

DECISION OF THE UMPIRE - File #0108
Review of Contractor's Intended Work Assignment
Fluor - Shell Athabasca Oil Sands Downstream Project

ATTACHMENT A

WRITTEN EVIDENCE SUBMITTED

(Including Umpire Weir's comments)

WRITTEN EVIDENCE

DECISION OF THE UMPIRE - File #0108 Flour – Shell Athabasca Oil Sands Downstream Project

Coring and Securing of Inserts

6.1 Administrator

All faxes from Brenda Davidson were addressed to

- ?? Hugh Tackaberry – Fluor Constructors
- ?? L. Matychuk – U.A. #488
- ?? H. Tostawryk – Ironworkers #720
- ?? D. Munro – IBEW #424
- ?? R. Wassill – Operative Plasterers’ & Cement Mason’s – Local 222
- ?? Umpire Bill Weir

Faxes from Brenda Davidson included:

UA joint (UA, IBEW, IW) Application for Review of Contractors Intended Work Assignment; Advising Umpire Weir instead of Umpire Beatson assigned to J.A. Plan #0108; Confirming Oral Hearing, date, location; who to be in attendance; Fluor’s description of the disputed work; UA submission (being couriered) CM Submission (being couriered); IBEW letter’ UA rebuttal; IW rebuttal.

6.2 UA Local Union #488 Submission

?? Application For Review of Contractors Intended Work Assignment

?? Sept. 26/01 Letter signed by UA, IW and IBEW stating a joint application; historical reference; manner in which mark up was conducted and vast majority of trades did not attend; comments on no-trade agreements on this work.

Umpire’s comments – For unexplained reason(s) majority if not all trades did not attend the Mark Up.

?? Tab A - Original Mark-Up. Jurisdictional Comments – Pre-Job Conference, Ft. Saskatchewan Alberta, July 12/00 (1 pg.)

Umpire’s comments – Comments specific to ACJV Assignment which state in 1st paragraph item B Grouting

“B. Grouting

Cement Masons shall perform all dry packing, filling of voids, and other forms of grouting (by any method or process) of base plates, columns, pumps and pump bases, vessels, skid mounted units and tanks, other equipment and

machinery set on concrete bases and foundations including: patching and finishing, hop sacking, grinding, rubbing of concrete and the application of curing compounds, expansion joint compounds, concrete hardener, saw cutting, and coring?”

?? Tab B - Hilti Drills Historically Utilized. Colour brochures of two Hilti hammer drills (1 pg + 2 brochures).

?? Tab C - Hilti Coring Machines Now Utilized. Colour brochures of two Hilti coring machines (1 pg + 2 brochures).

Umpire’s Comments - The tool referenced is the Hilti DO100 (hand held coring system). New technology which is being used.

?? Tab D - Adhesives Used. Pamphlet on adhesive system (1 pg + pamphlet).

UA joint Application for Review of Intended Work Assignment states: “Specially - Cement Mason coring holes for Inserts/Anchors for all Trades...

No mention of setting inserts/anchors or grouting?

?? Tab E - U.A. Position and Supporting Evidence. Overview of historical issues on installation of inserts/anchors (7 pgs).

Umpire’s comments – UA’s covering letter states:

“While this issue appears to be simple and straightforward, the ramifications to the unionized construction industry are enormous.

- 1. Historically, each trade has installed its own inserts and anchors.*
- 2. On any given project, this work could involve a substantial amount of man-hours.*
- 3. The installation of inserts/anchors is typically a one person operation. To involve more than one trade in this work would most certainly cause an excessive allocation of manpower – an expense our contractors will not bear and an expense we as unionized construction cannot afford in terms of competitiveness.*
- 4. The technological changes that are relevant are in terms of “tools of the trade”, that being the hammer drills vs. coring drills and adhesives vs. mechanical anchors. Most often, new technologies affect jurisdiction because of changes in process rather than efficiencies. To be efficient is to be competitive and, in this industry, means survival for contractors and unions alike.*
- 5. This dispute has arisen out of a mistake. Unfortunately, this mistake has the potential to be extremely costly to the unionized construction industry and it is incumbent upon us to rectify this issue before it causes jobsite disruptions.”*

Five letters of support from Comstock Guthrie, Alstom, Midwest, Kellogg, Brown & Root, effectively say that layout; drilling/coring of holes; setting of inserts/ anchors; epoxy application is the work of the individual craft.

- ?? Tab F - IW Position and Supporting Evidence. Letter of IW, dated Sept. 27/01 outlining scope of work (3 pgs).

Umpire's Comments – IW's Sept. 29/01 letter and attachments supporting the use of the "coring tool" by the individual crafts as a "tool of the trade".

Comments on Muskeg River Site mark up and "...CM not objecting that this work was to the IW."

"Also it worked at Joffre"

- ?? Tab G - IBEW Position and Supporting Evidence. Letter to J.A. Plan, from IBEW, dated Sept. 27/01 enclosing 3 letters supporting their position on coring and securing anchors (4 pgs.)

Umpire's Comments - IBEW Sept. 17/01 letter attaching letters from Comstock re Nova Chemicals Joffre 2000; Chemco Electrical Contractors Ltd. Re Dow Chemical, Ft. Sask. 1991 & 1992; Laird/Snowbird Suncor; all stating work in question that of IBEW.

6.3 CM Union Local 222 Submission

25 pages not indexed or tabbed.

Oct. 5, 2001 fax cover sheet "Statement of position"

1. October 4, 2001 statement of position that:

?? Work in question clearly within scope of CM Provincial Collective Agreement for the General Construction Sector.

?? Contractor made assignment due to their obligation with respect to Collective Agreement and are bound by prevailing local practice that coring on concrete and application of epoxy grout is work of CM.

?? The assignment is correct.

?? Excerpts from apprenticeship training curriculum showing concrete coring and grouting required in CM training.

?? Past awards of work in dispute.

?? Availability of CM on this project qualified to perform this work at all times.

?? Information on Industrial wage rates of CM Journeymen and Apprentices comparing to UA, IBEW & IW rates.

Umpire’s Comment – A very good overview

2. Provincial Cement Masons Collective Agreement (2 pages)
3. Alberta Labour Relations Board Certificate CM Fluor

Umpire’s Comment – During the Oral Hearing Fluor stated “it is not disputing that industrial coring is the work of the CM”. Fluor commented a number of times during the Oral Hearing as did the UA, IBEW and IW supporting this statement.

4. Alberta Labour Relations Board Registration between Construction Labour Relations & CM.
5. Apprenticeship Training – Concrete - Finisher Program (3 pages)
6. Schedule of Wage Rates and Benefits (4 pages)
7. Summary of Coring & Grouting Awards (11 pages) - Six coring awards and six grout awards

Umpire’s Comments

A number of these coring and grouting awards do not apply to the matter in questions.

Previous evidence Tab E of the UA submission – Kellogg Brown & Root, June 5, 2001 Jurisdictional Assignment Muskeg River CoGen Project.

Drilling or Coring for Fastening of Anchors in concrete to:

“By Individual Craft which was both the Proposed and also the Final Assignment.

During the Oral Hearing CM stated

“the major issue is coring”

“a number of cement masons roving around the site to do this work is not inefficient”(Umpire does not agree)

“do not agree May 5, 1926 Decision of Record (Green Book) applies to this matter”

6.4 UA Local Union #488 Rebuttal

- ?? October 10/01 - Covering letter from L. Matychuk submitting rebuttal to coring and securing of inserts (2 pgs.).

Umpire’s Comment – UA stated: It does not agree with CM statement that their members are the only tradespersons qualified to do this work. This being contradicted in the Mark Ups the CM submitted shows grouting being awarded to the Millwright without objection from the CM.

?? Overview - Outlining information in Tabs

?? Tab A - May 5^h, 1926 Decision of Record (Green Book – Pg. 129) (1 pg).

Umpire's Comment – I agree with the CM that this Decision of Record applies to “Brick, Tile and Masonry” and is not applicable to this matter which is Concrete.

?? Tab B - Job Decision – United Association/Operation Plasterers & Cement Masons (1 pg.).

?? Tab C - Job Decisions – United Association/Carpenters (2 pgs.).

?? Tab D - Job Decisions – United Association/Labourer (22 pgs.).

Umpire's Comment – I do not accept the UA's Oral Evidence that these decisions flow from the Decision of Record (Tab A).

All decisions are for United States Projects.

Why include this non applicable information?

6.5 IW Local Union #720 Rebuttal

?? October 10/01 – Unsigned covering letter from H. Tostowryk.

Umpire's Comment – Well presented comments on previous mark ups and Contractors Assignments.

Structural Ironworkers Collective Agreement (3 pages)

6.5 IBEW Local Union #424 Submission

?? Sept. 27/01 – Letter from D. Munro stating the IBEW position

?? Canadian Comstock Sept. 25/01 letter (reference UA, Tab G).

IBEW did not submit any Rebuttal

I thank the parties for their well prepared written submissions and for their direct/forthright discussion at the Oral Hearing.