

## CLEANING

186-2a

The following understanding has been reached between the parties and the Board of Mediation (Thomas A. Murray and Christian G Norman) in connection with the cleaning of bucks, stairs, etc.

1. The rough cleaning of surfaces to be painted shall consist solely of the removal of blobs of plaster or cement adhering thereto, and may be done by the plasterer's helper.
2. To remove such blobs the plasterers' helpers shall be limited in use to something like a barrel stave, a piece of wood or a 94 straight hoe" and shall not use painters' tools.
3. Any controversy later arising over the degree of cleaning or the method used, should be determined by calling the Board.-March 21, 1941.

187

-Plastering work, modeling for plasterers.

Wood Carvers' and Modelers' Association vs. Employing Plasterers' Association.

The work of modeling for plasterers is in the possession of the Modelers' and Sculptors' Guild. Decision of Executive Committee, March 7, 1906.

188

-Cast work, erection of.

Ornamental Plasterers' Society vs. Carpenters' Joint District Council-Phipps House.

The work described in the complaint has been in the possession of the plasterers.-Decision of Executive Committee, July 18, 1906.

188a

-Tile, acoustical (Acoustex), installation of.

Plasterers, Local No. 60 vs. Carpenters' District Council-Insurance Company of North America, Gold, John and Cliff Streets, New York, N. Y.

In view of the decisions by the National Board of Trade Claims and the tentative agreement between the Bricklayers', Masons' and Plasterers' International Union and the United Brotherhood of Carpenters and Joiners of America, the Committee finds that the putting up of acoustical slabs of the type in question when set in acoustical cement or other plastic material is the work of the plasterers; when nailed and no acoustical cement or plastic material is used, it is the work of the carpenters. Decision of Executive Committee, March 16, 1933.

188-2a

-Tile, acoustical (Rockoustile), installation of.

-Talc, acoustical, cork, installation of.

Plasterers, Local No. 60 vs. Carpenters' District Council, -Rockefeller Center, Sixth Avenue and 49th Street, New York, N. Y.

The Committee finds that where the acoustical material in question is being stuck and nailed it is not in the sole possession of either the carpenter or the plasterer. -Decision of Executive Committee, August 28, 1933.

188-3a

-H-runners, for acoustical tile (Permacoustic), in connection with suspended ceiling erection of.

Metal Lathers, Local No. 46 vs. Carpenters District Council-Bell Telephone Building, Washington and Bank Streets, New York, N. Y.

The committee finds that the erection of the H-runners to hold units in the suspended ceiling as on the job in question, is the work of the metal lathers. -Decision of Executive Committee, June 13, 1940.

188-4a

-Exposed metal bar when attached directly to the metal carriers to support acoustical tile, installation of.

Metal Lathers, Local No. 46, vs. New York District Council of Carpenters, -135 West 50th Street, New York City.

The Executive Committee finds that the installation of the exposed metal bar when attached directly to the metal carriers to support acoustical tile is the work of the Metal Lather. -Decision of the Executive Committee, January 6, 1964.

189

-Cellar walls, plastering of.

Plasterers vs. Cement Masons-66th and 67th Sts. and Broadway.

The work of plastering the interior walls of buildings is work that has been heretofore and now is recognized to be in the possession of the plasterers.

The finishing of the walls on the job in question shall be done by the plasterers.

In view of the statements made that the work of applying cement mortar to the inside of cellar walls, purely as a means of waterproofing, has been done by the cement masons, the Committee recommends that this question be taken up and decided by the conference committee provided for in the agreement between the unions made on October 6, 1915. -Decision of Executive Committee, April 4, 1916. See No. 52.

190

-Stringers of reinforced concrete staircase, finishing of.

Cement Masons vs. Plasterers-96th St, between Fifth and Madison Aves.

In view of the fact that there are marble treads on the stairway under discussion, thus indicating the desire for an ornamental and architectural effect, the Committee is of the opinion that the finishing of the stringer in this case is work that has heretofore been recognized to be in the possession of the plasterers.-Decision of Executive Committee, June 9, 1916.

#### 191

-Finishing coat to concrete arch of subway, application of.

Plasterers vs. Cement Masons-42nd Street Station.

The work in question is in the possession of the plasterers. -Decision of Executive Committee, October 20, 1916.

#### 191a

"Covercoat," or similar material, to entire concrete ceiling surface, application of.

Operative Plasterers and Cement Masons Local Union 60 vs. Painters District Council No. 9 - 54th Street and Second Avenue, New York, New York.

The Executive Committee finds that the work in question, the application of "covercoat," or similar material, to the entire surface of a concrete ceiling for the purpose of providing a finished surface is the work of Operative Plasterers and Cement Masons Local Union 60. -- Decision of Executive Committee, June 19, 1991.

#### 191-a Appeal

Painters District Council No. 9 appealed decision 191-a under the Appeals Procedure for the Plan for Settlement of Jurisdictional Disputes in The Construction Industry. An arbitration award regarding this issue rendered August 8, 1991 reversed this decision of The Executive Committee. In accordance with the New York Plan's procedures, this decision is and becomes an area-wide decision to the same extent and with the same force as all other decisions made by The Executive Committee covering jurisdictional disputes. Accordingly, decision 191-a and the work described therein is the work of Painter's District Council No. 9.

#### 191-2a

The Skimcoating of Existing Walls.

Operative Plasterers' and Cement Masons' International Local 530 and Local 260 vs. International Brotherhood of Painters and Allied Trades, District Council #9 - Various Locations. The Executive Committee finds that 1) the work of skimcoating or applying any other similar preparation on new partitions, walls or ceilings in newly constructed, or renovated, structures is work to be assigned to the Plasterers, and 2) the work of skimcoating or applying any other similar preparation on previously painted, or otherwise finished, partition walls or ceilings is work to be assigned to the Painters. Decision of the Executive Committee, December 18, 1998.

#### 191-2a Appeal

Operative Plasterers' and Cement Masons International Local 530 and Local 260 appealed Decision 191-2a under the Appeals Procedure for the NY Plan For The Settlement of Jurisdictional Disputes. An arbitration award by the National Plan For The Settlement of Jurisdictional Disputes was rendered on January 13, 1999, upholding the 191-2a decision of the NY Plan Executive Committee.

191-2b & 2c

### **The Application of a Level 5 Skim Coat Finish**

Operative Plasterers Local 530 vs Drywall Tapers & Joiners Local 1974--60 Wall Street.

On October 2, 2003 a hearing was held to determine whether or not the work in question should proceed to arbitration.

The Arbitration Panel determined that the dispute is arbitrable because the seven-day time limit provision to refer a dispute to arbitration after mediation in the procedures of the NY Plan is based on the permissive word "may". Whereas, the seven-day limit for submission of a dispute to mediation uses the mandatory word "shall". Therefore, the use of these two different words makes unnecessary the submission of the dispute to arbitration within seven days, but rather allows its submission within a reasonable time thereafter.

The other argument advanced by Local 1974's counsel on the issue of non-arbitrable-namely the application of the injunctions of Judges Nickerson and Gleeson involves the substantive merits of the dispute between the parties and cannot be resolved without an arbitration hearing on the facts of the case.

Accordingly, the Arbitration Panel directs that the case proceed to arbitration on its merits at a time to be determined. October 2, 2003, Eric J. Schmertz, Chairman.

An Arbitration hearing was held on November 20, 2003 on the merit of the work in question.

At the hearing, Local 1974 expressly chose not to appear though it received due notice of the scheduled hearing. Representatives of the Plasterers Local 530 appeared. The Board of Arbitration ruled that the hearing proceed and the proofs and allegations of Local 530 were heard.

Based on the evidence, testimony and arguments of Local 530, and in the absence of contrary evidence from Local 1974, but based on Decision 191-2a in the Green Book, and other relevant cited arbitration decisions, to which the Board of Arbitration is bound by the New York Plan For The Resolution of Jurisdictional Disputes, the Level 5 skim coating work performed at 60 Wall Street is the work of the Plasterers.

The Board of Arbitration, limited to deciding which Union has jurisdiction over the work in dispute and confined in its power to the terms of the New York Plan, does not have the authority to issue a prospective "cease and desist" order as requested by Local 530, nor does it have jurisdiction over the application of the Court rulings cited by letter by Local 1974 November 25, 2003; Eric J. Schmertz, Chairman of the Arbitration Board.

### 191-3a

The Re-Plastering of Various Wall Surfaces Employing What Can Best Be Described As a Skimcoat Plaster to Existing Wall Surfaces of Joint Compound.

Operative Plasterers' and Cement Masons International Local 530 and Local 260 vs. International Brotherhood of Painters and Allied Trades, District Council No. 9 -301 Park Avenue, Waldorf Astoria Hotel.

On January 22, 1999, the National Plan For The Settlement of Jurisdictional Disputes ruled that the work in question was different from that of 191-2a and would be heard at an arbitration proceeding. On February 16, 1999, the National Plan For The Settlement of Jurisdictional Disputes awarded the work in question to the Operative Plasterers' and Cement Masons International Local 530 and Local 260.

In accordance with the procedures of the NY Plan, the Executive Committee, on March 4, 1999, voted to make this decision area-wide to the same extent and with the same force as all other decisions made by the Executive Committee covering jurisdictional disputes.

### 191-4a

The Scraping, Plaster Welding, Patching and Re-Plastering of New and Existing Ceilings, Walls, Beams, Columns and Staircases and Skimcoating with Joint Compound or Any Other Similar Material to the Entire Wall and Ceiling Surfaces.

Operative Plasterers and Cement Masons Local #260 vs. Painters District Council #9-Henry Hudson Hotel 58th Street.

The Executive Committee determined that the work be awarded in the following manner:

1) The Scraping, Plaster Welding, Patching and Re-Plastering of New and Existing Ceilings, Walls, Beams, Columns and Staircases is the work of Plasterers' Local #260.

2) When Such Skimcoating is Required To Correct Surface Imperfections In the Preparation for Painting and/or Wall Covering it is the work of The Painters District Council #9 in all other instances, it is the work of the Plasterer.

Decision of the Executive Committee, March 20, 2000.

### 191-5A

The Application of a Level 5 Skim Coat Finish

Operative Plasterers Local 530 vs Drywall Tapers & Joiners Local 1974--60 Wall Street The Arbitration Panel finds that the dispute is arbitratable despite Federal Court injunctions because it involves the substantive merits of the disputes between the parties and cannot be resolved without an arbitration on the facts of the case. Decision of the Arbitration Panel, October 2, 2003.

At the Arbitration Hearing held on November 20, 2003 on the merits of the dispute, Local 1974 expressly chose not to appear through it received due notice of the scheduled hearing.

Representatives of Local 530 appeared and the Arbitration Panel ruled that the hearing proceed and the proofs and allegations of Local 530 were heard.

Based on the evidence, testimony and arguments of Local 530 and particularly based on Green Book Decision 191-2a and other relevant cited decisions of the New York Plan, the Arbitration Panel awarded the work in dispute to the Plasterers Local 530, November 25, 2003.

On March 30, 2004, the New York Plan was advised that Judge Gleeson of the United States District Court in Brooklyn vacated the decision of the New York Plan and upheld the previous court rulings in this matter. The New York Arbitration Panel decision of November 25, 2003 is thus null and void.

#### 191-6A

THE NEW YORK PLAN FOR THE SETTLEMENT OF JURISDICTIONAL DISPUTE IN THE MANNER OF THE ARBITRATION Between PAINTERS DISTRICT COUNCIL 9 -and- OPERATIVE PLASTERERS AND CEMENT MASONS LOCAL 530 OPINION AND AWARD

The jurisdictional dispute in this case involves the repair, and restoration of walls, ceilings and columns at various locations at the Post Office at Cadman Plaza, Brooklyn.

A hearing was held on March 9, 2005, at which time representatives of the Painters District Council 9 ("Painters") and Operative Plasterers and Cement Masons, Local 530 ("Plasterers") appeared and were afforded full opportunity to offer evidence and argument and to examine and cross examine witnesses.

The Arbitration Panel consisted of the Undersigned as Chairman and Messrs. John Cavanagh, Robert Samella, Michael Patti and Gordon Roth.

Under the New York Plan for the Settlement of Jurisdictional Disputes, the decision of the Panel is to be based of Green Book Decisions or International Agreements, or if there be none, on prevailing practices in the Greater New York geographical area.

In this case both parties rely on Green Book Decision. The Panel finds that the Green Book Decision, applicable to and determinative in this case is Decision 191-4a which reads:

#### 191-4a

"The Scraping, Plaster Welding, Patching and Re-Plastering of New and Existing Ceilings, Walls, Beams, Columns and Staircases and Skimcoating with Joint Compound or Any Other Similar Material to the Entire Wall and Ceiling Surfaces.

*Operative Plasterers and Cement Masons Local #260 vs. Painters District Council #9 - Henry Hudson Hotel 58th Street*

The Executive Committee determined that the work be awarded in the following manner:

1) The Scraping, Plaster Welding, Patching and Re-Plastering of New and Existing Ceilings, Walls, Beams, Columns and Staircases is the work of the Plasterers' Local

#260;

2) When Such Skimcoating is Required to Correct Surface Imperfections In the Preparation for Paining and/or Wall Covering it is the work of the Painters District Council #9. Decision of the Executive Committee March 20, 2000.

3) In all other instances it is the work of the Plasterers.

At the outset of the work involved, the relevant contractor assigned it to the painters, and the painters performed the work in the Post Office's fourth floor.

Thereafter, the contractor changed the assignment for the third floor (and apparently for the balance of the work) and gave it to the plasterers.

More specifically, the evidence adduced shows that the painters did the work using methods and processes consistent with ¶2 of the above-cited Decision, namely "Skimcoating to correct surface imperfections in preparation for paining and/or wall covering."

Based on the record before the Panel, the reasons for the change in assignment from the painters to the plasterers was because the contractor determined that substantial plastering was required to repair the walls, ceilings and columns, calling for plaster welding and replastering of the existing structures. In under taking the work, the plasterers did substantial replastering, applied a type of mesh for stability and then four coats of Dura bond 45, all preliminary to final painting. (It is undisputed that the final painting work is assigned to and within the jurisdiction of the painters.)

The painters claim that much of the enumerated work falls within the definition of "Skimcoating," and belongs to the painters.

There is no evidence in the record that the contractor did not have a legitimate operational reason to want more substantial plastering and replastering rather than a "correction for surface imperfections." Indeed it is clear to the Panel that the methods and processes set forth in ¶1 of the Decision apply to that need, rather than mere Skimcoating to correct surface imperfections. And that therefore if the methods and processes set forth in ¶1 are what is needed for repair and restoration, the craft with jurisdiction to do it is the plasterers.

The Panel feels compelled to make an observation, however, which is sharply critical of the contractor involved and the plasterers. It is that both violated Article IV Section 2 of the New York Plan by respectively directing and accepting a change in the assignment of the work from the painters to the plasterers. That Article and Section reads:

"When any entity bound to this Plan by any means make an assignment of work he shall continue such assignment without alteration unless a change is agreed to between the contending local unions or it is directed to reassign the work in an official decision and award in accordance with the Plan. (emphasis added)

Here, when the change was made, it was not agreed to by contending local unions, nor had a decision or award in the change yet been rendered.

For that violation, the Panel admonishes the contractor for making the change and admonishes the plasterers for accepting it, under those premature circumstances.

However, as an Award is now issuing, it is useless and ineffective to attempt to remedy the violation retractively. But the admonitions as well as a prospective directive to henceforth comply with Article IV Section 2, are part of this Decision.

Also, it is obvious that this case is fact-driven by the facts cited, and the decision standing alone does not create an absolute precedent for any other case.

However, as the Panel has relied on and interpreted Green Book Decision 191-4a, that Decision remains in full force and effect as precedent for jurisdictional disputes between the painter and the plasterers.

For the foregoing reasons and under the circumstances cited, the Panel makes the following Award:

The repair and restoration of walls, ceilings, and columns at the Post Office Cadman Plaza, Brooklyn, is work that belongs to the Operative Plasterers and Cement Masons Local 530.

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Eric J. Schmertz, Arbitrator

DATED: March 16, 2005 STATE OF NEW YORK)  
SS: COUNTY OF NEW YORK)

I, Eric J. 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.

191-6B

Drywall Tapers and Joiners Local 1974 Vs. Operative Plasterers & Cement Masons Local 530 Federal District Court Order

On March 17, 2005 Federal District Court Judge John Gleeson issued the following Court Order on long-standing jurisdictional disputes between these two trades:

It is hereby ordered that Local 530 of the Operative Plasterers and Cement Masons International, its officers, agents, servants, employers and attorneys, and all other in active concert or participation with any of them who receive actual notice of this order are enjoined and restrained from asserting jurisdiction over, and from causing or permitting members of Local 530 to perform any drywall finishing in the City of New York unless the owner of the site, through architects specifications, require that the drywall surfaces at issue are to receive plaster, acoustical or imitation acoustical finishes.

All other pointing and taping, regardless of material used, and regardless of whether "skimcoating" is requested or performed, shall be the work of the Drywall Tapers and Pointers of Greater New York, Local 1974.

If the architect's specifications require that some drywall surfaces receive plaster, acoustical or imitation acoustical finishes, while other drywall surfaces receive other finishes, Local 530 may

assert jurisdiction only over the finishing of drywall that will receive plaster, acoustical or imitation acoustical finishes.

As a result of this Court Order the Executive Committee of the Building Trades Employees' Association adopted a resolution to enter the above Court order into the Green Book as Decision 191-6A.

The Executive Committee determined that Decision 191-6A supercedes any and all previous New York Plan Green Book Decisions on the scope of work which is the subject of the Court Order.

This Green Book Decision renders null and void Green Book Decisions 185-2a, 191-2a appeal, 1913a and 191-5a.

Decision of the Executive Committee of the Building Trades Employees' Association, May 12, 2005.

#### 191--6C

Drywall Tapers and Joiners Local 1974 vs. Operative Plasterers and Cement Masons Local 530  
Federal District Court Consent Injunction

On June 8, 2005 the Drywall Tapers and Painters Local 1974 filed a lawsuit against several general and subcontractors requesting the court to determine why those contractors should not be enjoined from assigning the work in question--the same work as defined in Decision 191--B--to any employer who does not have a collective bargaining agreement with Local 1974 at any job site in New York City and within the jurisdiction covered by the New York Plan For The Resolution of Jurisdictional Disputes.

On September 9, 2005, Federal District Court Judge John Gleeson denied all motions submitted by the contractors that they were not bound to Green Book Decision 191-6B which outlines the previous Federal District Court Order awarding the work in question to Local 1974.

On December 16, 2005, the contractors involved in this litigation entered into a consent injunction. The consent injunction issued by Federal District Court Judge John Gleeson states:

"It is hereby ordered that the named defendants in this action are enjoined and restrained from assigning drywall finishing work for projects located within the City of New York, or contracting or subcontracting for the performance of such work, in contravention of the New York Plan and its arbitration decisions known as "Green Book Decisions", including without limitation Decision 191--6B. This injunction shall remain in effect until December 31, 2010, provided, that it shall be dissolved upon any of the following events:

- a. Local 1974, or its successor, disaffiliates from the Building and Construction Trades Council of Greater New York;
- b. an order is issued by any court of competent jurisdiction that reverses, supercedes, cancels or substantively modifies or

amends this Order, the Memorandum and Order of this Court dated September 9, 2005 injunction;

- c. the New York Plan for the Settlement of Jurisdictional Disputes dissolves or otherwise ceases operations as a forum for the resolution of jurisdictional disputes in the New York City construction industry;
- d. Local 1974 dissolves or otherwise ceases representing employees in its capacity as a labor organization as defined by the National Labor Relations Act;
- e. Local 1974 violates paragraphs 3 through 7 of the Settlement Agreement executed by the parties to the action; or
- f. Local 1974 fails to initiate and pursue an appropriate legal proceeding against any contractor or subcontractor of any tier bound to the New York Plan that fails to comply with Decision 191-6B; provided, however, that this Injunction shall not dissolve pursuant to this provision unless and until at least one named defendant provides written notice to Local 1974 of such contractor (or subcontractor) non-compliance and Local 1974 fails to initiate an appropriate legal proceeding with thirty (30) days of receipt of receipt of such written notice.

So Ordered

John Gleeson, U.S. D. J.

December 16, 2005  
Brooklyn, New York

On January 12, 2006, the Executive Committee of the Building Trades Employers Association unanimously adopted a resolution that the New York Plan for the Resolution of Jurisdictional Disputes must and will comply with the provisions of the Federal District Court Consent Injunction in the award of work as defined.

191b\*

Plastic Mesh (Scrim), for preventing overspray, application of.

Metallic Lathers Union and Reinforcing Iron Workers Local No. 46 vs. Plasterers Helpers' Union No. 30 - Concourse Plaza Hotel, Bronx, New York

The Executive Committee finds that the application of plastic mesh (scrim) in fireproofing bar-

joint installations when used for the purpose of preventing overspray is the work of Plasterers Helpers' Union No. 30 - Decision of the Executive Committee, August 9, 1990

192

Cork, placing of in forms for concrete arches.

Cement Masons vs. Johns-Manville Co.-40th St., between Eleventh and Twelfth Aves.

The work in question is in the possession of the plasterers. -Decision of Executive Committee, October 20, 1916.

193

Cellar walls, interior, dampproofing.

Plasterers vs. Cement Masons-Buildings, 15 E. 65th St. and Park Ave. and 57th St.

The evidence in this case shows that the work is similar to that performed in the year 1916 on the job at 66th and 67th Streets and Broadway and the Committee finds that:

The work of plastering the interior walls of building is work that has been heretofore and now is recognized to be in the possession of the plasterers.

The finishing of the walls in question shall be done by the plasterers.-Decision of Executive Committee, May 29, 1917.

194

Basement walls, interior.

Plasterers vs. Cement Masons and White Fireproof Construction Co. -Building, 36th St.

The complaint is sustained.-Decision of Executive Committee, July 13, 1917.

195

Plastering work, stucco, preparing exterior walls for application of.

Plasterers for Plasterers' Helpers vs. Fountain & Choate-78th St. and Madison Ave.

The complaint is sustained.-Decision of Executive Committee, October 9, 1917.

196

Cork, cutting of.

Carpenters vs. Plasterers and the United Cork Companies-Merchants Refrigerator Co. Building, 16th and 17th Sts., Tenth and Eleventh Aves.

The complaint is dismissed.-Decision of Executive Committee, November 14, 1917.

**New York Plan for the Resolution of Jurisdictional Disputes**

In the Matter of the Jurisdictional Arbitration  
Between

Plasterers Local #262

And

Tapers Local #1974

(Opinion and Award)

The disputed work is certain repairs to concrete columns at the work site: 360 Furman Street, Brooklyn.

The Plasters Union characterizes the work as “replastering” the columns. The Tapers Union characterizes the work as “skim coating”.

In accordance with the New York Plan an arbitration hearing was held on May 1, 2008 between the above-named Unions, on the question of which is entitled to the work in dispute.

The Arbitration Board consisted of the Undersigned as Chairman, and Messrs. Mike Patti, Mark Barian, Steve Keriakos and Brian Gordon, members.

Representatives of both Unions appeared and were afforded full opportunity to offer evidence and examine and cross-examine witnesses. The parties were expressly advised that material to a decision are (1) Green Book decisions; (2) relevant international or national union agreements among the trades; and (3) industry practices in the New York Metropolitan geographic area.

The Plasters cite Green Book Decision 191-2a (December 18, 1998) in support of its claim to work. The Tapers cite Green Book Decision 191-4a in support of its claim (March 20, 2007). The Board, considering all the evidence, does not judge either citation as determinative per se. But, both decisions contain definitions that are instructive.

What the majority of the Board deemed persuasive were the actual evidentiary facts of the actual work performed.

The Plasters based their case on a video of the columns involved and the actual work being performed on those columns. The film shows a large number of columns which are in disrepair. They have paint and surface material peeling off them. They are scarred with holes, gouges and significant tears that need to be covered and smoothed out to make the columns cosmetically unblemished. It asserts that the work of filling those holes, blemishes and gouges requires plastering, and therefore is work that belongs to be Plasters Union. They deny that those repairs were or can be made without plastering or by skim coating alone. And that the material used by the Tapers (who are doing the work) is a type or compound equivalent to plaster, or with a plaster ingredient.

The Board finds that the Plasters offered unrebutted evidence that they did not plaster or replaster the holes or gouges. But rather that all they did and what they assert is their undisputed work is and was to skim coat the columns, and did so multiple times, until the holes, blemishes and gouges were covered to the satisfaction of the contractor and consistent with the specifications of the job. That was the direct and unrefuted testimony of the contractor who did the work. Indeed, the Tapers concede that the filling of holes, blemishes and gouges is the work of another trade, either the laborer, masons or plasterers, but by testimony under oath, and unrefuted, assert that they achieved the repairs sought by and through use of skim coating only, albeit on a multiple basis. (There is no allegation of any building code violations). And there is no claim that multiple coats of skim coating was jurisdictionally improper.

The Board decided that the question before it was whether the actual work performed fell within the jurisdiction of the Tapers (who are doing it) or within the jurisdiction of the Plasters, requiring an order directing a change in the work assignment. Based on its finding of fact that the actual work performed was limited to skim coating, and not plastering, the Board determined that that particular work belongs to the Tapers. That it may have been better procedure, for structural or

cosmetic purposes, to assign the filling of the holes and gouges to the Plasterers, is not the issued before us and is beyond our jurisdiction. Rather, as that work was done entirely by multiple use of skim coating and skim coating materials, it complies with the jurisdictional rights of the Tapers. Indeed, these findings of fact are consistent with the portions of both Decisions 191-2a and 191-4a

The former, in relevant part makes the distinction that is present in the instant case, namely that:

- 1) The work of skim coating or applying any other similar preparations on new partition walls or ceilings in newly constructed, or renovated structures is work to be assigned to the Plasers. (emphasis added)
- 2) The work of skim coating or applying any other similar preparation in previously painted or otherwise finished, partitions walls or ceilings is work to be assigned to the Painter (i.e. Tapers) (emphasis added).

Here, the columns were not new, were previously painted and only skim coating was applied.

191-4a it was determined that:

- 1) Scraping, plaster, wiewding, patching and replastering of new and existing ceilings, walls, beams, columns and staircases is the work of the Plasterers...
- 2) When such skim coating is required to correct surface imperfections in the preparation for painting and/or wall covering, it is the work of the Painters (i.e. Tapers) (emphasis added).

Here, none of the work done by the Tapers was plastering, scraping or replastering. Rather, it was confined to skim coating (albeit, apparently multiple times) in preparation for painting.

For all the foregoing reasons, and confined as we are to what work was actually performed, and not what better or other methods may or even should have been employed, the disputed work of skim coating the columns at 360 Furman Street, Brooklyn was and is work properly assigned to the Tapers Union.

Eric J. Schmertz

Chairman

I, Eric J. 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.

DATE: May 5, 2008

## **197-a Appeal**

The Plasterers appealed the Green Book Decision to the National Plan for the Resolution of Jurisdictional Disputes on May 15, 2008.

On June 17, 2008 the National Plan for Settlement of Jurisdictional Disputes in the Construction Industry sustained the New York Arbitration Panel Decision that the work in question of painting of plaster molds and replacing of ceilings is confined to skimcoating and is the work of the Drywall Tapers Local 1974.

**New York Plan for the Resolution of Jurisdictional Disputes**

In the Matter of the Jurisdictional Dispute  
Between

Operative Plasterers' and Cement Masons' International Association Local #262

And

International Union of Painters and Allied Trades District Council Local #9

(Opinion and Award)

**Scope of work:** Specialty/Venetian/Armourcoat Plastering  
**Job site:** JP Morgan Chase – 270 Park Avenue  
**Contractor:** Tri-Line Contacting and Newport Painting  
**Award:** The Work In Question Is That Of The Painters District Council 9.

The arbitration was conducted on June 20, 2008.

Mr. Michael Gannon, Vice President and Director of Jurisdiction represented the Operative Plasterers' and Cement Masons' International Association Local 262.

Mr. Joseph Ramaglia, Business Manager, represented the International Union of Painters and Allied Trades District Council 9.

Both parties presented evidence and witnesses before a panel of five arbitrators, Angelo Lopes (Painters' Representative), Michael Patti (Plasterers' Representative), Eric Schisler (Independent Panelist), Mark Varian (Independent Panelist) and Andrew Byrne who served as the Independent Arbitrator.

**Decision of the Panel**

The arbitration was conducted in accordance with the New York Plan Hearing Procedures, and the arbitration deliberated and reached a decision after considering the materials and witnesses submitted to the panelists by both parties.

The Arbitration Panel weighed the evidence presented and testimony of the witnesses and used the following criteria in making its decision:

1. The Panel found there were no National or International agreements between the trades; they then considered the next criteria;
2. The Panel determined that there were no National Decisions of Record applicable to the scope of work which was the subject of this hearing;
3. The Panel then determined that there were no existing NY Plan Green Book decisions on the scope of work before the Panel;
4. The Panel then considered and determined both the established trade practice in the industry and the prevailing practice in the locality, the New York metropolitan area.

Under the 4<sup>th</sup> criteria, evidence presented by the IUPAT District Council 9 showed over 50,000 individual jobs performed by them over the years on the scope of work which was before the panel. That overwhelming evidence, compiled with the testimony of the witnesses led the Arbitration Panel to conclude that under both the established trade practice in the industry and the prevailing practice in the locality, the New York Metropolitan area, the work is that of the IUPAT District Council 9.

Therefore; the Specialty/Venetian/Armourcoat Plastering is awarded to IUPAT District Council 9.

Andrew Bryne, Independent Arbitrator  
Chairman

DATE: June 20, 2008

## **198 Appeal**

The Plasterers appealed the Green Book Decision to the National Plan for the Resolution of Jurisdictional Disputes on June 30, 2008.

On July 17, 2008 the National Plan for Settlement of Jurisdictional Disputes in the Construction Industry sustained the New York Arbitration Panel Decision that the work in question of specialty, venetian and armourcoat plastering is the work of the Painters District Council 9.