



ONTARIO LABOUR RELATIONS BOARD

OLRB Case No: **0805-15-JD**

International Brotherhood of Electrical Workers, Local 773, Applicant v **Alberici Constructors, Ltd.**, United Brotherhood of Carpenters and Joiners of America, Millwrights Local 1244, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 700, and Iron Workers District Council of Ontario, Responding Parties

BEFORE: Michael McFadden, Vice-Chair

APPEARANCES: Craig Flood, Daniel Anisfeld, Barry Heeney and Marc Stobbs appearing for the applicant; Meg Atkinson and Bill Vancoughnett appearing for Millwrights Local 1244; Rob Gibson, Miriam Wallbridge, Jason Roe appearing for Ironworkers Local 700; Geoff Ryans and Sean Thibeault appearing for Alberici Constructors Ltd.

DECISION OF THE BOARD: December 23, 2016

1. This application involves a jurisdictional dispute in the construction industry ("JD Application") filed by the International Brotherhood of Electrical workers, Local 773 ("IBEW") that takes issue with a work assignment made by Alberici Constructors Ltd. ("Alberici") to a composite crew of members of the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 700 ("Ironworkers") and the United Brotherhood of Carpenters and Joiners, Millwrights Local 1244 ("Millwrights").
2. For the reasons set out below I am dismissing the JD Application.

Disputed Work Assignment

3. The parties agree that the disputed work occurred within Board Area 1 in the ICI sector in the construction industry. In a decision dated July 14, 2015 the Board (differently constituted) described the disputed work as follows:

Work In Dispute

2. The parties agreed that the work in dispute is the installation of a linear electromagnetic propulsion rail transfer system at the Fiat Chrysler Assembly Plant located in Windsor, Ontario. The work involves the installation of linear synchronous motors within the propulsion rail system and the installation of a 300 volt DC power supply connected to that system. The work in dispute also consists of:

- Receiving and unloading all equipment (including base plates, stations and rails); and
- Setting all equipment, including the assembly, levelling and alignment of all components (alignment of equipment to +/- 0.125 mm – digital theodolite).

4. The relevant work tasks required to complete the installation of the system described above included:

- (a) the receipt and off-loading at the Fiat Chrysler plant (“the Plant”) of system equipment, including the base plates, pylons and rail segments;
- (b) the completion of floor layout and the setting of the base plates at their correct location and elevation;
- (c) the setting in place and alignment of the rail segments using a digital theodolite;
- (d) the setting and welding of all the trap angles as provided by the system vendor; and
- (e) the installation of any and all connection wiring for the power and control systems.

5. The work described at 4(e) above was assigned to members of IBEW and the other items described above were assigned to a composite crew of Ironworkers and Millwrights.

6. At the consultation IBEW made clear that it did not claim the offload or installation of any of the parts not directly part of the linear synchronous motor, the installation and alignment of the platform (a series of pylons) that support the rail segments that contain the linear synchronous motor segments and any final fine tuning of the rail alignment nor does it claim the work associated with the placement of the carrier that rides along the rail (the nature of this system is described in more detail further below).

Facts

7. The system at the core of this work dispute is the device that moves parts down between two rows of robots that perform work on the parts in order to complete a car body marriage sub-assembly. The parts are moved down on a carrier (essentially a highly magnetized beam on rollers) that rides on a rail that has sections that can lift and lower independently of each other as each robot station requires ("assembly rail"). When the carrier carrying the parts worked on by the robots reaches the end of the process the completed parts are removed and the now empty carrier is returned to the start of the line on a return rail to receive fresh parts and repeat the process ("return rail").

8. The assembly rail is elevated from the factory floor about 1.5 metres and mounted on pylons attached to the floor. The return rail is overhead of the assembly rail by some distance (and also affixed to posts attached to the factory floor). The total length of each of the complete assembly rail and return rail is approximately 60 metres and each rail segment is just less than 7 metres long and weighs approximately 360 kg. The rail segments are load bearing elements. The system manufacturer specifies very low variations and tolerances (as low as 0.125 mm) in respect of the placement of the rail mounting pylons, the gaps between the rails and the straightness of the continuation of the rail segments to each other. The base plates, the pylons and the rails were all installed with the use of precision measuring tools and the assembly and strengthening of some of the foundational supports required on-site welding.

9. Both the assembly rail and return rail and the carrier form a linear synchronous motor. A “regular” electric motor is a round donut of windings (called a “stator”) within which a magnetized shaft (called a “rotor”) is suspended. When power is applied to the stator it develops a magnetic field which causes the magnetized rotor to rotate. A linear synchronous motor (to describe it at its simplest) is akin to unrolling the round stator of an electric motor and laying it flat and then placing a magnetized device at one end. When power is supplied to the flat stator the magnetic field pulls or pushes the magnetized device along the horizontal axis. In this case, the stator motor parts are embedded in the rail segments by the manufacturer and they arrived at the Plant in that configuration, except for the end rails (the IBEW installed the motor stator sections in the end rail segments after their arrival at the plant).

Submissions of the Parties

10. In the course of their respective submissions all of the parties referenced the main factors that the Board typically considers in construction jurisdictional disputes, which include:

- (a) Collective bargaining relationships and trade union constitutions;
- (b) Trade agreements;
- (c) Employer practice;
- (d) Area practice;
- (e) Safety, skills and training; and
- (f) Economy and efficiency.

The parties to this proceeding addressed all of these factors in the briefs filed with the Board and their submissions at the consultation. The factors individually or in their aggregate did not decide this case. Both the IBEW on the one hand, and Alberici, the Millwrights and the Ironworkers (I will refer to these latter three parties collectively where appropriate hereafter as “the Other Parties”) on the other, presented a persuasive case that the application of the usual factors should favour their claim, but only if you first accept their differing characterization

of the work in issue. As will be seen further below, I prefer the characterization of the work in issue put forth by the Other Parties.

Applicant's Submissions

11. The IBEW submits that, notwithstanding the novelty of the system in Board Area 1, the work it claims is really nothing more nor less than the on-site assembly of an electric motor and such work is indisputably within its core jurisdiction. That the motor is an integrated feature of a rail system that is a form of conveyor does not convert the work to the jurisdiction of the other trade unions. Indeed, the IBEW submits, to focus on the system as a conveyor is to focus wrongly on the intended end use of the system rather than the work characteristics involved in its installation.

12. Counsel for the IBEW submits that a review of the relevant trade agreements, area practice and past cases establish that a critical distinction is drawn between the power system and the propulsion system for a conveyor and the former is always within the jurisdiction of the IBEW. Counsel for IBEW concedes that where a conveyor arrives at a site to be assembled and installed and the power system is already assembled and integral to the conveyor then the IBEW would not have a strong claim. But the examples of such are all invariably where there is an already assembled electric motor already attached to a part of the conveyor (or the work in respect of the electric motor involves simply attaching an already assembled motor to the conveyor) and that is not what occurred here as the motor itself was assembled on site. In addition, counsel for IBEW states, the same relevant trade agreements, area practice and past cases establish that the unloading and onsite delivery of electric motors or parts of electric motors are exclusively within the jurisdiction of the IBEW.

Other Parties' Submissions

13. The Other Parties all supported each other's submissions and I will not distinguish between them except where necessary.

14. The Other Parties submit that what was being installed and what is in dispute is in its essence a conveyor system, and to say that is not to focus on end use but to describe the thing itself. The Other Parties submit that the relevant trade agreements, the area practice and the previous cases all establish overwhelmingly that the installation of conveyor systems in Board Area 1 is performed by

Millwrights and Ironworkers, and in the case specifically of Alberici, a composite crew of Ironworkers and Millwrights members, regardless of the motive power system used, and that what happened in the instant case is fundamentally no different from what happened in all those similar previous examples. The Other Parties submit that if the IBEW is successful in the JD Application it will be carving out for itself jurisdiction over the off-load and installation of the stator motor segments but its members will not be able to perform the essential tasks associated with that work, which is the precision rigging, placement, alignment and affixing of the rail segments to their supports and to each other because the motor segments arrive at the site already embedded in the rail segments. The Other Parties also submit that there was no real motor “assembly” in a practical sense as asserted by the IBEW as the synchronous linear motor segments arrived at the site already integrated into the rails and the assembly of those segments was secondary to the precision alignment and connection of the rail segments to each other. In the submission of the Other Parties, the assembly of the motor segments embedded in the rails was much closer to the mere attachment of an already assembled rotary electric motor to a conveyor system.

15. Finally, as pertains to the offload and onsite delivery portion of its claim, the Other Parties submit that acceding to that portion of work claimed by the IBEW (alone or in conjunction with the assembly of the stator segments on the pylons) would be contrary to basic concerns over efficiency and economy as it would necessitate two distinct crews to offload and deliver parts onsite; an IBEW crew for just the rail segments and a composite Ironworkers and Millwrights crew for all the other parts, all of which tended to arrive at the same time in the same deliveries (and indeed, the rail segments arrived onsite in packages that included other parts).

Cases

16. All of the parties put a number of cases before me to help guide my deliberations and I have reviewed and considered them in reaching my decision and I am grateful to them for their assistance in this respect. The cases referenced included: *Toronto Star Newspapers Ltd. v. G.A.U. Local 35*, [1980] OLRB Rep. 565; *B.S.O.I.W., Local 721 and Newmarch Inc.*, [1990] OLRB Rep 179; *Premier Pipelines Limited*, [1988] OLRB Rep. 1068; *Aecon Industrial, a Division of Aecon Construction Group Inc.*, 2009 CanLII 40286 (ON LRB); *Aqua-Tech Dewatering Company Inc.*, 2015 CanLII 116306 (ON LRB); *Acco*

Canadian Material Handling, [1992] OLRB Rep. May 537; *Comstock Canada*, [1993] OLRB Rep. August 740; *State Group Limited*, [1993] OLRB Rep. Dec. 1397; and *Matrix North American Construction Ltd.*, 2015 CanLII 57348 (ON LRB).

Decision

17. As can be seen, the IBEW on the one hand submits that the proper way to assess the relevant facts is to view the rail segments as the stator segments of an electric motor assembled on site and focus on the work characteristics associated with on-site electric motor assembly, whereas the Other Parties submit that the proper way to assess those same relevant facts is to view the rail segments as portions of a conveyance system assembled on site and focus on the work characteristics associated with on-site conveyor system assembly. What the relevant facts actually reveal is that the rail segments are at the same time both a critical and structural feature of the mechanical conveyance system and major electrical components. On balance, I am more persuaded that the fundamental work at issue is the precision rigging, placement, alignment and attachment to each other of the rail segments and this is not work within the work jurisdiction of the IBEW in the ICI sector in Board Area 1. I am satisfied that I can land safely on this analytical division because it is clear to me from the undisputed evidence that the electrical connection of the stator segments to each other is in the nature of a "plug in" arrangement (tasks executed by IBEW members in any event in this case) rather than an on-site arrangement that would come within the exclusive work jurisdiction of IBEW. To put it a different way, the "assembly" of the motor stator parts in this case did not engage any of the core jurisdictional skills of the IBEW. These circumstances are more analogous to those circumstances where Millwrights bolt onto a conveyor system an already assembled electric motor, circumstances that the IBEW concede do not give rise to an exclusive work jurisdiction claim for the IBEW, than they are analogous to the on-site assembly of an electric motor.

18. I am satisfied after a careful review of all of the declarations and attached documents that the parties submitted with their respective consultation briefs that the area practice in Board Area 1 is that conveyance systems are assembled and installed on site by Millwrights and Ironworkers, and in the case of Alberici specifically, a composite crew of Millwrights and Ironworkers. That is what happened here and I am not persuaded that the work assignment should be

changed because the stator segments arrived at the site already embedded in the rail segments waiting to be plugged into each other.

19. The Ironworkers, in particular, placed heavy reliance upon the analytical approach the Board deployed in *Matrix North American Construction Ltd.* In that case, the Ironworkers and the Millwrights litigated a jurisdictional dispute over the installation of a scrap metal removal system installed at a steel mill at Hamilton. The system included a fixed chute that directed scrap steel trimmings created on a moving production line down into a bin placed on a rail car that then moved the bin to another location to be emptied. The dispute before the Board was only in respect of the installation of the fixed chute (and some rigging associated with that installation), but in assessing the competing claims over the work and the area and employer practice the Board considered whether the chute was part of a conveyor system. The Ironworkers in that case asserted that the bin itself could not reasonably be said to be part of a conveyor system and since it was the bin that received the scrap metal from the chute then the chute could not be part of a conveyor system either. The Board rejected the position of the Ironworkers by stating as follows:

30. However, I conclude that the bin is part of a conveyor consisting of the bin, the flat car on which it sits, the rails on which it travels and whatever it is that supplies the power to move or activate the rail car constitutes a conveyor. It is a system that moves material from one place to another. There is no reason to isolate the bin from the rest of the system of which it is a part. No party attempted to provide any definition of "conveyor" that is common to the industry (or even to file the Millwright/Iron Workers "Conveyor Agreement") to provide any aide to interpreting the word in this context. In its ordinary meaning this is a conveyor, and hence, for what it is worth, the chute conveys material for conveyor to conveyor.

20. In a general sense, I take *Matrix* to be sounding a cautionary note that the Board when considering competing work claims should resist the undue fragmentation of the parts of a system, or in other words the breaking up of an integrated system into the most elemental individual portions possible and then only examining the work characteristics associated with each individual portion. As the Board said in *Matrix* (and I paraphrase), context can and does matter. In that respect, the disputed system in the instant case is clearly the installation of a conveyor system and the predominant work

characteristics that gave rise to the JD Application were those associated with conveyor system work.

21. Because in my view the rail segments that included the embedded and already installed stator segments were primarily components of a conveyor and the critical work tasks associated with their installation at the Plant were within the work jurisdiction of the Ironworkers and the Millwrights that is also, in my view, a full answer and defence to the off-load claims of the IBEW. In other words, in my view the offload of the rails was primarily the offload of a conveyor system part, work within the jurisdiction of the Millwrights and the Ironworkers, more than it was the offload of an electric motor or parts of an electric motor, work which might well be within the jurisdiction of the IBEW given the trade agreements that were placed before me.

22. I pause to note here that there was a significant factual dispute between the parties about certain assertions made by the IBEW in its reply brief. In essence, IBEW stated in its reply brief (for the first time) that after the installation of the system some of the stator segments had to be removed because they were placed in the assembly rail in the wrong direction and its members did this work (the removal and reversal of direction of the errant rail segments). The Other Parties submitted at the consultation hearing that I should give no weight to this factual assertion because it was first raised in the reply brief and the Millwrights, in particular, said that in any event the facts as stated by the IBEW are not correct. What actually happened, the Millwrights state, is that the manufacturer embedded some of the stator segments in the rail segments in the wrong direction which was not discovered until the system was finally assembled and being tested for use. The Millwrights submitted that rather than remove rails IBEW members were assigned the task of removing and reversing the windings within the errant segments while the rails remained attached to the pylons and each other. The IBEW objected to the Millwrights seeking to introduce contrary facts at the consultation in this manner and submitted that an evidentiary hearing be held on this particular factual dispute.

23. I will not hold an evidentiary hearing into these disputed facts. Even if I was inclined to admit the facts first raised by the IBEW in its reply brief (which I am not¹), they do not change my overall view of

¹ The Board is typically very reluctant to permit a party to introduce new or fresh factual assertions in a reply brief in a construction industry jurisdictional dispute as it is fundamentally unfair to the other parties who then cannot respond and it may

the correctness of the work assignment in the first instance. But my procedural determination in this regard should in no way be taken to be a comment concerning the IBEW jurisdiction to do internal wiring or reconfigurations of synchronous linear motor segments.

24. For all of the reasons aforesaid, the JD Application is hereby dismissed.

“Michael McFadden”
for the Board

impinge on the expeditious resolution of such disputes. See Ontario Labour Relations Board Information Bulletin No 25 *Jurisdictional Disputes in the Construction Industry* under “Briefs” and see for example *Findlay-Jones Insulation Ltd.*, 2003 CanLII 7740 (ON LRB).