

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

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**DECISION OF THE UMPIRE – File #9913**

**Review of Contractor's Intended Work Assignment**  
**Use of Fork Lift Outside “General Warehouse or Storage Area”**

**PROJECT**  
**Shell Meg Project Scotford**

**CONTRACTOR**  
**Fluor Constructors**  
**Calgary, AB**

**PROTESTING PARTY**  
**International Union of Operating Engineers Local 955**  
**(IUOE)**

**RESPONDENTS**  
**General Teamsters Local 362**  
**(Teamsters)**

**and**

**Fluor Constructors Canada Ltd.**  
**(Fluor)**

**Decision Published**  
**November 8, 1999**

*Amendment to item 3, page 2 of 15 (as underlined)*

## 1. NATURE OF THE PROTEST

IUOE, the protesting party, have stated: "The Teamsters have been assigned work within the scope of the IUOE - see attached submissions".

## 2. DESCRIPTION OF THE WORK

The description of the work involved in this dispute was supplied by Fluor.

"Operation of fork lifts and rough terrain extendable fork lifts (zoom booms) in the general warehouse or designated storage area shall be the work of the Teamsters.

Operation of fork lifts and rough terrain extendable fork lifts (zoom booms) in all other instances shall be the work of the IUOE".

## 3. AUTHORITY

The authority of the Umpire is based on the Jurisdictional Assignment Plan of the Alberta Construction Industry, the Application by IUOE and responses submitted by Teamsters and Fluor. (*Amendment Dec. 23/99 to items underlined*)

## 4. 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).”*

## **5. SUBMISSIONS**

I have received (from J.A. Plan Administrator Portlock) and reviewed all documentation submitted by the IUOE, Teamsters and Fluor.

### **5.1 IUOE**

Further described the nature of their project as required in the J.A. Plan Procedural Rules, Article V, Item 4.

### **5.2 Teamsters**

In their October 25, 1999 letter and 12 attachments stated their position with reference to the June 10, 1999 Agreement between IUOE and Teamsters.

### **5.3 Fluor**

Their October 29, 1999 letter was clear in expressing their position.

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All documentation submitted by the IUOE, Teamsters and Fluor was accepted as Evidence

### **Disposition of Submissions**

All submissions have been returned to J.A. Plan Administrator Portlock.

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## EVIDENCE

### 6. REVIEW OF SUBMISSIONS

- October 29, 1999 J.A. Plan Administrator Portlock fax cover page to Umpire Weir enclosing submissions for IUOE and Teamsters and stating "the respondent trade, the Teamsters, have in their submission asked for this review to be conducted as an oral hearing. The applicant does not wish this matter to be handled as an oral hearing, accordingly it will proceed as a 'documents only' review".
- Oct. 29, 1999 J.A. Plan Administrator Portlock fax cover page to Umpire Weir enclosing Fluor's Oct. 29, 1999 letter being their description of the disputed work.
- Oct 14, 1999 J.A. Plan Administrator Portlock fax cover page to Teamsters and Fluor enclosing "Application for Review of a Contractor's intended Work Assignment submitted by the IUOE naming the Teamsters as the "affected trade" and Fluor as the contractor.

Requesting "statement of position" from Teamsters by 1700 Oct. 15, 1999

Requesting "full description of the disputed work" from Fluor by 1700 October 21, 1999.

- October 14, 1999 J.A. Plan Administrator Portlock's fax cover page to J.A. Plan Board of Trustees and Umpires advising of Application for Review of Contractors Intended Assignment, J.A. Plan File #9913.

#### 6.1 IUOE

- Copy of application form for Review of Contractor's Intended Work Assignment dated Oct. 8/99 submitted by International Union of Operating Engineers.
- 5 page undated submission by IOUE outlining dispute. Submitted on Union's behalf by Paul Bokowski, Business Agent, IUOE.

*Comment - clearly states IUOE position. Requests the Umpire:*

- a) affirm that "all Laydowns" are work areas and are in the jurisdiction of the IUOE.*
- b) re-affirm that Fork lift/Zoom Boom is power equipment and as such the work of the IUOE.*
- c) rule that the Teamsters' jurisdiction is in the warehouse, as there are no designated fenced, attached (to the warehouse) secure, storage area.*

d) *rule that a fenced, gated, secure storage area must be agreed upon by Fluor, Teamsters and IUOE at the pre-job in order to establish any possible Teamster jurisdiction.*

- 4 page Memorandum of Understanding between Coordinating Committee of Registered Employer's Organizations and Alberta & N.W.T. (District of Mackenzie) Building and Construction Trades Council.

*Comment - hi-lited are "Decisions of Record" and "Prevailling Practice".*

- Fluor Daniel Drawing of Construction Facilities Location Plan Sheet 2 (loose in binder).

*Comment - Notes Designated Laydown Area*

<i>C27-1 to C27-28</i>	
<i>C27-1 to C27-27</i>	<i>- 21,870 sq. M</i>
<i>C27-28</i>	<i>- 3,840 sq. M</i>
<i>In Total</i>	<i>- 25,710 sq. M.</i>

Item Mk. 1

- 5 page document entitled "Jurisdictional dispute between the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America and the International Union of Operating Engineers.

*Comment - documents the resolution of a serious jurisdictional dispute between the International Unions of OE and Teamsters on road construction. The decision of October 27, 1939 states:*

*"All power-driven equipment that is used exclusively as a vehicle to transport any material or other matter for building or other construction comes within the jurisdiction of the Teamsters and Chauffeurs."*

*"All power-driven equipment used on any and all types of building and other construction work including any and all power-driven equipment that has been in dispute between the Teamsters and Engineers, comes within the jurisdiction of the International union of Operating Engineers."*

*Page 133 of the Green Book records this as a decision of record dated January 29, 1940.*

*As this decision is silent on the details of power-drive equipment in dispute it is not possible to interpret.*

- One page excerpt from Pre-Job Conference (page 25).

*Comment - states - Fork lifts, Zoom Booms, Bob Cats & Man Lifts operation under what conditions states the June 10/69 agreement between the OE & the Teamsters will be recognized.*

Item Mk 2

- Handwritten notes of Paul Bokowski (undated)

Item Mk. 3

- October 29, 1997 letter to Mike King, Bus. Mgr., IUOE Local Union 955 from Frank Hanley, General President stating there was no current jurisdictional agreement with Intern. Brother of Teamsters.

*Comment - pertains to the dispute between these two unions and makes reference to the operation of articulating dumps and stinger-type cranes on pipelines.*

*Also comments "...we still have no current jurisdictional agreement with the International Brotherhood of Teamsters.:*

- Excerpt from Pre-Job Conference (page #5, undated)

*Comment - hi-lited is Laydown Area which states:- "Item #12 of this document shows a plot plan with the designated laydown area marked. When conditions warrant a change to these areas, any changes will be distributed.*

- Pages 46 - 49 from the Green Book of January 5, 1925 agreement between International Union of Operating Engineers and United Association of Journeymen Plumbers and Steam Fitters.

*Comment - not applicable as the UA not party to this dispute. Poorly presented.*

Item Mk. 4

- October 26, 1961 decision of the Joint Board on the Operation of Fork Lift at Atlas Missile Project near Altus, Oklahoma, Fluor Corp., Ltd. Contractor.

*Comment - states "The work in dispute is governed by decision of record of November 11-23, 1907 and shall be assigned to OE."*

*The particular facts and evidence not made available. Job specific only.*

Item Mk. 5

- February 8, 1961 decision of the Joint Board on Operation of Fork Lift at Avisun Project, Wilmington, Delaware, Bechtel Corporation, Contractor.

*Comments - same as Item Mk. 4.*

Item Mk. 6

- Copy of “Operating Engineers” instructions prepared by Adam Clark Company Ltd. (undated).

*Comment - ?*

- May 10/82 document prepared by PCL Industrial Construction, Appendix “A” Jurisdictional Work Assignments, Union Carbide Project – Prentiss, AB. Outlining operation of Fork Lifts, Bob Cats and Man Lifts

*Comment - states*

4. *Fork Lifts, Bob Cats and Man Lifts*

- a) Operation of fork lifts in the general warehouse area shall be the work of the Teamster.*
- b) Operation of fork lifts in all other instances shall be the work of the Operating Engineer.*
- c) Operation of front end loaders, including "bob cat" types, shall be the work of the Operation Engineer.*
- d) Man lifts (J lifts) shall be considered a "tool of the trade" and shall be the work of each respective craft.*
- e) Moving of equipment or materials, such as welding machines, prefabricated pipe spools, valves and related materials, can be done by the respective craft with the assistance of a cherry picker.*

Item Mk. 8

- November 10/77 letter from Cdn. Bechtel Limited to IUOE Local 955 regarding the operation of fork lifts.

*Comment - Syncrude Project - "The operation of fork lifts is being performed by Operating Engineers, except when same is being used in a Teamsters designated warehouse area where they are being operated by a Teamster".*

Item Mk. 9

- January 17/83 letter from Loram Construction to IUOE Local 955 regarding the operation of fork lifts.

*Comment - Project not named - "...only Teamster work in the warehouse area be the jurisdiction of the Teamster. All other fork lift work, on the Project, is the jurisdiction of the Operating Engineers".*

Item Mk. 10

- July 13, 1993 fax transmission from International Cooling Tower Inc. in Tucson, Arizona to Alberta Building Trades Council re Union Carbide Prentiss 11 Cooling Tower Project

*Comment - "Further to our markup meeting of July 5, 1993 we wish to confirm that the operation of any crane or zoom boom forklift used for unloading, transporting or erection purposes, would be the exclusive jurisdiction of members of Local 955, The International Union of Operating Engineers.*

*The Teamsters Local 362 have exclusive jurisdiction in the warehouse and adjacent yard."*

Item Mk. 11

- October 11/99 handwritten note from Gregory A. White to Paul stating fork lifts were being operated by Operating Engineers at the Brown and Root Joffre site.

*Comment - noted*

Item Mk. 12

- Handwritten comments entitled "Jurisdictional comments" with initials R.H. (undated) on Fluor expansion Petro Canada Refinery.

*Comment - ?*

Item Mk. 13

- September 13/99 handwritten note addressed to Bill Berg (part of note blanked out). Signed by Don R. Collin.

*Comment - ?*



Item Mk. 14

- Handwritten note with September 9 and 14, 1999 entries from W.R. Berg.

*Comment - Records Teamsters moving steel at Fab Shop for P/F Unit 13-01 and Teamster Dumping Metal Scrape Bin at Fab Shop - Zoom Boom.*

Item Mk. 15

- September 20, 1999 handwritten memo from Rick Makar of September 16, 1999 observation of Teamsters operating Zoom Book Forklift working in the Vessel Assembly yard adjacent to the Fabrication Building.

*Comment - noted*

Item Mk. 16

- Handwritten note from D.R. Collins (??) concerning conversation with “Hank” (undated).

*Comment - ?*

- September 20/99 handwritten note from D.R. Collins (??) concerning comments by job steward

*Comment - ?*

Item Mk. 17

- September 20/99 handwritten note from Rick Makar (O.E. Foreman)

*Comment - ?*

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*Comment - Submission hard to follow and not focused.  
Recommend in future a listing of attachments and attachments be marked.  
Who has the hidden agenda?*

## 6.2 Submission by General Teamsters, Local Union No. 362

- October 25/99 letter from Roy A. Finley, Local Secretary-Treasurer outlining Local's position on dispute (4 pages) listing enclosures as follows.

*Comment - Well documented. Clearly states the Teamsters position regarding the use of fork lifts outside of the general storage area. States:*

"I would first like to clarify that this dispute, in our view, has to do with the use of the forklift for lifting purposes only, since General Teamsters, Local Union No. 362 has exclusive jurisdiction over the moving of men and material. The dispute comes down to the definition of "laydown area" and whose work it is. For economic and efficiency reasons, it should be the work of the Teamsters.

*Comment - I do not agree with the Teamsters statement "... since Teamsters has exclusive jurisdiction over the moving of men and material". If such was so we would not have this or like jurisdictional disputes.*

The Teamsters Union and Operating Engineers in the Province of Alberta continue to use the 1969 Agreement (Enclosure #1) for the basis of deciding jurisdictional matters. We have worked under this agreement since I became a member of the Teamsters in 1970.

Regarding the issue in dispute, the Teamsters deny that we are performing work outside of the general warehouse storage area, or laydown areas. We have no knowledge of work performed in the tank plants or throughout the site.

The Operating Engineers' description of the storage area is somewhat confusing, as it describes work that is not in dispute..."

Our interpretation is that the laydown area is in fact a storage area. It is an area on a construction job, in which material is placed, which is not its final destination. This is an area in which the contractor uses their employees in an efficient manner. Typically, a Teamsters job function is not only to offload the material with a forklift, but also to perform the job of checking the material. It has been our jurisdiction for the thirty (30) years in which I have been involved in the construction industry, and is the most efficient way to handle and control material.

I take great exception to the Operating Engineers claim that we are attempting to expand our jurisdiction. It has been, and continues to be, the Teamsters position that we drive the forklifts in the general warehouse and storage areas. This is the most efficient way for us to perform our duties.

The Operating Engineers reference to the pre-job, shows that the 1969 Agreement is being used, and the reference to no designated storage areas is not correct. We expect you will see this in the contractor's records.

We do not take exception to sub-section (M) of the pre-job. However, we do take exception to the Operating Engineers reference to a definition of designated storage areas, and the reference to the Teamsters expanding their jurisdiction.

The Operators reference to the Green Book documents 4 through 17, is redundant, as we continue to use the 1969 Agreement in the Province of Alberta.

The Operating Engineers comment regarding several meetings to resolve this dispute are false. The Business Manager of Operating Engineers and myself (as Principle Officer of Teamsters Local 362) have met one time. The Operating Engineers reference to a local agreement is ridiculous, since we agree between ourselves that the 1969 Agreement applies in Alberta.

Attachment

- 1
  - Copy of 1969 Agreement - Construction Site Jurisdictional Agreement Between International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and International Union of Operating Engineers.

*Comment - Page 4 Article V states*

*"Fork Lifts*

*It is agreed between the two organizations that the operation of all fork lifts is the work of the Operating Engineers except under the following condition: The operation of fork lifts in a warehouse or storage area is recognized as the work of the Teamster. It is agreed that the fork lifts operated by the Teamster in the warehouse or storage area will not leave the confines of these areas to do any other work."*

- 2
  - Copy of dictionary definition "Storage"

*Comment - noted.*

- 3
  - Copy of dictionary definition "laydown"

*Comment - noted*

Attachment

- 4 • Copy of May 14, 1993 letter between IUOE General President and IBT General President, defining operation of forklifts in a warehouse or storage area as Teamster jurisdiction. It is agreed that the fork lifts operated by the Teamsters in the warehouse or storage area will not leave the confines of these areas to do any other work.
- Comment - noted*
- 5 • Copy of memo dated October 4, 1996 site manager, Williams Power Corporation stating that the operation of forklifts in a warehouse or storage area is work of the Teamsters. . It is agreed that the fork lifts operated by the Teamsters in the warehouse or storage area will not leave the confines of these areas to do any other work.
- Comment - noted*
- 6 • Copy of June 02, 1977 decision between IUOE and IBT stating that the contractor would be required to designate a storage area for the project.
- Comment - noted*
- 7 • Copy of decision between IUOE and IBT regarding forklift trucks being operated by Teamsters.
- Comment - noted*
- 8 • Copy of Award July 17, 1977 stating (01-76 and 02-76) the operation of forklifts in the ISI laydown area is work of Teamsters.
- Comment - noted*
- 9 • Undated copy of excerpt from National Erectors Association Craft Jurisdictional Guide, regarding equipment placed in common stockpile or warehouse and power equipment is used ....
- Comment - Titled Ironworkers - Electrical Workers - work to be done by Ironworkers. Assume included as it refers to common stock pile or warehouse.*
- 10 • Undated copy of except from National Erectors Association Craft Jurisdictional Guide, regarding stockpile or storage.
- Comment - Similar to above.*
- 11 • Copy of pre-job conference for Nova Chemicals Ethylene Plant No. 3 Joffre, Alberta, September 17, 1998 (d)(I) and (d)(vi) regarding forklift equipment, and indicating that the 1969 agreement will be recognized.
- Comment - confirms Fluor's October 29/99 letter. Recognizes Agreement*

*between IUOE and Teamsters.*

- 12 • Copy of pre-job conference for Shell Meg Project, Scotford Chemical Plant, Fort Saskatchewan, Alberta, December 10, 1998 (d)(I) and (d)(vi).

*Comment - same wording as 1969 Agreement*

- 13 • Copy of pre-job conference for Union Carbide Prentiss, Alberta March 2, 1999 (d)(I) and (d)(vi).

*Comment - same wording as 1969 Agreement.*

*Profession Presentation - Thank you.*

### **6.3 Fluor**

- October 29, 1999 from JA Plan Administrator attaching October 29/99 letter from Fluor, Hugh H. Tackaberry to JA Plan Administrator outlining Fluor's description of disputed work.

As per your request of October 14, 1999 Fluor Constructors Canada Ltd. (FCCL) hereby submits full description of the disputed work in regard to use of fork lifts outside "general warehouse or storage area" at the Shell MEG Project, Scotford, Alberta.

FCCL's assignment of this work at the mark-up meeting reads:

Operation of fork lifts and rough terrain extendable fork lifts (zoom booms) in the general warehouse or designated storage area shall be the work of the Teamsters.

Operation of fork lifts and rough terrain extendable fork lifts (zoom booms) in all other instance shall be the work of the Operating Engineers.

FCCL holds to this assignment and does not direct the Teamsters to perform work with the fork lifts or zoom booms outside the warehouse or designated storage area in the "general work area".

FCCL defines the warehouse to be the building and attached area where material is received and stored.

FCCL defines a designated storage area or designated laydown as an area remote from the main warehouse, used to receive and store material and equipment, and which provides extra storage space and is an area which is used on a permanent or temporary basis.

These areas are "designated" by the Construction Manager in conjunction with the Labour Relations Manager in order to prevent any temporary placement of material or equipment from being called a "designated laydown" area.

Teamsters use fork lifts and zoom booms in the warehouse and designated storage or designated laydown areas to off load and move material and equipment within these areas. Teamsters do not have jurisdiction on fork lifts or zoom booms outside these areas.

*Comment - all noted. Concise and to the point. Thank you.*

## **7. 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.*

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

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

## 9. FINDINGS

From the evidence submitted I find:

- There is an applicable Agreement dated June 10, 1969 between the IUOE and the Teamsters. Article V states the jurisdiction for the operation of Fork Lifts will be:

"The operation of fork lifts in a warehouse or storage area is recognized as the work of the Teamsters.

It is agreed that the fork lifts operated by the Teamsters in the warehouse or storage area will not leave the confines of these areas to do any other work."

This agreement is clear on the limit of the Teamster jurisdiction with respect to the operation of fork lifts.

- There may be confusion in the understanding of storage area and laydown area. The IUOE and the Teamster should put more effort into resolving this dispute and until that happens I will continue to apply the 1969 agreement.

## 10. THE RULING

- Fluor's Assignment is upheld.
- Teamsters are to immediately cease and desist operating fork lifts and rough terrain extendable fork lifts (zooms booms) other than in the general warehouse or designated storage area or designated laydown area only as designated by the construction Manager in conjunction with the Labour Relations Manager.
- The umpire's costs are to be paid equally by the Operating Engineers and the Teamsters.

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W.A. Weir, Umpire  
J.A. Plan/Alberta Construction Industry  
November 8, 1999