

JURISDICTIONAL ASSIGNMENT PLAN  
of the  
ALBERTA CONSTRUCTION INDUSTRY

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**RECONSIDERATION  
of the  
DECISION OF THE UMPIRE**

REVIEW OF CONTRACTOR'S WORK ASSIGNMENT

HANDLING / INSTALLATION OF SOLENOID PANEL  
NOVA CHEMICALS ETHYLENE 3 – JOFFRE, ALBERTA

CONTRACTOR. FLUOR CONSTRUCTORS CANADA LTD.

**J.A.Plan #0006. June 8, 2000**

**Disputing Trades**

International Brotherhood of Electrical Workers, Local Union 424, Edmonton

United Association of Journeymen and Apprentices of the Plumbing and Pipefitting  
Industry, Local Union 488, Edmonton

**Reconsideration of the Decision of the Umpire  
Contractor's Work Assignment  
Handling / Installation of Solenoid Panel  
Nova Chemicals Ethylene 3 – Joffre, Alberta  
Fluor Constructors Canada Ltd.**

**Reconsideration Request**

The request for reconsideration was brought by the International Brotherhood of Electrical Workers, Local # 424, in an application dated November 22, 1999 addressed to the Jurisdictional Assignment Plan of the Alberta Construction Industry. An oral hearing was requested.

**Authority**

The authority of the Umpire to undertake this reconsideration is based on Article VII of the Procedural Rules of the J.A.Plan and the request submitted by the Electrical Workers.

Fluor Constructors confirmed that the decision of the Umpire in J.A.Plan # 9914 dated November 1999, had been maintained on a continuous basis in the field. The UA also confirmed that UA forces have continued to handle and install the solenoid panels.

**Basis for Reconsideration**

It is the opinion of the IBEW Local 424 that the Umpire did not fully appreciate – nor take into consideration when arriving at his decision – what is involved with a “Panel Board Agreement” and “Single Instrument Agreement.” These are two distinct and separate agreements. In our opinion, the Umpire failed to make the distinction.

**Additional Evidence / Witnesses**

By the deadline of May 12, 2000, no additional evidence was submitted by either party

On May 31, 2000 the IBEW submitted to the Umpire and the UA, six pages of new evidence plus four pages of photographs. The Umpire agreed to review the new evidence and rule on its acceptability at the hearing.

The UA advised the Umpire on April 28, 2000 that it intended to present two witnesses subject to their availability.

## THE HEARING

The hearing was held on Thursday, June 8, 2000 in the Boardroom of the Alberta Arbitration and Mediation Society, Edmonton.

**Representing the IBEW -** Robert Lynn, Business Manager  
George Chatschaturian, Asst Business Manager

**Representing the UA -** Larry Matychuk, Business Agent

**Witnesses -** Cam Blair, Instrumentation Superintendent, Spantec  
Constructors, Joffre site  
Fred Boenig, Retired Instrument Fitter

There was no representative present from Fluor Constructors Canada Ltd.

### Challenges

Two challenges were presented to the Umpire by the United Association.

1. The first was an objection to the additional evidence submitted by the IBEW on May 31, 2000. "UA Local Union # 488 objects to the presentation of any additional evidence that was not submitted in a timely manner, as per the Umpire's directive."

Rule VII 2 of the J.A. Plan Procedural Rules says "It is permissible at oral hearings for the affected parties to present additional evidence through witnesses and otherwise. No time limit for presentation is mentioned.

In this case, the UA called the Umpire after receipt of the evidence to voice their objection. The Umpire advised that he would review the evidence and rule on its acceptability at the hearing. He also advised the UA to be prepared to argue on the evidence in case the ruling went against them.

At the hearing, both parties acknowledged that they were aware of, or had the evidence in their possession, for the past two months.

After hearing argument on the matter, the evidence appeared germane to the issue in my opinion, and to deny consideration could lead to a further dispute on the same issue at a later date. The UA had time to consider the evidence and prepare their argument. They were not disadvantaged. The evidence will be accepted.

2. The second challenge involved the J.A. Plan Procedural Rules VII (1) & (2).

“UA Local Union # 488 strongly objects to the hearing of this reconsideration, as we feel that the Administrator / Umpire has erred in recognizing and policing one of the most fundamental cornerstones of the J.A. Plan – J.A. Plan Procedural Rules VII (1) & (2).”

Rule 1 deals with the privilege of reconsideration “...provided that the decision has been accepted and put into effect...” Rule 2 says “The Umpire shall determine the matter of compliance with the decision in question ...”

On December 1, 1999, the UA complained to the J.A. Plan Administrator that harassment tactics were being employed by the IBEW against their forces on the site. UA assigned instrument work was being installed by IBEW forces even though they had been told by the Instrumentation Superintendent that it was not their work. Perhaps the rules could be construed to require the Umpire to investigate harassment complaints, however it was not done or specifically requested at that time.

The Umpire did not invite discussion on this matter and was surprised to have it brought forward as a basis for not proceeding with the hearing. No doubt the matter is a concern to the UA, but in my opinion it is not a basis for not proceeding. Matters were further complicated as this objection was raised at the commencement of the hearing with no prior warning. The UA acknowledged that their forces did handle and install the solenoid panels. The objection was denied.

With the challenges out of the way, both parties agreed that the hearing was properly constituted. The hearing began at 1:30 PM.

### **IBEW Evidence**

The Memorandum of Understanding signed by the Presidents of the UA and the IBEW dated August 22, 1968 (Panel Board Agreement) governs this work, not the single instrument agreements of October 3, 1973 or April 7, 1976, which have been used in the past by Fluor Constructors in making this assignment. Panel Boards may contain an instrument or several instruments.

A copy of the Memorandum of Understanding dated March 2, 2000 (see challenge 1 on page 2), was introduced. It involved the resolution of a dispute at the Irving Oil Refinery in St. John, New Brunswick. The International Representatives of both Unions determined that winterized enclosures should be defined as panels and/or cabinets. “Consequently, the winterized enclosures containing a pressure transmitter requiring both an electrical and piping connection shall be installed utilizing composite crews. In the interest of settling the above referenced dispute, it is recognized that panel heaters are not

considered instruments. All other panels or cabinets shall be handled in a manner consistent with the August 21, 1968, Panel Board Agreement.”

Included with the above memorandum is a copy of the Panel Board Agreement dated August 21, 1968 and a copy of an internal memo of Fluor Constructors indicating that Hugh Tackaberry agrees to go composite on panels.

Concerning mark-ups, the term “as per the agreement” is used when talking about instruments. There are so many instruments that the mark-up has to be general in nature and details sorted out on the job. The assignment to the UA in this case was a field assignment. The assignments on page 30 of Fluor’s the pre-job mark-up are based on the 1976 Agreement.

The UA in their evidence for J.A. Plan #9914 said that the Panel Board Agreement has never been construed to include a weather sealed box or enclosure. The assignment from the Irving Oil Refinery dispute changes this, as it refers to winterized enclosures.

The UA in their evidence for J.A. Plan #9914 make a point of multiple instruments being the subject of the Panel Board Agreement. The multiple instrument issue is not a valid basis on which to assign. It is the type of connections that matter. The 1968 Panel Board Agreement stands alone. Later Agreements deal with individual instruments placed in a piping system or vessel. The IBEW is not claiming this work. What we are talking about are panel boards or enclosures with the instruments already mounted.

The IBEW pointed out to the Umpire that they were not in attendance at the pre job mark-up on this project which resulted in a delay in initially protesting this assignment.

The decision of the Board of Industrial Relations of Alberta dated February 14, 1972, also refers to panel boards as being composite.

Concerning the Umpire’s remark in J.A. Plan # 9914 that installation by a composite crew would result in an excessive allocation of manpower, the IBEW pointed out that usually such work was divided up and efficiency managed. “We are talking about a lot of work here, probably in excess of 1000 man hours.”

This concluded the IBEW evidence.

#### **U.A. Rebuttal and Evidence**

The evidence originally submitted by the UA is to be made a part of this reconsideration.

The UA does not agree with the IBEW that the Umpire did not appreciate the difference between a panel board agreement and a single instrument agreement. The Umpire’s award was correct.

The IBEW was not disadvantaged more than others by not being present at the mark-up. All trades were supplied with the results.

The UA agrees that a panel board may be on a board or in an enclosure. The work in dispute is not a panel board but a solenoid enclosure. Examining the photographs supplied by the IBEW, it is evident that the disputed work is not the same as at the Irving Oil Refinery. We are talking about solenoids not transmitters.

The placement issue is what governs. The panels are usually shown on a drawing while the solenoid locations are worked out on the job. The UA does not argue who installs later instruments added to a panel. The Board of Industrial Relations in their 1972 decision got it right.

**Witness – Cam Blair**

Mr. Blair is a Journeyman Instrument Mechanic and has worked as an Instrumentation Foreman, General Foreman and Superintendent.

Mr. Blair said that it is difficult to know what “composite” means when trying to divide the work on the job. The work cannot be divided equally and it does not work with the two trades trying to do things jointly. If a device requires piping or tubing, that is what governs the location and installation. The electrical connection is much more flexible and comes afterwards. To permit each trade to install half the boxes is not feasible.

**Witness – Fred Boenig**

Mr. Boenig has over thirty years experience as an Instrumentation Fitter. He has seen instrumentation controls and systems develop and evolve over many years.

Mr. Boenig said that instrument panels are designated on the location drawings. You cannot call this work a panel. It is a box enclosing instruments. The specific location is decided on site, usually under the overall direction of the Instrumentation Superintendent. Transmitters as mentioned in the new evidence are not the same thing.

This concluded the UA evidence.

**IBEW Rebuttal**

What is a panel? We have an enclosure with three instruments which falls clearly within the Panel Board Agreement. Location is not an issue. We must go back to the Agreement and what it addresses. The first paragraph says panels and cabinets are defined as containing multiple instruments or controls requiring both electrical and pressure connections.

A solenoid and transmitter both fall under the category of instruments or controls. A solenoid is a control device that opens or closes a valve. Fluor says that a solenoid is a

control device and that places it under the Panel Board Agreement. Multiple is not an issue. The Irving Oil decision addresses this – numbers do not matter.

There is a lot of work involved. Carrying out, making of brackets, mounting etc. To say composite is not workable is not true. There are many panels that are alike and could be installed by either the IBEW or the UA. The piping involved is small and flexible and need not control the location.

This concluded the IBEW rebuttal.

### **U.A. Conclusion**

The Irving Oil decision and agreement does not apply to this work. Transmitters are not solenoids.

The covering of the instruments is not relevant. Size is not relevant. There has been no new information presented by the IBEW that bears on this dispute.

This concluded the presentation of evidence.

## **SUMMARY**

I have re-read the evidence presented by both parties in connection with the Review of Contractor's Work Assignment, J.A. Plan # 9914. On the basis of that evidence I see no reason to alter the assignment made at that time. The UA / IBEW Agreements dated October 3, 1973 and April 7, 1976 are both more applicable to the work in dispute than the Panel Board Agreement of August 22, 1968. I recognize the difference between them, but the work in dispute is not a panel board. The function and make up of the solenoid valve agrees with the wording contained in the Fluor Constructors mark-up description on page 30 (clause n. ii). This wording was obviously based on the 1976 UA / IBEW Agreement.

So let us consider the new evidence presented at the hearing. The first was the Memorandum of Understanding between the UA and the IBEW dated March 2, 2000. In this Understanding, the Unions agree that the Panel Board Agreement dated August 21, 1968 is to apply to the winterized enclosures in question, and the enclosures shall be installed utilizing composite crews if they contain a pressure transmitter requiring both an electrical and piping connection. Further on, the Understanding says "In the interest of settling the above referenced dispute....all other panels or cabinets shall be handled in a manner consistent with the August 21, 1968 Panel Boards decision between the parties."

The Understanding refers more than once to "the above referenced dispute", and from this I would have to conclude that the Understanding was intended to apply to the handling of winterized enclosures and other panels and cabinets at the Irving Oil

Refinery project. I consider this Understanding to have no general application beyond the dispute it was intended to resolve.

The second piece of new evidence involved the two witnesses called by the UA, Mr. Cam Blair and Mr. Fred Boenig. Both were experienced tradesmen who have first hand experience in dealing with the work in dispute. The testimony of Mr. Cam Blair I found particularly relevant, because as Instrumentation Superintendent for Spantec Constructors he was directly responsible for the efficient installation of instruments and controls. He was unequivocal in his rejection of the composite crew idea and explained in detail the inefficiencies such an operation would occasion if implemented. Mr. Fred Boenig told us how the field determined the difference between a panel and an instrument box. The work in question is not a panel.

The direction regarding remotely mounted instruments or controls as determined by the Board of Industrial Relations in their decision of February 14, 1972 should apply, not panels or cabinets.

**Decision**

The ruling of the Umpire dated November, 1999, J.A. Plan # 9914 remains in force.

Costs of this reconsideration shall be borne by the IBEW.

G.R. Beatson, Umpire  
J.A. Plan / Alberta construction Industry