

## GLAZING

### 113

Agreement between the Window and Plate Glass Dealers' Association and the Glaziers, Local Union No. 1087, Brotherhood of Painters, Decorators and Paperhangers of America.

Work covered-Setting and glazing Of all glass and mirrors of every kind and description.

### 114

**-Glazing, sash, metal.**

Sheet Metal Workers vs. Glaziers -Cedar and West Sts.

The work of glazing metal sash where a cap or solder is used is work that has been in the possession of the sheet metal workers. The work of glazing metal sash where a cap or solder is not used is work that has been in the possession of both the sheet metal workers and the glaziers. The cutting of glass is work that has been in the possession of the glaziers. -Decision of Executive Committee, January 23, 1907. Superseded by 114a.

### 114a

**-Sash, metal.**

Sheet Metal Workers vs. Glaziers.

R E S O L V E D, that the agreement made by the Sheet Metal Workers and the Glaziers' Unions, relating to the glazing of hollow metal sash, be accepted as a competent revision of an arbitration decision and be substituted for the decision of January 23, 1907, printed in the Handbook as Decision No. 114.

The Agreement reads as follows:

It is agreed by both parties to this agreement that all glass set in sheet metal sash, frames and doors shall be set by members of the Brotherhood of Painters, Decorators and Paper Hangers of America according to their claim of jurisdiction, granted by the Convention of the Building Trades Department of the American Federation of Labor at St. Louis, December, 1910, and that all sheet metal work on sheet metal sash, frames and doors, shall be done by members of the amalgamated Sheet Metal Workers International Alliance.

-Decision of Executive Committee, December 18, 1923.

## 115

**-Sash, hollow metal, manufactured by Hermann & Grace.**

Sheet Metal Workers vs. George A. Fuller Company -Hallenbeek-Hungerford Building.

The decision of January 23, 1907, applies to this work, and the glazing should be done by sheet metal workers. -Decision of Executive Committee, July 15, 1914.

## 116

**-Skylight, saw-tooth.**

Sheet Metal Workers vs. W. L. Crow Construction Co.—43rd St. and Eleventh Ave.

The W. L. Crow Construction Co. is directed to have the sawtooth skylight in question glazed by sheet metal workers. Decision of Executive Committee, August 2, 1917.

## 116a

**-Glazing, rolled Iron bar skylights.**

Glaziers, Local No. 1087, vs. Sheet Metal Workers, Local 28 -American Express Building, Bliss Yards, Long Island City.

The Committee finds that the glazing of rolled iron bar skylights is not in the possession of a trade. - Decision of Executive Committee, November 1, 1926.

## 117

**-Partitions, wooden, glazing of.**

Carpenters vs. Glaziers and the Pittsburgh Plate Glass Co.—45th St. and Fifth Ave.

The complaint is dismissed. -Decision of Executive Committee, May 7, 1918.

## 118

**-Sash, steel, glazing of.**

Glaziers vs. Sheet Metal Workers and Post & McCord-Army Supply Base, South Brooklyn.

The complaint of the glaziers is sustained, as the sash being glazed is of rolled steel, and Post & McCord is directed to employ glaziers to do the work. - Decision of Executive committee, April 21, 1919.

### **118a**

**-Glass and capping thereof, rehabilitation of Greenhouse/Conservatory, installation of.**

Glaziers Union Local 1087 vs. Sheetmetal Workers Union Local 28-Bronx Botanical Gardens/Conservatory; Bronx, New York.

The Executive Committee finds that, based on existing area-wide agreements, the work in question, the installation of glass and the capping thereof in the rehabilitation of a Greenhouse/Conservatory is the work of Glaziers Union Local 1987. - Decision of the Executive Committee, July 26, 1994.

### **119**

**-Beads, metal, setting of.**

Carpenters vs. Glaziers and Cauldwell-Wingate Company -Mt. Sinai Hospital.

The complaint of the carpenters is sustained. -Decision of Executive Committee, June 29, 1921.

### **119-a**

The Installation of Photo Voltaic Cells Consisting of Glass Panels in a Field Glazed Curtain Type System

International Brotherhood of Electrical Workers Local 3 vs Glaziers Local 1281 -Staten Island Ferry Terminal.

The Arbitration Panel determined that the installation of photovoltaic cells shall be performed by the Glaziers Local 1281--November 19, 2003.

On November 20, 2003, the NY Plan Administrator rendered the above null and void based on a request from IBEW Local 3. Local 3 alleged that a member of the Arbitration Panel involved in this hearing was in fact a contractor involved in the job in question. The NY Plan Administrator determined that fact to be true and in violation of the NY Plan .

On December 10, 2003 Glaziers Local 1281 requested the decision to rescind the initial award of November 19, 2003 based on the fact that the interim NY Plan used for the hearing in question did not require anyone to disqualify themselves as an Arbitration Panel member. That provision was included in the 1996 NY Plan document but was not included in the NY Plan procedures for this hearing. In addition, they submitted the NY Plan Administrator did not have the authority to declare the decision null and void. The NY Plan Administrator then referred this issue to the General Counsel for the NY Plan.

The General Counsel to the NY Plan ruled on January 16, 2004 that a review of the NY Plan language agreed upon as an interim document between the Building & Construction Trades Council and the Administrator for the NY Plan as negotiations for amending the NY Plan were taking place in fact the deleted the provision of the 1996 Plan requiring panel members not be involved in any case in which they had a direct interest. Therefore, the panel member performing the work in this case was eligible to serve. In addition, the NY Plan Administrator does not have the authority to declare any determination of the Arbitration Panel null or void.

The decision to rescind the November 19, 2003 decision is invalid and the work in question is awarded to the Glaziers Local 1281.

### **119-A**

On October 30, 2007, IBEW Local 3 filed an appeal of the above NY Plan decision to the National Plan for the Resolution of Jurisdictional Disputes.

On December 13, 2007, a National Plan Decision reversed the above NY Plan decision. The National Plan decision awards the work in question to IBEW Local 3.

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**

**OPINION AND DECISION**

**International Union of Painters and Allied Trades**

**And**

**Sky King Skylights, Inc.**

**RE: Plan Case No. NY 10/30/07 (Appeal of NY Plan Decision)**

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

A hearing regarding this arbitration was initially held on December 6, 2007, but discontinued when it was discovered that the responsible contractor had not been officially notified of the hearing date. The hearing was re-scheduled and held on December 11, 2007, at the offices of the Plan Administrator at 900 7<sup>th</sup> 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 roof top photovoltaic systems at One River Terrace in Battery Park City, New York.

**Appearances**

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

**Jerry Westerholm  
Director, Construction & Maintenance**

**Kirk E. Groenendaal  
International Representative**

**Raymond A. Melville**

Assistant Business Manager  
IBEW Local Union No. 3

For the International Union of Painters and Allied Trades  
(Referred to as the IUPAT)

William Courtien  
Executive Assistant to the General  
President

Bill Elfield  
IUPAT District Council 9  
Glaziers Local Union No. 1281

Sky King Skylighting, Inc.

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**

On October 10, 2007, a hearing was held by the Arbitration Panel, under the New York Plan, to determine if the scope of work in this dispute was the same or different than previous Green Book decision 119-A, issued November 19, 2003.<sup>1</sup> If the panel determined the scope of work was the same as the Green book decision 119-A, that decision would be applicable. If the panel determined the scope of work was different, an arbitration hearing would be held immediately on this issue.

The Arbitration Panel determined on October 10, 2007, that the scope of work submitted was the same as that determined by Green Book decision 119-A, The work was awarded to Glaziers Local 1281 and the decision was entered into the New York Green Book as Decision 119-B.<sup>2</sup>

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 Plan.

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<sup>1</sup> Under the New York Plan for the Resolution of Jurisdictional Disputes, "The arbitration panel shall be bound by National or International Agreements of record between the trades, New York Plan Green Book Decisions, or where there are none, the recognized and established prevailing practice in the greater metropolitan area.

<sup>2</sup> Rules of the New York Plan require such decisions to be decisions of record.

Secondly, did the decision of the Local Board address the established criteria of Article V, Section 8 of the 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 the parties (IBEW) were not afforded an opportunity to present evidence in support of their claim, and that the New York Arbitration Panel failed to address the established criteria of Article V, Section 8 of the National Plan by treating their decision 119-B as the equivalent of a National Plan Decision of Record, rather than the equivalent of a job decision issued by a National Plan arbitrator.<sup>3</sup>

Thus, the request for appeal by the IBEW was approved and is properly before this Arbitrator for adjudication at this hearing.

Discussions and Positions of the Parties

Written presentations and oral arguments were made by the representing parties and were thoroughly, comprehensively and excellantly 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 roof top photovoltaic systems, is the work of the IBEW based on Article V, Section 8 (d) of the Plan, which states: "If no decision of record is applicable, the arbitrator shall consider the established trade practice in the industry and prevailing practice in the locality," and the work be awarded to the IBEW accordingly.

The IBEW expressed that the work in this dispute is significantly different than the work involved in the New York Plan decision 119-A. Decision 119-A involved dual purpose panels which were used in a curtain wall where glazing was required to keep out elements, e.g windows in a curtain wall. The IBEW referenced testimony from this hearing whereby the Glaziers representative attested to not claiming roof top panels (similar to the roof top panels involved in this dispute) that were installed at the Jewish Museum, "because that array is basically not a glazing system. That is not how glass is installed, that I have ever seen."

The IBEW submitted two (2) projects which involved the installation of stand-alone roof top photovoltaic systems, the Museum of Jewish Heritage and the Roosevelt Island projects, which were installed by the IBEW. They further provided numerous contractor letters of assignment to the IBEW for installations of photovoltaic systems throughout New York City and the immediate surrounding areas.

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<sup>3</sup> It is noted, while Agreements of Record are applicable only to the parties signatory to such agreement, Decisions of Record are applicable to all trades under the National Plan.

The IBEW offered that the National Joint Apprenticeship and Training Committee for the Electrical Industry (NJATC) has offered training in Photovoltaics, since 1997 with a course entitled "Installing Grid Connected Photovoltaic Systems" and have trained over 400 instructors to train their members of the IBEW in the installation of photovoltaic systems throughout the country. They provided a listing of numerous projects throughout the U.S. where the IBEW has installed photovoltaic systems.

In further support of their position based on trade practice in the industry, they provided the parties a copy of the book entitled *Photovoltaic Systems*. This book which, authored by the NJATC and used in the IBEW training, outlines the over 50 training centers throughout the U.S. that have installed photovoltaic systems on their buildings.

The IBEW has also partnered with the National Photovoltaic Construction Partnership (NCPC) in helping owners, architects, engineers and government agencies to better understand solar powered installations and practices.

### IUPAT

The IUPAT contends that the work in dispute, the installation of a roof top photovoltaic system is not a single-craft but multi-craft installation, involving the setting of the glass panels and architectural metal (mullions). The IUPAT pointed out that Glaziers, Sheet Metal Workers, and Electricians were used for the installation. Glaziers and Sheet Metal Workers installed the mullions and the perforated, non-functional aluminum louvers; Electricians did all the inter-connecting wiring.

The IUPAT contended the setting of glass is the work of the glaziers. Though photovoltaic technology is incorporated in the glass panels, it is their position that this installation is rightfully assigned to the IUPAT, since the installation involved using glazing methods (using a suction cup which is indigenous to the glazing trade).

The IUPAT provided transcripts from the hearing held October 10, 2007, before the Arbitration Panel, whereby a representative of IBEW Local 3 testified, "In a curtain wall of a building where glass is installed and photovoltaic technology is incorporated in that glass and glazing techniques are required, we understand, concede and agree this is the work of the glazier. We feel the same about roof and canopy installations, where glazing methods and materials are employed, that is the work of the glazier."

Also, the IUPAT provided a letter from Atlantech Systems Inc, a dealer for Colt International, the manufacturer of the panels, which stated that the system also served as "an aesthetic architectural mechanical screen feature of the building, concealing various mechanical components which would otherwise be exposed to view," in support of their position that the panels were not solely designed to generate electricity.

The IUPAT provided information regarding typical pivot or torsion bar glazing system installations, from windows, herculite doors, aluminum doors, shower enclosures, steel sash, revolving doors and operable skylights, including glazing systems and hardware that require electricity, e.g. electric door locks, automatic sliding, revolving folding and pivoting doors, operable skylights and smart glass systems, etc., all of which are installed by glaziers.

They showed a roof top glass louver system at 40 Mercer Street in Manhattan that was installed by an IUPAT signatory employer. This glass louver system was designed for its aesthetics and to keep the roof of the building cooler, which they advocated was similar to the roof top installation in this dispute. They also provided letters from two contractors, one in New Jersey and one in Texas, stating they have assigned the installation of photovoltaic glass panels to the Glaziers. They also provided numerous decisions involving jurisdictional disputes with various trades over a sundry of glass installations in support of their claim to the work in dispute based on trade practice in the industry.

It is the position of the IUPAT that the assignment by the responsible contractor to install the glass in this system to the Glaziers was a correct assignment.

Sky King Skylighting, Inc.

The IUPAT provided a letter date December 10, 2007, from Sky King Skylights Inc., 622 W. Lafayette Street, Easton, Pennsylvania, signed by Cynthia Mooney, President, which stated:

"I would like to state for the record that I feel I made a proper assignment of the glass work to the IUPAT glazier in that it has been my experience that they are the most qualified craft to make any and all adjustments to the laminated glass panels that contain the photovoltaic technology in this system and to insure that it is installed properly. I also made sure that sheet metal workers and electricians were used in their respective parts in the installation of this system.

"Although it would be very efficient and more cost effective if one craft had all of the skills required, the fact is that no one craft has the expertise to incorporate all of the skills required in the areas of glass, metal and electric to complete this job."

Application of Plan Criteria

Based on the authority vested under the Plan, Article V, Section 8 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;*

This Arbitrator finds there is no previous agreement of record or applicable agreement between the International unions.

- b) *Only if the Arbitrator finds that the dispute is not covered by an agreement or applicable agreement of record or agreement between the crafts to the dispute, he shall then consider whether there is a previous decision of record governing the case.*

This Arbitrator finds there is no previous decision of record governing the case.

- c) *If the arbitrator finds that a previous decision of record governs the case, the arbitrator shall apply the decision of record in rendering his decision, except under the following circumstances. After notice to the other parties to the dispute prior to the hearing that it intends to challenge the decision of record, if a trade challenging the decision of record is able to demonstrate that the recognized and established prevailing practice in the locality of the work has been contrary to the applicable decision of record, and that historically in the locality the work in dispute has not been performed by the other craft or crafts, the arbitrator may rely on such prevailing practice rather than the decision of record. If the craft relying on the decision of record demonstrates that it has performed the work in dispute in the locality of the job, then the arbitrator shall apply the decision of record in rendering his decision. If the arbitrator finds that the 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 rather than the prevailing practice in the locality.*

This Arbitrator finds no evidence of impropriety, i.e. raiding, under-cutting of wages, or vertical agreements, by any involved party.

- d) *If no decision of record is applicable, the arbitrator shall then consider the established trade practice in the industry and the prevailing practice in the locality.*

It is the opinion of this arbitrator that this dispute shall be determined based on established trade practice in the industry and the prevailing practice in the locality.

- e) *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.*

#### Summary Findings

The IBEW and the IUPAT provided substantial support and evidence as to the basis of their claims to the work in dispute, with the IBEW defining the work as an installation of a photovoltaic system and the IUPAT interpreting the work as a glass installation.

Both parties consented in their testimony that installations involving photovoltaic technology can include multiple craft, depending on the configuration and design of the respective system, and the involvement of the respective crafts will depend on the specifics involved in the installation.

Based on the testimony and information presented in this case, it is the opinion of this Arbitrator that the work in dispute involves the installation of a photovoltaic system that is incorporated in manufactured glass panels and erected on a building roof top. The primary, if not sole purpose of this photovoltaic installation is to provide photovoltaics, a solar energy technology to convert solar radiation into electricity and to provide a means of converting energy into an electrical resource for use in this facility. Though aesthetics may have been considered in the design of this system, which may also provide a windbreak by nature of its existence, it is the opinion of this Arbitrator, that these factors do not categorize this

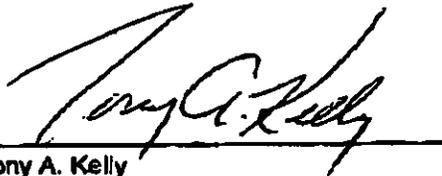
installation as dual purpose. The purpose of the installation is to provide the photovoltaic capabilities, and would not be necessary or provided for other reasons alone.

With respect to the installation of photovoltaic systems, the IBEW provided unequivocal evidence and documented support to substantiate their claim to the work based on established trade practice and prevailing practice in the locality. Though the use of photovoltaics is a relatively new and evolving technology, the IBEW clearly demonstrated it has been integrally and actively involved with photovoltaic systems and the installation of the same since inception. Conversely, the IUPAT demonstrated its preeminence in the industry with respect to glass installations.

#### Decision

Therefore, in accordance with the considerations set forth under Article V, Section 8(d) above, this Arbitrator has determined that the work in dispute, the installation of roof top photovoltaic systems at One River Terrace, in Battery Park, New York, shall be assigned to employees represented by the IBEW.

This decision shall only apply to the job in dispute.



Tony A. Kelly

Dated: December 13, 2007