any such 26 week period?

In this case, the Employer is required by the law to go back over the whole 26 weeks and recompute statutory overtime so that the man receives statutory overtime after 40 hours in every week in which he worked more than 40 hours.

May an Employer lay a man off
after he has worked 1000 hours
but before the end of the
26 weeks?

He not only may do so but the agreement provides that when he has worked 1000 hours for a single employer, "He shall be dismissed." In Coos Bay where the men have been working regularly more than 40 hours per week, it is necessary either to add more men to the registration list or for another contractor to come into the picture.

May an Employer lay a man off
after 12 hours in any day or
56 hours in any week?

Yes, he may do so; our agreement specifically provides that he may. He is not required to do so, however. If a whole gang is laid off in order to prevent its working more than 12 hours in a day or 56 hours in a week,

this will work a hardship on any members of the gang who have worked less than the rest of the gang. Joint Labor Relations Committee should consider this problem and make appropriate rules to overcome this hardship.

Will the new provision have
any effect on dispatching
procedures?

Yes, the clause provides that the employer shall keep track of the hours worked for him by individual men and shall notify the dispatcher when a man has worked 950 hours in any 26 weeks' period. Such a man shall not be further dispatched during the 26 weeks to this employer if the additional work will bring his total hours up above 1000.

Similarly the employers will certainly keep their own record of hours worked within any one week by individual workers in order to avoid, if possible, the payment of statutory overtime after 56 hours. It is probable that when a man or a gang gets close to the 56 hour limit in the particular week, the employer will notify the dispatcher so that substitute men or gangs may be dispatched.

How is statutory overtime computed?

Because of uncertainties arising out of the recent Supreme Court decision, this has not been finally determined. However, the examples which follow are probably correct. What we call "overtime" in the longshore industry is not overtime for purposes of the Wage and Hour Act. Contract overtime is, for purposes of the Wage and Hour Act, a straight time rate paid for working during undesirable

hours including nights, week-ends and holidays. Statutory overtime is figured as $1\frac{1}{2}$ times the "regular rate" of pay, which is the average rate paid for the hours worked. Here are some examples:

Example No. 1: A man working nights puts in 13 hours exclusive of meal times. Under the 1000 hour clause, his pay for the 13th hour will be at the rate of $1\frac{1}{2}$ times the overtime rate. (Note that under the new contract, if the work in excess of 11 hours is in order to finish the ship for sailing, then the rate of $1\frac{1}{2}$ times the overtime rate must be paid for both the 12th and 13th hour. If, however, the work beyond the normal 9 hour maximum is necessitated by emergency, or because no replacements are available, then the only penalty is that provided by the law for hours in excess of 12).

Example No. 2: A man puts in 60 hours working nights in a payroll week (which will now always be from 8 a.m. Monday, one week, to 8 a.m. the next Monday). Since all the hours are "overtime hours" as provided in the contract, his statutory overtime will be paid at the rate of $1\frac{1}{2}$ times the contract overtime rate for the 4 hours over 56.

Example No. 3: A man is working days. He starts at 8 a.m. and works 4 hours to noon; works 5 hours from 1 p.m. to 6 p.m.; and then is ordered back in the evening and works 4 hours from 7 p.m. to 11 p.m. or a total of 13 hours. Under the contract, he is paid at the straight time rate of \$1.82 for the first six hours and at the contract overtime rate of \$2.73 for the other 7 hours. This makes a total of \$30.03 required under the contract for the 13 hours work.

Under the Wage and Hour Law as interpreted by the Supreme Court, however, he is entitled to additional pay. This is calculated by dividing his contract earnings of \$30.03 by 13, the number of hours he works, in order to get his "regular rate." In this case, his regular rate is \$2.31. For the 13th hour, he should receive, in addition to what is required under the contract, an amount equal to half of the "regular rate" of \$2.31 for an hour, or \$1.15 $\frac{1}{2}$. Thus his total pay for the 13th hour will be the contract overtime rate of \$2.73 plus \$1.15 $\frac{1}{2}$ or \$3.88 $\frac{1}{2}$ and his total earnings for the day will be \$30.03 plus \$1.15 $\frac{1}{2}$, or \$31.18 $\frac{1}{2}$.

Example No. 4: The same procedure is followed in figuring statutory overtime after 56 hours in a week: earnings are calculated on the basis of the contract; the total is then divided by the number of hours worked in order to get the "regular rate"; and then one-half of the regular rate is added to the week's earnings for every hour in excess of 56.

Example No. 5: If a man works more than 1000 hours and the Employer has to compute statutory overtime after 40 hours each week in which the man worked more than 40 hours, the figuring is done in precisely the same way.

12/16/48

1000 Hour Clause

Anything in this agreement to the contrary notwithstanding, it is agreed that no man shall be employed or shall work more than one thousand (1000) hours for any single employer during any period of twenty-six (26) consecutive weeks commencing at 8:00 a.m. on Monday, December 6, 1948. When a man has worked nine hundred fifty (950) hours in any such period of twenty-six (26) consecutive weeks for any one employer, such employer shall notify the dispatcher and such man shall not be further dispatched in such period to such employer for additional work which will exceed said one thousand (1000) hour limitation. When a man has worked the maximum number of hours permitted by this sub-section for any employer, he shall be dismissed and when a man has worked twelve (12) hours in any work day or fifty-six (56) hours in any workweek for any such employer, he may be dismissed. On such dismissal, payment shall be made only for the hours actually worked up to the time of such dismissal and the man so dismissed shall not thereafter be dispatched to such employer during such workday, workweek or twenty-six (26) consecutive weeks period, as the case may be. Time and one-half the regular rate as prescribed by Section 7(b) of the Fair Labor Standards Act of 1938 shall be paid for the time worked for any such employer in excess of twelve (12) hours in any workday or in excess of fifty-six (56) hours in any workweek. Any time worked, whether as a longshoreman or as a carloader, dock worker, or other category of employee, for an employer party to this agreement shall be considered time worked for the purposes of this paragraph. Paid travel time likewise shall be considered time worked for the purpose of this paragraph.

In applying this provision, it is agreed that the over-all work opportunity of longshoremen of a port shall not be reduced and present methods of equalization of work opportunity and earnings interfered with.

The union agrees to forthwith secure the certification required by Section 7(b)(1) of the Fair Labor Standards Act of 1938. The employers shall have the right at their discretion to terminate the provisions of the foregoing paragraphs upon 5 days' notice to the Union. If, by legislation or court decision, the obligations and rights of the parties to this agreement with respect to overtime under the Fair Labor Standards Act should be altered, then the provisions of the foregoing paragraphs shall be subject to re-negotiation.

NATIONAL LABOR RELATIONS BOARD

Washington 25, D. C.

In the Matter of
International Longshoremen's and
Warehousemen's Union

Case No. 20-WH-1

CERTIFICATION OF REPRESENTATIVES AS BONA FIDE
UNDER SECTION 7 (b) OF FAIR LABOR STANDARDS ACT OF 1938

On November 19, 1948, International Longshoremen's and Warehousemen's Union, filed with the Regional Director for the Twentieth Region its Request for Certification of Representatives as Bona Fide Under Section 7 (b) of the Fair Labor Standards Act of 1938. The employer named in the aforesaid request is Waterfront Employers Association of the Pacific Coast, San Francisco, California.

Investigation discloses that petitioner has been recognized as collective bargaining representative of all longshoremen, gang bosses, hatch tenders, winch drivers, donkey drivers, boom men, burton men, sack turners, side runners, front men, jitney drivers, lift jitney drivers, and any other person doing longshore work employed by the Employer since 1947 and have since operated under agreement with the Employer.

The National Labor Relations Board hereby certifies that International Longshoremen's and Warehousemen's Union, is a bona fide representative of employees of Waterfront Employers Association of the Pacific Coast, San Francisco, California, for purposes of Section 7 (b) of the Fair Labor Standards Act of 1938.*

Dated, Washington, D. C., December 1, 1948.

By direction of the Board:

Frank M. Kleiler
Executive Secretary

* A certificate of bona fides for purposes of the Fair Labor Standards Act does necessarily establish the right of the organization so certified to be recognized as the exclusive bargaining representative of employees within a particular bargaining unit under the provisions of the National Labor Relations Act.