

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA:

v. : Criminal No. 17-
PAUL MOE, SR. : Title 18, United States Code,
Sections 1343, 1349 and 2

INDICTMENT

The Grand Jury in and for the District of New Jersey, sitting at Newark,
charges as follows:

INTRODUCTION

1. At all times relevant to this Indictment:

a. The Company, which conducted its operation out of Port Elizabeth, New Jersey, was a marine terminal operator that off loaded containers from international cargo ships and moved the merchandise from Port Elizabeth, via rail and trucks.

b. Defendant PAUL MOE, SR. was the General Foreman of the Rubber Tired Gantry Crane Department ("RTG Department") for the Company and was responsible for maintenance and repair of the on-terminal container handling equipment. He is a member of ILA Local 1804-1 (hereinafter Local 1804-1). PAUL MOE, SR.'s total annual compensation package from the Company was approximately \$500,000.

c. The International Longshoreman's Association, AFL-CIO, ("ILA") was a labor organization, as that term is defined in 29 U.S.C. § 142(3) and § 152(5) and an employee organization for purposes of 29 U.S.C. § 1002 and § 1003.

d. Local 1804-1 was a labor organization as that term is defined by 29 U.S.C. § 142(3) and § 152(5) and an employee organization for purposes of 29 U.S.C. § 1002 and § 1003, a majority of whose members were maintenance employees working on the Port of New York and New Jersey. The Company and its employees, who were represented by Local 1804-1, were subject to the collective bargaining agreements (CBAs) negotiated between the ILA and the New York Shipping Association.

e. The United States Maritime Alliance, Ltd. ("USMX") was an association comprised of carriers, stevedores, marine terminal operators, and port associations from Maine to Texas, within the meaning of those terms in 29 U.S.C. § 142, § 152, § 1002 and § 1003. As such, USMX represented the employers, including the Company, of the workforce that provides the necessary support to offload containers from cargo ships and to move that product out of the ports of New York and New Jersey.

f. The USMX and the ILA have a collective bargaining agreement ("Master Contract"), effective October 1, 2012 through September 30, 2018, setting the basic standards by which labor-management relations are governed in ports on the East and Gulf Coasts, from Maine to Texas. These standards include basic wage rates, work hours, the establishment of certain employee benefits and the continuation of

ILA jurisdiction. The Master Contract specifically states that “[t]he regular or normal working day shall consist of eight (8) hours from 8:00 A.M. to 12:00 Noon and from 1:00 P.M. to 5:00 P.M., and the regular or normal work week shall consist of forty (40) hours made up of five (5) regular or normal working days from Monday to Friday, inclusive. Employees covered by this Master Contract, when required by Management, “shall work Saturdays, Sundays, and legal holidays and any night during the entire seven (7) day week.” The Master Contract requires that all local agreements must be consistent with and supplement the terms and conditions of the Master Contract.

g. The New York Shipping Association, Inc. (“NYSA”) was an association of local longshore industry employers, within the meaning of those terms in 29 U.S.C. § 142, § 152, § 1002 and § 1003. It was comprised of shipping companies (also known as carriers), marine terminal operators, of which the Company is one, and other employers of waterfront labor in the Port of New York and New Jersey which were subject to the Master Contract. Its principal office was located in Edison, New Jersey. One of its main functions was to negotiate, enter into, and administer on behalf of its members collective bargaining agreements prescribing the terms and conditions of employment for longshore and maintenance workers in the Port of New York and New Jersey. The NYSA’s stated mission is to “represent the interests of its members in maximizing the efficiency, cost-competitiveness, safety and quality of marine cargo operations in the Port of New York and New Jersey.”

h. In 2013, the NYSA negotiated with the ILA, on behalf of its employer-members, a Memorandum of Settlement of Local Conditions in the Port of New York and New Jersey ("2013 Memorandum") as part of their CBA, which established the terms and conditions of employment for members of all affiliated ILA local unions representing longshoremen, clerks, checkers, maintenance workers and all other craft employees in the Port of New York and New Jersey. Terms and conditions of employment governed by the 2013 Memorandum included both changes in employee pension and welfare benefits and revisions in employee working hours, aimed at increasing worker productivity. The NYSA-ILA CBA affirms and reiterates the regular hours as set forth in the Master Contract in paragraph (f) above.

i. The 2013 Memorandum also memorialized special compensation arrangements ("Special Packages") for employer's incumbent staff employees ("Incumbents") which required that "[I]ncumbent staff employees will be assigned specific work tasks by their Employers, will be required to be physically present and engaged in that work when required by their Employers for a minimum of forty (40) hours per week, and will be required to report to the terminals when required by their Employers. Employees not present at work when required will be subject to docking of pay and suspensions for repeated offenses." Defendant PAUL MOE, SR. was an incumbent staff employee of APM. This provision recognizes the practice of employers guaranteeing certain workers special compensation packages in excess of those hours they actually work, but only if the Incumbents worked the mandatory minimum hours of forty (40) hours per week.

j. As a result of being granted a “special package”, defendant PAUL MOE, SR. was entitled to be paid twenty four (24) hours a day, seven (7) days a week, three hundred sixty five (365) days a year, but only if he worked the mandatory eight (8) hours per day and forty (40) hours per week at the terminal.

k. Pursuant to the CBA between the NYSA and ILA, employees of the Company were permitted to participate in one or more employee benefit plans that were jointly established and maintained, and otherwise complied with the terms and conditions of employment in the NYSA-ILA CBA and the 2013 Memorandum.

l. The NYSA-ILA Money Purchase Pension Fund and Plan (hereinafter “MPPF”), was subject to title I of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), 29 U.S.C. § 1001, et seq. MPPF was a multi-employer-employee pension benefit plan established and maintained by employers and the ILA which was required by ERISA to be administered in accordance with the NYSA-ILA CBA and other governing documents of the plan. By the terms of the NYSA-ILA CBA, employers were required to contribute monies to the MPPF on behalf of eligible employees by forwarding to the NYSA an amount equal to \$1.00 per hour for each hour worked by such employees. The NYSA was also required by the NYSA-ILA CBA to match the employers’ contribution with an additional contribution of \$1.00 per hour for each hour worked by such employees.

COUNT 1
(CONSPIRACY TO COMMIT WIRE FRAUD 18 U.S.C. § 1349)

2. From in or about September 2015 through in or about March 2017, in the District of New Jersey and elsewhere, the defendant,

PAUL MOE, SR.,

did knowingly and intentionally conspire and agree with Coconspirator #1, Coconspirator #2, and others, to commit an offense against the United States, namely: (a) to devise, and intend to devise, a scheme and artifice to defraud, and to obtain, and attempt to obtain, money and property by means of materially false and fraudulent pretenses, representations and promises, that is, by generating false timesheets for submission to the Company, and (b) for the purpose of executing such scheme and artifice by transmitting and causing to be transmitted by wire communications in interstate commerce, writings, and pictures and sounds, namely the aforementioned false timesheets, contrary to Title 18, United States Code, Section 1343.

OBJECTS OF THE SCHEME TO DEFRAUD

3. The objects of the scheme to defraud were to obtain money from the Company by submitting false timesheets to the Company's timekeepers in order to: (a) generate paychecks for defendant PAUL MOE, SR. for hours of work for which he was not entitled to be compensated; and to (b) cause the Company to make

contributions to the MPPF, on behalf of defendant PAUL MOE, SR., to which he was not entitled in the weeks when he did not perform the mandatory 40 hours of work required by the NYSA-ILA CBA.

MANNER AND MEANS OF THE SCHEME TO DEFRAUD

4. It was part of the conspiracy to defraud that PAUL MOE, SR. routinely failed to appear on a daily basis at the Company's terminal in Elizabeth, New Jersey to meet his minimum responsibilities as the General Foreman for the RTG Department. PAUL MOE, SR. instructed Coconspirators #1 and #2, and others, to record on the Company's daily timesheets that he was present at the terminal and had worked the mandatory eight hours and, accordingly, was entitled to an additional sixteen hours of overtime.

5. It was a further part of the conspiracy to defraud that Coconspirators #1 and #2 would prepare, in advance, daily timesheets with PAUL MOE, SR.'s signature already affixed; and, they would later falsely report on the timesheets that PAUL MOE, SR. had arrived at the Company's terminal each day, Monday through Friday, and remained there for approximately eight hours. Thereafter, Coconspirators #1 and #2 automatically credited PAUL MOE, SR. with an additional sixteen (16) hours of overtime. In truth, Mr. MOE appeared at the Company's terminal infrequently and, when he did, would typically remain three hours or less.

6. It was further part of the conspiracy to defraud that, after being falsely credited with 120 hours per week he had not earned. PAUL MOE, SR. was also credited by Coconspirators #1 and #2 with an additional forty eight (48) hours of overtime for Saturday and Sunday.

7. It was further part of the conspiracy to defraud that the approximate 168 hours, falsely reported each week on the timesheets, were also used to determine the corresponding contributions due from the Company to PAUL MOE, SR.'s MPPF account.

OVERT ACTS

8. In furtherance of the conspiracy and to affect its unlawful objects, on the following dates, defendant PAUL MOE, SR., Coconspirators #1 and #2 , and others, caused the following overt acts to be committed, in the District of New Jersey and elsewhere:

a. On or about September 4, 2015, PAUL MOE, SR. was not at the Company's terminal as required, but at the Loop Inn Motel, in Avenel, New Jersey with Individual #1;

b. On or about September 8, 2015, PAUL MOE, SR. was not at the Company's terminal as required, but at the AMC Lowes movie theater in Elizabeth, New Jersey, with Individual #1;

c. From in or about September 28, 2015 through October 4, 2015, PAUL MOE, SR. traveled for a week to Florida with Individual #1, without advising the Company;

d. From on or about October 19, 2015, through October 25, 2015, PAUL MOE, SR traveled to Aruba for a week with Individual #2, without advising the Company;

e. On or about April 7, 2016, PAUL MOE, SR. was not at the Company's terminal as required, but at the Gateway National Recreation Area at Sandy Hook, New Jersey;

f. On or about June 15, 2016, PAUL MOE, SR. was not at the Company's terminal as required, but on his yacht at the Atlantic Highlands Marina;

g. On or about March 27, 2017, PAUL MOE, SR. was not at the Company's terminal as required, but spent the day with Individual #1;

h. On or about March 29, 2017, PAUL MOE, SR. was not at the Company's terminal as required, but spent the day with Individual #1.

In violation of Title 18, United States Code, Section 1349.

**Counts 2 through 14
(Wire Fraud -18 U.S.C. 1343)**

9. The allegations set forth in Paragraphs 1 (a through l) and 3 through 8 of Count One of this Indictment are hereby realleged and incorporated, as if forth fully herein.

10. On or about the dates set forth in the chart below, in the County of Union, in the District of New Jersey and elsewhere, having devised and intending to devise a scheme and artifice to defraud, as described in Paragraphs 1 (a through l) and 3 through 8 of Count One, and for obtaining money and property from the Company by means of materially false and fraudulent pretenses, representations, and promises, the defendant,

PAUL MOE, SR.,

did knowingly transmit and cause to be transmitted by means of wire communications, i.e., email, in interstate commerce, certain writings, namely false timesheets transmitted, in connection with the (a) payment of wages and (b) contributions to the MPPF on behalf of the defendant PAUL MOE, SR., as set forth below, each constituting a separate count of this Indictment:

COUNT	WEEKLY PAYROLL DATES	WAGES PAID PURSUANT TO FALSE TIMESHEETS	CONTRIBUTIONS PAID PURSUANT TO FALSE TIMESHEET
2	8/31-9/6/2015	\$9,110.40	\$168

3	9/7-9/13/2015	\$9,258.40	\$72.00
4	9/14-9/20/2015	\$9,110.40	\$168.00
5	9/28-9/30/2015	\$3,777.60	\$168
	10/1-10/4/2015	\$5,332.80	\$96
6	10/19-10/25/2015	\$9,110.40	\$168.00
7	3/21-3/27/2016	\$9,258.40	\$168.00
8	4/18-4/24/2016	\$10,221.50	\$144.00
9	7/11-7/17/2016	\$9,110.40	\$168.00
10	8/1-8/7/2016	\$9,110.40	\$168.00
11	8/15-8/21/2016	\$9,110.40	\$168.00
12	1/30-2/5/2017	\$9,356.40	\$168.00

13	2/20-2/26/2017	\$9,508.40	\$168.00
14	3/27-4/2/17	\$9,356.40	\$168.00

All in violation of Title 18, United States Code, Section 1343 and Title 18, United States Code, Section 2.

A TRUE BILL

FOREPERSON



WILLIAM E. FITZPATRICK
Acting United States Attorney

CASE NUMBER: _____

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District of New Jersey**

UNITED STATES OF AMERICA

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INDICTMENT

TITLE 18 U.S.C. Section 1349

Title 18 U.S.C. Section 1343

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