

**JURISDICTIONAL ASSIGNMENT PLAN**  
*of the*  
**ALBERTA CONSTRUCTION INDUSTRY**

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**J.A. PLAN – FILE #0407**

**DECISION OF THE UMPIRE**

*Review of Contractor's Intended Work Assignment*

**VENTILATION OF WELDING FUMES**

**PROJECT**

**GENESEE PHASE 3 POWER GENERATOR  
GENESEEE, ALBERTA**

**CONTRACTOR**

**Industrial Ventilation Services Inc  
(IVS Inc)**

**PROTESTING UNION**

**Sheet Metal Workers' International Association, Local Union No. 8  
(SMW)**

**RESPONDING UNION**

**International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers, &  
Helpers, Lodge 146  
(BM)**

**DECISION PUBLISHED**

**August 25, 2004**

**by**

**W.A. Weir, Umpire**

## 1. DESCRIPTION OF DISPUTE

The SMW's Application of July 13, 2004 states:

1 "The work in dispute is

ventilation of welding fumes at the Genesee Phase Three job site"

2. The BM's Submission of July 20, 2004 covering letter describes the work in more detail as:

"the installation, operation, servicing and dismantling of localized ventilation equipment";

2. SITE VISIT – was not held

## 3. AUTHORITY

The authority of the Umpire is based on the Jurisdictional Assignment Plan of the Alberta Construction Industry, as revised and issued May 1<sup>st</sup>, 2003. The Application submission by the Protesting Party (SMW) and the response submitted by the Respondent (BW) and the Contractor (IVS Inc.)

4. SUBMISSIONS (reference Appendix A for detail)

The Contractor IVS Inc.'s, submission explained in detail the work in dispute and the labour agreement the work was being done under.

Both the SMW and the BW presented thoughtful Submissions supporting their positions. Understandably some of their written evidence was duplicated and some was not applicable.

## Disposition of Submissions

When no longer required all documents received by the Umpire from either the J.A. Plan Administrator or at the Hearing will be shredded as they contain the Umpire's many comments inserted in his deliberations.

## 5. HEARING

A Hearing was held Thursday, July 29<sup>th</sup>, 2004 in the meeting room of the Construction Labour Relations, Edmonton, AB office.

### Attendance

- IVS Inc, the Contractor was represented by Del Hankinson.
- SMW, the Protesting Union, was represented by
  - Gregory Reid, Business Manager
  - J Peter Wyatt, Business Representative
- BW, the Responding Union, was represented by
  - Len Jacobs, Business Representative
  - Cory Channon, International Representative
- Umpire Weir

All in attendance signed the Attendance Record and took the Oath under their name affirming the evidence they were about to give was the truth, the whole truth and nothing but the truth.

No challenges were offered and no pre-hearing matters were raised. The Umpire declared the hearing to be properly constituted in accordance with the rules of the J.A. Plan of the Alberta Construction Industry and called the hearing to order at 0900 and adjourned at 1200.

The Umpire thanks the representatives of the SMW, the BM and IVS Inc. for their written submissions and for their professional presentations during the oral hearing.

## 6. PRESENTATION OF EVIDENCE

### A. SUBMISSIONS

All submissions including Rebuttals both written and oral have been considered as evidence.

The Umpire has reviewed all the written submissions, listened to all the presentations and has reviewed his notes recorded prior to and during the oral hearing in arriving at his Decision.

## 1. SMW EVIDENCE

Greg Reid spoke to SMW's Written Evidence submitted in support of the SMW application protesting the Contractor IVS Inc.'s assignment as the SMW International Association Local Union #8 claim for the fume exhaust/ventilation system at this job site

He addressed

i. the SMW/BM June 28, 1957 **Agreement of Record** through which their Local #8 will prove that throughout Alberta, Local #8 has established prevailing practice for the work in dispute

ii. SMW October 23, 2003 letter to IVC Inc. advising that SMW will prove by the **attested International Agreement** of June 28, 1957 the work in question is within the jurisdiction of Local #8 and referred to Article 1, Section 2, Article IV Section 4 and Article V Section 1 as applying to this work

iii. the October 16, 2003 Final Assignment, including a copy, which records the SMW claimed the work in question

iv. the Smog Buster by enclosing very detailed information on this flexible, mobile, ventilation apparatus equipment for confined spaces and at the Hearing reviewed and stating why this was SMW work and why it was not that of the BMs

v. The Alberta Apprenticeship and Industry Training Act Trade Regulations for both the Sheet Metal Worker and the Boilermaker and at the Hearing stating why the SMW training and trade regulation are applicable to this work

vi. the SMW International Association International Representative, Bert Ottenson's, July 15, 2004 letter to SMW Greg Reid advising that on July 9, 2004 he had spoken to the BM International Representative, Cory Channon who advised "that the BM were not about to move off the work in dispute". Mr. Ottenson concluded his letter with "This concluded my enquiry into this work"

vii. Fourteen letters of support from twelve different Alberta contractors who employ sheet metal workers/mechanics in the installation of Fume Extraction Systems, Welding and general exhaust of systems

One of the contractors stated "One of the largest and most impressive installations we have done was completed last year, and involved 38 work station exhaust systems installed in the training facility for the Boilermakers Union"

*Umpires' Comments:*

- These 12 contractors do not state if they are referencing construction as the J.A. Plan as does not apply to maintenance.
- During the SWM's presentation or during the BM's x-examination the BM's spokesperson state: "no objection to the SMW installing the permanent systems which is what the contractor's state they do. This is their work"
- The June 28, 1957 Agreement is silent on the work in this dispute.
- The BM's Channon questioned why in the Alberta Learning SMW Trade Regulation in General Matters Respecting the Trade why does it spell out in detail the fabricating and installing fume and dust exhaust system, etc. and servicing, maintaining and upgrading fume and dust systems, etc.

**2. BM EVIDENCE**

Len Jacobs and Cory Channon both spoke to their Written Evidence submitted in support of the Contractor's Assignment of the work in question to the BM.

They addressed

- i. the work had been ongoing for the past 10 months at this project for the temporary ventilation of welding fumes
- ii. they provided in their Exhibit 1 photos of the work in dispute, a description of the functions and purpose of this temporary installation used to collect localized gases and fumes from welding which creates a cleaner, healthier and more productive work environment
- iii. the Contractor, IVS Inc assigned this work in accordance with the well established prevailing practice for installing, operating, servicing and dismantling localized Smog Buster ventilation equipment and has trained the BM's to perform all the tasks required efficiently and safely.
- iv. this dispute is much more than ventilation of welding fumes as the SMW have stated
- v. comments on the lack of a bargaining agreement between the contractor, IVS Inc and the SMW and that the J.A. Plan rules require the Umpire to decide on an existing bargaining relationship and other matters.
- vi. A copy of the collective agreement between the Contractor, IVS Inc and the BM was submitted and stated boilermakers have performed this work for approximately the last 9 years without any disputes being filed. They question why after 10 months since the work started and a very short time to its completion, does the SMW dispute the work?

- vii comment on the June 28, 1957 International Agreement between the SMW and the BM. The agreement represented permanent fixtures, not temp localized ventilation systems to collect fumes from localized welding.
- viii a letter of confirmation from an Ontario contractor, ALSTOM Canada Ltd, that they assign all phases of localized ventilation equipment to BMs.
- ix provided technical definitions of ventilator and the other types of ventilation
- x Letter of Understanding from the J A Plan

*Umpire's Comments:*

- The SMW's Reid stated the June 28, 1957 agreement covers both permanent and temporary work.
- The July 28, 1957 Agreement is silent on permanent or temporary.
- Twice during the Hearing the BM's Channon repeated that the SMW had no objection to the BM using this equipment in confined areas.
- The SMW's Reid stated:
- The Smog Buster is not a Tool of the Trade.
- This equipment is also being used by the Ironwork, Pipe Fitter and Electrician.
- The BM Channon stated:
- They have received no objection from these crafts and they plug in the electrical
- The scaffold Worker installs and dismantles the scaffold
- The trade moves the fans and the welder the rubber hoses.
- Asked the SMW's Reid "has the SMW ever installed. Operated and removed this equipment?"
- Mr. Reid replied SMW have never installed the Smog Buster.
- IVC Inc's Hankinson states:
- 6000 lin. Ft. of rubber hosing is used.
- Supplying air is a tool of the trade as is the equipment that supplies it.
- Future equipment all be smaller.

**3. THE CONTRACTOR IVC INC.'S EVIDENCE**

IVS Inc. Spokesperson Del Hankinson reviewed the information IVS Inc. had sent to the Administrator for the purpose of this dispute and he referenced

- i. IVS Inc.'s July 15, 2004 letter described the work and the need for a "detailed" knowledge of welding and boilermaker work is required in order to set up and move the equipment appropriately. Scope of work and knowledge of boiler making is critical to effectively work with the trade and improve their efficiency and air quality.
- ii. The history of this system known as **Smog Buster** invented and patented by two boilermakers in 1990 and commercialized in 1996 with all work being performed in both Canada and the U.S. by boilermakers.
- iii. that since "IVS Inc.'s inception 18 months ago they have utilized Boilermakers".
- iv. that over the last 9 years no other trade has ever challenged this Work assignment in Canada or the U.S. until this current challenge by the SMW Local #8.
- v. Training requirements and the two in depth training courses have been given to approx. 30 boilermakers. The course was prepared and presented by a UBC Associate Professor who was previously a BC WBC air quality engineer.
- vi. that IVS Inc. nor any of its predecessor companies who used the **Smog Buster** ever had a "bargaining relationship" with the Sheet Metal Workers.
- vii. the submissions of the SMW, the BM and IVC Inc. determined the June 28, 1957 BM/SMW agreement was not applicable as there is no reference to temporary, localized ventilation equipment.
- viii. the basis of their original assignment was historical practice of utilizing Boilermakers for the installation, operation, servicing and dismantling of temporary localized ventilation systems.
- ix. in summary the Work directly supports the Boilermakers work in confined and enclosed spaces, as only Boilermakers have done this Work over the last nine years using equipment, invented and patented by Boilermakers, and the successive agreements signed with the boilermakers International ... all precedents support the current work assignment."
- x. IVC Inc.'s spokesperson also referenced:
  - The Smog Buster's technical capabilities
  - 14 coloured photographs of the Smog Buster in Action
  - Temporary ventilation of confined spaces
  - Testimonials and data on Workers Exposures comparing Smog Buster in use and Grit Blasting to:
    - General Ventilation
    - WCB 8 hour allowance and
    - WCB 12 hour allowance

- A very thorough explanation

*Umpire's Comment: Boilermakers inventing and patenting equipment does not automatically establish jurisdiction.*

## 2. REBUTTAL EVIDENCE

### I. SMW REBUTTAL

SMW's Business Manager, Gregory Reid's July 27, 2004 letter to the Umpire via the J.A. Plan Interim Administrator addresses:

**Exhibit One:** There is an agreement between the two Unions dated June 28, 1957. The contractor has erred in his final assignment by not giving the BM/SMW agreement the proper consideration in accordance with the Procedural Rules Article IV item #5.

**Exhibit Two:** The SMW's agree with the BM's that they do not have a bargaining relationship with Industrial Ventilation Services Inc. The SMW understands that Article VI(k) would refer the contractor to the June 28, 1957 agreement.

**Exhibit Three:** Ventilation is the work of the SMW whether the installation is permanent or not.

**Exhibit Four:** A copy of the final assignment. No evidence to substantiate the Contractor IVC Inc. claim that this system has been in use for years. The Jurisdictional Assignment Plan procedures do not have any time limits regarding when an application can be filed, except that the job in question must be ongoing.

**Exhibit Five:** BM/SMW agreement – the "Smogbuster" clearly comes under the jurisdiction of the SMW. Fume exhaust is ventilation. The agreement is not silent on ventilation.

**Exhibit Six:** Mr. Albright states in his letter that "This equipment is considered a tool of the Trade". The SMW's dispute this statement. At Genesee the Smogbuster is being "utilized" by the Iron Workers, Pipe Fitters and Electrician Welders.

Mr. Albright also states "For your information this work was performed without any dispute from any other craft". The Genesee job site is the first instance that the SMW's are aware of that the Smogbuster has been used on a construction site. The other jobs were maintenance and as far as the SMW's know maintenance work cannot be taken to the Jurisdictional Assignment Plan.

Exhibit Seven: McGraw-Hill information (reference Appendix A)



Exhibit Eight: Whether or not the SMW has a bargaining relation with a contractor has little bearing on the SMW's jurisdiction. The SMW's jurisdiction does not change simply because of the absence of a bargaining relationship.

*Umpire's Comment:*

- Marty Albright is Manager Labour Relations and Safety for Ontario based ALSTOM Canada Inc.

- Not applicable to this Dispute as the J.A. Plan rules govern.

## II. BM REBUTTAL

BM's Business Representative Len Jacobs' July 27, 2004 letter to J.A. Plan Administrator address:

i The Sheet metal Workers submission is filled with irrelevant information to say the least

The Boilermakers position has not changed regarding the contents of your submission dated July 20, 2004

ii Exhibit 6, 7, 8, 9 and 10 of the SM submission are completely irrelevant to the dispute.

In accordance with the procedural rules of the Plan document both trade regulations are not applicable.

The Boilermaker/Sheet Metal worker agreement is not applicable Correspondence from the Sheet Metal Workers International is not applicable.

Lastly all the contractors' letters provided by the Sheet Metal Union are irrelevant because of the "permanent" nature of which the systems are installed

Furthermore the Boilermakers have no bargaining relationship with any of the contractors they have provided.

The Boilermakers Union supports the position the contractor has provided relative to this dispute.

iii Without getting into a long and exhaustive rebuttal we wish to retain further opportunities to discuss these matters at the scheduled hearing date

## III. IVS INC. REBUTTAL

IVS Inc's Del Hankinson's July 27, 2004 letter to the J.A. Plan Interim Administrator addresses

## 7. FINDINGS

In accordance with the J.A. Plan Procedural Rules and in consideration of all the written and Oral Evidence:

### The Empire Finds:

1. There is no Decision of Record or Agreement of Record applicable to this dispute.

2. The June 28, 1957 International Agreement is not applicable as it does not address this dispute which is understandable as this dispute deals with new technology and equipment not used in 1957.

The Authors of this Agreement were extremely thoughtful in addressing the future when they included in the Agreement:

We are confident that this agreement will go far in re-establishing the traditionally harmonious relationship that has existed between these two International Unions for many years, and will protect the job opportunities of the members of both organizations. Further, our bargaining position with employers in the industry served will be greatly strengthened.

*Empire's comment:*

- This appears to be proven in Alberta when during the hearing on a number of times the BM representatives stated emphatically they do not do SMW work.
- This was further verified when the BM awarded the 38 work stations exhaust systems installed in their training facility to a sheet metal contractor whose sheet metal workers installed the system.

The Authors also stated:

Work not covered specifically by the International agreement is to be handled in the following manner

First an attempt is to be made by local union representatives in the area to resolve the dispute. In the event the local representatives fail to resolve the dispute, the matter will then be referred to the presidents of the two International Unions or their designated representatives.

That was done without success in this dispute at the local level and at the respective International level between the SWM and BM International Representatives as recorded in the SMW International Representative July 15, 2004 letter to Greg Reid, Business Manager, SMW Local #8

The Authors also stated

It is also agreed that no disputes which might occur between our respective affiliated local unions will be referred to the National Joint Board for Settlement of Jurisdictional Dispute in the Building and Construction Industry. Any dispute that may arise between our respective organizations will be first handled on the local level in keeping with the terms of the agreement. All interpretations which may be required with respect to any part of the agreement will be made by the presidents of the two International Unions or their designated representatives.

4 The Spokespersons for the Contractor IVS, Inc, the SWM and the BW clearly presented their positions.

5 The work in dispute, commenced in October 2003 and continues. However, Hitachi, the Owner has requested the Contractor to demobilize and remove all Smog Buster equipment, as they have also done previously from the site within the next two or three weeks from July 29, 2004 (date had been changed a number of times)

6 Providing air and the Smog Buster equipment that supplies it is not a tool of the trade No more than scaffolding is a tool of the trade

If the Smog Buster was a tool of the trade did the Iron Workers, Electricians & Pipefitters install the equipment they are using?

7 Letters of Understanding

*Umpire's Comment:*  
• the undated Letters of Understanding in particular the first letter with respect to the SMW Union not having a bargaining relationship with the Contractor IVS Inc. is a non issue and not as the BM have stated.

8 J.A. PLAN ARTICLE VI. PROCEDURES

a. VI (h) "If during the course of consideration of a dispute, any party to the dispute or the Umpire should decide that there is a substantial and material question of technological change attendant to a dispute which cannot be resolved on the basis of available evidence, the Umpire shall temporarily suspend the deliberations and make such investigation as he deems necessary to avail himself of relevant facts and evidence bearing on the dispute and shall in any event make a job decision prior to scheduled commencement of work"

*Umpire's Comment:*

- *This dispute involves new technology. The Umpire has received much information on the dispute including the technical aspects. There was no reason to temporarily suspend the deliberations.*

- b. VI (k) of the J.A. Plan Procedural Rules directs the Umpire on the procedure he is required to follow and states

“In rendering his decision, the Umpire shall determine first whether a previous Decision of Record and/or Agreement of Record governs. If no such Decision or Agreement applies he shall then consider whether there is an applicable agreement between the disputing Unions governing the case. If no such Agreement is in effect, the Umpire shall consider established trade practice, prevailing practice, together with a reasonable acceptance of considerations for efficiency, safety, good management, and a desire by all Parties to eliminate excessive allocation of manpower. (See the attached Letters of Understanding).”

1. The first step is to determine whether a previous Decision of Record and/or Agreement of Record govern.

*Umpire's Comment: The Hearing confirmed there is no previous Agreement of Record or Decision of Record.*

2. The Umpire then has to consider:

- Whether there is an applicable agreement between the disputing Unions governing this dispute

*Umpire's comment: The SMW/BM Agreement of June 28, 1957 is not applicable as it makes no reference to the matter in dispute and the parties to the dispute were unable to obtain resolution of this dispute through the process documented in the Agreement through international representatives.*

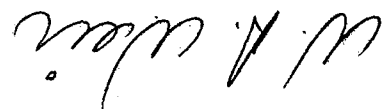
3. Next is prevailing practice.

*Umpire's Comment:*

- *The SMW's documentation from 12 contractors is silent on working with Smog Buster equipment.*
- *The Contractor IVS Inc.'s documentation records that only BM's have installed this equipment. This has established prevailing practice as limited as it is.*
- *The Umpire has fulfilled the requirements of Articles VI (h) & (k).*

**8. THE DECISION**

The Assignment by the Contractor IVS, Inc. is upheld.  
The cost of this application shall be paid by SMW.  
This Decision is for this job only.



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W A Weir, Umpire  
J A Plan/Alberta Construction Industry  
August 25, 2004

APPENDIX A  
SUBMISSIONS RECEIVED  
J.A. PLAN - FILE #0407  
**DECISION OF THE UMPIRE**  
*Review of Contractor's Intended Work Assignment*  
**VENTILATION OF WELDING FUMES**  
**PROJECT**  
Genesee PHASE 3 Power GENERATOR  
Genesee, Alberta

1. SUBMISSION FROM SHEET METAL WORKER'S INTERNATIONAL ASSOCIATION, LOCAL UNION NO. 8 (SMW)

Covering letter addressed to Loretta Richens, interim J.A. Plan Administrator, dated July 20, 2004 from Gregory Reid, Business Manager/Financial Secretary-Treasurer of Local No. 8 (1 page)

Tab 1 Letter to Umpire - dated July 20, 2004 from Gregory Reid, Business Manager/Financial Secretary-Treasurer of Local No. 8 (1 page)

Tab 2 Interim JA Plan Administrator letters, dated July 14 and 15 to SMW, BW, IVS Inc. & Umpire (2 pages)

Tab 3 SMW October 23, 2003 letter to IVS Inc. claiming jurisdiction and including Agreement between SMW & BM, and copy of IVS Inc. October 16, 2003 markup (9 pages)

Tab 4 IVS Inc.'s Final Assignment, dated October 29, 2004 (2 pages)

Tab 5 Smog Buster - technical information (16 pages)

Tab 6 Apprentice & Industry Training Act, Sheet Metal Worker Trade Regulation (34 pages)

Tab 7 Apprenticeship & Industry Training Act, Boilermaker Trade Regulation (63 pages)

Tab 8 Copy of June 28, 1957 International Agreement between Sheet Metal Workers International Association and International Brotherhood of Boilermakers (6 pages)

Tab 9 Letter from SMW International Representative, Bert Ottenson - dated July 15, 2004 to Greg Reid, Business Manager, Local #8, advising he had spoken to the BM International Representative Cory Channon who said "the Boilermakers were not about to move off the work in dispute. Mr. Ottenson also stated "This concluded my enquiry into this work" (1 page)

Tab 10 Contractor Letters/Faxes - 14 faxed letters from 12 different sheet metal contractors between the dates of Feb 7, 1990 and July 16, 2004 supporting SMW Local No. 8's position (14 pages)

**2. SUBMISSION FROM INTERNATIONAL BROTHERHOOD OF BOILERMAKERS (BM)**

Covering letter dated July 20, 2004 to J.A. Plan Administrator, Scott Boyd from Len Jacobs, Business Manager for Local #146. Letter outlines contents of all Exhibits and includes a description of the functions and purpose of this temporary installation - (5 pages)

Exhibit 1 General arrangement of photographs of the work in dispute (3 pages)

Exhibit 2 Notification by the J.A. Plan that a dispute exists between the Boilermaker (BM) and the Sheet Metal Worker (SMW). Work in dispute has been identified by the SMW as "ventilation of welding fumes" (1 page).

Exhibit 3 Copy of the collective agreement between the Boilermakers (BM) and Industrial Ventilation Service Inc. (IVS Inc.) (3 pages)

Exhibit 4 Copy of IVS Inc.'s Final Assignment dated October 29<sup>th</sup>, 2003 to the BM (2 pages)

Exhibit 5 Copy of the June 28, 1957 International Agreement between the Boilermaker (BM) and the Sheet Metal Workers (SMW) (3 pages).

Exhibit 6 Letter dated 11/10/03 from ALSTOM confirming that ALSTOM Canada Inc. have been historically assigned temporary localized ventilation equipment to the Boilermaker (BM) without dispute from any other craft (1 page).

Exhibit 7 Technical information from McGraw-Hill Multimedia Encyclopedia of Science and Technology on the many types of ventilation and further describes the function and purpose of each (4 pages)

Exhibit 8 J.A. Plan Letter of Understanding pages 25 & 26 (2 pages)

**3. SUBMISSION FROM INDUSTRIAL VENTILATION SERVICES INC. (IVS Inc.)**

1 Brochure cover from Industrial Ventilation Services on Smog Buster complete with Technical Capabilities sheet and colour photos (4 pages)

2 Brochure insert titled "Smog Buster Technical Capabilities" referencing Air changes, Heat, Humidity, Air conditioning, Particulate Filtration, Containment, Explosion Proof, 2 pages containing 12 colour photos and testimonials from Kellogg Brown & Root (Canada) Senior Project Manager

3 Copy of IVS Inc.'s July 15, 2004 letter to J.A. Plan from Del Hankinson, President of IVS Inc. outlining Description of Work, History, Training Requirements of Boilermakers, Bargaining relationships, List of previous projects, Review process and Summary (2 pages)

4 Copy of Sept 26, 2002 Industrial Systems Ventilation Agreement between the International Brotherhood of Boilermakers (3 pages)

5 Copy of June 29, 1999 Industrial Ventilation Services agreement between the International Brotherhood of Boilermakers (3 pages)

6 Copy of April 25, 2002 Industrial Ventilation Services agreement between the International Brotherhood of Boilermakers Union (3 pages)

7 Second Copy of Sept. 26, 2002 (3 pages)

8 Second Copy of Item 4 (3 pages)

9 Second Copy of Item 5 (3 pages)

10 Second Copy of Item 2 (2 pages)