

JURISDICTIONAL ASSIGNMENT PLAN
of the
ALBERTA CONSTRUCTION INDUSTRY

Decision of the Umpire

Review of Contractor's Intended Work Assignment

THE ASSIGNMENT OF THE OPERATION OF
CERTAIN ON- SITE VEHICLES AND TASKS

Syncrude UE-1 Project, Mildred Lake, Alberta

Contractor. North American Site Development Ltd.

J. A. Plan #0109. November 9, 2001

Disputing Trades

General Teamsters Local Union No. 362, Calgary, Alberta

International Union of Operating Engineers Local 955, Edmonton, Alberta

**Review of Contractor's Intended Work Assignment –
The Operation of Picker Trucks, Low-boy Trailers,
High-Boy Trailers, Tandem Trucks, Hauling Trucks,
Crew Bussing, Fueling, Dust Control, Stationary Fueling
and Transportation of Men and Materials**

INTRODUCTION

For the Teamsters

Roy A. Finley, Secretary Treasurer Local 362, Calgary
Ken Karwchenko, Local 362, Edmonton

For the Operating Engineers

Paul Bokowski, Business Agent Local 955, Edmonton
Bruce Kryluik, Local 955, Edmonton

For North American Site Development Ltd.

Allan K. Mc Cagherty, Edmonton
Sam Kemble, C.L.R., Edmonton

As Intervenor

R. Neil Tidsbury, Secretary
Coordinating Committee of Registered Employers' Organizations

Authority

The authority of the Umpire is based on the Jurisdictional Assignment Plan of the Alberta Construction Industry, the request and evidence submitted by the Teamsters and the evidence submitted by the Operating Engineers, the Contractor and the Intervenor.

PRELIMINARIES

Documents submitted by the parties questioning the appropriateness of proceeding, were dealt with by the Umpire.

Challenge 1. - North American – because of the lack of a bargaining relationship with the protesting Union:

“Therefore, we request that the Umpire declare that it is not appropriate to determine work jurisdiction in this case. It is certainly totally inappropriate to award work to the Teamsters Union in this case. The Umpire CANNOT create a bargaining relationship when there isn't one.”

The Umpire drew the attention of the parties to Article III 2(d) of the J.A. Plan Procedural Rules requiring the Umpire to decide on the presence of a bargaining relationship when requested. He also made reference to the first Letter of Understanding which expands on this matter. The Letter says that the Umpire "...may or may not determine it appropriate to award work to a participating Union notwithstanding the absence of a bargaining relationship."

Because of the above requirements of the J.A. Plan, the Umpire is obligated to hear argument on this matter before making a decision on the request by North American.

Challenge 2. - Teamsters

In a letter dated October 24, 2001, the Teamsters asked the Umpire to review Article X of the Procedural Rules, Use of Lawyers, with regard to the rebuttal evidence submitted by North American. The Umpire advised that he would hear argument on this matter but not on the basis of opinion evidence or hearsay evidence.

Mr. McCagherty of North American asked whether or not the Umpire intended to accept the letter from the Teamsters, as it was dated after the closing date set for the receipt of documents. The Umpire said that the letter would be accepted because it did not deal directly with the issues before the hearing, but did deal with the legitimacy of the hearing. Mr. McCagherty refused to accept the letter but did agree to argue its contents.

Mr. Finley of the Teamsters said that an assurance from Mr. McCagherty that lawyers were not used would satisfy him. The assurance was given.

Procedural Order

The Umpire outlined the procedural order that would be followed in the hearing.

1. The parties will present evidence and argument dealing with the existence of a bargaining relationship between the Contractor - North American and the protesting Union - the Teamsters.
2. The parties will next present evidence and argument dealing with the Teamster claim of mis-assignment of work.

Description of the Work

A description of the work was provided by Mr. McCagherty of North American.

"Project work is comprised of site preparation, site grading, as well as the excavation and backfill of trenches used for the installation of underground piping. Project work also includes the demolition of underground piping."

Project schedule: Estimated July 30, 2001 – October 30, 2003

1. EVIDENCE

The Existence of a Bargaining Relationship

Teamsters

Mr. Finley spoke to the Project Terms for the Syncrude 21 Projects – a document signed by the Alberta & NW Territories Building Trades of which the Teamsters is a member.

Page 15 - Article 17.02 Jurisdictional Assignments

- (a) The responsibility for and the processes and considerations to be followed in the assignment of work shall be in accordance with the provisions of the Jurisdictional Assignment Plan of the Alberta Construction Industry.
- (b) All jurisdictional disputes shall be resolved in accordance with the Jurisdictional Assignment Plan of the Alberta Construction Industry.

Page 20 – Collective Agreements form part of the Project Terms for Syncrude 21 projects

Page 23 - Certificate # 25 – General Teamsters Union Local 362 is listed as the Local Union in the schedule of collective agreements.

- 3. “ For each of the below listed trade jurisdictions, the Local Union which shall be referenced shall be the Local Union or Unions having territorial jurisdiction over areas in which work is carried on pursuant to the project terms.”

The Teamsters have a bargaining relationship that arises from this collective agreement.

Other Unions have used this agreement to claim work. The Construction & General Workers Union #92 and the United Association #488 were both awarded work by North American, but neither have a bargaining relationship with North American. We suggest that the Operating Engineers do not have a bargaining relationship with North American Site Development Ltd.

The Teamsters is signatory to the Syncrude 21 Agreement and therefore would expect the Jurisdictional Assignment Plan to uphold its jurisdiction.

North American

Mr. McCagherty advised that North American was required to use the terms of the Syncrude 21 agreement. The Scope of the agreement was very carefully prepared.

North American Site Development Ltd. has letters dated in the 1980's establishing a relationship with the Labourers and the U.A. The firm never has had a relationship with the Teamsters.

In written evidence Mr. McCagherty referred to Article 1.03 of the Syncrude 21 Project Agreement.

The Terms apply "...to each Employer in respect to those of the Employers' employees engaged in construction ...for whom a Building Trades Union has established and retained or subsequently acquires and retains the right of collective bargaining."

The language does not extend a bargaining relationship to and between organizations that do not have existing relationships. The correct conceptualization of the project Agreement, is to treat it as a supplementary document that overrides certain provisions of each collective agreement for the purposes of creating common terms and conditions.

Concerning Schedule 1, lead Paragraph 3 and Teamster Certificate #25.

These must be read consistently with Article 1, Scope and Definition. When done so, it shows that North American has complied with the Schedule as Article 1 says it only applies to Trades with which North American has a bargaining relationship.

Operating Engineers

Mr. Bokowski objected to the inclusion as evidence of the two letters from the Labourers Union and the United Association which were presented by Mr. Finley. He stated that neither the Operating Engineers nor North American had had a chance to prepare argument on this matter. The Umpire overruled the objection on the grounds that the letters did not constitute new evidence, but merely corroborated the claim made in Mr. Finley in his letter dated October 17, 2001, of which Mr. Bokowski received a copy.

Mr. Bokowski does not believe that the Teamsters have a bargaining relationship with North American, but he knows that the Operating Engineers do.

Although Mr. Bokowski did not offer further oral evidence at this point, the Umpire has chosen to make reference to the written evidence submitted by the Operating Engineers, which bears on the existence of a bargaining relationship.

As per Memorandum of Understanding and the Procedural Rules. (J.A. Plan)

"In any event a decision of the Umpire shall not have the effect of either extending to that Participating Contractor subcontracting restrictions that are not included in a collective agreement that is binding upon that Participating Contractor or extending to that Participating Contractor any hiring obligations that are not included in a collective agreement that is binding upon that Participating Contractor."

Intervenor – Coordinating Committee of Registered Employers’ Organizations

Mr. Tidsbury thanked the parties, particularly the Teamsters, for allowing him to make a presentation. He cautioned that this should not become a regular occurrence, and the Intervenor should be required to prove an interest in the proceedings.

There are two ways a bargaining relationship can be achieved.

By certification – issued by the Labour Relations Board.

By agreement – does not have to be in writing, could be voluntary recognition.

Reference was made to section 174(1), paragraph (b) of the Alberta Labour Relations Code.

Mr. Tidsbury gave some background on the development of the Syncrude 21 Agreement.

Part 3, Division 8 of the Alberta Labour Relations Code contains provisions for the creation of project agreements upon application to the Minister, and Mr. Tidsbury explained why this permission was necessary. Project agreements that were in place at the time the Code was adopted were grand-fathered. Since that time, there have not been any project agreements negotiated pursuant to Division 8, nor was the Syncrude 21 Agreement negotiated pursuant to Division 8. We would have a different argument here if we had been dealing with a Division 8 agreement he said.

The Syncrude 21 Project Agreement was negotiated pursuant to the registration certificates that each of the employers’ organizations had, ie., the employers organizations that make up the coordinating committee. This agreement is an adjunct to each of the registration collective agreements, and it does not require that all of the work at the Syncrude 21 Project be carried out by unionized contractors and the unions signatory to the project terms. The terms do require that if a contractor has a bargaining relationship with one or more of the unions, then these are the terms that apply. (see section 1.03). If no relationship exists, then the terms do not apply.

The application of this agreement is addressed in sections 174 and 176 of the Alberta Labour Relations Code, a copy of which Mr. Tidsbury included in his written evidence. Subsection 2, Section 174 of the Code says that Subsection 1 of Section 174 applies to employers only to the extent of their collective bargaining relations with a trade union, ie. an employers’ organization and a trade union cannot create bargaining relationships where none exist.

Section 17 of the Syncrude Project Terms referring to the J.A. Plan cannot create bargaining relationships. As has been pointed out, the Plan operates whether or not a bargaining relationship exists.

From his written evidence, Mr. Tidsbury made the following comments. In entering into the Syncrude 21 Project Terms, the Coordinating Committee acted on behalf of the

employers' organizations listed in the Schedule attached to the Project Terms.

Application of the Syncrude 21 Project Terms is covered in Article 1.03, and the Terms are a part of the collective agreements entered into by the respective employers' organizations and the counterpart unions.

It is clear that the registered employers' organization is prohibited from entering into a collective agreement that would bind an employer with whom the subject trade union has not established, or does not subsequently establish, the right of collective bargaining.

The Syncrude 21 Project Terms cannot extend or create a bargaining relationship between the Teamsters and North American where no such relationship otherwise existed. The Coordinating Committee did not have the authority to create such a relationship.

1. REBUTTAL EVIDENCE

Teamsters

Mr. Finley suggested that Mr. Tidsbury presented his own interpretation of the Alberta Labour Relations Code.

From his written evidence.

“It would be ludicrous to think that an employer would attempt to avoid a J.A. Plan Ruling (#9904) by arguing that they have no bargaining relationship with any union while quoting terms and conditions to an agreement that union is signatory to.”

A bargaining relationship is created by the Syncrude 21 Project Agreement. The J.A. Plan is referenced and the Umpire can rule on jurisdiction. The J.A. Plan offers the only court to which the Teamsters can bring this dispute.

Both the Labourers and the UA were awarded work but have no bargaining relationship with North American. Letters from these two Unions were tabled confirming the lack of “signatory status” between them and North American Site Development Ltd.

Intervenor

The coordinating committee is not here to say that the Teamsters cannot bring a claim to the J.A. Plan. They are here only to say that the Syncrude 21 Agreement does not create bargaining relationships where none exist.

Teamsters

The existence or non existence of a bargaining relationship does not prevent us moving ahead on the matter of jurisdiction.

North American

Mr. McCagherty claimed in his letter dated October 22, 2001 that North American Site Development Ltd. does have a bargaining relationship with both the Labourers Union and the Pipefitters Union (UA).

The work in dispute is heavy and highway construction – not general construction.

Syncrude 21 Project Terms cannot be used to create a bargaining relationship. Our letter dated October 22, 2001 deals with this.

Teamsters

All the trades working on the site for North American Site Development Ltd. are working under general construction agreements.

Operating Engineers

The Operating Engineers do have a relationship with North American Site Development Ltd..

This concluded the evidence on the existence of a bargaining relationship.

2. EVIDENCE

The Mis-Assignment of Work by North American Site Development Ltd.

Teamsters

Mr. Finley quoted from the Teamster application which listed on the second page the equipment that had been assigned to the Operating Engineers in contradiction of all decisions of record and prevailing practice in Alberta. Clearly, the transportation of men and materials on industrial construction projects in Alberta is the work of the Teamsters. Referring to clause 17.02 of the Syncrude 21 Project Terms, Mr. Finley noted that the assignment of work and the resolution of jurisdictional disputes on this project is to be in accordance with the provisions of the J.A. Plan of Alberta. This has not been done.

The Teamsters Local Union # 362 are signatory to the Project Terms (Registration Certificate # 25). This gives it territorial jurisdiction over areas in which work is carried on pursuant to the Project Terms. The Green Book Decision dated October 27, 1939 confirms this jurisdiction and gives the teamsters the exclusive right to transport men and materials. Also the June 1, 1969 Agreement, although cancelled in 1997, still forms the basis of determining prevailing practice on industrial construction projects in Alberta.

Mr. Finley referred to the Pre-Job Mark-Up Conference held by North American Site Development Ltd. on July 23, 2001. On page 3, work was assigned to the Labourers and the Plumbers and Pipefitters. On page 4, reference is made to the Syncrude 21 Agreement which makes modifications to the Teamsters registered construction agreement. He also

provided a copy of the jurisdictional claim prepared by the Teamsters and the final work assignments by North American on August 20, 2001. No work was assigned to the Teamsters.

The Teamster presentation concluded with four assignments of work to the Teamsters by North American Construction Ltd. on projects in Alberta. Much of this work is similar to the work claimed by the Teamsters in this case, but assigned to the Operating Engineers.

The Syncrude 21 project Terms apply. Through the J.A. Plan of Alberta we are given the opportunity to claim jurisdiction.

Operating Engineers

Mr. Bokowski spoke to the written evidence submitted by the Operating Engineers.

The J.A. Plan procedural Rules precludes it from extending to a participating contractor any hiring obligations not included in the collective agreement. If there is no collective agreement, the J.A. Plan cannot force North American to hire Teamsters. Any decision to the contrary would not be binding on anybody.

The Collective Agreement currently in force in Alberta awards much of the work in dispute to the Operating Engineers. Four assignments of equipment operation by various contractors confirms that the work in dispute is often performed by Operating Engineers in the Fort McMurray area. Mr. Bokowski ran through the various types of equipment.

An earlier decision by the J.A. Plan (#9904) gives the operation of boom trucks to the Operating Engineers in a similar situation as this, where the contractor had no relationship with the Teamsters. Another J.A. Plan decision (#9910) recognizes that Operating Engineers do use boom trucks for hoisting to position. A third decision (#0014) recognizes that there is no negotiated agreement between the Operating Engineers and the Teamsters in Canada, and the 1969 agreement is not in force. This was admitted by the Teamsters in their letter dated October 17, 2001.

The Syncrude 21 Agreement says that unions must resolve their own issues. The 1939 Decision of Record has no bearing in this case because the Teamsters do not have a bargaining relationship with North American. The work awarded to the Teamsters was by North American Construction Ltd. not North American Site Development Ltd.

The Umpire should be aware that North American Construction Ltd. is a different company from North American Site Development Ltd.

The Operating Engineers request that the assignment of work by North American Site Development Ltd. be upheld.

North American

North American Site Development Ltd. is not a signatory to the Syncrude 21 Agreement but must abide by the terms of that agreement. These terms are listed on pages 2 and 3 of the October 22, 2001 letter North American wrote to the J.A. Plan. North American did not use the Syncrude 21 Agreement to establish a relationship with the Labourers and the UA.

Mr. McCagherty confirmed that in the Fort McMurray area, much of the work in dispute goes to the Operating Engineers. In this case, North American had the opportunity to reduce the number of trades working on the site and therefore the cost.

On the Syncrude 21 Project, we are part of an alliance and abide by the Project Terms. On the mark-ups submitted by the Teamsters, we acted as a sub-trade and had to abide by the terms set by the general contractor. Thus the inclusion of the Project Terms in the mark-ups.

Reference was again made by Mr. McCagherty to the Alberta Labour Relations Code, Article 149(a) and Section 174.

Sam Kemble made the observation that if the Syncrude 21 Project Terms are applicable, they must be applicable in their entirety, including Article 1.03.

2. REBUTTAL EVIDENCE - SUMMARY**Teamsters**

The Letter of Understanding is going to be key to this decision. The Umpire has the right to rule on the Teamster's jurisdiction request. The Syncrude 21 project Terms refers to the J.A. Plan for that purpose.

A bargaining relationship may or may not be in place, but jurisdiction must rule.

Operating Engineers

Our letter dated October 18 covers 95% of our summation. A ruling on jurisdiction in this case could be a breach of trust and possibly a breach of law.

Concerning the 1969 Agreement which the Teamsters Union claims forms the basis for prevailing practice in Alberta. In their letter dated October 17, 2001 to the J.A. Plan Administrator, they admit that this agreement is not in effect.

In the Scope clauses of the Collective Agreements submitted in the Operating Engineers' evidence, the work described is overburden removal not general construction work. This is also true for the work in dispute. For this reason the Teamsters claim to jurisdiction does not apply.

In summary, Mr. Bokowski read from his rebuttal letter dated October 18, 2001 to the J.A. Plan Administrator. Some of the key points made.

Syncrude 21 Project Terms do not impart a bargaining relationship.

The awarding of work is the Contractor's responsibility.

The J.A. Plan of Alberta cannot impart a bargaining relationship.

The various North American Group companies are separate entities.

No Employers' Association can impart a bargaining relationship on any entity.

Without a bargaining relationship, North American is not required to hire Teamsters.

If North American decided to hire Teamsters it would be their choice.

North American

North American Site Development Ltd. is not signatory to the Syncrude 21 Agreement, but it must abide by the Project Terms.

The Nova Agreement is not applicable to any projects related to Syncrude or to the Syncrude 21 Agreement. This is made clear in the Scope and Definition of the Nova Agreement.

Mr. Mc Cagherty made reference to the prohibition contained in Article 149(a) of the Labour Relations Code of Alberta.

No trade union and no person acting on behalf of a trade union shall seek to compel an employer or employers' organization to bargain collectively with the trade union if the trade union is not the bargaining agent for a unit of employees that includes employees of the employer.

North American Site Development Ltd. does not employ Teamsters. Furthermore, the Teamsters have not established and retained the right of collective bargaining for any of our employees.

Mr. McClagherty also made reference to Section 174 of the Code. This section makes it clear that no one has the right or the authority to force a collective bargaining relationship unless done so by a legalized recognized process.

This concludes the presentation of evidence and rebuttal.

Nature of the Protest

The Teamsters claim that the award was made to the Operating Engineers in contradiction of all decisions of record and the prevailing practice on industrial construction sites in Alberta. Clearly the hauling of men and materials is the work of the Teamsters.

Evidence

Written and spoken evidence was presented in accordance with the Procedural Order outlined on page 2.

A summary of this evidence is included in Attachment A.

FINDINGS

1. The Existence of a Bargaining Relationship

All parties made reference to the Syncrude 21 Agreement in arguing the existence of a bargaining relationship.

The Teamsters are signatory to this agreement through the Alberta and NW Territories Building Trades (certificate #25), and thus claim a bargaining relationship. Article 17 of the Agreement invokes the J.A. Plan in matters of jurisdictional disputes, and Article III 2(d) of the J.A. Plan requires the Umpire to decide on the presence of a bargaining relationship when requested to do so.

Although the Teamsters have a legitimate entrée to the J.A. Plan jurisdictional dispute mechanism by way of the provisions quoted above, there is nothing in their evidence, or in the J.A. Plan requirements, that indicates the existence of a bargaining relationship. As Mr. McCagherty said, the language in the Syncrude 21 Agreement does not extend bargaining relationships to and between organizations that do not have existing relationships. Mr. Bokowski agreed.

Mr. Tidsbury on behalf of the Coordinating Committee of Registered Employers' Organizations pointed out that only by certification issued by the Labour Relations Board or by agreement between the parties, can a bargaining relationship be achieved. The Syncrude 21 Agreement cannot extend or create a bargaining relationship where no such relationship otherwise existed.

The awarding of work to other Unions by North American, with or without a bargaining relationship in place, has no bearing on the existence of a bargaining relationship between the Teamsters and North American.

The Syncrude 21 project Terms do not impart a bargaining relationship where none exists.

2. The Mis-Assignment of Work by North American Site Development Ltd.

In accordance with Article 17 of the project terms of the Syncrude 21 Agreement, when a jurisdictional dispute arises, and clearly the assignment of work in this case has resulted in a jurisdictional dispute, the J.A. Plan of Alberta shall be used to resolve the dispute.

The same Article states that the processes and considerations to be followed in the assignment of work shall be in accordance with the provisions of the J.A. Plan. Both trades referred to decisions of record, previous J.A. Plan decisions, prevailing practice and assignments of similar work by other contractors to prove that the processes and considerations of the Plan had been followed or ignored as the case may be.

The Operating Engineers provided a copy of their current collective agreement for the general construction sector. In it the operation of the whole range of heavy construction equipment is listed as their responsibility.

Both trades also provided a number of work assignments. The projects referred to show an equal competence on the part of both trades in the handling of heavy construction equipment, and the willingness by contractors to rely on that competence. There is no choice to be made here as to which trade should be awarded the work.

However, looking at the use to which the equipment is put in the work assignments mentioned above, indicates that the operation of vehicles used in the hauling of material was assigned to the Teamsters, while the operation of vehicles used in grading and shaping was assigned to the Operating Engineers. Prevailing practice in Alberta gives to the Teamsters the use of selected heavy construction equipment for transportation, but transportation is not the activity described in the description of work provided by the Contractor. On this project, site preparation, grading, excavation and backfill is the work in dispute and this is traditional Operating Engineers work.

On the issue of efficiency, Mr. McCagherty said "...North American had the opportunity to reduce the number of trades working on the site and therefore the cost." In this case clearly the prerogative of North America.

RULING

There is no bargaining relationship between the Contractor and the General Teamsters.

The assignment of the Contractor is upheld.

The cost of processing this application shall be borne by the General Teamsters

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

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

**THE ASSIGNMENT OF THE OPERATION OF
CERTAIN ON-SITE VEHICLES AND TASKS**

J. A. Plan # 0109, November 9, 2001

ATTACHMENT A