

ONTARIO LABOUR RELATIONS BOARD

3215-09-HS United Brotherhood of Carpenters & Joiners of America, Local 1946, Applicant v. **EllisDon Corporation**; Dan Dignard, Inspector; and International Brotherhood of Electrical Workers, Local 120, Responding Parties.

BEFORE: Harry Freedman, Vice-Chair.

DECISION OF THE BOARD: March 3, 2010

1. Dan Dignard, an inspector under the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1 as am. (the "Act") issued an order on January 21, 2010 requiring electricians to mount bed locators in the hospital rooms at the Victoria Hospital construction project in London, Ontario (the "Order"). That work had been assigned to members of the applicant ("Local 1946"). As a result of the Order, members of Local 1946 ceased mounting bed locators at the Victoria Hospital construction site. That work has been carried out by members of the International Brotherhood of Electrical Workers, Local 120 ("Local 120") since the issuance of the Order.
2. Local 1946 filed a timely appeal with the Board under section 61(1) of the Act on February 1, 2010 against the Order (Board File No. 3216-09-HS) and at the same time made this application to the Board under section 61(7) of the Act for an order suspending the operation of the Order pending the disposition of the appeal.
3. Local 1946 is the trade union representing the carpenters who had been mounting the bed locators up to the date of the Order. Local 120 is the trade union representing the electricians who have been mounting the bed locators since Mr. Dignard issued the Order. EllisDon Corporation ("EllisDon") identified itself as the constructor responsible for the Victoria Hospital construction project.
4. Both Local 120 and the Ministry of Labour (the "MOL") on behalf of Mr. Dignard oppose this application while EllisDon agrees with Local 1946 and supports its request to have the Order suspended pending the disposition of the appeal. The parties filed detailed and comprehensive submissions together with supporting documents and authorities which have been of considerable assistance to me in dealing with this application.
5. The Order is based on section 3 of O. Reg. 572/99 as am. (Training Requirements for Certain Skill Sets and Trades) under the Act. The Order prohibits persons who are not electricians to carry out the work of mounting bed locators. The Order states in part:

Upon consultation with the workplace parties and review of the Skill Set for Electricians it was determined that the work being done shall be done by Electricians.

Mr. Dignard explained his basis for issuing the Order at page 3 of the narrative portion of the Order when he wrote:

Complaint about who is installing Bed Locators. Work is being done by Carpenters and Electricians feel that it is electrical work.

The unit being installed is a Bed Locator which upon examination was discovered to be an electrical raceway for power and data wiring.

The work being done by Carpenters is installing the electrical raceway or Bed Locator on the wall and pulling three flexible metal conduits through the back of the raceway.

It has been determined that the work being done is not a Jurisdictional issue or dispute but rather the work is part of the skill set for 309A Electricians as set forth by Ministry of Training Colleges and Universities in document R.R.O. 1990, Regulation 1051 Electrician.

This document states:

"electrician" means a person who,

(a) lays out, assembles, installs, repairs, maintains, connects or tests electrical fixtures, apparatus, control equipment and wiring for systems of alarm, communication, light, heat or power in buildings or other structures.

It is apparent from the Order Mr. Dignard's focus at the time he issued the Order was a complaint over who was installing the bed locators. It is also significant in my view that Mr. Dignard's assessment of the equipment being installed related to whether the work being done was work within the skill set of electrician within the meaning of the *Trades Qualification and Apprenticeship Act*, R.S.O. 1990 c. T.17 as am. (the "TQAA"). There is nothing in the narrative to suggest Mr. Dignard was concerned the installation of the bed locators by carpenters created a safety hazard or posed any risk to their health and safety or to the health and safety of any other worker at the Victoria Hospital construction site. Rather, he determined because the bed locator is "an electrical raceway" and the installation of that "electrical raceway or Bed Locator on the wall" required "pulling three flexible metal conduits through the back of the raceway bed locator" the installation work had to be done by a person authorized under the TQAA to carry out that work.

6. Section 3 of O. Reg. 572/99 provides:

- (1) A worker shall not carry out work in a scheduled trade unless he or she is authorized to carry out work in that trade under the *Trades Qualification and Apprenticeship Act*.
- (2) Every employer who employs a worker in a scheduled trade shall ensure that the worker is authorized to carry out work in that trade under the *Trades Qualification and Apprenticeship Act*.
- (3) For the purposes of this section, a worker is carrying out work in a trade if that work is part of the trade as set out in the regulation made under the *Trades Qualification and Apprenticeship Act* and referred to in Schedule 2.

The term "scheduled trade" is defined by section 1 of O. Reg. 572/99 to mean "a certified trade within the meaning of the *Trades Qualification and Apprenticeship Act* that is listed in Schedule 2." Items 1 and 2 of schedule 2 of O. Reg. 572/99 are "Electrician, branch 1: construction and maintenance electrician" and "Electrician, branch 2: domestic and rural electrician" respectively.

7. The trade of "electrician" is a certified trade under the TQAA by reason of Reg. 1051, R.R.O 1990 under the TQAA. Section 2 of Reg. 1051 provides the electrician trade is composed of two branches. Branch 1 of the trade is "a construction and maintenance electrician as defined in clause (a) of section 1 of the definition of 'electrician' in section 1." Branch 2 of the trade is a domestic and rural electrician and is not relevant to the issue in this proceeding. Section 1 of Reg. 1051 defines the term "electrician" as follows:

"electrician" means a person who,

- (a) lays out, assembles, installs, repairs, maintains, connects or tests electric fixtures, apparatus, control equipment and wiring for systems of alarms, communication, light, heat or power in buildings or other structures,
- (b) plans proposed installations from blueprints, sketches or specifications and installs panel boards, switch boxes, pull boxes and other related electrical devices
- (c) measures, cuts, threads, bends, assembles and installs conduits and other types of electrical conductor enclosures that connect panels, boxes, outlets and other related electrical devices,
- (d) installs brackets, hangers or equipment for supporting electrical equipment,
- (e) installs in or draws electrical conductors through conductor enclosures,
- (f) prepares conductors for splicing of electrical connections, secures conductor connections by soldering or other mechanical means and reinsulates and protects conductor connections or
- (g) tests electrical equipment for proper function,

but does not include a person who is permanently employed in an industrial plant at a limited purpose occupation in the electrical trade.

After reading O. Reg. 572/99 together with Reg. 1051 it becomes apparent O. Reg. 572/99 requires a person performing the work described in clause (a) of the definition, that is laying out, assembling, installing, repairing, maintaining, connecting or testing electric fixtures, apparatus, control equipment and wiring for systems of alarms, communication, light, heat or power in buildings or other structures, be authorized by the TQAA to do that work.

8. For purposes of this application, I have assumed the members of Local 1946 are not authorized by the TQAA to perform the work described in section 1, clause (a) of Reg. 1051 while members of Local 120 are authorized to do that work.

9. Mr. Dignard's authority to issue the Order is found in section 57(1) of the Act. Section 57(1) provides:

Where an inspector finds that a provision of this Act or the regulations is being contravened, the inspector may order, orally or in writing, the owner, constructor, licensee, employer, or person whom he or she believes to be in charge of a workplace or the person whom the inspector believes to be the

contravener to comply with the provision and may require the order to be carried out forthwith or within such period of time as the inspector specifies.

If the work of mounting a bed locator to the wall of a hospital room is properly characterized as the installation of an electrical fixture or electrical apparatus, the members of Local 1946 engaged in that work were not authorized under the TQAA to do it. The Order issued by Mr. Dignard requires EllisDon to comply with O. Reg. 572/99 by having that work performed by members of Local 120 who are qualified by the TQAA to do the work of a branch 1 electrician.

10. The Board has the discretion under section 61(7) of the Act to suspend the operation of an order under appeal. Section 61(7) provides:

On an appeal under subsection (1), the Board may suspend the operation of the order appealed from pending the disposition of the appeal.

Although section 61(7) confers a broad discretion on the Board, the Board has generally limited the exercise of that discretion to circumstances where an applicant establishes suspending the operation of the order is not likely to create a danger to the health and safety of the workers, where the applicant has demonstrated a strong *prima facie* case for a successful appeal of the order, and where the applicant will be prejudiced if the order is not suspended. See *Regional Municipality of Hamilton-Wentworth*, [1998] OLRB Rep. July/Aug. 709; *R. J. Dungey and Sons Ltd.*, [1999] OLRB Rep. Jan./Feb. 82; *Upper Grand District School Board*, [2000] OLRB Rep. Nov./Dec. 1253; *Loblaw Companies East*, [2003] OLRB Rep. Sept./Oct. 856; *Carmeuse Lime (Beachville) Limited*, [2004] OLRB Rep. March/April 257.

11. When an applicant under section 61(7) seeks the suspension of the operation of an order under the Act pending the disposition of the appeal of that order, the applicant must persuade the Board it is appropriate in all the circumstances to exercise its discretion to do so.

12. The bed locator is a manufactured and assembled unit Local 120 and the MOL in their submissions characterize as being an electrical fixture or electrical apparatus, not unlike a fluorescent light fixture. Local 1946 and EllisDon submit the bed locator is a manufactured unit containing assembled and installed electrical outlets attached to the metal frame of the bed locator unit. They submitted the bed locator is akin to a headboard affixed to the wall of a hospital room. They say affixing the bed locator to the wall does not involve the installation of an electrical fixture or electrical equipment as the members of Local 1946 do not do any wiring or connecting of the electrical components of the bed locator to the wiring.

13. Local 1946 set out in some detail the work its members do in respect of mounting the bed locators on the wall. It appears to me from the parties' submissions there is no material difference among the parties about what is done to install the bed locators. Local 1946 described that work as follows at paragraphs 7 through 10 of schedule A of its application:

7. A bed locator is a pre-manufactured headboard that is affixed to the walls of the rooms. The bed locator includes a preassembled, pre-installed electrical outlet attached to the bed locator's metal frame. The frame is attached to the way by affixing eight (8) screws or plugs at the point where the bed will be located. The frame is then covered with a prefabricated fibreglass panel.
8. There are three sets of wires encased in flexible metal conduit at the location where each bed locator is affixed. The flexible metal conduits

are attached to a prefabricated head wall. The conduit was preassembled and pre-installed on the head walls and the head walls were installed by members of the Carpenters without objection for the IBEW or the Ministry. Members of the Carpenters also installed the drywall and cut holes in the dry wall for the flexible metal conduit. Members of the IBEW did pull the flexible metal conduit from the head wall through the holes in the drywall. When the bed locator frame is affixed to the wall, the employee installing the frame will have to place the metal conduit through pre-fabricated holes in the frame.

9. The employee installing the frame does not connect the wiring in the flexible metal conduit to the preassembled, pre-installed outlet on bed locator/headboard's frame. That wiring connection is performed by a member of the IBEW. The fibreglass cover is then placed on the metal frame after the conduit is wired into the bed locator's preassembled, pre-installed electrical outlet.
10. At no time during the affixation of the bed locator is there any current passing through any of the wiring. During the inspection the Inspector was satisfied of this fact.

There is some dispute between the parties as to whether Mr. Dignard was satisfied that no electrical current was passing through any of the wiring as Local 1946 asserts at paragraph 10. The MOL in its response on behalf of Mr. Dignard asserts he was not satisfied that the wires being worked with were not live. It submitted:

In fact, the possibility that they might be live while the work was being done remains his concern. The carpenters are not qualified to test the wires to make that determination; nor is there any evidence that they did so. In fact, a serious electrical hazard exists if the wires are in fact live, and they touch the sides of the raceway as they are fed through.

Local 120 makes a similar submission at paragraph 14 of Schedule A of its response when it states:

...any handling of the conduit and conductor wires without appropriate training could be deadly. The Carpenters have asserted that there is no current passing through any of the wiring. This is disputed. Whenever a worker handles electrical wires they must ensure that those wires are dead. Because electricity is invisible, prior to any other handling or work, a worker must test the wires to ensure that there is no current present. This basic safety measure must be undertaken in every case, even where a worker has conducted a lock out/tag out procedure, they must still test and ensure that the wires are safe to work with. The members of the Carpenters' union, who appear to deny the risk of working with electrical wires, components and fixtures, do not have the skills and training to perform this testing.

14. EllisDon and Local 1946 accept the work being done by members of Local 1946 before the Order was issued required them to pull the electrical conduit installed earlier by members of Local 120 through holes in the bed locator before mounting the frame of the bed locator on the wall. EllisDon in its response points out at tab 2 of its Book of Documents that the wires within the flexible conduits members of Local 1946 feed through back of the bed locator are not connected to a power panel and members of Local 120 have verified there is no power in those wires.

15. Amico Corporation ("Amico"), the manufacturer of the bed locator, describes its product as a "bed locator system". At page 2 of its general specification document (tab 1 of Local 120's response) Amico states:

Each bed locator system shall hold up to four (4) electrical/communication devices on each side of the unit. It shall contain electrical raceways to enclose electrical wiring for each type of power (critical, normal & low voltage/communication).

The bed locator is comprised of a metal frame with a back plate and four channels within that frame. Each end of a channel has an electrical outlet. There is wiring in each channel connected to the outlet. There are three holes in the back plate of the bed locator through which the electrical conduits that had been previously installed by members of Local 120 are pulled.

16. The installation instructions provided by Amico distinguish between mounting the bed locator on the wall and connecting the services to the bed locator. See paragraphs 4 and 5 of the Amico Installation Instructions (Tab 10 of the EllisDon Book of Documents).

17. The bed locator is a pre-fabricated unit that contains electrical outlets. The bed locator contains electrical raceways, but members of Local 1946 have no role whatsoever in placing or connecting the wiring in those electrical raceways to the electrical outlets at each end of the electrical raceways. The members of Local 120 connect the wires in the flexible electrical conduits that had been pulled through the holes in the back plate of the bed locator when it was mounted on the walls to the wiring in the electrical raceways in the bed locator after the bed locator is mounted on the wall.

18. Local 1946 in its submissions filed in reply on March 1, 2010 to the responses filed by Local 120 and the MOL states the only work performed by its members "is attaching the metal frame [of the bed locator] to the wall. This involved placing the three pre-existing wires [flexible electrical conduits] through the holes in the frame and then attaching the frame to the wall." Having reviewed all the material filed by the parties, it seems to me that submission captures the essence of the work the members of Local 1946 were doing prior to Mr. Dignard issuing the Order and what work they ceased doing after it was issued.

19. Mr. Dignard indicated in his narrative supporting the Order that the work being done was not a jurisdictional issue or dispute but rather that the work is part of the skill set of an electrician as set out in the TQAA. As Local 1946 points out in its submissions, and as confirmed in the narrative with the Order, there was a complaint made about who was installing the bed locators. According to Local 1946, John Gibson, the senior business representative for Local 120 contacted Tony D'Orazio, the senior representative for Local 1946 to find out if members of Local 1946 were installing the bed locators. During a subsequent conversation, Mr. Gibson advised Mr. D'Orazio he believed installing the bed locators was work that should be done by members of Local 120. He also told Mr. D'Orazio Local 120 was considering filing a jurisdictional dispute under section 99 of the *Labour Relations Act, 1995*, S. O. 1995, c. 1 as am. and asked him whether Local 1946 would intervene in that proceeding. Mr. D'Orazio made it clear to Mr. Gibson that Local 1946 would intervene and defend the assignment of the bed locator installation to its members. About a week later Mr. Dignard attended at the project and made the Order.

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20. The principal consideration in determining whether to suspend the operation of an order pending the disposition of an appeal of that order is whether the suspension of the order would endanger worker safety. Both the MOL and Local 120 contend the Order must be maintained to ensure worker safety due to the risk associated with handling electrical wires when the workers who are doing that work are not properly trained to do so. In my view, if the wires being handled are not connected to a power source or, in other words, the wires are not live and there is no possibility they will be live when they are being handled by workers not trained to deal with live electrical wiring, then an order prohibiting persons who are not electricians from pulling those wires may be suspended without risking the safety of workers.

21. In this case, the time when the flexible electrical conduits are pulled through the back plate of the bed locator is when the bed locators are affixed to the wall. EllisDon points out the loose wires in the conduits are checked by members of Local 120 to ensure there is no power in those wires prior the installation work beginning. It contends the loose wires are not connected to any power panel and have already been verified to be dead lines.

22. Local 120 submits there is a risk associated with handling any wires since unless one is trained to test the wires to determine whether they are live, a worker cannot be sure there is no electric power in those wires.

23. The difficulty with that submission is that if there was a real concern about the loose and exposed wires in the conduits being live, then there would be a far greater risk throughout the project since it is clear that during construction, wiring and conduits are installed and remain unconnected and exposed to be connected at a later stage of construction. I agree with and adopt the following submission made by Local 1946 in its March 1st reply:

The IBEW and the Ministry suggest that the major concern here is that the Carpenter places the wires through the holes in the frame. They raise the spectre of these wires being live. The Ministry submits the Inspector was not satisfied those wires were not live. First, as EllisDon submits, procedure before and after the Order required the wires be checked by an electrician before the Carpenter attaches the metal frame/headboard to the wall. Second, the Inspector must not have had a concern about the wires being live. If there was a possibility the wires were live there is a much greater hazard present than just the Carpenters affixing the frame. Specifically there would be possibly live wires lying exposed throughout the worksite. The Carpenters assume that the Inspector would not have been unconcerned about such circumstances if they had in fact been even remotely possible or overlooked ensuring that potentially live wires were being untended throughout the jobsite. The absence of any Order to remedy such a situation is proof that such a situation did not and does not exist.

Those submissions and the clear and unequivocal assertion of EllisDon that the wires being pulled through the back plate of a bed locator are not connected to a power source and had been checked by an electrician to ensure they are not live prior to the installation of the bed locators persuade me that members of Local 1946 were not handling live electrical conduit and wires when they were installing the bed locators and there is no real possibility they would be pending the disposition of this appeal. For those reasons I am satisfied suspending the Order will not endanger the safety of workers.

24. The MOL asserts the bed locator is an electrical fixture or apparatus and therefore any work associated with its installation requires a qualified person to do that work.

25. It seems to me, contrary to the opinion of Mr. Dignard, that the Order does relate to a jurisdictional dispute between Local 120 and Local 1946. Mr. Dignard when he made the Order focussed on the work only an electrician can do as a result of a complaint about who was doing the work rather than a complaint relating to a safety hazard at the construction project. Moreover, Mr. Dignard did not consider the general carpenter trade as defined by Reg. 1056, R.R.O. 1990 under the TQAA. Section 1 of Reg. 1056 defines a general carpenter to mean "a person who is experienced in all of the units as defined in Columns 1 and 2 of Schedules 1 and 2." Schedules 1 and 2 set out the In-School Training and Work Experience Training for the general carpenter trade. Item 5 of Schedule 2 deals with interior finishing. Column 2 of Schedule 2 at item 5 describes the various elements of interior finishing which include "Built-in fixtures". If the bed locator is an electrical fixture, it must be installed by an electrician. If, however, the bed locator is a built in fixture that is not an electrical fixture, then its installation is part of the trade of a general carpenter.

26. The MOL in its submissions agrees that if the type of work being done is also described in Reg. 1056 then the members of Local 1946 would be permitted to do such work. The MOL argues the installation of electrical raceways is not work encompassed by Reg. 1056. I agree with the MOL, but it is unclear that members of Local 1946 were installing electrical raceways. The electrical raceways had been manufactured and installed in the bed locators as part of their initial assembly by Amico. The members of Local 1946 were installing the unit or fixture containing the electrical raceways. They were not handling the actual raceways in the bed locator.

27. Although the bed locator contains electrical components and electrical raceways it appears to me more likely a bed locator would not be considered an electrical fixture. A large built in cabinet for a home entertainment centre with shelves might well contain electric lights and electrical outlets that would have to be wired and connected. Surely no one would suggest that merely because that built in cabinet had some electrical components it becomes an electric fixture that must be affixed to the wall and floor by an electrician. Installing a cabinet containing electrical components is in my view work within the trade of a general carpenter while the actual wiring and connecting of the electrical components with that cabinet are encompassed by the electrician trade.

28. In dealing with this application I need only assess the relative strength of the position taken by Local 1946 and EllisDon in respect of the characterization of the bed locator. In my view, it is more probable than not that the bed locator would be considered a metal framed fixture that contains smaller electrical fixtures and electrical raceways. Based on the material filed by the parties I am persuaded, although possible, it is unlikely a bed locator in its entirety would be considered an electrical fixture within the meaning of TQAA. Rather, the electrical outlets on each side of the bed locator which are connected by wiring passing through the electrical raceways should be considered electrical fixtures.

29. In my view, both Local 1946 and EllisDon have provided substantial grounds for asserting the Order is incorrect. I am satisfied given what I believe is the more likely characterization of the bed locator as a metal framed fixture containing smaller electrical fixtures that Local 1946 has demonstrated it has a good *prima facie* case for a successful appeal of the Order.

30. Both the MOL and Local 120 contend Local 1946 has failed to establish it would be prejudiced if the Order were not suspended. The MOL submits an applicant seeking the suspension of an order must demonstrate significant prejudice and that prejudice must outweigh concern that suspension of the order would endanger worker safety. The MOL relies on *Ontario (Ministry of Community Safety and Correctional Services)*, Board File No. 2314-06-OH, decision dated December 22, 2006, unreported, Q. L. cite [2006] OOHSA No. 156 and *Home Depot of Canada Inc.*, Board File No. 1648-05-OH, decision dated September 26, 2005, unreported, Q. L. cite [2005] OOHSA No. 137.

31. In *Ontario (Ministry of Community Safety and Correctional Services)* the Board found at paragraph 31 there was "an insufficient basis upon which to clearly find that worker safety would not be jeopardized if this Order were suspended." Similarly, in *Home Depot of Canada Inc.*, the Board held the applicant had failed to establish worker safety would be assured if the Order were suspended. In this case, I am satisfied suspending the Order will not create a risk to the workers' safety at the construction project.

32. Local 120 in its submissions relies on *R.J. Dungey & Sons Ltd.*, [1999] OLRB Rep. Jan/Feb. 82 to assert "economic hardship or claims cannot be allowed to override concerns for worker safety pending the disposition of the appeal." I agree with that submission, but as noted earlier, suspending the Order in this proceeding does not raise concerns about worker safety.

33. Local 1946 submits it will suffer significant prejudice because its members will have lost significant work opportunities to members of Local 120 as a result of the Order. It points out its members had installed well over 400 bed locators before the Order was issued, all without complaint from Local 120. It contends Local 120 had, in effect, obtained what is really an interim order in a jurisdictional dispute by lodging the complaint under the Act and convincing the inspector to issue the Order. Local 1946 also points out Local 120 will not be prejudiced by suspension of the Order since it had no right to that work assignment after having allowed members of Local 1946 to do a substantial amount of that work without asserting any claim over that work. Finally, Local 1946 submits its members will have lost the opportunity to earn wages doing the work they were assigned to perform. If it is successful in the appeal, Local 1946 members will not be able to recover those losses.

34. Local 120 submits the prejudice claimed by Local 1946 is, at best, an institutional prejudice relating to its work jurisdiction and is not the sort of prejudice the Board considers relevant in determining whether to suspend the operation of an order made under the Act. Local 120 relies on the following passage in *PCL Constructors Canada Inc.*, [2009] OLRB Rep. May/June 442 at page 446:

There is some operational prejudice to PCL in refusing to suspend the order, although that is not a significant factor in these circumstances. However, there is no prejudice to any other party. There may be some institutional prejudice to the Sheet Metal Workers as a trade union if the Order is suspended (just as there would be the same degree of prejudice to the Labourers if it were not suspended), but that is not a consideration in an application to suspend under this Act.

It seems to me Local 1946 has provided a concrete basis for asserting prejudice beyond "some institutional prejudice". The loss of work opportunities for the members of Local 1946 is significant particularly when that loss of earnings cannot be compensated if it is successful in its appeal of the Order.

35. I prefer the approach taken by the Board in *Skyjack Inc.*, [2007] OLRB Rep. Jan./Feb. 191 in which the Board wrote at page 196:

...this Order would appear to contemplate the applicant engaging in a not inconsiderable process involving a complete risk analysis of its entire workplace followed by the creation and implementation of a new programme for a facility at which over 600 persons are employed. Given this, it can be assumed that resources and costs would be required to comply and, although their exact amount may be unknown, they will not be nominal. What is also clear is that, whatever the costs are, the applicant will not be able to recoup them should its appeal be successful. Therefore, the applicant will suffer prejudice should the suspension not be granted.

The Board in that case also noted there would be little prejudice if the order were suspended.

36. While Local 120 may well be prejudiced if the Order is suspended as it is likely, given the position taken by EllisDon in this matter, its members will not continue installing the bed locators, that work had not been assigned to them initially. Since Local 120 had not claimed a right to do that work using the normal jurisdictional dispute process under section 99 of the *Labour Relations Act, 1995*, the prejudice claimed by Local 1946 if the Order is not suspended is far more significant than the prejudice to Local 120 that may result if the Order is suspended.

37. I have been persuaded by Local 1946 and by EllisDon that the Board ought to exercise its discretion under section 61(7) of the Act and suspend the Order pending the disposition of the appeal in Board File No. 3216-09-HS.

38. The Board pursuant to section 61(7) of the Act hereby suspends the operation of the order issued by Inspector Dan Dignard on January 21, 2010 in F.V. No. 5973556 pending the disposition of the appeal of that order in Board File No. 3216-09-HS.

“Harry Freedman”
for the Board