

ELECTRICAL WORK

78

- Agreement between The Electrical Contractors' Association and the Inside Electrical Workers of Greater New York, I.B.E.W.

15. Switchboards may be delivered at the place of work of the manufacturers of the same, but the erection, assembling of carrying parts, and all wiring on and to the board shall be done by the members of the Union.

79

-Electricians vs. Elevator Constructors and A. B. See Electric Elevator Company-Bohack job, Broadway, Brooklyn .

The elevator constructors conceded that the work of running the feed wires belonged to the electricians.

The electricians and the elevator constructors agreed that the old agreement between the unions was satisfactory. -Decision of conference between representatives of Elevator Manufacturers' Association, Electrical Contractors' Association, Master Steamfitters' Association, Brotherhood of Electrical Workers No. 3 and Elevator Constructors and Millwrights' Union No. 1, held on June 27, 1904.

Copy of the old agreement between Elevator Constructors' Union No. 1 and Electrical Workers' Union No. 3:

Whereas, a question has arisen between the members of Electrical Workers No. 3 and the Elevator Constructors' Union No. 1 regarding the rights of the latter to install certain electrical appliances attached to elevators, and it being to the best interest of both parties, and their employers to settle the matter amicably and permanently; therefore,

It is agreed that the Elevator Constructors' Union No. 1 will, and does hereby agree, that the Electrical Workers No. 3 shall have the right to perform all electrical work of installing flashlight or other official signals, electric annunciators, car lamps and the feed wires to the controller, and as this includes all the work which can possibly be considered as being outside that necessary for the installation of an elevator, the Electrical Workers No. 3 agree that they will accept this concession as final, and that they will not hereafter demand the right to perform any of the work now performed by the Elevator Constructors' Union No. 1, except as herein specified.

80

- Fixtures, hanging of.

New York Electrical Workers' Union vs. Tiffany Studios- Dr. Parkhurst's Church.

The Tiffany Studios is instructed to employ members of the recognized Electrical Workers' Union on the work of hanging fixtures on the job in question. -Decision of Executive Committee, March 21, 1906.

80a

-Ceiling, Grid, Installation Of.

Carpenters District Council vs. Electrical Workers, Local No. 3 - La Fonda De Sol Restaurant, Time-Life

Building, New York City.

The-Executive Committee finds that the work in question is the work of the Electrician. -Decision of the Executive Committee, April 19, 1961.

81

- Switchboards, assembling of current carrying parts.

New York Electrical Workers' Union vs. Chas. L. Eidlitz Co.

The Chas. L. Eidlitz Co. is ordered to at once comply with the provisions of Section 19 of the electrical trade agreement and employ none but members of the New York Electrical Workers' Union to assemble the current carrying parts of the switch boards on the Altman Building. -Decision of Executive Committee, August 10, 1906.

82

-Annunciators and car lighting appliances in elevators, installation

New York Electrical Workers' Union vs. Elevator Constructors and Millwrights' Union -Altman Building.

The work of installing electrical annunciators and car lighting appliances is in possession of the Electrical Workers' Union. - Decision of Executive Committee, October 3, 1906.

82a

-Electrical Work Involving Elevators, Installation of.

Local Union No. 3, I.B.E.W. vs. Elevator Constructors Local Union No. 1 -525 East 68th Street , New York City.

The Executive Committee finds that the electrical work involving the installation and wiring of the hall lanterns, the position indicators in the cars, the hall position indicators, the telephone work in the cars and the emergency lights is the work of the Electricians. - Decision of the Executive Committee, February 15, 1972.

83

-Feed wires to motors, temporary.

New York Electrical Workers' Union vs. Elevator Constructors and Millwrights' Union -Post Building, Vesey St.

The work of running temporary feed wires to motors to run drills for hydraulic elevators is in possession of the electricians. - Decision of Executive Committee, October 12, 1906.

84

-Conduits, fibre, running of.

Electrical Workers vs. P. J. Carlin Construction Co. - B. R. T. Substation, 39th St., Brooklyn.

The charge is sustained and the P. J. Carlin Construction Co. is directed to employ members of the

recognized Electrical Workers, Union on the work in question. -Decision of Executive Committee, March 17, 1909.

84a

Channels in wooden floors for conduits, cutting of.

Electricians vs. Carpenters and John Lowry, Jr. - University Building, Waverly Pl.

The work of cutting channels in wooden floors for electrical conduits, as now being done in the University Building, Waverly Place, is not in the sole possession of either trade. -Decision of Executive Committee, June 6, 1922.

84-2a

-Outlet boxes in finished cabinets and cabinet work, cutting for.

Carpenters District Council vs. Electrical Workers, Local No.3 - One Wall Street, New York, N. Y.

The Committee finds that the cutting of finished cabinets and cabinet work for outlet boxes is work that is in the possession of the carpenters. -Decision of Executive Committee, May 5, 1931.

84-3a

The Cutting of Holes In Raised Floors

International Brotherhood of Electrical Workers Local #3 vs. District Council of Carpenters Local #137 - 1166 6th Ave.

The Executive Committee determined the work of penetrating the floor to provide access for electrical conduit or other electrical equipment belongs, in part, to IBEW Local #3 and in part to the District Council of Carpenters Local #137:

- 1) Such penetrations performed off-site and penetrations of precise locations identified on shop drawings or other construction documents belong to the District Council of Carpenters.
- 2) Such penetrations performed on-site where the location of the penetration is not identified on a shop drawing or other construction documents are awarded to IBEW Local #3.

Decision of the Executive Committee March 8, 2001.

A Letter of Clarification on the award in this case was sent to all parties on April 25, 2001. The letter stated:

- 1) Such penetrations performed off-site and penetrations of precise locations identified on original shop drawings and/or original construction documents belong to the District Council of Carpenters.
- 2) Such penetrations performed on-site where the precise location of the penetration is not identified on the original shop drawing and/or other construction documents or where it is necessary to mark the penetrations on the documents at the site are awarded to IBEW LOCAL #3.

The Arbitration Panel has determined that the phrase **construction documents** shall be interpreted to mean **contract documents furnished by the architect, engineer or other consultants hired by the owner.**

Sincerely,

Louis J. Coletti
NY Plan Administrator

84b

Conduits, concrete, Installation of.

Electrical Workers, Local No. 3 vs. Excavating Laborers, Local No. 731 - Bay Street and Richmond Terrace, St. George, Staten Island.

The Committee finds upon the evidence submitted, that the installation of concrete conduits to carry electrical wire and cable is the work of the electricians.-Decision of Executive Committee, July 15, 1948.

84-2b

-Conduits, concrete, in city highways, Installation of.

In the matter of the reopening of the dispute between Electrical Workers Local No. 3 and Excavating Laborers, Local No. 731-Bay Street and Richmond Terrace, St. George, Staten Island, New York.

This case was first heard upon complaint of electrical workers on July 15, 1948, as an ex parte case because the excavating laborers, although cited, failed to appear. The committee rendered its decision, No. 84b, in favor of electrical workers.

Upon petition by the excavating laborers, the committee granted a rehearing and both parties were heard on October 1, 1948, with summations on November 30, 1948, at which time briefs were submitted.

The work in dispute is the laying of concrete conduits underground in public streets and highways for the carrying of electrical wires and cables.

After careful consideration of all of the evidence adduced at the hearings, the decision of July 15, 1948 (84b) is rescinded. The evidence shows preponderantly that the work has been performed by laborers in public street areas, therefore, the committee finds that it is the work of excavating laborers.-Decision of Executive Committee, February 8, 1949.

84-3b

- Reinforcing In concrete foundations for Lamp Posts and/or Traffic Light Standards In existing public streets, Installation of.

Metallic Lathers Union Local No. 46 vs. International Brotherhood of Electrical Workers Local No. 3.

The Executive Committee finds that the installation of reinforcing in concrete foundations for Lamp Posts and/or Traffic Light Standards in existing public streets is the work of the Electrical Worker. -Decision of the Executive Committee, May 15, 1967.

85

- Switchboards, erection of.

Inside Electrical Workers' Union vs. Watson-Flagg Engineering Co.

The Executive Committee finds that in the erection of a switchboard at the Keyser Silk Mill with men other than members of the Electrical Workers' Union, the rulings under the Arbitration Plan and the last trade agreement between the Electrical Contractors' Association and the Inside Electrical Workers' Union has not been violated, and the complaint is dismissed.-Decision of Executive Committee, September 23, 1913.

(Superseded by an agreement between the Electrical Contractors' Association and the Electrical Workers Union, dated April 1, 1917. See No. 78.)

86

-Elevator device, wiring, etc., for.

In the matter of the Electrician vs. the Elevator Constructor, relative to the following question:

“Shall the installing and connecting of conduits, wiring and electric switches required for the operation of a complete system which will prevent the moving of an elevator car when one or more hatchway doors are open be performed by the electrical workers or the elevator constructors?”

Therefore, this case is to be decided with regard solely to the rightful jurisdiction of the trades involved, and to this end I shall, in making the decision, consider the elevator shaft as being not only that part of the building in which the elevator car runs, but all parts of the building within a space of five feet of the actual operating area of the „haft itself, and this definition is to be applied wherever I use the words “elevator shaft” in this decision.

I therefore decide,

(1) That the installing and connecting of conduit, wiring and electric switches required for the operation of the apparatus in question where the same is installed outside of the limits of the elevator shaft, as above described, shall be done exclusively by the electrician.

(2) That the connecting of said apparatus to the operating parts of an elevator of any kind shall be done exclusively by the elevator constructors.

(3) That the work of installing and connecting of conduits, wiring and electric Switches required for the operation of the apparatus in question within the elevator shaft, as above described, and within

the restriction of paragraph 2 of the decision shall be done with equal right either,- by the elevator constructor or the electrician as the contractor making said installation May elect to employ.-Decision of Umpire (Ross F. Tucker), May 7, 1914.

86-2a

-Card Reader Systems, installation of.

Elevator Constructors No. 1 vs. Electrical Workers Local No. 3 - 388 Greenwich Street, New York City, New York.

The installation of card reader systems which are part of an external master building security system in elevators is the work of Electrical Workers Local Union No. 3 - Decision of Executive Committee, March 7, 1990.

86a

-Switches or starting boxes and wiring to motor for operation of elevator doors, installation of.

Electrical Workers vs. Elevator Constructors and Elevator Supplies Company, Inc.-Consolidated Gas Company Building, 14th St. and Irving P1.

The work of installing the switches, or starting boxes, and wiring from there to the electric motor, on a compressor which is used exclusively for the operation of elevator doors is not in the sole possession of either the Elevator Constructors or the Electrical Workers.-Decision of Executive Committee, December 20, 1927.

87

-Annunciator cables, taping Of.

Electrical Workers' Union vs. the Gurney Elevator Company.

The taping of annunciator cables is electrician's work and should be performed by electricians who are members of the Electrical Workers' Union. -Decision of Executive Committee, May 20, 1914.

88

-Wires, drawing of, through conduits for the lighting of elevator cabs.

Electrical Workers' Union vs. the A. B. See Electric Elevator Company-37th St. and Broadway.

The drawing of wires through conduits is electrician's work and should be performed by electricians who are members of the recognized Union. -Decision of Executive Committee, May 20, 1914.

89

-Dumb-waiters, installation Of.

Electrical Workers vs. Burdett-Rowntree Manufacturing Co. Altman Building.

As a general Proposition the elevator constructor has been confined to the shaft, or to a point in close proximity thereto, and the installation of electrical work in connection with dumb-waiters shall be (lone by electricians beyond five feet from the shaft.-Decision of Executive Committee, May 20, 1914.

90

-Dumb-waiters, control wiring.

The decision of the Executive Committee does not set aside or iii any way change that portion of the decision of the umpire, reading:

The connecting of said apparatus to the operating parts of an elevator of any kind shall be done exclusively by the elevator constructors.-Agreed to in conference held June 17, 1914.

91

-Dumb-waiters, control wiring.

The connections to the switchboard should be made by a force consisting of an equal number of electricians and elevator constructors.-Proposed by the Executive Committee and accepted by representatives of Unions and Employers' Associations, July 29, 1914.

92

-Panel boards and cutout boxes, doors and trim for.

Carpenters' Union vs. Cleveland & Ryan-Bellevue Hospital Building.

The work of installing panel board and cutout box doors and trim has been in the possession of both the electricians and the carpenter. -Decision of Executive Committee, September 24, 1914.

93

-Motors, setting of.

Electrical Workers vs. Millwrights-Parcel Post Building.

The Executive Committee finds that the work of setting the motors in question is not in the sole possession of either the millwrights or the electricians.-Decision of Executive Committee, July 27, 1915.

93a

-Electrical work, Individual electric motors, In connection with heating and ventilating work, handling and setting of.

Electrical Workers vs. Steamfitters-Madison Square Garden, 49th and 50th Sts. and Eighth Ave.
The handling and setting of individual electric motors in connection with heating and ventilating work is not in the possession of a trade. -Decision of Executive Committee, May 6, 1926.

93b

-Individual electric motors, In connection with heating and ventilating work, handling and setting of.

Electrical Workers vs. Sheet Metal Workers-Farmers Loan and Trust Co , Fifth Ave. and 41st St., and 82nd and 83rd Sts. and Central Park West.

The handling and setting of individual electric motors in connection with heating and ventilating work is not in the possession of a trade.-Decision of Executive Committee, May 6, 1926.

93c

Electric Motors, unattached in conjunction with air-handling systems, installation of.

Electrical Workers Local No. 3 vs. Sheet Metal Workers Local Union No. 28, - Swiss Bank Building, New York City, New York.

The Executive Committee finds that the installation of unattached electric motors in conjunction with air-handling systems is the work of Sheet Metal Workers Local Union No. 28 - Decision of the Executive Committee, September 5, 1990.

93d

The Running of A Linear Induction Motor.

The International Brotherhood of Electrical Workers Local #3 vs. Laborers' Local #731 - The Air Train at JFK Airport.

The Executive Committee determined that the work of running a Linear Induction Motor is awarded to the Laborers' Local #731 - Decision of the Executive Committee November 20, 2000.

94

-Wiring of hoisting equipment, temporary.

Electricians vs. Hoisting Association.

The temporary wiring run with the initial installation of a hoist may be done by the hoisting employers' men and all wiring run after the electricians start work on a job must be done by electricians. -Order of Executive Committee, February 11 and April 13, 1916.

94a

The Erection of Pre-Fabricated Bolt - Together Temporary Shantys.

District Council of Carpenters Local #608 vs. International Brotherhood of Electrical Workers Local #3 - 745 7th Ave. Morgan Stanley.

The Executive Committee determined the work of erecting a pre-fabricated bolt-together temporary shanty is the work of the International Brotherhood of Electrical Workers Local #3 - Decision of the Executive Committee, October 17, 2000.

95

Illuminator, threshold, installation of.

-Electrical Workers vs. Elevator Supply & Repair Co.-West End Ave. and 75th St.

The setting of the threshold is work that is in the possession of the elevator constructors. The installation of the electrical work in connection with the same is in the possession of the electricians. -Decision of Executive Committee, August 3, 1916.

96

-Conduit of sheet metal.

Sheet Metal Workers vs. Lord Electric Co. and Electricians-65 Broadway.

The sheet metal is used as a duct or conduit to carry electric wire, and the work of installation is in the possession of the electrical workers. The manufacture of this sheet metal duct or conduit is work that is in the possession of the sheet metal workers. -Decision of Executive Committee, March 9, 1917.

96a

-Conduit of sheet metal on marquises, Installation of.

Sheet Metal Workers, Local No. 28 vs. Electrical Workers, Local No. 3 - Loew's Theatre, Steinway Avenue and 28th Street, Astoria, L. 1.

The Committee finds that the work in question is used as a duct or conduit to carry electrical wires and sockets. It is also used for ornamentation and to form panels for the plasterer and is work that is recognized as being in the possession of the sheet metal worker. -Decision of Executive Committee, November 28, 1930.

96b

-Sheet metal work to be used as a conduit for strip lighting, Installation of.

Sheet Metal Workers, Local No. 28 vs. Electrical Workers, Local No. 3-Earl Carroll Theatre, Seventh Avenue, between 49th and 50th Streets, New York, N. Y.

The complaint of the sheet metal workers is sustained. -Decision of Executive Committee, July 30, 1931.

96c

-Glass In ceiling frames and in metal frames of marquise, glazing

Glaziers, Local No. 1087 vs. Electrical Workers, Local No. 3-Hotel Waldorf-Astoria, Park and Lexington Aves., 49th to 50th Streets, New York, N. Y.

The Committee finds that the glazing of ceiling frames and the glass in metal frames of the underside of the marquise is work that is in the possession of the glazier. -Decision of Executive Committee, August 13, 1931.

97

- Fixtures, lighting, ornamental bronze, (electro plate process) .

Ornamental Bronze and Iron Workers vs. the Lighting Fixture Workers and E. F. Caldwell Co. Berkeley Lyceum.

The complaint is dismissed. -Decision of Executive Committee, May 10, 1917.

97a

- Fixture, lighting, Iron framing for, assembling of.

Housesmiths, Local No. 52 vs. Electrical Workers, Local No. 31 Rockefeller Center, Fifth and Sixth Avenues, 48th to 50th Streets, New York, N. Y.

The complaint is dismissed. -Decision of Executive Committee, August 23, 1932.

98

Fixtures, reflector made by plasterers, erection of.

Plasterers vs. Fixture Workers and Lord Electric Co. -Broadway, between 61st St. and 62nd St. The complaint is dismissed. -Decision of Executive Committee, June 18, 1917.

99

- Fixtures, wiring and connecting of plate warmers.

Electrical Workers vs. Ravitch Bros. Constr. Co. -74th St. and Fifth Ave.

The complaint is dismissed. -Decision of Executive Committee, August 15, 1917.

100

-Elevator operating tables, wires connecting there to .

Electrical Workers vs. Elevator Constructors and Otis Elevator Co.--Army Supply Base, South Brooklyn.

The work of connecting the wires to the operating tables on the Army Base job (contract of Otis Elevator Co.) is work that is in the possession of the electricians, and the contractor is directed to employ electricians to make such connections.-Decision of Executive Committee, March 28, 1919.

100a

-"Conduo" base, setting of.

Electricians vs. Carpenters - Bank of Commerce Building.

The work in question, the setting of "Conduo" base, which is a new product, is not in the possession of a trade, and we recommend that the question, "Who shall perform the work?" be referred to a Special Arbitration Board. -Decision of Executive Committee, January 16, 1923.

100-2a

-"Conduo" base, setting of.

In the matter of the agreement between the Electrical Workers and the Carpenters.

The electrician is to set up the raceway or conduo, and the carpenter is to put on the wall mould, face plate and wash strip forming the base part. -June 26, 1923.

100b

-Electrical work, "Conduo" base block or grounds, setting of.

Electrical Workers vs. Carpenters-Park-Lexington Building, Park Ave. and 45th St.

The work in question is not in the possession of a trade, and the question of who shall perform the work is referred to a Special Arbitration Board. -Decision of Executive Committee, March 13, 1923

100c

-Holes in wooden templates, making of.

Electrical Workers vs. Carpenters - 48th St., between Fifth and Sixth Aves.

The Committee finds that the laying out and making of holes wooden templates to act as spreaders for conduits and to hold them in position is work that has been in the possession of the Electricians. - Decision of Executive Committee, December 16, 1924.

100d

-Holes in wooden templates, making of.

In conformity with the decision of December 16, 1924, the making of the holes in the wooden ends of the boxes before they are assembled is template work, and is the work of the electrician. -Decision of Executive Committee, February 19, 1926.

100e

-Hangers, for bus bars and conduit, installation of.

Iron Workers vs. Electrical Workers-Edison sub-station, 22nd and 23rd Sts., between Sixth and Seventh Aves.

The work in question, the installing of hangers of 3" channel and 3" angles, is work that is not in the sole possession of the iron worker or the electrician. -Decision of Executive Committee, October 13, 1925.

100f

-Hangers for conduit, Installation of.

Ironworkers vs. Electricians-Edison Power House, 40th Street and First Avenue, New York City.

Decision 100e, rendered October 13th, 1925, states that that the installing of hangers of 3" channel and 3" angles is not in the e possession of the iron worker or the electrician. In the case of the 40th Street and First Avenue Power House, the testimony showed that a substantial amount of the iron used in the hangers and supports was larger than dime inches, and that the majority of such work elsewhere has been done by iron workers. The Committee finds that hangers larger than three inches for power houses and sub-stations is in the possession of the iron workers. -Decision of Executive Committee, August 30,

1928.

100g

-Holes In wooden templates, making of.

Electrical Workers vs. Carpenters-40th Street and East River Power House.

The Committee's interpretation of Decision 100d of the Handbook is that where the form box has been assembled, the boring of the holes for conduit is the work of the carpenter.-Decision of Executive Committee, September 18, 1928.

100h

- Tubing, copper, In connection with fire alarm systems, Installation of.

Plumbers, Local No. 1 vs. Electrical Workers, Local No. 3 - New World's Fair, Flushing, New York.

The committee finds that the electrical worker has clearly established possession of the work, therefore, the complaint is dismissed. -Decision of Executive Committee, January 16, 1939.

100-i

-The Installation of Hand Holes/Manholes On Intelligent Traffic Systems (ITS).

Local 3 International Brotherhood of Electrical Workers vs. Building, Concrete & Excavating Laborers Local 731 - Bruckner Expressway.

On the evidence presented, the Arbitration Panel finds that the work in question is the work of Local 3 International Brotherhood of Electrical Workers. March 25, 2002.

100-j

-The Drilling For The Installation of Electrical Work Within An Asbestos Containment Area.

Local 3 International Brotherhood of Electrical Workers vs. Laborers Local 78, PS91 - Queens.

Based on the evidence presented, the Arbitration Panel finds the work in question is the work of Local 3 International Brotherhood of Electrical Workers, July 18, 2002.

Laborers Local 78 appealed the decision of the local Arbitration Panel to the National Plan for The Resolution of Jurisdictional Disputes.

On September 9, 2002, the National Plan for The Resolution of Jurisdictional Disputes overruled the decision of the local Arbitration Panel. That ruling stated:

Drilling of holes for the expressed purpose of mounting various electrical equipment in suspected asbestos containing material.

and is the work of Laborers Local 78.

On September 30, 2002, the local Arbitration Panel re-convened. After reviewing the National Plan's

decision, reviewing the past practice in previous Green Book decisions where National Plan jurisdictional awards overruled local arbitration panels and determining that the intent and purpose of the New York Plan For the Resolution of Jurisdictional Disputes is to determine area-wide practices - the Arbitration Panel ruled the National Plan decision to be area-wide.

100-k

-The Drilling of Holes For The Installation of Electrical Work Within An Asbestos Containment Area

IBEW Local 3 v Laborers Local 78- Frances Lewis High School, Queens, New York.

The Arbitration Panel finds the work in question:

1. The drilling of holes for the installation of electrical work which contains asbestos is the work of Laborers Local 78.
2. The drilling of holes that does not contain asbestos for the installation of electrical work is the work of IBEW Local 3.

A hearing was held on October 14, 2005 at which time representatives of both Unions appeared and were afforded full opportunity to offer evidence and argument and to examine and cross-examine witnesses.

Certain facts are not disputed. In significant part the work involved the removal of tiles attached to concrete, and then the drilling of holes in the concrete for the installation of electrical equipment.

It is agreed that the tiles (referred to above) contained asbestos.

These tiles were removed by the Laborers Local 78. It is undisputed that that work was within that Unions jurisdiction, and is not claimed by Local 3.

Because the General Contractor and/or the School Construction Authority assumed that the concrete contiguous to the tiles also contained asbestos, it or they assigned the drilling of holes in the concrete also to the Laborers Local 78.

The evidence adduced shows that certain members of both Unions have been trained and possess the required legal licenses to perform work involving exposure to asbestos.

Local 3 asserts that because the drilling of the holes was for the purpose of installing or dealing with electrical equipment, and because its members are licensed to work in an asbestos containment area, that work should have been assigned to and performed by Local 3 (concededly under the supervision of a licensed asbestos supervisor).

Local 78 asserts that with the undisputed fact that the tiles contained or were of asbestos, it was proper and in accordance with operating practice for the contractor or School Authority to deem the entire job "asbestos contaminated" and that therefore all the work in an area of asbestos (including the drilling in the concrete) was properly assigned to the trade first assigned to handle that particular type of work, namely in this case Local 78.

Both unions offered testimony, argument and evidence on other jobs each handled in which asbestos and/or other contaminants were present, so whatever particle there has been appears to be disparate, and conflicting.

The parties were expressly advised at the outset of the hearing that the authority of the Arbitration panel under the New York Plan is, inter alia and in pertinent part:

“The arbitration panel shall be bound by Green Book decisions... or when there are none, international Agreement of record between the trades. If none of these apply for any reason... the arbitration panel shall consider the established trade practice and prevailing practice in the Greater New York geographical area.”

Local 78’s case rests primarily on its citation of Green Book Decision # 100-j which held:

“Drilling of holes for the expressed purpose of mounting various electrical equipment in suspected asbestos containing material is the work of laborers Local 78.
(and this Decision was made ‘area-wide’ by subsequent action of its arbitration panel).”

Local 3 disputes the validity and applicability of that decision. It points out that at first the local jurisdictional decision awarded this type of work to Local 3, but that on appeal, Arbitrator Thomas G. Pagan in September 2002 reversed the local decision and rendered a National Award, granting the work to Local 78. That decision argues Local 3, was erroneous and flawed.

The controlling precedent, asserts Local 3, is a National arbitration award dated January 18, 2005 in which Arbitrator Paul Greenberg, under facts similar to the case before Pagan and to the instant dispute, awarded the work (in California) to Local 3.

Under our express authority the Panel is unable to credit the Greenberg’s decision over that of Decision over that of Decision 100-j in the Green Book. The former is not in the Green Book, it is not from the New York geographical area, nor does it qualify as a National Agreement (which must be signed by the presidents of the Unions involved).

We have previously stated that the evidence of prevailing practice is unclear and hence indeterminate.

What remains therefore is the Green Book Decision 100-j.

One of the benefits of an arbitration case is that at the hearing facts are developed that may be more accurate than and different from what the parties believed at the time the dispute arose.

That is the case here. The parties agreed at the hearing that the removal of the asbestos tiles was the work of Local 78. They also agreed that if there was no asbestos in the concrete, Local 78 would not claim the drilling work and it would belong properly to Local 3.

The Panel believes and rules that the actual facts, as disclosed at the hearing should and therefore and will “reform” the nature of this dispute, and hence be the basis for its resolution.

The critical fact that emerged at the hearing was that based on a test by an independent testing organization (apparently ordered by the School Authority) the concrete did not contain asbestos.

Therefore that accepted fact distinguishes this case from the application of Decision 100-j. That Decision applies when asbestos “is suspected.” And about 25% of the dispute of work in this case was performed by Local 78 because of that “suspicion.” But now that it is established that there is no present basis to suspect asbestos in the concrete, Decision 100-j in not prospectively applicable. And therefore the balance of the drilling may and shall be done by Local 3.

In short, though the Panel is in disagreement over whether the Pagan decision (and hence Green Book Decision 100-j) was properly decided or wrongly decided, we need not consider either overruling it or enforcing or applying it. We need not, because, as stated, the dispute is now mooted by the new evidence adduced at the hearing. Specifically, to reiterate, the removal of the tiles which contained asbestos was properly was the work of Local 78.

But because the evidence shows that the concrete does not contain asbestos, the prospective drilling of holes in the concrete for the installation of electrical equipment was and is the work of Local 3.

Signed by Eric J. Schmertz
October 24, 2005

On November 5, 2005 the IBEW Local 3 filed an appeal with the National Plan for the Resolution of Jurisdictional Disputes in Washington D.C.

On December 5, 2005 the National Plan Arbitration reviewed the local New York Plan Decision. That decision was awarded the work as follows:

“The Decision of the New York Panel is reversed. The disputed work of core drilling holes through asbestos containing material (or suspected asbestos containing material) when the holes will be used to install electrical conduit shall be performed by electricians, so long as the electricians posses the appropriate level of licensure or certification required by federal, state or local governments to perform the work.”

As provided by Article V, § 8 of the National Plan, this decision shall apply only to the job in dispute.”

Paul Greenberg, Arbitrator
Washington, D.C.

The New York Arbitration Panel then took the following action:

- 1) To adopt The National Plan Award as area-wide in accordance with the policy of The New York Plan procedures.
- 2) The National Plan Award in this Case 100-k would supersede and make null and void a previous Green Book decision 100-J.

On March 10, 2006, the Mason Tenders District Council filed a lawsuit in the United States District Court challenging the decision of the New York Plan Arbitration Panel.

On June 30, 2006, the New York Plan entered into a consent agreement with the Mason Tenders District Council and the lawsuit was withdrawn.

On November 16, 2006, the same members of the initial Arbitration Panel who ruled on the December 5, 2005 decision re-convened as agreed to in the Consent Decree and issued the following ruling:

“In accordance with the required procedures of the NY Plan, its policies and practices, a National Award pre-empts a NY Plan Award. Therefore the Greenberg Award supercedes and replaces the aforesaid NY Plan decision, which is null and revoked.”

Also, in accordance with the consent agreement in the lawsuit by local 78 in U.S. District Court, the NY plan panel was reconvened for the purpose of adopting the Greenberg Award area-wide. The Panel did so at said reconvened meeting. That procedure of area-wide adoption is and was mandated by the policy and provisions of the NY Plan.

In addition, in accordance with said consent agreement the NY Plan Panel was also reconvened for the purpose of rescinding a prior action it took in stating that the Green Book Decision 100-K superceded Green Book Decision 100-J.

The NY Plan has no provisions in which any Arbitration panel has the right to determine that one decision superceded another. All decisions stand individually on their own merit and the Arbitration panel exceeded its authority in its original ruling.

Therefore, the Arbitration panel voted to rescind its prior decision thus meaning that Green Book Decisions 100-J and 100-K remain in place as independent area-wide decisions on the scope of work in question.

Finally, any question or challenge to the legality of the Greenberg decision are not before this panel; but are matters for judicial review. In that regard the rights of the parties are expressly reserved.”

Eric J. Schmertz
Chairman

The Installation of Support Brackets for Video Monitors mounted on Trading Desks

The following understanding between the International Brotherhood of Electrical Workers, Local #3 and The New York City District Council of Carpenters is entered into to settle a jurisdictional dispute relating to the installation of these mounting brackets.

It is the purpose of this understanding to improve relations between the two trades, to settle jurisdictional disputes directly between the two trades, and mutually to assist each union to secure work coming within its recognized jurisdiction.

It is expressly understood and agreed that this dispute shall relate only to "the installation of support brackets for video monitors mounted on trading-desks at any location in the geographical jurisdiction of the two trades" subsequent to the execution of this document, and not relate to nor have any bearing on jurisdictional disputes that may exist, or in future occur, between either of the parties hereto and any other International Union or subordinate body thereof.

The installation of support brackets for video monitors mounted on trading desks, belongs in part, to IBEW Local # 3 and The New York City District Council of Carpenters, it is agreed that the installation of these single purpose brackets will be performed by a composite crew of equal number.



Michael J. Forde
Executive Secretary/Treasurer
NYCDCC



Christopher Erikson
Business Manager
IBEW Local #3

100-M

The Installation of lighting reflector back-out and drilling holes for fixture stems through the black-out

IBEW Local #3 vs. Carpenters Local #608 – 26 Battery Park City (Goldman Sachs)

The Installation of the lighting reflector black-out is the work of and should be assigned to the Carpenters Local #608.

The drilling of holes for the fixture stems is the work of and should be assigned to IBEW Local #3.

A hearing was held on April 15, 2009 at which time representatives of both the above named unions appeared, and were afforded full opportunity to offer evidence and argument and to examine and cross-examine witnesses. Messrs. Joseph Fitzpatrick, Mark Varian, Monet Milad and Lee Zaretsky served as members of the Arbitration Panel. The undersigned served as the Panel Chariman.

The parties were expressly advised by the chairman that the priority of the evidence under the New York Plan as (1) Green Book decisions that are applicable; (2) International Agreement between unions involved that are applicable and absent to those (3) the industry practices in the geographical area.

Though both sides cited various Green Book Decisions, International Decisions and Joint Board Decisions, the Panel finds one explicit provision of an International Agreement March 1, 1974 to be applicable and controlling. That Agreement is entitled "Installation and Erection of Luminous and Acoustical Suspended Ceilings". Paragraph 2 thereof reads:

"2. Grid systems supporting the finished ceiling materials and electric fixtures shall be installed by Carpenters. Any additional supports (including T's and hangers) required to support light fixtures only shall be installed by Electricians who shall also mechanically secure and electronically connect the light fixtures."

Based on the evidence and testimony the Panel is satisfied that the disputed work is part of a "Grid System" that the "lighting reflector black-out" also referred to as the "baffle" is part of the "ceiling materials and/or fixtures" and that the "drilling of holes for fixtures stems supports the light fixture...". Accordingly, it is the Panels decisions that the installation of the "lighting reflector black-out is the work of the Carpenters. And that the "drilling of holes for fixture stems" is the work of the electricians.

I, Eric Schmertz do hereby affirm upon my Oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

NEW YORK PLAN FOR THE RESOLUTION OF JURISDICTIONAL DISPUTES

-----X	
IN THE MATTER OF THE ARBITRATION	:
between	:
IBEW Local 3	:
and	:
DISTRICT COUNCIL OF CARPENTERS	:
-----X	

OPINION
and
AWARD

This jurisdictional dispute and arbitration involves the installation of “Newmat System being used as lighting fixture lenses” at 200 West Street - Battery Park City, New York.

A hearing was held on October 9, 2009 at which time representatives of the above-named Union’s appeared and were afforded full opportunity to offer evidence and argument and to examine and cross-examine witnesses. Messrs. Robert Ansbro, Lee Zaretsky, John Pinto and Michael Checchi served as members of the Arbitrationa Panel. The Undersigned served as the Panel Chairman.

The parties were expressly advised by the Chairman that the priority of evidence under the New York Plan is (1) Green Book Decisions that are applicable; (2) International Agreements between the unions involved that are applicable and, absent these (3) the industry practice in the geographical area.

No Green Book Decisions were cited. However, both sides cited and relied on the same International Agreement dated January 29, 1974, signed by the General President of the Carpenters and Joiners of America and the International President of the IBEW, and entitled ...Agreement Covering the Installation and Erection of Luminars and Acoustical Suspended Ceilings.

At the threshold , the Carpenters rely on Paragraph 6 thereof, to procedurally challenge the authority of this Panel to hear and decide the merits of this case. It argues that the proper jurisdiction for an adjudication is to and before “the respective International Presidents for settlement...” That provision reads:

If a jurisdictional dispute arises which cannot be settled by local representatives, Or a question of interpretation arises as to the meaning or intent of this Agreement, it shall be referred immediately to the respective International Presidents for settlement by the Jurisdictional Administrators or assignment of representatives to adjust as per the Agreement.

The Panel rejects this procedural argument by the Carpenters . The Panel notes that the aforesaid International Agreement was negotiated some 35 years ago. But that since then the parties to this case have contractually agreed to and bound themselves to settle jurisdictional disputes under the instant New York Plan. In other words, the parties subsequently agreed to a novation of the forgoing paragraph 6, by substituting and preempting said paragraph by agreement to use the New York Plan exclusively for the adjudication of jurisdictional disputes.

On the merits, the parties disagree over whether the product involved is or is not a “lens” in a lighting fixture. Physically the product is a “fabric” or “plastic” or “membrane” stripping, that is stretched and fit into a metal track and trough i(n which lighting is located); thereby diffusing the enclosed lighting, and creating strips of lighting on the ceilings. (That look like “waves.”)

The Panel finds and rules that the stripping is a “lens” within the industrial interpretation and meaning of that designation.

In a different case, the results of which have probative meaning in the instant case before us, the parties hereto apparently agreed on the definition of a “lens.” In the written results of a mediation session conducted by the President of the Building and Construction Trades Council (Barry LaBarbera), he states that the IBEW, Local 3 and the

Carpenters Union #608 “defined a lens as any device that light shines through.” (emphasis added)The Carpenters’ representative in the case before us, acknowledged that he participated in that mediation but that he “disagreed with that definition.” But he acknowledged that he did not thereafter dispute the definition in writing nor formally register a dissent or in any other way protest the stated definition. We are constrained therefore to accept Mr. LaBarbera’s statement as an admission by the Carpenters of the validity of that definition.

With that definition it is the finding of the panel that the “fabric,” “plastic” or “membrane”stripping, installed over lighting, and through which the lighting “shines through” (diffused for decorative purposes) is a “lens.”

With that ruling, the earlier part of paragraph 6 of the International Agreement is applicable and determinative. Said provision reads:

6. Diffusers or louvers directly attached to light fixtures and those not placed as a continuing part of the general ceiling installation shall be installed by Electricians. After ceiling system has been completed any removal and replacement of diffusers or louvers in order to complete the electrical work shall be done by Electricians

The product in this case meets the foregoing conditions. It is a “diffuser. It is directly attached to a light fixture.” Though placed in the ceiling, the Panel finds that it is adjunct to, but “not placed as a continuing part of the general ceiling installation.” (emphasis added) Moreover, if as the latter part of that paragraph provides, the removal and replacement of the diffusers is the work of the Electricians, it is both logical, and as expressly stated in the first sentence, that the installation is also the work of the Electricians.

AWARD

The installation of Newmat System being used as lighting fixture lenses, at 200 West Street, Battery Park City, New York is the work of and should be assigned to the Electricians.



Eric J. Schmertz
Chairman

DATED: October 12, 2009

STATE OF: NEW YORK)

COUNTY OF: NEW YORK)
ss:

NEW YORK PLAN FOR THE RESOLUTION OF JURISDICTIONAL DISPUTES

-----X	:	
IN THE MATTER OF THE ARBITRATION	:	OPINION
between	:	and
IBEW LOCAL #3	:	AWARD
and	:	
PLUMBERS LOCAL #1	:	
-----X		

This jurisdictional dispute and arbitration involves the installation of electrically activated towel bars in the bathrooms of the condominium apartments of the Westin Hotel at 123 Washington Street, New York City.

A hearing was held on November 23rd, 2009 at which time representatives of the above-named Unions appeared and were afforded full opportunity to offer evidence and argument and to examine and cross-examine witnesses. Messrs. John Pinto, Paul Weisenberg, Peter Cafiero and Robert Samela served as members of the Arbitration Panel. The Undersigned served as the Panel Chairman.

The parties were expressly advised by the Chairman that the priority of evidence under the New York Plan is (1) Green Book Decisions that are applicable; (2) International Agreements that are applicable between the unions involved, and, absent these (3) the industry practice in the geographical area.

The towel rack involved in this case has an electrical component which, when activated heats the individual bars which in turn warms or dries towels or clothing hung thereon.

At present, the installation of the towel fixture, namely its physical, and manual connection to the bathroom wall has been assigned to and is being done by the plumbers. The installation, wiring and activation of the electrical part is being done by the electricians.

However, the electricians claim that because the towel bar is an “electrical device,” the entire work of physical and manual installation as well as the electrical work because falls within its jurisdiction. And Local 3 seeks a decision awarding the full work to it.

The plumbers do not claim any jurisdiction over the electrical work or the electrical component of the fixture. They acknowledge that that work belongs to the electricians, and recognizes that the New York City Code and the manufacturers instructions accord that work to the electricians. What is before this panel is simply whether the entire installation belongs to the electricians, or whether the plumbers are entitled to hold on to the physical and manual installation on and to the bathroom walls, leaving the electrical aspect to the electricians.

The plumbers have cited and rely upon Decision 197(i) in the Green Book, which reads:

- i. Installing all accessories for toilet room and bathroom, such as soap, sponge, glass, paper and brush holders; towel racks and bars, glass shelves and mirrors, robe hooks and linen and paper towel holders, glass shower doors, and shower enclosures, sanitary napkin dispensers and all accessories of any description installed in toilet rooms and bathrooms, etc., or which may be used as any accessory to or with a plumbing fixture; and all drain boards, excepting only such china accessories that are tiled in. (emphasis added)

The electricians challenge this citation, arguing that it is not a Green Book decision, but rather, as entitled, a bilateral agreement between the plumbers and their contractors. The Panel rejects this challenge. No matter its origin, the foregoing was placed in the Green Book and was given a Decision number (197). Hence, the Panel rules, it was intended to be and is a Green Book Decision, regarding the work enumerated therein.

The electricians, cite and rely on certain International Agreements, signed by the international presidents of the IBEW and the United Association of Journeymen...of the Plumbing...Industry, dated march 25, 1969. The panel finds and rules that the international agreements citations are not applicable, but that the aforesaid Green Book Decision is

applicable and determinative in this case. Respectively, the references in the international agreements pertain to 'panel boards' or 'cabinets;' "electrical connections for reacting to the variable characteristics of liquids, gases and solids...;" "electric space heaters;" "kitchen and laundry appliances;" and "wood backing." Nowhere in those references is "towel bars" mentioned. And the Panel finds no basis to construe those specific references to other types of items, to cover "towel bars."

The Green Book reference to towel bars is explicit and unqualified. It covers towel bars generally, without any distinction between or identification of different or potentially different types of towel bars. Its first sentence is unequivocal. It applies to "installing all accessories...of any description..." (emphasis added)

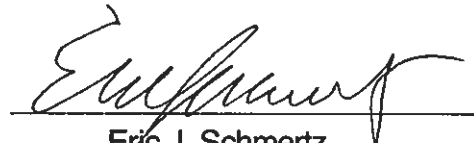
The Panel concludes that the instant towel bar is an "accessory" within the meaning of Decision 197. Not only is the towel bar included in the enumerated "accessories" but the Webster definition of an "accessory" is:

"Anything of secondary or subordinate importance; an object or device not essential in itself but adding to the beauty, convenience or effectiveness of something else." (emphasis added)

We conclude that the instant towel bar, placed in and as part of bathroom facilities and fixtures "add to the...convenience or effectiveness ..." of the bathroom. The Panel recognizes that the Decision 197, was enacted as early as 1917. Yet in the absence of any other rule applicable to towel bars or any cited international union negotiations on towel bars, and considering the unqualified language of Decision 197, that Decision remains applicable and effective, despite the Panel's recognition of technological changes over the years.

AWARD

The physical and manual installation of towel bars in the bathrooms of the condominium apartments at the Westin Hotel, 123 Washington Street, New York City is the work of Plumbers Local #1. The handling, installation and activation of the electrical components of the towel bars, including any other electrical work so involved, is the work of IBEW, Local #3.



Eric J. Schmertz
Chairman

DATED: November 23rd, 2009

100-P
(Appeal to 100-O)

On December 7, 2009, IBEW Local #3 filed an appeal of the above NY Plan decision to the National Plan for the Resolution of Jurisdictional Disputes.

On January 8, 2009, a National Plan Decision reversed the above NY Plan decision. The National Plan decision awards the work of the installation of electrically heated towel racks at 123 Washington Street to IBEW Local #3.

This decision rescinds and makes null and void Green Book Decision 100-O2

In accordance with the rules and procedures of the NY Plan Addendum B, Article VI – Enforcement:

“Arbitration Decisions of the NY Plan that are reversed or overturned by appeal awards made by the National Plan For The Resolution of Jurisdictional Disputes shall be entered into the Green Book as project specific – rather than area-wide.”

**PLAN FOR THE SETTLEMENT OF JURISDICTIONAL DISPUTES
IN THE CONSTRUCTION INDUSTRY**

.....
In the matter of Arbitration between:

International Brotherhood of Electrical Workers

And

**United Association of Journeymen and Apprentices
Of the Plumbing and Pipe Fitting Industry of the
United States and Canada**

OPINION AND DECISION

And

Tishman Construction Corp.

RE: Plan Case No. NY 12/7/09 (Appeal of New York Plan Decision)

.....
Before: Arbitrator Tony A. Kelly

A hearing regarding this arbitration was held on January 8, 2009, at the offices of the Plan Administrator at 900 7th Street, N.W., Suite 1000, Washington, D.C., in accordance with the Procedural Rules of the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry ("the Plan").

Issue

The hearing is over an appeal by the International Brotherhood of Electrical Workers of a decision by the New York Plan of a jurisdictional dispute over the installation of electrically activated towel bars in the bathrooms of the condominium apartments of the Westin Hotel at 123 Washington Street, New York City, New York.

Appearances

**For the International Brotherhood of Electrical Workers
(Referred to as the Electricians and the IBEW)**

**Jim Ross
International Representative**

**Raymond A. Melville
IBEW Local Union No. 3**

For the United Association
(Referred to as the Plumbers and the UA)

Michael A. Pleasant
International Representative

Michael Appuzzo
Plumbers Local No. 1

Donald F. Doherty
Plumbers Local No. 1

Tischman Construction Corp.

Not represented at the hearing

Appeals from Decisions of Recognized Local Boards

The Procedural Rules and Regulations of the Plan, Article X, Paragraphs 3 and 4, state, "Appeals referred to arbitration will be processed in accordance with Article V of the Agreement. Presentations shall be in writing and limited to that which was presented at the recognized local Plan for the settlement of jurisdictional disputes."

Background of the Dispute

The work in dispute is being performed under a Project Labor Agreement (PLA), which requires that all work assignments be made "pursuant to the Green Book decisions of the New York Plan"¹ and that all jurisdictional disputes be submitted to the New York Plan for resolution.

On November 23, 2009, the Arbitration Panel heard the jurisdictional dispute between IBEW Local No. 3 and Plumbers Local No.1 involving the installation of electrically activated towel bars in the bathrooms of the condominium apartments of the Westin Hotel at 123 Washington Street, New York City. The towel rack involved has an electrical component which, when activated heats the individual bars, which in turn warm or dry towels or clothing hung thereon.

The parties were advised that the criteria to be applied were "(1) New York Green Book Decisions that are applicable; (2) International Agreements that are applicable between the unions involved; and (3) the industry practice in the geographical area."

The IBEW claimed that the towel bar is an "electrical device" and that the entire installation falls within its jurisdiction. The Plumbers did not claim the electrical work or the electrical component of the fixture and acknowledged that the New York City Code and the manufacturers' instructions applied to that work and belonged to the IBEW. Conversely, they claimed that the physical and manual installation of the towel rack itself, on and to the bathroom walls, is the work of the Plumbers, with the IBEW performing the electrical aspects.

¹ The Green Book of the New York Plan contains statements and decisions relating to trade jurisdictions and practices in the New York City area and are not considered Decisions of Record under the National Plan.

The Plumbers cited and relied on Decision 197(i) in the New York Green Book, which reads:

- i. Installing all accessories for toilet room and bathroom, such as soap, sponge, glass, paper and brush holders; towel racks and bars; glass shelves and mirrors, robe hooks and linen and paper towel holders, glass shower doors, and shower enclosures, sanitary napkin dispensers and all accessories of any description installed in toilet rooms and bathrooms, etc., or which may be used as any accessory to or with a plumbing fixture; and all drain boards, excepting only such china accessories that are tiled in. (emphasis added)

The IBEW challenged this citation arguing that it is not a "Green Book decision." The Arbitration Panel rejected this challenge and affirmed that "it was placed in the Green Book and was given a Decision number (197)," and "was intended to be and is a Green Book Decision."

The IBEW cited and relied on certain International Agreements, signed by the International Presidents of the IBEW and the UA, dated March 25, 1969, which the Arbitration Panel ruled were not applicable on the basis that...."nowhere in those references is "towel bars" mentioned."

Conversely, the Arbitration Panel contended that "the Green Book's reference to towel bars is explicit and unqualified. It covers towel bars generally, without any distinction between or identification of different or potentially different types of towel bars." The Arbitration Panel further concluded, "The Panel recognizes that the Decision 197 was enacted as early as 1917. Yet in the absence of any other rule applicable to towel bars or any cited international union negotiations on towel bars, and considering the unqualified language of Decision 197, the Decision remains applicable and effective, despite the Panel's recognition of technological changes over the years."

The Award of the Arbitration Panel was "The physical and manual installation of towel bars in the bathrooms of the condominium apartments at the Westin Hotel, at 123 Washington Street, New York City is the work of Plumbers Local #1. The handling, installation and activation of the electrical components of the towel bars, including any other electrical work so involved, is the work of IBEW, Local #3."

The IBEW filed a timely appeal of the Arbitration Panel's decision pursuant to the procedures of the New York Plan, a recognized Local Plan under Article VIII of the National Plan.

In accordance with the National Plan's Administrative Practices and Procedural Regulations Governing Appeals from Recognized Local Boards, two (2) issues must be determined:

First, were the parties afforded the opportunity to present evidence at a hearing conducted for that purpose and held in conformity with generally recognized procedures not incompatible with the provisions and procedures of the National Plan.

Secondly, did the decision of the Local Board address the established criteria of Article V, Section 8 of the National Plan. In this consideration the Plan Administrator shall apply the same restrictions placed on the Joint Administration Committee (JAC) in considering an appeal from a Plan Arbitrator's decision: "The sole issue to be considered on appeal is whether the Arbitrator failed to address the established criteria of Article V, Section 8."

The Plan Administrator determined that criteria applied by the Arbitration Panel in this dispute differed from the criteria of Article V, Section 8, of the Plan, and therefore granted the IBEW's appeal on the basis that the Panel's decision "failed to address the established criteria of Article V, Section 8."²

Discussions and Positions of the Parties

Written presentations and oral arguments were made by the representing parties and were thoroughly, comprehensively and excellently prepared. Summaries of these positions are as follows:

IBEW

It is the position of the IBEW that the work in this dispute, the installation of electrically heated towel warmers, should be awarded to the IBEW under Article V, Section 8 (b) of the National Plan on the basis of trade practice in the industry and the prevailing practice in the locality. It is the contention of the IBEW that since the electrically heated towel rack is electrically connected, it therefore becomes an electrical unit or component to be installed by the IBEW.

To support their claim to the trade practice in the industry, the IBEW submitted various international agreements and understandings between the IBEW and the UA, covering such items as panels, cabinets, instruments, electric space heaters, kitchen and laundry appliances that require electrical connections only and are unloaded, handled and installed by the IBEW. Further, the IBEW emphasized though these understandings do not specifically address the work in dispute, they offer a clear understanding and agreement between the IBEW and the UA that equipment and devices requiring an electrical connection only shall be handled and installed by the IBEW.

To emphasize their recognition in the industry regarding electrically connected items, they included a photo of a lighted clothing bar in a closet which they attested was installed by the IBEW and not by another craft that usually installs (non-lighted) clothing bars in closets.

The IBEW also offered installation instructions from several manufacturers of heated towel warmer and drying racks which indicated that the installation of the electrically heated towel racks should be by a licensed electrician in accordance with local and national electrical codes.

Regarding the prevailing practice in the locality, the IBEW presented two letters from electrical contractors stating that members of IBEW Local 3 had performed the installation of electrically heated towel racks at the Hilton Grand Village Club and the Mark Hotel in New York City, and included a photo of a Local 3 journeyman electrician installing a Myson electric heated towel warmer at the Hilton Grand Vacation Club.

² In previous appeal cases from the New York Plan, the Plan Administrator has ruled that because the National Plan does not recognize New York Green Book decisions as "Decisions of Record" under the criteria of the National Plan, reliance by New York Arbitration Panels on such Green Book decisions as the basis for deciding a case is inconsistent with the established criteria of Article V, Section 8, of the National Plan.

UA

It is the position of the UA that this dispute was correctly decided by the Arbitration Panel under the New York Plan that the installation of bathroom towel bars, in any form, is the work of the plumber. It is the contention of the UA that the towel rack and the electrical components and the activation of the same are two separate and distinct installations. The UA does not claim the electrical components of the towel bars and concedes they are properly installed and activated by the IBEW

In recognition of the criteria set forth in Article V, Section 8, of the National Plan, it is the position of the UA that there is no previous or applicable agreement between the UA and the IBEW regarding the installation of towel bars.

In support of their position their claim to the work in dispute based on area and trade practice, the UA cited the following from the National Plan's "Green Book:"

1. Decision between the Bricklayers, Masons and Plasterers International Union and the UA, dated November 14, 1923, entitled "Anchors for Bathroom Accessories" reflects that bathroom accessories "placed after finished tile wall surfaces are completed, shall be set by Plumbers and Steamfitters."
2. Agreement between the Carpenters and the UA, dated September 29, 1939, entitled "Bath and Toilet Room Accessories and Medicine Cabinets" which states "it is agreed that the installation of all bath and toilet room accessories, such as paper holders, towel racks and bars, glass shelves, etc., however installed, shall be the work of the members of the United Association of Journeyman Plumbers and Steamfitters."

Further, the UA emphasized that the November 23, 2009, decision by the Arbitration Panel of the New York Plan held that a towel bar is a bathroom accessory and is specifically listed as an accessory in Decision 197 of the New York Green Book, and that this decision further affirms their entitlement to the installation of bathroom towel bars.

The UA offered substantial documentation, including contractor letters of assignment, Joint Board decisions, etc., reflecting that the installation of bathroom accessories were performed by the UA. It is noted that this documentation predominantly referred to various bathroom accessories and fixtures in general and did not specifically refer to electrically heated towel bars.

Mr. Michael Appuzzo testified he served as foreman on a job at the Kitano Hotel where electrically activated towel bars were installed in bathrooms by plumbers.

Application of Plan Criteria

Based on the authority vested under the Plan, Article V, Section 8 (as amended March 15, 2008) provides the following criteria for making the award:

In rendering his decision, the Arbitrator shall determine:

- a) *First, whether a previous agreement of record or applicable agreement, including a disclaimer agreement between the National or International Unions to the dispute governs;*
- b) *Only if the Arbitrator finds that the dispute is not covered by an appropriate or applicable agreement of record or agreement between the crafts to the dispute, he shall then consider the established trade practice in the industry and prevailing practice in the locality. Where there is a previous decision of record governing the case, the Arbitrator shall give equal weight to such decision of record, unless the prevailing practice in the locality in the past ten years favors one craft. In that case, the Arbitrator shall base his decision on the prevailing practice in the locality. Except, that if the Arbitrator finds that a craft has improperly obtained the prevailing practice in the locality through raiding, the undercutting of wages or by the use of vertical agreements, the Arbitrator shall rely on the decision of record and established trade practice in the industry rather than the prevailing practice in the locality.*
- c) *Only if none of the above criteria is found to exist, the Arbitrator shall then consider that because efficiency, cost or continuity and good management are essential to the well being of the industry, the interests of the consumer or the past practices of the employer shall not be ignored.*

The Arbitrator shall set forth the basis for his decision and shall explain his findings regarding the applicability of the above criteria. If lower-ranked criteria are relied upon, the Arbitrator shall explain why the high-ranked criteria were not deemed applicable. The Arbitrator's decision shall only apply to the job in dispute.

Opinion and Decision

In accordance with the criteria set forth above, this Arbitrator has determined that there is *no previous agreement or record or applicable agreement, including a disclaimer between the National or International Unions to the dispute.*

This dispute shall then be considered by this arbitrator on the basis of criteria b) *only if the Arbitrator finds that the dispute is not covered by an appropriate or applicable agreement of record or agreement between the crafts to the dispute, he shall then consider the established trade practice in the industry and prevailing practice in the locality. Where there is a previous decision of record governing the case; the Arbitrator shall give equal weight to such decision of record, unless the prevailing practice in the locality in the past ten years favors one craft. In that case, the Arbitrator shall base his decision on the prevailing practice in the locality. Except, that if the Arbitrator finds that a craft has improperly obtained the prevailing practice in the locality through raiding, the undercutting of wages or by the use of vertical agreements, the Arbitrator shall rely on the decision of record and established trade practice in the industry rather than the prevailing practice in the locality.*

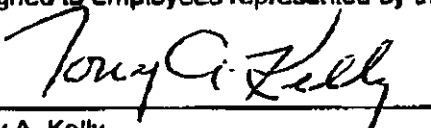
In considering the established trade practice in the industry and the prevailing practice in the locality, the IBEW and the UA provided substantial testimony and evidence to establish their roles in performing the work in dispute. The IBEW defining the electrically heated towel racks as an electrical unit, device or appliance, in which they are entitled to install. The UA defining the towel rack as a bathroom accessory, in which they are entitled to install, and acknowledging that the electrical work involved is the work of the IBEW.

It is apparent that the electrically heated towel bars are not a common bathroom installation, but are utilized and installed primarily in high-end, luxury condominiums and hotels. The UA provided substantial documentation and evidence to demonstrate that the established trade practice in the industry and the prevailing practice in the locality favor the UA for the installation of bathroom towel racks that are not electrically heated (emphasis added by the Arbitrator).

With respect to electrically heated towel racks, the IBEW and the UA presented testimony and documentation from contractors attesting that their respective members had installed electrically heated towel racks at various hotels in New York City; however, neither party demonstrated a preponderant for the installation of towel racks that are electrically heated based on testimony and contractor assignments.

It is the opinion of this Arbitrator that the Memoranda of Understanding between the IBEW and the UA that were entered in this hearing by the IBEW are acceptable for the purpose depicting the traditional jurisdictional understandings and guidelines that exist between the IBEW and the UA in support of their claim to the work based on established trade practice in the industry and prevailing practice in the locality. Further, it is apparent that these Memoranda clearly demonstrate that the two International Unions, in their review of their respective jurisdictional responsibilities for the various items, equipment and components that were addressed, recognized and agreed that those items "requiring or having electrical connections only" were to be handled and installed exclusively by the IBEW. Though these Memoranda do not specifically refer to electrically heated towel racks, it is the opinion of this Arbitrator that a towel rack that is electrically heated is, in itself, an item, unit or component that is "electrically connected." Therefore, it is the opinion of this Arbitrator that based on these Memoranda of Understanding, the IBEW has substantiated that the established trade practice in the industry and the prevailing practice in the locality with respect to installations that are electrically connected to be the work of the IBEW. Since the heated towel racks in this dispute are electrically connected, they are justifiably within the recognized jurisdiction of the IBEW to handle and install. Conversely, bathroom racks that are not electrically connected would be handled and installed by the UA.

Therefore, in accordance with the considerations set forth under Article V, Section 8 (b) above, this Arbitrator has determined that the work in dispute, the installation of electrically heated towel racks at the condominium apartments at the Westin Hotel located at 123 Washington Street, New York City, shall be assigned to employees represented by the IBEW. This decision shall only apply to the job in dispute.



Tony A. Kelly
Arbitrator

Dated: January 12, 2010

NEW YORK PLAN FOR THE RESOLUTION
OF JURISDICTIONAL DISPUTES

- - - - - x

In the Matter of the Arbitration

between

LOCAL UNION NO. 3, IBEW

and

NEW YORK CITY DISTRICT
COUNCIL OF CARPENTERS

- - - - - x

OPINION AND AWARD

In accordance with the provisions of the New York Plan for the Resolution of Jurisdictional Disputes, a hearing was held before an Arbitration Panel on March 4, 2010, commencing at 3:20 p.m., at the offices of the Building Trades Employers Association in New York City, to resolve a jurisdictional dispute between the two above-named Unions. A mediation to resolve this dispute was held on January 23, 2009, but the parties could not reach an agreement, and the dispute was scheduled for an arbitration hearing. The arbitration hearing was delayed several times for various reasons, until it was held on March 4, 2010, following notices to the parties dated February 3, 2010. Representatives of both Unions appeared at the hearing, where they offered evidence and made arguments. The undersigned Arbitrator served as the Chairman of the Arbitration Panel. All four contractor members of the Panel were present at the

hearing, and participated in deciding this dispute.

The jurisdictional dispute between the above-named Unions, i.e., the scope of work at issue in this case, is the installation of TV monitor support mounts, also referred to as brackets, in the rooms of a hotel located at 844 Washington Street in New York City. The owner of the hotel assigned the disputed work to the Carpenters. The Electricians assert that the installation of these TV monitor support mounts belongs to its jurisdiction, that the Electricians have always performed this work as part of the installing the TVs and making sure they operate, and that it is only in the last year or so, with the proliferation of flat screen TVs, that the Carpenters have claimed this work. At the hearing, the Electricians introduced testimony from several electrical contractors, and documentation from numerous electrical contractors, supporting its position that the Electricians have installed brackets for flat screen TVs, and have performed the work of installing brackets for TVs going back long before flat screen TVs. For these reasons, the Electricians submit that the work of installing TV monitor support mounts should be assigned to them.

The Carpenters assert that its jurisdiction has always covered the work of installing brackets, that brackets are just a piece of hardware used to secure TVs on walls, that there is no wiring involved, and that the Carpenters are the most qualified craft to perform this work. The Carpenters acknowledge that wiring,

cable work, mounting the TVs, plugging the TVs in, and making sure they operate is all work that belongs to the Electricians, but that when something needs to be securely fastened to a wall, such as a flat screen TV, that is the Carpenters work. The Carpenters introduced an agreement between the Carpenters and the Electricians from December 2007, which requires that the installation of support brackets for video monitors on trading desks be done by composite crews of Carpenters and Electricians, as support for its position that the installation of brackets is work within the Carpenters jurisdiction. The Carpenters also introduced evidence of the Carpenters installing TV monitor support brackets at a group of hotels in Manhattan. For these reasons, the Carpenters submit that the work in dispute of installing these brackets was properly assigned to the Carpenters.

The New York Plan provides, in Article V(3)(I), in relevant part, as follows:

The arbitration panel shall be bound by National or International Agreements of record between the trades, New York Green Book decisions, or GCA decisions where applicable, or where there are none, the recognized and established prevailing practice in the greater metropolitan area....

In addition, an amendment to Article V, Section 8 of the National Plan states that as of March 15, 2008, if the Arbitrator finds that a dispute is not covered by an applicable agreement between the two

crafts to the dispute, the Arbitrator "shall then consider the established trade practice in the industry and prevailing practice in the locality."

The Unions presented no evidence of any existing agreement of record, or of any applicable international agreement between the two Unions, other than the agreement between the two Unions to use composite crews for the installation of support brackets for video monitors on trading desks. However, in this agreement, the Unions stated that:

It is expressly understood and agreed that this dispute shall relate only to "the installation of support brackets for video monitors on trading desks at any location in the geographical jurisdiction of the two trades" subsequent to the execution of this agreement, and not relate to nor have any bearing on jurisdictional disputes that may exist, or in future occur, between either of the parties hereto and any other International Union or subordinate thereof.

This agreement, by its terms, applies only (emphasis added) to the installation of support brackets for video monitors on trading desks, and it specifically states that it is not intended to apply to any other jurisdictional disputes that may occur. Thus, the Panel finds that this agreement has no bearing on the issue in this case.

Moreover, the Unions presented no applicable Green Book decisions. Consequently, the Panel must look to the "recognized and

established prevailing practice in the greater metropolitan area.” The Electricians presented evidence showing that the overwhelming “recognized and established prevailing practice in the greater metropolitan area” is that the installation of TV monitor support mounts, or brackets, is performed by the Electricians. Thus, under the provisions of the New York Plan the Electricians are entitled to perform the installation of TV monitor support mounts at the hotel located at 844 Washington Street in New York City. Therefore, based on the facts and circumstances of this case, and for the reasons explained, the Arbitration Panel issues the following

Award

The work in dispute in this case, i.e., the installation of TV monitor support mounts, or brackets, in the rooms at the hotel located at 844 Washington Street in New York City, shall be assigned to Local Union No. 3, IBEW.

It is so ordered.

Richard Adelman, Chairman

Dated: March 10, 2010

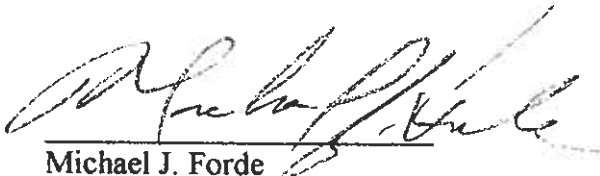
The Installation of Support Brackets for Video Monitors mounted on Trading Desks

The following understanding between the International Brotherhood of Electrical Workers, Local #3 and The New York City District Council of Carpenters is entered into to settle a jurisdictional dispute relating to the installation of these mounting brackets.

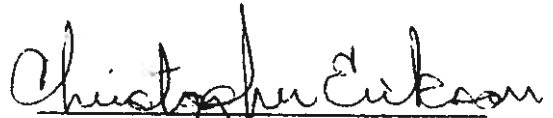
It is the purpose of this understanding to improve relations between the two trades, to settle jurisdictional disputes directly between the two trades, and mutually to assist each union to secure work coming within its recognized jurisdiction.

It is expressly understood and agreed that this dispute shall relate only to "the installation of support brackets for video monitors mounted on trading desks at any location in the geographical jurisdiction of the two trades" subsequent to the execution of this document, and not relate to nor have any bearing on jurisdictional disputes that may exist, or in future occur, between either of the parties hereto and any other International Union or subordinate body thereof.

The installation of support brackets for video monitors mounted on trading desks, belongs in part, to IBEW Local # 3 and The New York City District Council of Carpenters, it is agreed that the installation of these single purpose brackets will be performed by a composite crew of equal number.



Michael J. Forde
Executive Secretary Treasurer
NYCDCC



Christopher Erikson
Business Manager
IBEW Local #3

NEW YORK PLAN FOR THE RESOLUTION
OF JURISDICTIONAL DISPUTES

- - - - - x

In the Matter of the Arbitration

between

LOCAL UNION NO. 3, IBEW

and

NEW YORK CITY DISTRICT
COUNCIL OF CARPENTERS

- - - - - x

OPINION AND AWARD

In accordance with the provisions of the New York Plan for the Resolution of Jurisdictional Disputes, an Arbitration Panel held a hearing on January 13, 2011, commencing at 2:10 p.m., to resolve a jurisdictional dispute between the two above-named Unions. Both Unions were parties to a mediation session on November 4, 2010, in an effort to resolve this dispute, but the parties could not reach an agreement, and the dispute was scheduled for an arbitration hearing. The arbitration hearing was delayed twice before it was held on January 13, 2011, following notices to the parties dated January 10, 2010. Representatives of both Unions appeared at the hearing, at which they offered evidence and made arguments. The undersigned Arbitrator served as the Chairman of the Arbitration

Panel. All four contractor members of the Panel were present at the hearing, and participated in deciding this dispute.

The jurisdictional dispute between the above-named Unions, i.e., the scope of work at issue in this case, is the installation of support brackets for mounting projectors in classrooms at John Jay College, located at 59th Street and 11th Avenue in New York City. Turner Construction Company hired Sea Crest Construction Corporation as one of six general contractors for the job at John Jay College. Sea Crest was hired to perform the work set forth in package 2, one of the ten work packages on the job. Included in package 2 was the installation of the support brackets for mounting projectors, the subject of the dispute in this case. Sea Crest contracted the work of installing the support brackets to a subcontractor who used the Carpenters, and the Electricians contested this assignment of work .

The Electricians assert that installation of the support brackets for mounting projectors in the classrooms at John Jay College is work that belongs to its jurisdiction, that strut supports are standard material utilized by all the crafts in the construction industry, that it is well established that each craft installs the struts that support the equipment within each craft's jurisdiction, and that since it is the Electricians work to install the projectors, and to perform all the electrical work that is associated with the projectors, the installation of the support

brackets is work that belongs to the Electricians. In sum, the Electricians submit that the work of installing the support brackets for mounting projectors at John Jay Colleges should be assigned to them.

The Carpenters assert that the installation of the support brackets is part of the support blocking performed by Carpenters in framing out the structure of the classrooms at John Jay College, that there is no wiring or electrical work involved in this work, that the installation of the support brackets is part of the package of work performed by the Carpenters working for the subcontractor hired by Sea Crest, and that this work has always been part of the Carpenters' jurisdiction, and is work that Carpenters have regularly performed. The Carpenters acknowledge that all wiring work, the installing and mounting of the projectors, and making sure the projectors operate properly is work that is within the jurisdiction of the Electricians, and point out that the Carpenters are not performing or seeking to perform any of this work. For these reasons, the Carpenters submit that the work in dispute of installing support brackets for mounting projectors was properly assigned to the Carpenters.

The New York Plan provides, in Article V(3)(I), in relevant part, as follows:

The arbitration panel shall be bound by National or International Agreements of record between the trades, New York Green Book

decisions, or GCA decisions where applicable, or where there are none, the recognized and established prevailing practice in the greater metropolitan area....

In addition, an amendment to Article V, Section 8 of the National Plan states that as of March 15, 2008, if the Arbitrator finds that a dispute is not covered by an applicable agreement between the two crafts to the dispute, the Arbitrator "shall then consider the established trade practice in the industry and prevailing practice in the locality."

The Unions presented no evidence of any existing agreement of record, or of any applicable international agreement between the two Unions. Moreover, the Unions presented no applicable Green Book decisions. Consequently, the Panel must look to the "recognized and established prevailing practice in the greater metropolitan area." The parties do not disagree with respect to the governing principle that each craft has jurisdiction over the installation of the struts, or mounts or brackets, that support the equipment that falls within each craft's jurisdiction. The parties agree that the equipment in this case, the projectors, and the work related to the projectors, is work that is within the Electricians' jurisdiction, but the dispute here is based on the Carpenters' claim that the installation of the support struts is part of the support blocking which the Carpenters performed in framing out the structure of the classrooms at John Jay College, and which is within the Carpenters'

jurisdiction.

Each party has a rational basis for claiming the work in question, and it appears that it was more efficient to assign the installation of the support brackets for mounting projectors to the Carpenters. However, the evidence reveals that support struts would not have been utilized in framing the structure of the classrooms at John Jay College but for the fact that they were needed as support for mounting projectors in the classrooms at John Jay College. Since it is undisputed that projectors are equipment that fall within the Electricians' jurisdiction, the work of the installation of support brackets for mounting projectors in classrooms of John Jay College, under the provisions of the New York Plan, is work that falls within the Electricians' jurisdiction, and, thus, the Electricians are entitled to perform the installation of support brackets for mounting projectors at John Jay College.

Therefore, based on the facts and circumstances of this case, and for the reasons explained, the Arbitration Panel issues the following

Award

The work in dispute in this case, i.e., the installation of support brackets for mounting projectors at John Jay College, located at 59th Street and 11th Avenue in New York City, shall be assigned to Local Union No. 3, IBEW.

It is so ordered.

Richard Adelman, Chairman

Dated: January 24, 2011

NEW YORK PLAN FOR THE RESOLUTION
OF JURISDICTIONAL DISPUTES

- - - - - x

In the Matter of the Arbitration

between

LOCAL UNION NO. 3, IBEW

and

NEW YORK CITY DISTRICT
COUNCIL OF CARPENTERS

- - - - - x

OPINION AND AWARD

In accordance with the provisions of the New York Plan for the Resolution of Jurisdictional Disputes, an Arbitration Panel held a hearing on April 29, 2011, commencing at 8:30 a.m., to resolve a jurisdictional dispute between the two above-named Unions. Both Unions were parties to a mediation session on November 4, 2010, in an effort to resolve this dispute, but the parties could not reach an agreement, and the dispute was scheduled for an arbitration hearing. The arbitration hearing was postponed from April 15, 2011, because witnesses for the Carpenters' were not available. As noted, the hearing was held on April 29, 2011, following notices to the parties dated April 18, 2011. Representatives of both Unions appeared at the hearing, at which they offered evidence and made arguments. The undersigned Arbitrator served as the Chairman of the Arbitration Panel. All four contractor members of the Panel were present at the hearing, and participated in deciding this dispute.

The jurisdictional dispute between the above-named Unions, i.e., the scope of work at issue in this case, is the installation of the so-called "Newmat system," a fabric covering lighting fixtures in ceilings of the law firm Cleary Gottlieb Steen & Hamilton, located at 1 Liberty Plaza, in New York City. The fabric is heated at the site, and then stretched into place over the lighting fixtures. The Newmat system is produced by a French company, which provides its customers with a ten-year maintenance warranty, and it only permits the Newmat system to be installed by

persons who have been specifically trained to do this work. The company's distributor in the metropolitan New York City area is signatory to a collective bargaining agreement with the Carpenters Union, members of whom have received training in the installation of the Newmat system, and who are installing the Newmat system that is the subject of this dispute.

The New York Plan provides, in Article V(3) (I), in relevant part, as follows:

The arbitration panel shall be bound by National or International Agreements of record between the trades, New York Green Book decisions, or GCA decisions where applicable, or where there are none, the recognized and established prevailing practice in the greater metropolitan area....

In addition, especially when an applicable decision is not recent, the Panel, in making its decision, is required to consider whether the prevailing practice over the past ten years favors one of the crafts involved in the dispute.

The Electricians Union argues that the same issue regarding the installation of the same Newmat system in the same manner was arbitrated under the New York Plan, and that a decision rendered dated October 9, 2009, awarded the work to the Electricians Union. The Electricians Union asserts that this is a New York Green Book decision, that it is binding on the Carpenters Union, and that, consequently, the Electricians Union is entitled to this work. In addition, the Electricians Union points out that the two Unions had settled this issue in August 2009, by defining "a lens as any device that light shines through," and agreeing that "lens installations are the jurisdiction of the Electrician. Further, the lens installation in dispute shall in the future be the work of IBEW Local Union #3."

The Electricians Union also points out that the October 9, 2009, decision makes note of this settlement, and that the decision rejects the Carpenters Union's argument that the 1974 International Agreement governs this dispute, because the Unions, thereafter, had agreed to settle jurisdictional disputes under the New York Plan. The Electricians Union argues that electricians have been performing this work, i.e., installing lenses of all types on fixtures, for at least a 100 years. However, the Electricians Union do acknowledge that if the Newmat system, or

any material, is installed as an entire ceiling, then the installation would belong to the Carpenters Union. For these reasons, the Electricians Union submits that the work of installing the Newmat system covering the fixtures in the ceilings at 1 Liberty Plaza falls within its jurisdiction, and that this work should be assigned to the Electricians Union.

The Carpenters Union presented an existing international agreement of record between the two Unions from 1974, entitled "Installation and Erection of Luminous and Acoustical Suspended Ceilings," which provides that "If a jurisdictional dispute arises which cannot be settled by local representatives..., it shall be referred immediately to the respective International Presidents for settlement...." Based on this international agreement the Carpenters Union maintains that the dispute regarding the installation of the Newmat system must be referred to the International Presidents for resolution, and that this Panel has no authority to decide this dispute. The Carpenters Union argues that the Green Book decision dated October 19, 2009, is not binding, that the installation here is not the same installation assigned to the Electricians Union in that decision, and that the Carpenters Union appealed the decision, but the appeal was not heard because it was filed three days late.

On the merits, the Carpenters Union argues that carpenters have installed the Newmat system all over the country, including in New York City, for at least 25 years, without objection, prior to 2009, from the Electricians Union, with whom they work hand-in-hand, that the Newmat system is a stretched fabric usually installed about twelve inches below the fixture as part of a ceiling system, that this fabric is not a lens but similar to any other ceiling material, and that carpenters who install the Newmat system have been specially trained to do this work. For these reasons, the Carpenters Union submits that the work of installing the Newmat system covering the lighting fixtures in the ceilings at 1 Liberty Plaza was properly assigned to the Carpenters Union.

The clear and unambiguous language of the New York Plan states that, "The arbitration panel shall be bound by National or International Agreements of record between the trades, New York Green Book decisions...." Although the Carpenters Union argues that the New York Green Book decision dated October 9, 2009, is not binding because the installation was not the same type of installation as in this case, the Panel finds that the installation of the Newmat system covering the lighting fixtures in ceilings at 200 West Street, the location of the installation

in the October 9, 2009 decision, was the same type of installation of the Newmat system as at 1 Liberty Plaza, and that the Green Book decision dated October 9, 2009, issued less than two years ago, governs this dispute. Therefore, based on the facts and circumstances of this case, and for the reasons explained, the Arbitration Panel issues the following

Award

The work in dispute in this case, i.e., the installation of Newmat system covering lighting fixtures in the ceilings at Cleary Gottlieb Steen & Hamilton, located at 1 Liberty Plaza in New York City, shall be assigned to Local Union No. 3, IBEW.

It is so ordered.

Richard Adelman, Chairman

Dated: May 3, 2011

100-T

- The Installation of Newmat System, a Fabric Covering Light Fixtures In Ceilings
- IBEW Local 3 and Carpenters Local 157
- National Plan Appeal Decision of Green Book Decision 100-S

**PLAN FOR THE SETTLEMENT OF JURISDICTIONAL
DISPUTES IN THE CONSTRUCTION INDUSTRY**

In an Arbitration Between:
IBEW LOCAL UNION NO. 3,

)
)
) Case No: NY 5/12/11
)
)

) Hirsch: Case No. H10-048
)
)

And
NEW YORK CITY DISTRICT COUNCIL
OF CARPENTERS
)
)
)
)
)

DECISION AND AWARD

ROBERT M. HIRSCH, ARBITRATOR

Appearances By:

IBEW LOCAL 3: Jim Ross, International Representative,
Construction & Maintenance

CARPENTERS: Gary A. Rogers, Assistant to the General President, UBC&J

EMPLOYER: Timothy Greco, President
Newmat Northeast Stretch Ceiling Systems

Re: Jurisdictional Dispute re: Newmat System

Page 2

STATEMENT OF PROCEDURE

This matter arises from a jurisdictional dispute between the New York City District Council of Carpenters ("Carpenters") and Local Number 3 of the International Brotherhood of Electrical Workers ("IBEW") involving the installation of the "Newmat system" in New York City by Newmat Northeast Stretch Ceiling Systems ("Employer" or "Newmat").

The matter was originally heard under the New York Plan for the Resolution of Jurisdictional Disputes on April 29, 2011. An Opinion and Award under that Plan awarded the work to the IBEW. The Carpenters filed a timely appeal from the Arbitration Panel's decision to the National Plan. A hearing on this appeal was held on June 2, 2011, at the Plan's offices in Washington, D.C.

The two unions were present and participated at the hearing. The Employer was also present and participated as well. The parties stipulated that the matter was properly before this Arbitrator.

ISSUE PRESENTED

Whether the installation of the Newmat system by the Employer in the ceiling of the law firm Cleary Gottlieb Steen & Hamilton, located at 1 Liberty Plaza, New York City, should be performed by the IBEW or the Carpenters.

Re: Jurisdictional Dispute re: Newmat System

Page 3

FACTUAL BACKGROUND

The Newmat System is a PVC stretch fabric system developed in France and now sold throughout the United States. Newmat permits the installation of the product only by licensed dealers whose personnel have been trained by the Employer or an affiliate (Newmat USA). The installation of the system requires the stretching of a membrane over a large area of ceiling. According to Newmat's President, Timothy Greco, the ceiling system runs from one wall to another and often covers an entire ceiling area. There are occasions when the membrane covers a strip or long panel in the ceiling, but that only accounts for about one percent (1%) of the ceiling installations done by Newmat. According to Mr. Greco, although the Newmat system at issue in this dispute has a translucent membrane to diffuse light from the ceiling, the system is not attached directly to the light fixtures and is set at least twelve (12) inches below the ceiling lights. When Newmat does manufacture a smaller membrane covering which will be part of a light fixture, it sells that product to a lighting company which then installs it with its own personnel. Newmat provides a ten (10) year warrantee and free maintenance agreement to New York area customers, provided the installation is performed by licensed installers.

According to the Employer, Newmat USA signed a collective bargaining agreement with the International Brotherhood of Carpenters in 1996. Since that time, the Carpenters have performed all installation work in the New York area as well as the rest of the country. Newmat Northeast, the Employer in this matter, signed a similar agreement in 2010.

Re: Jurisdictional Dispute re: Newmat System

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DISCUSSION

The National Plan for the Settlement of Jurisdictional Disputes sets forth the following standards for the Arbitrator to follow in making a decision:

In rendering his decision, the Arbitrator shall determine:

- a) First whether a previous agreement of record or applicable agreement, including disclaimer agreement, between the National or International Unions to the dispute governs;
- b) Only if the Arbitrator finds that the dispute is not covered by an appropriate or applicable agreement of record or agreement between the crafts to the dispute, he shall then consider the established trade practice in the industry and the prevailing practice in the locality. Where there is a previous decision of record governing the case, the Arbitrator shall give equal weight to such decision of record, unless the prevailing practice in the locality in the past ten years favors one craft. In that case, the Arbitrator shall base his decision on the prevailing practice in the locality. Except, that if the Arbitrator finds that a craft has improperly obtained the prevailing practice in the locality through raiding, the undercutting of wages or by the use of vertical agreements, the Arbitrator shall rely on the decision of record and the established trade practice in the industry rather than the prevailing practice in the locality.
- c) Only if none of the above criteria is found to exist, the Arbitrator shall then consider that because efficiency, cost or continuity and good management are essential to the well being of the industry, the interests of the consumer or the past practices of the employer shall not be ignored.

The Arbitrator shall set forth the basis for his decision and shall explain his findings regarding the applicability of the above criteria. If lower-ranking criteria are relied upon, the Arbitrator shall explain why the higher-ranking criteria were not deemed applicable. The Arbitrator's decision shall apply only to the job in dispute.

The International Brotherhood of Electrical Workers and the Carpenters and Joiners of America in fact entered into an agreement in 1974 in an attempt to eliminate jurisdictional disputes relating to the installation of ceiling systems and lighting fixtures. Both parties

Re: Jurisdictional Dispute re: Newmat System

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submitted the agreement into evidence in this arbitration. Two key provisions of that agreement are relevant here.

Section 4 of the Memorandum of Understanding states: "ceiling systems below and supported independently of the light fixtures shall be installed in their entirety by Carpenters."

Section 6 of the agreement states: "Diffusers or louvers directly attached to the light fixtures and those not placed as a continuing part of the general ceiling installation shall be installed by Electricians."

Since there is an "agreement of record or applicable agreement" between the two international unions, the question for this Arbitrator is to interpret that document and apply it to the facts of the underlying dispute here. The IBEW takes the unwavering position that the product made and installed by Newmat is a "diffuser" or "lens" cover for ceiling lights, and therefore the installation work belongs to them. The Carpenters argue that the installations are "ceiling systems" unattached to the light fixtures and therefore should be their work. Both positions are reasonable but fail to fully address the nature of the product. There is no question that the translucent stretch ceilings diffuse light. Some even appear as long strips of light cover running the length of the ceiling. But the vast majority of the systems cover much or all of the entire ceiling in a room and are suspended through some type of anchoring mechanism independent of any light fixture.

This Arbitrator finds that the Newmat system generally functions as a ceiling system and is supported independently of the light fixtures as contemplated by Section 4 of the 1974

Re: Jurisdictional Dispute re: Newmat System

Page 6

agreement described above. The Newmat system also is a continuing part of the general ceiling installation as referenced in Section 6 of that agreement. Accordingly, its installation shall be by the Carpenters.

CONCLUSION

It is hereby ORDERED that the installation of the Newmat system at the law firm of Cleary Gottlieb Steen & Hamilton, located at 1 Liberty Plaza, New York City, shall be performed by the Carpenters.

This decision shall apply only to the job in dispute.

Date: June 6, 2011.



Robert M. Hirsch, Arbitrator