

The Container Gainshare Money versus the Container Clause

History:

The BCMEA and ILWU Canadian Area met on October 4, 1985 to negotiate a renewal and revision of the collective agreement that was due to expire on December 31, 1985. A sticking point in the negotiations was the "Container Clause". This clause in the collective agreement (26.05) was in the nature of a manning or work jurisdiction clause designed to preserve work opportunities for longshoremen.

The container clause required that containers destined for the Vancouver area be packed or unpacked on the dock by persons employed under the terms of the collective agreement. The BCMEA's position was to eliminate the container clause. The Union's position was if the Association wanted to eliminate the container clause they must guarantee 40 hours a week to all longshoremen in B.C. The proposal was rejected by the BCMEA.

Dalton Larson was appointed Conciliation Commissioner May 30, 1986. In his report released September 8, 1986 Larson recommended elimination of the container clause. He also recommended that the Association pay a guarantee for the benefit of active members of the Union based on **some determination** (emphasis added) by them of actual work opportunities lost.

The Union did not accept the Larson Report. The BCMEA locked out the ILWU October 6, 1986 - November 18, 1986. The government passed legislation (The Maintenance of Ports Operation Act, C-24) in November 1986 ordering the end to the lock-out. The Conciliation Commissioner's recommendations (The Larson Report) was imposed by Bill C-24 as the collective agreement; **except for the container clause.**

The container clause was referred to the Industrial Inquiry Commission headed by Joseph Weiler. Weiler issued his report on December 15, 1987. The Weiler Report (164 pages and 60 pages of appendices) recommended the Container Gainshare Fund and the Waterfront Industry Productivity Fund.

The Association was to make annual payments into these two Funds. "The

payments shall be calculated on the basis of ten dollars (\$10.00) per TEU for the total number of TEUs handled in that calendar year by workers dispatched under the terms of the Collective Agreement in excess of the base level. . . . the base level for the Gainsharing Arrangement is the number of TEUs handled under the terms of the Collective Agreement in the calendar year 1987 . . .”

Union Response:

The ILWU Canadian Area Officers of the day were outraged by the Weiler Report. **ILWU Canadian Area Waterfront News Bulletin (July 17, 1987) said:**

“The container clause 26.05 in our Collective Agreement may be history sometime after September 1, 1987. Weiler gave it the “coup de grace” in his report. It now remains to be proclaimed by Cadieux (Conservative Minister of Labour) to complete the injustice of Bill C-24 if possible.”

ILWU Canadian Area Waterfront News Bulletin (July 22, 1987) said:

“The Longshore Contract Executive Board meeting on July 17, 1987 decided that Arbitrator Weiler had overstepped his bounds as Industrial Inquiry Commissioner. After consultation with legal counsel they had lawyer Jim Dorsey file in the Federal Court of Appeal an action under subsection 28(1) of the Federal Court Act.

We know the membership feel that they have been dealt with unjustly.

We now receive a report under Bill C-24 that could conceivably have been executed contrary to subsection 28(1) of the Federal Court Act.

If this is the case then the Federal Court should set it straight.

If this means the destruction of the Weiler Report, so be it.”

We went to the Federal Court and they set aside his initial report and referred it back to Weiler for reconsideration. **On December 28, 1987 the Canadian Area put out this bulletin:**

“The latest and last edition of the Weiler Report has been received by the Union. Weiler changed his previous report somewhat, but is still substantially the same.

1987 will be the base year, and as already noted, we do not have this figure as yet. However, for all the cans handled over the amount handled in 1987, the Association must pay \$10.00 to the Container Gainshare Fund and the

Waterfront Industry Productivity Fund. This will continue until 1992 with the base year still 1987.

Seventy-five percent of the money obtained will be paid to the Container Gainshare Fund. The Waterfront Industry Productivity Fund will receive the other 25% of the \$10.00."

The September 20, 1990 the ILWU Canadian Area Bulletin, Gainshare Fund said:

"As a result of Bill C-24, Maintenance of Ports Operation Act 1986, the Container Clause was removed. Two funds were established recognizing this change, the Gainshare Fund and the Productivity Fund.

The Longshore Contract Executive Board (L.C.E.B.) has decided that there be a series of bulletins to inform the members of the funds and the options for dispersal of the funds. They also proposed a referendum be held to adopt a decision on the disposition of the money."

On September 26, 1990 the ILWU Canadian Area Bulletin, Gainshare Fund said:

"This bulletin will deal with the options for dispersal of the funds as adopted by the Longshore Contract Executive Board (L.C.E.B.).

The options being considered are:

- A) The payment of 'both' fund balances to the Waterfront Industry Pension Plan.
- B) The payment of the 'Gainshare' fund balance to active members of the I.L.W.U.
- C) The distribution of 'both' fund balances to the R.R.S.P. of individual members.
- D) The payment of the 'Gainshare' fund balance to the I.L.W.U.

It must be emphasized that the matter must be resolved before the end of 1990, otherwise there will be income tax payable with respect to interest earned."

The October 17, 1990 ILWU Local 500 Bulletin said:

"After the October 3, 1990 Caucus meeting, the Local 500 delegates met. After examining the proposals and questioning the tax lawyer, your caucus delegates by majority vote recommended placing the 'Gainshare' into the

pension plan.

BALLOTING - ONE DAY ONLY
THURSDAY, OCTOBER 25, 1990 6:00 a.m. - 6:00 p.m.

FOR YOUR INFORMATION:

- 16 delegates voted to place the monies into the pension plan.
- 1 delegate voted to pay the monies to active members of the I.L.W.U.
- 1 delegate voted to place the monies into R.R.S.P. of individual members.
- 4 delegates voted to give the money to the Union.”

A breakdown of the monies contained in the gainshare and productivity funds for 1988 and 1989 follows:

Gainshare & Productivity 538,942.23 ÷ 2300 = \$234.32 per member for 1988
234.32 ÷ 12 = \$ 19.53 per month

Gainshare & Productivity 484,168.06 ÷ 2300 = \$210.51 per member for 1989
210.51 ÷ 12 = \$ 17.54 per month

On October 31, 1990 the ILWU Canadian Area Bulletin, GAINSHARE REFERENDUM said:

RESULTS BY LOCALS

<u>Local</u> <u>Option 'D'</u>	<u>Option "A"</u>	<u>Option "B"</u>	<u>Option "C"</u>	
500	435	282	137	70
502	8	35	23	123
503	5	18	4	34
504	12	9	5	28
505	44	8	6	2
508	101	31	63	6
519	<u>1</u>	<u>1</u>	<u>4</u>	
<u>0</u>				
	<u>606</u>	<u>384</u>	<u>242</u>	<u>263</u>

The I.L.W.U. Caucus of October 3, 1990 mandated that the option receiving the most votes would be the one implemented.

The Union will proceed to implement **OPTION "A"**.

This was formalized by the Black Book Agreement #26 signed by Gordon Westrand for the ILWU and Bob Wilds for the BCMEA.

#26 Joint Industry Labour Relations Committee

Re: Industrial Inquiry Commission as provided for in Bill C-24

The Joint Industry Labour Relations Committee hereby agrees to amend the findings of the above-cited Industrial Inquiry Commission concerning the elimination of the Container Clause effective January 1, 1988, as follows from the Collective Agreement:

1. The proposed Container Gainshare Fund and the Waterfront Industry Productivity Fund are eliminated effective January 1, 1988.
2. The formula established by the Weiler Commission for determination of the monies to be paid to such funds shall continue to be in effect.
3. Commencing upon the date of signing of this document all monies generated annually under the above-cited formula shall be paid to the Waterfront Industry pension Plan by January 15 of the following year.
4. Such monies shall be available to the Trustees of the Waterfront Industry Pension Plan to provide benefits for plan members consistent with the terms of the Pension Plan and based upon sound actuarial advice.

Ref. November 22, 1990