

## ONTARIO LABOUR RELATIONS BOARD

**0094-09-JD** International Alliance of Theatrical Stage Employees and Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada, Local 58 ("IATSE, Local 58"), Applicant v. International Brotherhood of Electrical Workers, Local 353 and **The Board of Governors of Exhibition Place**, Responding Parties.

**BEFORE:** Marilyn Silverman, Vice-Chair.

**APPEARANCES:** Donald K. Eady, Danny Kastner, David Baer and Mark Goldenberg appearing for the applicant; Gail Misra and Mike Oram appearing for the International Brotherhood of Electrical Workers, Local 353; Elizabeth Kosmidis and Sandy Douglas appearing for The Board of Governors of Exhibition Place.

**DECISION OF THE BOARD:** November 13, 2009

1. This is a jurisdictional dispute filed under section 99 of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act"). The work in dispute was assigned by The Board of Governors of Exhibition Place ("The Board of Governors" or "the employer") to members of the International Brotherhood of Electrical Workers Local 353 ("the IBEW"). The International Alliance of Theatrical Stage Employees and Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada, Local 58 ("IATSE") assert that the work should have been assigned to its members.

2. The work in dispute is the installation and removal of temporary video surveillance cameras and cable at various locations at Exhibition Place for the Canadian National Exhibition ("the CNE").

### **Background Facts**

3. The Board of Governors, or specifically, the CNE Association, is responsible for the set up and organization of the CNE. The Board of Governors sought advice from an independent consultant who determined the need for additional security cameras during the CNE. The installations occurred in July 2008 and again in July 2009. In September of each of those years they were removed when the CNE closed. Thirty-three cameras were installed, approximately twenty-seven of which are attached to permanent structures such as poles. The cameras were mainly installed at entrances and exits to the CNE for the purpose of crowd and vehicle control and to monitor points of exit.

4. There are two kinds of cables used in this work. CAT 5 cables are used to connect the cameras to the internet. This is done through telephone cable in telecom rooms and electrical substations. CAT 3 cables provide the power to the camera.

5. The CNE grounds over which the cameras and cables are installed cover approximately 192 acres. Most of the cameras were mounted on existing poles or on booths, although some were installed on temporary structures. Although the members of the IBEW

installed the cameras and cables, members of neither trade attached the cameras to the cables. This was done by employees of the consulting firm that advised on the installation of the system.

6. The parties referred to an earlier decision of the Board that is relevant; *The Board of Governors of Exhibition Place*, [2002] OLRB Rep. September/October 842 (“the 2002 decision”). In that case the employer assigned the installation of security cameras at the casino at Exhibition Place to the IBEW. IATSE and the employer took the position that the work of moving surveillance cameras at the casino is work of the members of IATSE. The IBEW took the position that all electrical work, permanent or temporary, was the work of its members. That position was based on the proposition that IATSE members were entitled to work in theatres and the casino was not a theatre. The Board did not change the work assignment to the IBEW. However, it did accept IATSE and the employer’s position, and interpreted the recognition clause in the IATSE agreement as covering this work at the casino. It found that the correct distinction to be made was whether or not the work in question was temporary or permanent. The panel described the bright line test as follows:

7. We prefer the approach adopted by the employer and IATSE: whether the work is permanent or temporary. It is less prone to differences of interpretation and it better fits the operational interest of the two unions: the IBEW is certified for ICI construction work; IATSE has bargaining rights for the technical operational and maintenance work. The work IATSE does, whether in a playhouse theatre or at other theatres of public amusement, is the same. The same level and type of skill and experience are required. The IBEW’s work concerns permanent construction; IATSE’s work involves temporary, non-construction installations. IATSE members set up, maintain, run and dismantle temporary lighting, sound and visual equipment and displays. They work with chattels, not fixtures: *Disney Display*, [1986] OLRB Rep. Feb. 236. The IBEW does permanent, construction work of electrical fixtures.

7. The Board concluded that while leaving the assignment in that case with the IBEW was appropriate, the assignment was a “one off” and would not be repeated because “... the ongoing work with the cameras and the camera cables belongs, in the employer’s submissions, to IATSE.” At paragraph 14 of the decision the Board described why it did not disturb the assignment to the IBEW given its analysis that temporary work should go to IATSE:

14. In our view it was legitimate for the employer to use IBEW members to install the cable (and the cameras) as part of the general electrical installation, which all parties accept was properly IBEW work. The electrical work, and the laying of cables as part of construction, falls within the IBEW’s work. The employer’s assignment was a “one-off”, in the sense that the cables were treated as part of the general permanent fitting of electrical fixtures by the IBEW. It will not be repeated because the on-going work with the cameras and the camera cables belongs, in the employer’s submission, to IATSE. The employer preferred to have one group of workers complete the task, and they had sufficient skill and experience to make the installation safely. It made economic sense for the employer to do it this way. In the circumstances we do not find the employer’s assignment in 1991 to be erroneous. We will not interfere with it.

8. Since that time the installation of cameras and cabling at the casino has been done exclusively by members of IATSE. It is notable that like the CNE, the casino only operates for a short period of time.

9. Each of the parties dealt with the impact of the 2002 decision as well as the traditional factors that the Board considers in a jurisdictional dispute: the collective agreements, employer practice and preference, skill, training and safety, and economy and efficiency.

10. As a preliminary matter the IBEW advances an argument that this work (or specifically the majority of it that was attached to fixtures) is construction work and can only be done by IBEW members and not IATSE members. In this argument the IBEW says that most of the cameras were on fixtures and thereby affixed to the land. As such, it is work within the construction industry (*City of Toronto* [1978] OLRB Rep. December 1145; *E.S. Fox Limited*, [1993] OLRB Rep. April 321 and *Arcan Eastern Ltd.* [1969] OLRB Rep. April 141). Since IATSE is not a construction trade union, the IBEW says that it has no jurisdiction to claim the work.

### **The 2002 decision**

11. IATSE relies on the 2002 decision and asserts that I should find the conclusions reached in that case to be dispositive of this assignment. It says that the camera installation at the casino is temporary and that members of IATSE have been the exclusive installers of video surveillance at that venue every year except as described in the 2002 decision. IATSE says the CNE assignment should be the same as there is no difference between the casino and the CNE in any relevant way in regard to the work in dispute.

12. The IBEW has a different approach to the 2002 decision. It says that decision was based on a specific and distinct set of facts and that the Board did not undertake the usual analysis of the factors that it does in a jurisdictional dispute. It recognizes that those factors are typically brought to bear in a construction industry application but advances the proposition that this dispute is akin to that in the construction industry because of the craft work that these trades do.

13. The employer too asserts that the scope and application of the 2002 decision should be limited to the casino. The employer contends that there was never any express agreement that IATSE would do this work throughout the CNE, and in fact it is members of the IBEW that do the employer's video surveillance work at Exhibition Place.

14. I turn now to the positions of the parties on the relevant factors.

### **Collective Agreements**

15. The relevant articles in the IATSE agreement are 1.1, 1.2 and 1.4:

- 1.1 The Employer recognizes the Union as the sole bargaining agent for all stage employees engaged by the Employer to perform work on theatrical productions or concerts and their operating systems on any temporary or permanent stage, or on other events for which stage employees are engaged, on the Grounds of Exhibition Place in the City of Toronto, save and except non-working supervisors and persons above the rank of non-working supervisors.
- 1.2 The Union's jurisdiction, as outlined in Article 1.1, includes jurisdiction over equipment regularly used by stage employees in connection with that theatrical production or concert, or other event for which stage employees are engaged, when such equipment is used for the recording or broadcast of such theatrical production or concert (with or without an audience).

1.4 The Employer agrees that the work jurisdiction of the Technical Services Shop is the work established and performed by technical employees covered by this Agreement required to maintain and repair sound, lighting and video equipment in the care of Exhibition Place in the inventory of equipment in technical services. The set up or dismantling of lighting equipment held in the technical services inventory to the limit of one total man-hour will be the responsibility of technical service employees.

16. The IBEW members performed this work under its ICI agreement although the IBEW submits that either the ICI or non- ICI agreement that it has with the Board of Governors covers this work and supports the assignment. Article 2 of the ICI agreement provides in part:

Installation, construction, inspection, operation, maintenance and repair of all electrical work in isolated plants and within property lines of any given property...

All work necessary to the assembling, installation, erection, operation, maintenance, repair, control, inspection and supervision of electrical apparatus, devices, wires, cables, supports...

17. The IBEW maintains this work falls within its core jurisdiction and relies again on the argument that this is construction work because the cameras are, in the majority, attached to fixtures.

18. IATSE argues that its collective agreement precisely covers the work at issue, although the other parties point out that some of the video surveillance equipment was not part of the inventory of the Technical Services shop. Further IATSE says that the IBEW collective agreement does not contemplate these temporary installations of video surveillance cameras and cables.

19. The employer suggests that this factor supports the assignment to either trade.

20. While there may be a marginal advantage supporting the IBEW's claim because the inventory was not from the technical shop, equally there is a similar advantage for IATSE in that its scope clause specifically refers to temporary work. This of course does not preclude the IBEW from doing temporary work. In the result, this factor is neutral and supports the assignment to either trade.

### **Economy and Efficiency**

21. IATSE relies on its assertion that in 2001 the IBEW members needed assistance from the IATSE members in the casino installation. In addition, ongoing technical assistance to security staff who monitor the system is provided by IATSE members.

22. The IBEW says that its members consistently do the work and the Board of Governors decision to make that assignment support it.

23. Having carefully reviewed the documents provided for the type of work that these trades perform regarding camera installations, there is no sustainable difference regarding economy and efficiency that favours one trade.

24. This factor is neutral.

### **Skill, Training and Safety**

25. IATSE says its members are specialists in these temporary installations, having performed them for years and that IBEW members require the assistance of the IATSE members to do the work in dispute.

26. The IBEW contends that the Cat 3 cables utilize electrical power from a power source including one sourced at an electrical sub-station. The IBEW says that the training and expertise of its members in these areas is specialized, added to the fact that only electricians are authorized to enter electrical substations. In the IBEW's submission, this means that its members have the superior skill and training.

27. Based on the requirement of access to the electrical substation, this factor may favour the IBEW. However, it became clear at the consultation and is referred to in the IATSE reply brief that the IATSE members might access the substation, although it is unclear as to how they do and whether they are authorized to do so. In addition, the work done at the casino and other venues is the same work as that done at the CNE and there is no suggestion that the IATSE members do not possess the requisite skill, training and safety to do the work there.

28. I find this factor then to be neutral.

### **Employer Practice and Preference**

29. IATSE relies on the work performed in the casino and the statement made in the 2002 decision. Also, it lists other places at Exhibition Place where its members set up video surveillance cameras. IATSE provided copies of work orders and the declaration of Mark Goldenberg. He is a technician and member of the "house crew" in the technical services shop and has worked for the Board of Governors since 1995. Mr. Goldenberg is responsible for the video surveillance system at the casino. That system operates 170 cameras and has been changed, moved and modified under the direction of Mr. Goldenberg and with other IATSE members. His declaration provides that in 2001 IATSE members had to redo most of the coaxial cable connections that had been completed by the IBEW members (the subject of the 2002 decision). IATSE says that the IBEW has no practice of temporary security camera installation.

30. As to other work performed at Exhibition Place, IATSE installed a camera and door contact alarms, motion detectors, permanent and temporary cameras in different locations. In addition to video surveillance, IATSE has installed cameras for imaging for the following events at Exhibition Place: the Boat Show, the Royal Agricultural Winter Fair and the Molson Indy and Toronto Grand Prix.

31. The IBEW asserts that the work orders described by IATSE are generally small, other than the casino. Those orders describe estimates of work, maintenance or movement of cameras between locations.

32. The IBEW distinguishes that work from the regular and consistent installation of surveillance cameras by its members. Those work orders involve installing the security system in the parking garage, and pulling cable for cameras at BMO stadium. It does appear from those work orders that large scale work associated with the installation and removal of cameras and cabling is done by the IBEW at Exhibition Place. Sandy Douglas, the Director of Human Resources, Security, Occupational Health and Safety for the Board of Governors confirmed this

in his declaration and says that work related to the cabling and installation for security of Exhibition Place grounds is assigned to the IBEW.

33. In respect of the work relied upon by IATSE, Mr. Douglas points out in his declaration that some of the work relied upon by IATSE was redone or replaced and assigned at that point to members of the IBEW without complaint by IATSE.

34. Having carefully reviewed the details of the work orders and declarations prepared by members of both trades and the employer, I am of the view that employer practice and preference supports the assignment of this work to the IBEW. Other than the casino, it appears from what is before me that the employer routinely assigns installation of surveillance video cameras and cabling at the grounds of Exhibition Place to members of the IBEW. Much of the work involved is cabling, be it for power or signals. The casino provides a notable exception and one that IATSE says is determinative.

35. I am of the view that the work of installing video surveillance cameras and cables on the grounds of the Exhibition Place generally is assigned to members of the IBEW. The casino work is distinct from security on the grounds. The fact that the work in dispute is temporary work does not in my view override the fact that the IBEW video surveillance security work on the grounds of Exhibition Place is assigned to members of the IBEW. In addition, the employer preference favours the IBEW assignment.

36. This factor then favours the IBEW.

#### **Area Practice**

37. IATSE's brief relied on area and industry practice in its claim that technical installation for theatrical productions is at the core of its jurisdiction. Given the unique nature of this work and the venue at which it is done, I do not think that area practice is a relevant consideration in this determination.

#### **Summary and Conclusion**

38. Having regard to the factors detailed above, the employer practice and preference favour the assignment of this work to the IBEW. Further, IATSE as the party who asserts that the work assignment was improper bears the onus of persuading the Board that the assignment should be interfered with: *Ecodyne Limited*, [1997] OLRB Rep. March/April 197. IATSE has not met that onus. Accordingly, the Board confirms the assignment made to the IBEW.

"Marilyn Silverman"

for the Board