

**JURISDICTIONAL ASSIGNMENT PLAN**  
*of the*  
**ALBERTA CONSTRUCTION INDUSTRY**  
**(J.A. Plan)**

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**DECISION OF THE UMPIRE – File #9908**

**Review of Contractor's Intended Work Assignment**

**Installation of Through Wall Combined Heating/Cooling Units**

**PROJECT**

**Syncrude North Camp A/C**  
**Mildred Lake Village, Alberta**

**CONTRACTOR**

**E<sup>3</sup> Services Inc., Fort McMurray, AB**  
**(E<sup>3</sup>S Inc.)**

**PROTESTING PARTY**

**Sheet Metal Workers' International Association**  
**Union #8**  
**(SMWIA #8)**

**RESPONDENT**

**International Brotherhood of Electrical Workers**  
**Local Union #424**  
**(IBEW #424)**

**Decision Published**  
**July 15, 1999**

## **Review of Contractor's Intended Work Assignment – Installation of Through Wall Combined Heating/Cooling Units**

### **1. NATURE OF PROTEST**

SMWIA #8, the protesting party have stated:

“Basis of protest is the work in dispute is the Jurisdiction of the Sheet Metal Workers’ International Association in accordance with an International Agreement.

This Agreement applies to the installation of 600 “through the wall” combination heating and cooling air conditioners.”

### **2. AUTHORITY**

The authority of the Umpire is based on the Jurisdictional Assignment Plan of the Alberta Construction Industry, the Application submission by SMWIA #8 and responses submitted by E<sup>3</sup>S Inc. and IBEW #424.

*The IBEW #424 challenges the right of the Umpire to consider SMWIA #8’s application as “the work in question is work outside of the construction industry”.*

### **3. J.A. PLAN, PROCEDURAL RULES**

#### **Article IV: Contractor's Responsibility (in part)**

Item IV 5(a) states:

*"5. The intended work assignment by the Contractor shall be made on the following basis:*

- (a) Where a Decision of Record applies to the disputed work, or where an Agreement of Record between the disputing trades applies to the disputed work, the Contractor shall assign the work in accordance with such Agreement or Decision of Record. Where a local trade agreement between two unions has been filed with the Umpire, the Contractor shall assign the work in accordance with such trade agreement providing such trade agreement does not affect another trade."*

#### **Article V: Union’s Responsibility (in part)**

Item V 4 states:

- "4. A Union may file with the Umpire through the Administrator a protest against the indented work assignment of a Contractor on a particular project. Such protest of assignment shall indicate the project, the disputing trades, those trades and parties affected by the dispute, an account of leading to the work assignment, and a full and detailed description of the work in dispute. The Union shall also indicate the basis*

*of its protest of the assignment by the contractor. The Union shall cite any Decision or Agreement of Record on which its protest is based. When no Decisions or Agreements of Record are applicable, the Union shall cite the basis for its protest of assignment. Any Union may also notify the Umpire through the Administrator of a work stoppage engaged in by another Union. Prior to filing a protest, the Union shall advise the Contractor and the Union in possession of the disputed work of its claim for the dispute work and seek to settle the same. (amended by "Plan Amendments No. 2", (02/12/97)."*

#### **4. SUBMISSIONS**

I have reviewed all documentation submitted by the parties including the documentation requested in my July 08, 1999 letter. I thank the parties for their prompt response to that letter. Unfortunately E<sup>3</sup> Services couriered package was not received until July 13, 1999.

##### **4.1 SMWIA #8**

- Further described the nature of their protest as required in the Procedure Rules Article V, Item 4 by submitting their letter of June 22, 1999 including attachments
  - Separate letter of June 22, 1999 explaining their position
  - Correspondence with E<sup>3</sup>S Inc.
  - December 16, 1969 International Memorandum of Agreement between IBEW and SMWIA (Memo of A.).
  - June 28, 1957 Boilermaker/SMWIA International Agreement.
  - Four Decisions of various Boards awarding this work to the SMWIA.
  - Installation instructions (13 pages) for the units in dispute.
  - Information (6 pages) on the Climette unit.
  - July 09, 1999 letter with respect to "Green Book" agreements.

##### **4.2 IBEW #424**

- July 23, 1999 letter stating the Assignment is correct and the work in question is work outside the Construction Industry.
- June 28, 1999 letter stating position and enclosing letters from five different Ft. McMurray electrical firms.
- July 12, 1999 letter with respect to Green Books agreements.

### 4.3 E<sup>3</sup>S Inc.

- June 28, 1999 letter including:
  - Scope of work and electrical specifications (3 pages).
  - Detail C, dwg. 70-D-P-7206 sheet 1 re thermostat modification.
  - Sequence of work.
  - Justification of Position.
- July 09, 1999 letter complete with attachments received by courier on July 13/99.

### Disposition of Submissions

Should the parties require any of the information returned to them they should contact the J.A. Plan Administrator as all the material submitted has been returned to him.

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## EVIDENCE

## 5. REVIEW OF SUBMISSIONS

### 5.1 SMWIA #8

Their June 22, 1999 letter of submission contained:

- A separate June 22, 1999 letter complete with attachments, the contents of which I will comment on.
- May 26, 1999 SMWIA #8 fax transmittal to E<sup>3</sup>S Inc. enclosing the Memo of A. stating “Local #8 interpretation of 1(d) and 1(e) pertains to this work.”.

*Comment - I will comment on the Memo of A. in my review of the IBEW #424 and E<sup>3</sup>S Inc. submissions.*

- May 31, 1999 IBEW fax transmittal to E<sup>3</sup>S Inc. advising their understanding of the work in the installation of combination electrical heating/air conditioning units and claiming all of the work as per the Memo of A.
- June 15, 1999 SMWIA #8 fax transmittal to E<sup>3</sup>S Inc. referring to discussions of May 27 and message left on June 07, 1999 to which no reply has been received.
- June 18, 1999 E<sup>3</sup>S Inc. letter stating E<sup>3</sup>S Inc. had assigned the jurisdiction for the work based on articles 1(a) and 1(c) of the Memo of A.

*Comment - E<sup>3</sup>S Inc. took over three weeks to provide SMWIA #8 a written reply during which time three weeks of actual construction had been processed as work commenced on June 01, 1999.*

- June 28, 1957 Boiler Maker/Sheet Metal Workers International Association International Agreement.

*Comment - this agreement is specific to the two unions mentioned and even though Article I states the installation of ventilating fans, blowers, air handling units, etc. is recognized as coming under the jurisdiction of the SMWI Association, the IBEW is not party to this Agreement and as such it has no effect on the IBEW.*

*- Not relevant to this dispute.*

- Letters from three separate Jurisdictional Boards
  - Impartial Jurisdictional Disputes Board, Washington, D.C., letters to the SMWI Association dated:

*- February 1, 1990 dispute between UA, IBEW and SMWI on the jurisdiction of through wall package type heating and cooling units the Board agreed the assignment to the SMWI was proper.*

*- March 07, 1980 in dispute between IBEW and SMWI on handling and installation of all metal wall sleeves, complete package type heating and cooling units, grilles, louvers and duct work shall be assigned to the SMWI on the basis of trade practice.*

- National Joint Board for settlement of Jurisdictional Disputes Building and Construction Industry, Washington, D.C.

*- November 20, 1959 letter in dispute between SMWI and UB Carpenters and Joiners over unloading, distribution, assembling, erection of enclosures and removal of front panels for window air conditioning units, etc. shall be assigned to the SMW.*

- Joint Conference Board for the Construction Industry, Washington, D.C.

*- March 14, 1955 letter in dispute between UA and SMWI on installation of combined heating and air conditioning units is to be assigned to the SMWI.*

*Comment - only applicable to UA & SMWI not the IBEW*

*- not applicable to this dispute.*

- Thirteen pages of the installation instructions for the disputed units and six pages of a nearly identical unit.

*Comment - it is understandable the SMWIA #8 may not have had access to the actual contract information.*

*- My review of this information caused me on June 08, 1999 to request from E<sup>3</sup>S Inc. additional information on the*

*installation of the actual units which was received on July 13, 1999.*

- *My comments on this information are included in the review of E<sup>3</sup>S Inc. submission in this section.*

- In response to my July 08, 1999 request the SMWIA #8 advised on July 09, 1999 they could not find any reference in the “Green Book” to Agreements of Record of Decisions of Record.

## **5.2 IBEW #424**

Their June 28, 1999 letter states:

- The work in question is work outside of the construction industry.

The collective agreement in effect is the Maintenance Agreement between Local Union 424, IBEW and Environmental Electronic Electrical Services Inc. The term is effective from January 1, 1998 to December 31, 1999. Therefore E<sup>3</sup>S Inc. is not a Participating contractor as per section 2(1) of the Construction Industry Jurisdictional Assignment Plan Regulations. The Umpire has no jurisdiction to accept or deal with Local 8’s application.

If the Umpire does consider Local 8’s application, which we would protest, we submit the following”

*Comment:*

- *The working question is construction.*
- *Reference – Alberta Labour Relations Board Reports, [1997] Alta. L.R.B.R.*
- *Pages 364 and on the Board ruled that elevator modernization, capacity of existing elevators enhanced and improved – Work found to be construction within definition of Code.*
- *Page 365 for the reasons.*
- *Page 366 defines construction.*
- *Page 369 defines maintenance work.*
- *All pages for the complete ruling.*
- *Applying these facts to the dispute in question Syncrude North Camp a/c project is a construction project. Even though in performing this project IBEW #424 collective agreement in effect is the Maintenance Agreement.*
- There is no Agreement of Record between the IBEW #424 and the SMWIA #8 which covers this work.”.
- The 1969 Memorandum of Agreement between the Sheet Metal Workers International Association and the International brotherhood of Electrical Workers does not specifically cover the work in question. Combination electrical

heater/air conditioner units are not part of this Agreement. It does provide some degree of direction as to what the two unions have considered when formulating this Agreement for similar work.

Paragraph (a). "...unit(s)..., not duct connected, shall be the work of the IBEW."

Paragraph (c), "completed package room cabinet type....units, with or without thru wall fresh air intake, shall be the work of the IBEW."

The units assigned to IBEW in this instance are not duct connected, and the units are completed package room cabinet type. Considering this the Contractor made the correct assignment."

*I agree the 1969 Memo of A. does not specifically cover the work in question.*

*I question why an agreement between IBEW and SMWIA covering this and related matters does not exist.*

- Stated it is not efficient to have units handled by two bargaining units.
  - Comment - I do not understand as this is happening now as both the Carpenters and IBEW #8 are involved.*
- Evidence of prevailing practice and established trade practice is attached.
  - Comment - The attachment contains letters from five contractors who in general state when installing units similar to these they use IBEW members.*
  - *These submissions lack detail and, respectively, with this limited information it is difficult to verify if this represents prevailing or established trade practice.*
- In response to my July 08, 1999 request IBEW advised on July 12 there are no Agreements and Decisions of Record on this matter and pointed out they dealt with this issue in their submission.
  - *I thank IBEW #424 for their concise focused submission.*
  - *The J.A. Plan was created by the Coordinating Committee of Registered Employer Organizations (Employer) and Alberta and N.W.T. (District of McKenzie) building and Construction Trades Council (Council). Even though IBEW#424 is not a member of the Council the Plan is still considering their submission.*

### **5.3 E<sup>3</sup>S Inc.**

Their June 29, 1999 submission letter contained four attachments:

- Attachment 1 – 3 pages of electrical specifications and scope of work.
  - Comment - These specifications define electrical requirements and in Item 4.2.5 refer to a 125V receptacle and cover for new*

*heating/cooling window units. Items 4.2.7 & 8 also refer to the same type of window unit.*

- Attachment 2 – one page of Detail “C” of drawing 70-D-P-7206 Sheet 1 showing the ambient temperature thermostat modification.
- Attachment 3 – Sequence of work

*This document explained the procedure and steps followed to complete the work.*

*E<sup>3</sup>S Inc. loads and transports the units in a pick up truck from storage to the locations they will be installed. There is no confirmation this is being done by IBEW #424 members.*

*Once on location the units are removed from their shipping boxes (by what trade?), the outer housing removed (by what trade?) and installed in the newly framed wall hole by the carpenter.*

*I question why the carpenters are handling and installing part of or all of these units when this has been assigned to IBEW #424.*

*The additional thermostat is installed and the unit is then installed back in the housing in the wall. There is no confirmation this is being done by IBEW #424 members.*

*The unit it tested and the carpenters complete the interior and exterior finishing.*

*On July 8, 1999 I requested from E<sup>3</sup>S Inc. (with copies to IBEW #424 and SMWIA #8) clarification of the details of installation. A binder of information which I will refer to as a supplementary submission was received July 13, 1999.*

- Attachment 4 – Justification of Position

*This well prepared document states “E<sup>3</sup>S Inc. assigned this work on the basis of the Memo of A. Article 1(c) and the reason Article 1(e) does not apply even though SMWIA #8 says it does”.*

*I agreed with the IBEW #424 that the Memo of A. does not specifically cover the work in question. Neither articles 1(c) or 1(e) are specific to this work.*

*Comments on Sequence of Work attachment that “it would not be good project management having two bargaining units trades handling these units”.*

*Again the question is jurisdiction. SMWIA #8 have not disputed the electrical scope of the work is the jurisdiction of the IBEW #424. The question is the jurisdiction for the handling and installation of the packaged heating/air conditioning units.*

*Section 1 of the Memo of A. does not have a division for the units on this project:-*

*Division 1 Units*

- (a) and (b) do not apply



- *(c) is for through wall completed package room cabinet type electric heating units with no mention of air conditioning.*
- *(d) does not apply*
- *(e) again only addresses electric heating units with no mention of air conditioning or through wall.*
- *None of the submissions verified the units in question met this criteria*
- *E<sup>3</sup>S Inc. state “we find great difficulty in identifying each of the individual sections as there is no mechanical means of joining the sections and there are no clear demarcation lines identifying where one section ends and the next section begins”.*
- *The remaining Divisions 2, 3 and 4 do not apply to this matter.*

### **SUPPLEMENTARY SUBMISSION**

July 09, 1999 E<sup>3</sup>S Inc. letter enclosed a binder of information referred to by attachments.

- Attachment A Invitation to Tender Document  
 B Pre-bid Meeting Minutes  
 C Mechanical and Civil Scope of Work  
 D Photographs and Explanation of Actual Work  
 E Installation Instructions Manual  
 F Electrical Scope of Work Bunkhouse K including electrical drawings.

#### *Comment*

#### *This information*

- *much of the submission did not pertain to my questions of July 08, 1999*
- *some of the information was useful in further explaining the procedure and details of installation.*
- *contained Owner’s preliminary work schedule*
  - *Construction start – May 31, 1999*
  - *Completion of all work – July 31, 1999*

E3S Inc. July 9/99 letter stated in part

- Actual work commenced – June 01/99
  - Original contract will be complete – July 21/99
  - Additional work Bunkhouse P will be complete – July 28/99
-

On July 15, 1999 SMWIA #8 confirmed they do not wish to review the Supplementary Submission and in their July 15, 1999 letter referred to the July 12/99 E<sup>3</sup>S Inc. information transmitted to them on July 12, 1999.

- Their interpretation of the Dec. 16 Memo of A. differs from that of Mr. Dunning (E<sup>3</sup>S Inc.) or Mr. Bendfeld (IBEW #424).
- Do not agree the cost of a “certain number of journeymen” would significantly increase the overall project cost.
- The Gross Industrial Wage package for a SM Journeyman is \$1.00 less/hour than an IBEW Journeyman.
- Their SMW Trade Regulation included allows one SM Apprentice for each one Journeyman.

## 6. J.A. PLAN ARTICLE II: DEFINITIONS:

### **Defines:**

*"Agreements between Unions" - There are various types of Agreements - Agreements of Record and other National, Provincial and Local Agreements. These Agreements are not binding on other crafts not signatory to the Agreements and, insofar as the Canadian Plan is concerned, they do not affect the claims or rights of work jurisdiction of Unions not party to the Agreement.*

*"Agreements of Record" - are those Agreements between Building Trades Unions which have been recorded with the Canadian Plan and are binding on the signatory Unions. These are the only Agreements contained in the "Green Book". Agreements of Record are applicable only to the parties signatory to such agreements.*

*“Decision of Record” – Decisions of Record are those which appear in the publication commonly referred to as the “Green Book” published and approved by the Building and Construction Trades Department, AFLCIO (current issue) and are international or national in scope. They are applicable to all trades even though a dispute which resulted in a Decision of Record may originally have involved only two trades.*

*They are not to be confused with job decisions rendered by the Canadian Plan which apply only to the SPECIFIC JOBS and crafts named in the job decisions. However, the Canadian Plan is required to give due consideration to Decisions of Record in arriving at job decisions.*

*Decisions of Record in the “Green Book” do not appear in chronological order and are always referred to by dates.*

## 7. J.A. PLAN ARTICLE VI: PROCEDURES TO BE USED BY THE UMPIRE

*In making my decision I have followed this procedure.*

## 8. FINDINGS

- There are no Agreement or decisions of Record between SMWIA #8 and IBEW #424 recorded in the “Green Book”.
- The 1969 Memorandum of Agreement (Memo of A.) between the Sheet Metal Workers International Association (SMWIA) and the International Brotherhood of Electrical Workers (IBEW) does not pertain to the work in question.
- The IBEW #424 have not established the prevailing practice or established trade practice.
- Lacking any of the above to arrive at my decision I turn to site specific decisions (not recorded in the “Green Book”) of Feb 01/90 and March 07/80 by the Impartial Jurisdictional Disputes Board, Washington, D.C. in two similar disputes involving SMWIA and IBEW. In both cases this Board ruled in favor of SMWIA.
- E<sup>3</sup>S Inc. did not properly interpret the Memo of A. when making the assignment.
- Under E<sup>3</sup>S Inc. assignment IBEW #424 are responsible for transportation, unpacking, placement, removal of any components, placement of outer housing and placement of the units. The carpenters are not.

## 9. THE RULING

The decision is not upheld. The work is reassigned to SMWIA #8.

It is impractical at this stage of the project with only two weeks remaining to implement this reassignment.

The remaining work is allowed to be completed by IBEW #8 under the original assignment.

The Umpire’s costs are to be paid equally by E<sup>3</sup>S Inc. and IBEW #424.

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W.A. Weir, Umpire  
J.A. Plan/Alberta Construction Industry  
July 15, 1999