

HOISTING WORK

120

Agreement between the Building Contractors' and Mason Builders Association, The Cement League, Contracting Stonesetters Association, Inc., Contracting Plasterers' Association of Greater New York and International Union of Operating Engineers, Local No. 14.

Article IV. Work covered.

Engineers shall be employed on the operation of

All high pressure boilers, high pressure steam (not from permanent plant of an existing building on the job site or street service) used for temporary heating, when operated by Parties of the First Part.

All engines, irrespective of power used for hoisting materials and construction equipment for buildings.

Air compressors, (it being agreed that one (1) engineer shall service two compressors when such compressors are located within one hundred feet of each other, and shall drive all truck mounted compressors).

Air valves when compressed air is obtained from other source than the employees compressor.

Steam or compressed air driven concrete or mortar mixers -

Pulsometers, syphons and pumps driven by steam or compressed air. On five or more single or double suction power pumps. Cableways, cranes, clamshells, orange peel and dragline buckets.

Climbing cranes.

Locomotives.

Power chain hoists and concrete pumps.

House elevators used in the construction, alteration, demolition and repairing of buildings and structure at a cost of \$25,000.00 or more (it being agreed that from a cost of \$25,000.00 to \$50,000.00, an engineer shall be employed for a minimum of one week and that from \$50,000.00 to \$100,000.00, an engineer shall be employed for a minimum of two weeks. (These terms shall apply to all contracts of one contractor in one building progressing at the same time).

Unloading material from a truck to the ground where power is used to facilitate same shall not be classified as hoisting. In connection with pumping where any pumping is required to be operated continuously on river coffer dams and well point pumps because of a water condition shall be employed water condition, an engineer shall be employed.

A lift truck when such lift truck is used to hoist building materials.

A conveyor when such conveyor is used to raise building materials from one floor to another floor.

Motorized buggies when they are used on temporary ramps for lifting materials to the second floor, or above.

An engineer shall NOT be required on gasoline engines furnishing power to drive electric generators when one machine (no larger than 300 amperes) is involved in a project.

When two or more machines of this size or one or more machines of a larger size are utilized on a project.

Welding machines when used on structural steel work.

Personnel material hoists, regardless of the use of such machines.

Helicopters used in construction.

Article V. Hours.

Section 1. The minimum basic day will be seven (7) hours, between the hours of 8:00 A.M. and 4:00 P.M., for all weekdays, except Saturday. This time shall be actual running time and the engineer shall have his machine ready to run at 8:00 A.M., unless otherwise notified on the previous day.

Section 2. It is agreed that the engineer shall be employed on a straight time weekly basis, except as provided in SECTION 4 hereof.

Section 3. Where an engineer works with the mechanics of a trade who are on eight (8) hour day basis, the engineer will work the additional hour at straight time.

Section 4. At the start and finish of a job engineers shall be paid for the actual time worked. On jobs of one or two days' duration an engineer shall be paid for a day's wage for each day he works. When an engineer, hoisting for the concrete contractor exclusively, is employed only one or two consecutive days within a period of five consecutive working days, he shall receive a minimum of three days' pay for each payroll week.

Section 5. When working with the Plasterer, the engineer shall work similar hours as the Plasterers' Laborers seven (7) hour day.

When machines are being used to pump or spray plastering material on a job, an engineer shall be employed,

A. When one or more machines are pumping or spraying above the second floor on all apartment buildings over seven (7) stories high.

B. When one or more machines are pumping or spraying above the second floor on office buildings which require 1,250 square yards or more per floor.

C. When two or more machines are pumping or spraying from street level up on buildings over two stories high.

D. On jobs comprised of more than one (1) building, when two to four machines are pumping or spraying from street level up on buildings over two stories high, whether working on one or more buildings at a time; however, when five or more machines are in operation on more than one building, an additional engineer shall be employed.

E. No engineer shall be required where only one machine is use for pumping or spraying unless hose is larger than three (3) inches, except as stipulated above.

F. When an engineer is employed he may cover the house car or portable hoist for not more than two hours per day.

Section 6. it is further agreed that no work shall be performed on Saturday, except in case of emergency or necessity, and that no work shall be performed then unless notice be given to the Secretary of the international Union of Operating Engineers Local # 14, by 2: 00 P.M., on the previous Friday, stating building where work is to be performed and the number of engineers required, when double time shall be allowed.

E m e r g e n c y work, involving danger to life and pro p e r t y, may be performed without above notice being given.

Section 7. The legal holidays referred to in this Article are: New Year's Day, Lincoln's Birthday, Washington's Birthday, Decoration Day, Independence Day, Labor Day, Columbus Day, Election Day, Armistice Day, Thanksgiving Day, and Christmas Day. When an engineer is employed during the payroll week in which the aforesaid holidays fall, he shall be paid for these holidays even if they fall on Saturday.

Section 8. When Pumps, syphons, pulsometers and/or boilers are operating twenty-four (24) hours continuously, three shifts of engineers shall be employed and no double time shall be paid except where men working more than eight (8) hours on one shift, or are employed over forty (40) hours continuously. There shall be no charge for engineers' services on operating automatic pumps during noon hour.

121

A g r e e m e n t b e t w e e n T h e C e m e n t L e a g u e a n d I n t e r n a t i o n a l U n i o n o f o p e r a t i n g E n g i n e e r s , L o c a l N o . 1 4 .

This agreement is the same as No. 120.

122

A g r e e m e n t b e t w e e n S t o n e S e t t i n g C o n t r a c t o r s ' A s s o c i a t i o n a n d I n t e r n a t i o n a l U n i o n o f O p e r a t i n g E n g i n e e r s , L o c a l N o . 1 4 .

This agreement is the same as No. 120.

123

-Hoisting work, building materials, caisson work.

United Portable Hoisting Engineers vs. Geo. A. Fuller Co. -Broadway and Thames St.

The Geo. A. Fuller Co. is instructed to employ engineers, members of the recognized union, to operate engines used for handling all materials used in building construction work. This includes all construction in connection with caisson work.-Decision of Executive Committee, May 31, 1906.

124

-Hoisting work, building material.

United Portable Hoisting Engineers vs. Elevator Constructors and Millwrights' Union.

The work of hoisting building material is in possession of the hoisting engineers and is covered by their agreement. Further, the Elevators Constructors and Millwrights' Union does not claim the work of hoisting building material. The organizations interested in the question involved are hereby ordered to hold a conference for the purpose of arranging properly the details of hoisting for the completion of the buildings. See Conference Report Feb. 11, 1907. -Decision of Executive Committee, October 17, 1906.

125

-Building material.

United Portable Hoisting Engineers vs. Elevator Constructors and Millwrights' Union.

The Elevator Constructors and Millwrights' Union is ordered to refrain from hoisting building material.

-Decision of Executive Committee, October 23, 1906.

126

-Building material.

United Portable Hoisting Engineers' Local 296, The Elevator Constructors and Millwrights' Union, Local No. 1, vs. The Hoisting Association, Elevator Manufacturers' Association and Mason Builders' Association.

The elevator constructors may hoist building material on the house elevators after the hoisting for the plastering above the first floor has been done; previous to this time the work of hoisting of all building material must be performed by the United Portable Hoisting Engineers, except material used in the construction of elevators which may be hoisted by the elevator constructors.

This means that if house elevators are used for the purpose of hoisting material before the hoisting for the plastering above the first floor has been done, said house elevators must be operated by members of the United Portable Hoisting Engineers' Union. While house elevators are in control of the elevator manufacturers they must be operated by the elevator constructors.

This agreement permits the engineer to hoist building material with the hoisting machine and the elevator constructor to hoist building material on the house elevator after the hoisting for the plastering above the first floor has been done.-Decision of Conference, February 11, 1907-Superseded by No. 129.

127

-Pumps and mixers, operations of, by power other than steam or compressed air.

United Portable Hoisting Engineers vs. Mason Builders' Association and Masters' League of Cement Workers .

After carefully weighing all the evidence submitted, I have reached the following as my decision:

First: Pumps and mixers operated by other motive power than steam or compressed air not being in possession of any trade may be operated by the United Portable Engineers, if the contractor so elects.

Second: Pumps and mixers not operated by steam or compressed air may also be operated by members of either the Brick Masons Helpers Union or Cement Workers Helpers Union as the contractor may determine, and under the plan of arbitration governing the building trades of New York City.-Decision of Umpire (D. W. O'Neil), January 4, 1909.

127a

- Welders, electric, portable, operation of.

Enterprise Association of Steamfitters, Local No. 638, with Ornamental and Architectural Iron Workers, Local No. 447, Boilermakers, Lodge No. 2 and Electrical Workers, Local No. 3, vs. Operating Engineers, Local No. 14-Waterside Power Station, 39th Street and East River, New York, N. Y.

On the evidence submitted, the Committee finds that no mechanic of any one particular trade is required to start and stop the apparatus used for electric welding and, therefore, the operation of the apparatus for electric welders is not in the possession of a trade. -Decision of Executive Committee, September 8, 1937.

128

-Steam pump for pumping water from excavation, running of.

Portable Engineers vs. Hedden Construction Co.-Metropolitan Life Building.

The Hedden Construction Company is directed to employ a member of the Portable Hoisting Engineers' Union on the work referred to in the complaint (pumping water with steam syphon). - Decision of Executive Committee, January 6, 1909.

128a

-Pumps, for excavation work, running of.

Engineers, Local 184, vs. Pipe Fitters, Local 566.

The Committee finds that under Section 22 of the Arbitration Plan that the work of running pumps in excavation work is not in the sole possession of Engineers, Local No. 184, or U. A. Pipe Fitters, Local No. 566. -Decision of Executive Committee, January 20, 1925.

128-2a.

-Pipe work on compressors .

Pipefitters, Welders and Burners, Local No. 566 vs. Apprentice Engineers, Local Union No. 125A -

Fourth Avenue and 24th Street, New York, N. Y.

The Committee finds that the work in question, the pipe work connecting compressors, is not in the sole possession of the pipefitters or the engineers. -Decision of Executive Committee, May 5, 1931.

128b

-Steel sheeting and steel piles, of, with oxy-acetylene, burning off .

Pipefitters, Welders and Burners, Local No. 566, vs. Engineers, Local No. 125A -Barclay and West Streets, New York City.

The Committee considered the complaint of the Pipefitters, Welders and Burners, U. A. Local No. 566, and on the statement of the representative of the Engineers' Local No. 125A that his men had not been doing this work and that they did not claim it, therefore, the complaint is dismissed. - Decision of Executive Committee, November 21, 1930.

129

-Hoisting work.

Agreement between the Mason Builders' Association, the Elevator Manufacturers' Association, the Hoisting Association, the Elevator Constructors and Millwrights Union No. 1, and the United Portable Hoisting Engineers' Union, Local No. 403, April 11, 1913.

Section 1. The elevator constructors may hoist building material on the house elevator after the hoisting for the plastering above the first floor has been done, and the hoisting for the cement floors above the second floor has been completed. Previous to this time, the hoisting of all building material must be performed by the United Portable Hoisting Engineers, except materials used in the construction of elevators, which may be hoisted by the elevator constructors.

Section 2. This means that if house elevators are used for the purpose of hoisting building materials before the hoisting for the plastering above the first floor has been done, and the hoisting for the cement floors above the second floor has been completed, said house elevators must be operated by members of the Portable Hoisting Engineers' Union. While house elevators are in control of the elevator manufacturers, they must be operated by elevator constructors.

Section 3. This agreement permits the engineers to hoist building materials with a hoisting machine and the elevator constructors to hoist building materials on the house elevator after the hoisting for the plastering above the first floor has been done, and the hoisting for the cement floors above the second floor has been completed.

Section 4. A member of the United Portable Hoisting Engineers' Union need not be employed to operate the house elevator for making good the hoist hole from which the temporary hoist is being removed when the hoisting for the plastering above the first floor has been done, and the hoisting for the cement floors above the second floor has been completed.

Section 5. When the engineer has left the building, in accordance with sections 1, 2, 3 and 4, and there are two hundred (200) linear feet or more of partition work to be installed an engineer must be

employed to hoist such partition material and any other building material which may be required during this time.

Section 6. A member of the United Portable Hoisting Engineers' Union need not be employed to operate car being used solely as a scaffold for performing work in the elevator shaft. If such a car is used for hoisting material for mechanics using such car then a member of the United Portable Hoisting Engineer's Union shall be employed. When car is used for patching, painting, etc., then an elevator constructor shall be employed.

Section 7. An elevator constructor shall always run the elevator for the adjusting and installing of elevator signals or elevator appurtenances or for any other work being installed or erected by members of the Elevator Constructors' Union.

Section 8. The elevator constructors shall operate all cars used for carrying passengers, house furniture, or both, and no passenger shall ride on a car used for material when the passenger car is in working order. Employees loading or unloading car shall not be considered passengers.

Section 9. In consideration of the above agreement being approved by the Building Trades Employers' Association, and it being understood by all parties to this agreement that no other trade will be granted the same privilege, the United Portable Hoisting Engineers agree that all machines used exclusively for hoisting material, erected or installed by elevator constructors, shall be operated by members of the Elevator Constructors' Union.

129a

-Electric Chain Hoist, use of for Installation.

Operating Engineers Local 14 vs. I.B.E.W. Local 3 -1166 Sixth Avenue, New York City.
The operation of power activated equipment for the vertical movement of materials and/or equipment from the level at which they were delivered and unloaded at the building site to the level at which installation of said materials and/or equipment will proceed, is the work of the Operating Engineer. The use of the Electric Chain Hoist when used to install the materials and/or equipment is a tool of the trade making the installation. -Decision of the Executive Committee, November 15, 1972.

130

- E n g i n e e r ' s t i m e , m e t h o d o f c o m p u t i n g .

United Portable Hoisting Engineers vs. Jacob A. Zimmerman & Co., Inc.-J. K. Stewart Building, Long Island City.

The method of computing the engineer's time should be continued in the same manner in which it was started, and the engineer should, therefore, be paid straight time.-Decision of Executive Committee, February 5, 1917.

130a

IN THE MATTER OF THE ARBITRATION between OPERATING ENGINEERS LOCAL 14-14B
-and-INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 3

OPINION AND AWARD

The jurisdictional dispute between the above-named Unions involves the question of which union has jurisdiction over the operation of two overhead, Type B cranes at the Poletti Powerhouse, in Astoria Queens, New York.

A hearing was held before an Arbitration Panel on May 5, 2004, 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.

The operation of the two cranes is presently split between the two unions - one is operated by the Operating Engineers, the other by the I.B.E.W. Both cranes are performing identical work. The "50-50" sharing was on order of the contractor, and apparently pursuant to a decision of the Executive Council of the American Federation of Labor, dated August 4, 1926.

Local 3, I.B.E.W. is satisfied with the split work arrangement, arguing that it is in accord with that decision and seeks affirmation of that arrangement from this Arbitration Panel.

Local 14-14 B of the Operating Engineers claims jurisdiction over both cranes, asserting that the 1926 decision is inapplicable. Rather, it argues that by consistent practice in the Greater New York geographical area, such cranes have always been operated by members of the Operating Engineers, and that that prevailing practice is determinative.

As the parties were expressly advised at the outset of the hearing, the authority of the Arbitration Panel under the New York Plan for the Settlement Jurisdictional Disputes, is as follows, inter alia and in pertinent part:

"The arbitration panel shall be bound by Green Book decisions...or where there are none, International Agreements 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."

The parties agreed that there are no applicable Green Book decisions. The panel finds that cited decision of 1926 is not an International Agreement, within the meaning of the Panel's authority. An International Agreement must be signed by the presidents of the respective unions involved. Standing alone, as a "decision" it was obviously not a negotiated Agreement between the parties, nor signed by their presidents. Moreover, and significantly, the 1926 decision, by its express terms was confined to and applicable to thirteen western states, not including New York. Additionally, the cited Memorandum of Understanding of July 21, 1965, which affirms the 1926 decision fails the test of an applicable International Agreement on two grounds. First, though it incorporates and affirms the 1926 decision, it makes no change in the limits thereof, namely limiting it still to the thirteen western states of Colorado, Idaho, Montana, Utah, Wyoming, Alaska, Hawaii, California, Nevada, Oregon and Washington. Again, New York is not included or covered. Secondly, that Memorandum was signed (or purported to have been signed) by the I.B.E.W. Vice Presidents of the eight and ninth Districts and the Regional Director, tenth Region of the Operating Engineers. It was not signed by the respective presidents of the unions, and hence does not rise to the level of an International Agreement.

Accordingly as Local 3 I.B.E.W. relies entirely on the 1926 decision, it has failed to meet its burden of proof in this case.

Conversely, Local 14-14B of the Operating Engineers, relying on established and prevailing trade practice, has met its burden of proof. By evidence and testimony it has shown that over the years, with the only exception being the instant Poletti power plant, overhead cranes of this type have been operated by members of the Operating Engineers Union. Indeed, Local 3 I.B.E.W. concedes that its claim for jurisdiction in this case is because there are two cranes at work, and that it seeks the right to operate one of them, not both. It acknowledges that if there was a single crane, it would concede jurisdiction to the Operating Engineers, and would not have joined in this arbitration. With our rejection of the 1926 decision, the Panel views that concession and acknowledgement as determinative of the Operating Engineer's jurisdiction over both cranes.

The prevailing trade practice, which is controlling in this case, has been shown clearly and convincingly by the Operating Engineers. Eleven affidavits and supporting testimony were submitted into evidence showing the unvaried trade practice in the New York geographical area of assignment of operating cranes of this type to the Operating Engineers. And the record is devoid of any examples (except the one in dispute) of an assignment to Local 3 B.I.E.W.

For the foregoing reasons, the Panel makes the following AWARD:

The operation of the two Type B overhead cranes at the Poletti Powerhouse, in Astoria Queens, New York is work that belongs to Local 14-14B of the International Union of Operating Engineers.

Eric J. Schmertz, Chairman

DATED: May 11, 2004

STATE OF NEW YORK)

SS:

COUNTY OF NEW YORK)

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