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PRESENTATION TO THE
AGC LABOR AND EMPLOYMENT LAW COUNCIL'S
20th ANNUAL CONSTRUCTION LABOR LAW SYMPOSIUM

April 30, 2004

**UPDATE ON THE BAC/OPCMIA
JURISDICTIONAL DISPUTE**

By: Robert P. Casey
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- I. BACKGROUND/HISTORY
 - A. System Of Territorial Maps Unilaterally Abrogated By OPCMIA In 2000
 - B. NLRB Election Petitions—Usually State-Wide Units
 - C. Leverage For Merger Discussions at International Level
 - D. Threats of Subcontracting Grievances Against General Contractors
 - E. Area Standards and Recognitional Picketing, Jurisdictional Disputes
- II. JOINT ADMINISTRATIVE COMMITTEE OF THE PLAN FOR SETTLEMENT OF JURISDICTIONAL DISPUTES IN THE CONSTRUCTION INDUSTRY ACTS
 - A. Declared a Repetitive Dispute in April, 2003
 - B. Unions Unable To Reach an Agreement
 - C. Referred to Three-Person Arbitration Panel
- III. PANEL HEARING
 - A. Statement of the Issue: “What is an appropriate remedy within the province of the Plan . . . that will serve to alleviate the continuing jurisdictional disputes between the [BAC and OPCMIA] that have been declared . . . to be disruptive to the industry?”
 - B. Laborers allowed to intervene as an affected party.

- C. Parties file “voluminous amount” of briefs, declarations, etc. followed by a hearing on 1/28/04 with oral argument. Results in a five-page decision on 2/11/04 of which two pages are “Opinion”, and most of those two pages go to a discussion of the Panel’s authority.

IV. THE PANEL’S DECISION

- A. What they did not do--merge the unions, provide some measure of Plan authority over ERISA collection actions or NLRB petitions involving BAC/OPCMIA disputes. Panel concluded it had no authority to enact these types of relief.
- B. While the Panel decided it DID have the authority to reinstate the prior Map System, or create a new Map System, it did not do that either, stating simply that “[a]fter review of the evidence and arguments made by the parties however, it is clear to the Panel that a Map System will not provide resolution to the jurisdictional disputes giving rise to this arbitration.” The unanswered question is, why?
- C. The Decision: “Henceforth, all jurisdictional disputes between the BAC and the OPCM that are brought before the Plan shall be resolved in favor of the work assignment of the involved Employer. Jurisdictional disputes between the BAC or OPCM and LIUNA, or any other union(s) brought before the Plan shall be resolved under the procedures of Article V of the Plan.”
- D. Clarification on 3/11/04: Scope of the award resolving disputes in favor the Employer’s assignment “is limited to cement finishing and plastering work tasks.”

V. WHAT DOES IT MEAN?

- A. Victory for construction industry management. For contractors who are signatory with both unions, the employer preference will control (presumably includes composite crew decisions as well). For those contractors, this is the same outcome that would likely result from an NLRB 10(k) proceeding.
- B. NLRB election petitions are unaffected—likely to continue to be the weapon of choice where the OPCMIA or BAC wish exclusive representation.
- C. Subcontracting grievances and ERISA collection actions unaffected. These will continue to represent a potential “pay twice for the same work” landmine for general contractors.
- D. Disputes with Laborers will be processed as before—either under the Plan or at the NLRB.

IN THE MATTER OF ARBITRATION
Between
INTERNATIONAL UNION OF BRICKLAYERS and
ALLIED CRAFT WORKERS, AFL-CIO
And
OPERATIVE PLASTERERS' & CEMENT MASONS'
INTERNATIONAL ASSOCIATION OF THE UNITED
STATES AND CANADA, AFL-CIO
And
LABORERS' INTERNATIONAL UNION OF NORTH
AMERICA

(As Intervenor)

OPINION
AND
DECISION

A hearing regarding this arbitration was held on January 28, 2004, at 10:00 am, at the AFL-CIO building located at 815 16th Street, N.W., Washington, D.C. The undersigned arbitrators were appointed to hear the case by the Joint Administrative Committee established under the provisions of the Plan For The Settlement Of Jurisdictional Disputes In The Construction Industry. At the conclusion of the hearing the record was closed by the arbitrators.

APPEARANCES

For the International Union of Bricklayers and
Allied Craft Workers, AFL-CIO

Seymour M. Waldman

For the Operative Plasterers' & Cement Masons'
International Association of the United States
and Canada, AFL-CIO

Brian A. Powers

For the Laborers' International Union of
North America

Gregory A. Davis

ISSUE

The parties to the arbitration were unable to frame and stipulate to an issue. The undersigned arbitrators therefore state the issue as:

“ What is an appropriate remedy within the province of the Plan For The Settlement Of Jurisdictional Disputes In The Construction Industry Including Procedural Rules And Regulations, that will serve to alleviate the continuing jurisdictional disputes between the International Union of Bricklayers and Allied Craft Workers, AFL-CIO, and the Operative Plasterers' & Cement Masons' International Association of the United States and Canada, AFL-CIO, that have been declared by the Joint Administrative Committee to be disruptive to the industry?”

FACTUAL FINDINGS

The Joint Administrative Committee (hereinafter referred to as JAC) established under Article III of the Plan For the Settlement Of Jurisdictional Disputes In The Construction Industry (hereinafter referred to as Plan) reviewed, under the provisions of Article X of the Plan, the record of jurisdictional disputes between the International Union of Bricklayers and Allied Craft Workers, AFL-CIO (hereinafter referred to as BAC) and the Operative Plasterers' & Cement Masons' International Association of the United States and Canada, AFL-CIO (hereinafter referred to as OPCM). The JAC determined that the jurisdictional disputes between BAC and OPCM are repetitive and disruptive to the industry. The JAC, under Plan Article X Sec. 2.(c) referred the matter to BAC and OPCM for a period of 90 days to endeavor to reach a national agreement governing future jurisdiction. The BAC and OPCM failed to reach an agreement and further to the provisions of Plan Article X the dispute was referred to a National Arbitration Panel (hereafter referred to as Panel) made up of the below signed arbitrators.

The Laborers' International Union of North America (hereinafter referred to as LIUNA) was determined by the JAC to be a directly affected party to the dispute and allowed to intervene. The Panel agreed with the parties on a briefing schedule and a hearing date. The parties filed a voluminous amount of briefs and declarations, reply briefs and rebuttal declarations and surrebuttal declarations. All of these writings were reviewed by the Panel between November 13, 2003 and January 21, 2004, in preparation for the hearing of January 28, 2004. Each of the parties offered oral arguments at the hearing and the proceedings were transcribed.

OPINION

As a threshold matter, the Panel is confronted with the question of the breadth of Its authority under the Article X Panel proceedings. The BAC has argued that Article X imposes no restrictions whatsoever on the Panel's authority to craft a remedy. BAC implies that the Panel may disjoin Article X from the four corners of the Plan and Its Procedural Rules And Regulations (hereinafter referred to as Rules) and apply any decision or award that the Panel sees as fit. In this regard BAC has asserted that NLRB representational issues cannot be separated from jurisdictional issues.

A careful reading of the Plan/Rules reveals that Article X is actually constructed to support the intent and purpose of the Plan/Rules and Article X does in fact incorporate by expressed reference, specific provisions of the Plan/Rules. Article X contains the term "dispute" 12 times within Its body of Sections. This reference to disputes must be read in context with the overall Plan/Rules. The term "dispute" is not a catchall to be used for any purpose. Various parts of the Plan/Rules support this contention.

“...It is a violation of the Plan for the contractor to hold up disputed work or shut down a project because of a jurisdictional dispute (Panel emphasis) ...”

(Page 3. Rules)

“...during the existence of the Plan there shall be no strikes, work stoppages, or picketing arising out of any jurisdictional dispute (Panel emphasis)...”

(Page 4. Rules)

“...where an issue is a case, dispute or controversy involving a jurisdictional dispute (Panel emphasis)...”

(Page 5.- 6. Rules)

“...The parties to this Agreement dedicate their efforts to improving the construction industry by providing machinery for the handling of disputes over work assignments (Panel emphasis)...”

(Page 14. Plan)

“Resolution Of Jurisdictional Disputes (Panel emphasis)”

(Page 19. Plan)

“...A jurisdictional dispute (Panel emphasis) is defined as a dispute between unions over the assignment of work and in which the Employer has an interest...”
(Page 31. Plan)

This sampling of Plan/Rules language unequivocally establishes that the purpose of Plan/Rules is to address the issue of jurisdictional work assignment disputes. There is no evidence that would support an expansion of Article X to address anything beyond jurisdictional disputes. For this reason the Panel rejects the arguments and requests of the parties regarding the following:

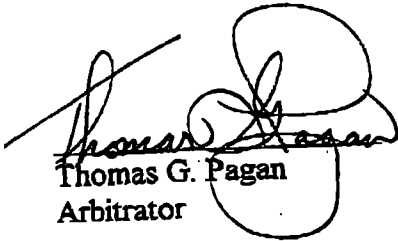
- **An order to merge the BAC and OPCM.**
- **An order providing some measure of Plan authority over the operation and administration of Local Building & Construction Trade Councils.**
- **An order providing some measure of Plan authority over the Project Labor Agreement Committee of the Building & Construction Trades Department, AFL-CIO.**
- **An order providing some measure of Plan authority over ERISA trust fund collection lawsuits involving BAC and OPCM.**
- **An order providing some measure of Plan authority over the distribution of BAC and OPCM working dues.**
- **An order providing some measure of Plan authority over NLRB election petitions regarding BAC and OPCM.**

It is the opinion of the Panel that the subject of the reinstatement of the prior Map System, or the creation of a new Map System is within the authority of the Panel. After review of the evidence and arguments made by the parties however, it is clear to the Panel that a Map System will not provide resolution to the jurisdictional disputes giving rise to this arbitration.

DECISION

After an arduous review of the evidence entered into this arbitration, the Panel finds good and sufficient reason to render the following decision.

Henceforth, all jurisdictional disputes between the BAC and the OPCM that are brought before the Plan shall be resolved in favor of the work assignment of the involved Employer. Jurisdictional disputes between the BAC or OPCM and LIUNA, or any other union(s) brought before the Plan shall be resolved under the procedures of Article V of the Plan.


Thomas G. Pagan
Arbitrator

Andy Douglas
Arbitrator

John McMahon
Arbitrator

February 11, 2004

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Thomas G. Pagan
Arbitrator

Andy Douglas
Arbitrator


John McMahon
Arbitrator

February 11, 2004

March 11, 2004

Richard M. Resnick
Administrator and Counsel to the
Plan for the Settlement of Jurisdictional
Disputes in the Construction Industry
1125 15th Street, N.W., Suite 801
Washington, D.C. 20005

Re: National Arbitration Panel Decision
February 11, 2004

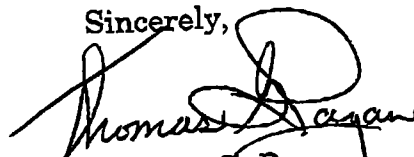
Dear Mr. Resnick:

In response to your correspondence to the above-referenced Panel dated March 2, 2004, the Panel members have been in communication regarding the requests of the Joint Administrative Committee.

After careful consideration of the issues raised by the JAC, the Panel hereby submits clarification language regarding the Decision. The following submission should be printed as a second paragraph under the Decision when entered into the Green Book.

"On March 2, 2004, the Joint Administrative Committee requested clarification regarding the scope of the work encompassed in all jurisdictional disputes solely between the BAC and the OPCM to be resolved in favor of the work assignment of the involved Employer. Such scope is limited to cement finishing and plastering work tasks."

Sincerely,


Thomas G. Pagan
Panel Chairman