



PLAN FOR THE SETTLEMENT OF JURISDICTIONAL DISPUTES

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Jurisdictional Disputes

- ▶ What is a Jurisdictional Dispute?
 - ▶ A jurisdictional dispute “is a dispute between two or more groups of employees over which is entitled to do certain work for an employer.”
NLRB v. Radio Engineers, 364 U.S. 573, 579 (1961).
- ▶ Procedures/Methods for Addressing Jurisdictional Disputes:
 - ▶ **NLRB - Section 10(k)**
 - ▶ **Plan for the Settlement of Jurisdictional Disputes**
 - ▶ Local Boards
 - ▶ NMA
 - ▶ Grievance under CBA
 - ▶ Picketing

LMRA

- ▶ 1947 – Congress made it unlawful for a union to strike, threaten, coerce, or restrain an employer to force or require the employer to assign particular work to a particular group of employees.
- ▶ Congress also created a process for resolving competing claims to work, called Section 10(k).

LMRA

- ▶ If parties fail to resolve a jurisdictional dispute after notice from the NLRB, the NLRB will hold a hearing to determine which trade should be assigned the work in dispute.

LMRA

- ▶ NLRB takes evidence at the hearing and then awards the work after considering the following:
 - ▶ (1) work-jurisdiction provisions in the parties' collective-bargaining agreements,
 - ▶ (2) to whom the work is currently assigned,
 - ▶ (3) the employer's preference and past practice,
 - ▶ (4) practice in the industry and geographical area,
 - ▶ (5) relative skills and training, and
 - ▶ (6) economy and efficiency of operations.

LMRA

- ▶ In almost every case, the NLRB awards the work in dispute to the craft that was originally assigned the work.
- ▶ Losing union must comply with NLRB decision or risk additional NLRB proceedings.
- ▶ Losing Union cannot pursue grievance over work assignment that is contrary to NLRB decision.

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



History of the Plan

- 1920's there was a National Board
- 1930's BCTD decided cases directly
- Late 30's-40's – National Referee decided cases
- 1947 – LMRA - §10(k) – NLRB decides disputes unless a voluntary procedure exists
- 1948 – National Joint Board to satisfy §10(k)
- 1970's – Impartial Jurisdictional Disputes Board

1984 – Present Plan

- Cases heard by independent arbitrators
- Some amendments through the years
 - Canadian disputes processed in Canada
 - Substantive changes effective in 2008
- Green Book
 - Set-up of Book
 - Procedural Rules
 - Plan
 - Agreements & Decisions of Record
 - Online – www.nabtu.org (under Field Services)

Sponsoring Organizations



- North America's Building Trades Unions
 - Affiliated International and National Unions
 - Affiliated Local Unions
- Employer Associations
 - Mechanical Contractors Association of America
 - National Electrical Contractors Association
 - North American Contractors Association
 - Sheet Metal and Air Conditioning Contractors National Association
 - The Association of Union Contractors

Joint Administrative Committee



- Oversees operation of Plan
- 4 General Presidents
- 4 Representatives from Sponsoring Employer Associations
- Chairman (President of NABTU)
- Vice-Chairman (Designated by Employer Assoc.)
- Appoints U.S. and Canadian Administrators
- Appoints Arbitrators – Knowledgeable about construction industry

Types of Disputes



- Original Assignment Disputes
- Jurisdictional Disputes
- Impediment to Job Progress Disputes

Original Assignment Disputes

- Contractor with responsibility for the performance or installation of work has the right and responsibility to make a specific assignment of the work – often at a pre-job conference.
- Contractor cannot change an assignment once it has been made
- If a contractor impermissibly changes the assignment, the union who lost the work can file for an original assignment determination
- Administrator makes original assignment determinations
 - Not a decision on the merits
- Administrator's decisions can be appealed to Arbitrator
- Purpose of the Rule Against Changes
 - Protects contractors from undue pressure to change assignments
 - Provides unions with a way to immediately challenge the assignment

Processing of a Jurisdictional Dispute

- Jurisdictional Disputes initiated by International/National Union or Contractor
- Notice must contain:
 - Name & location of project
 - Unions involved
 - Responsible contractor
 - Whether the parties are stipulated
 - Whether parties have met or attempted to meet at local level in effort to resolve the dispute

Processing of a Jurisdictional Dispute

- Administrator notifies affected Internationals within 2 days
- Parties have 5 days to resolve dispute
- No settlement – any party may file request to arbitrate
- Administrator sends out list of arbitrators
- Parties have 3 days to return arbitrator selection form

Processing of a Jurisdictional Dispute

- Upon selection of arbitrator
 - Hearing held within 7 days in D.C. or Canada
 - Only one representative from each party may attend hearing
 - Hearing informal and expedited
- Arbitrator must issue decision within 3 business days after case is closed
- Arbitrator's decision is final and binding
 - No appeal on the merits

Processing of a Jurisdictional Dispute

- No back pay or damages for misassignment of work
- No independent action allowed for back pay or any other damages based on arbitrator's decision
- Fees and expenses of arbitrator paid by the losing party or parties, unless not all parties are stipulated
- Administrative fee of \$500
 - charged to employers not members of one of the sponsoring employer organizations and unions not affiliated with National Building Trades

Criteria to be Applied by Arbitrators

Article 5, Section 8

- Step 1 – Agreements between crafts, including disclaimer agreements and agreements of record
- Step 2 – Established trade practice in the industry and prevailing practice in the locality
 - If a decision of record covers the work, the Arbitrator must consider whether the prevailing practice in the locality in the past ten years favors one craft and whether the favored craft obtained the work through raiding, the undercutting of wages, or through vertical agreements.
- Step 3 - If none of the above is found to exist, the Arbitrator shall not ignore the interests of the consumer or the past practices of the employer

Arbitrator's Decision

- **Decision only applies to job in dispute**
- Arbitrator must set forth the basis for his decision and explain why higher-ranked criteria were not deemed applicable
 - If criteria not explained in decision, JAC may honor appeal and send case to a new Arbitrator

Jurisdictional Disputes - Examples

■ Example 1 – Agreement Between Crafts

- Contractor A assigns the removal of insulation materials from a mechanical system to the Laborers.
- The Insulators file a jurisdictional dispute under the Plan, claiming that the work should have been assigned to them.
- At the hearing, the Insulators present the following Agreement between the Insulators and LIUNA.

Insulators-LIUNA Agreement

INTERNATIONAL AGREEMENT FOR REMOVAL OF ASBESTOS-CONTAINING MATERIALS

This Agreement is entered into between the International Association of Heat and Frost Insulators and Asbestos Workers and the Laborers' International Union of North America, to prevent jurisdictional disputes with reference to the removal of all asbestos-containing materials and to insure that both trades receive their fair equity of this type of work.

It is expressly understood and agreed that this Agreement will be applicable only within the jurisdiction of the two signatory International Unions.

It is mutually agreed that in accordance with this Memorandum of Understanding, the work listed below shall be performed accordingly:

1. The removal of all insulation materials, whether they contain asbestos or not, from mechanical systems (pipes, boilers, ducts, flues, breechings, etc.) is recognized as being the exclusive work of the Asbestos Workers.
2. On all mechanical systems (pipes, boilers, ducts, flues, breechings, etc.) that are going to be scrapped, the removal of all insulating materials whether they contain asbestos or not shall be the exclusive work of the Laborers.
3. The removal of all asbestos-containing materials from walls, ceilings, floors, columns and all other non-mechanical structures and surfaces, etc., is recognized as being the exclusive work of the Laborers.
4. The term "removal" as used in this Agreement shall include the sealing, labeling and dropping of scrap material into the appropriate containers. After drop, final disposal shall be the work of the Laborers.
5. The loading at the designated area of all materials that have been removed, bagged and tagged, as well as cleanup and all unloading, burying and other work required at the disposal site is recognized as being the exclusive work of the Laborers.

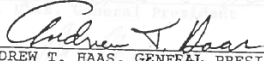
Any dispute or controversy arising out of the application or interpretation of this Agreement shall be settled as follows:


1. The Local Union Business Representatives of the respective organizations shall use every effort to arrive at an equitable settlement at the jobsite.
2. Failing to resolve the dispute as described in the above Section 1, both Local Union Business Representatives shall state their positions and claims in writing to their respective International Unions, which shall promptly assign International Representatives to investigate and resolve the dispute in accordance with this Agreement.
3. If International Representatives fail to adjust any dispute in accordance with this Agreement, said dispute shall be referred to the offices of the General Presidents.

There shall be no work stoppages on the job, either prior to or during the period awaiting a settlement.

SIGNED AND AGREED UPON on this 17 day of APR, 1985.

FOR: INTERNATIONAL ASSOCIATION OF HEAT AND FROST
INSULATORS AND ASBESTOS WORKERS


ANDREW T. HAAS, GENERAL PRESIDENT


WILLIAM BERNARD, GENERAL SECRETARY-TREASURER

FOR: LABORERS' INTERNATIONAL UNION
OF NORTH AMERICA


ANGELO FOSCO, GENERAL PRESIDENT


ARTHUR E. COIA, GENERAL SECRETARY-TREASURER

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2. Failing to resolve the dispute as described in the above Section 1, both Local Union

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Jurisdictional Disputes - Examples

- Example 2 – Established Trade Practice/Prevailing Practice in the Industry
 - Contractor A assigns three-coat plastering to the Carpenters.
 - The OPCMIA files a jurisdictional dispute under the Plan, claiming that the work should have been assigned to them.
 - At the hearing, the OPCMIA demonstrates that it is entitled to the work under the established trade practice in the industry and the prevailing practice in the locality.
 - Arbitrator awards the work to the OPCMIA.

Jurisdictional Disputes - Examples

- Example 3 – Established Trade Practice/Prevailing Practice in the Industry
 - Arbitrator must also consider whether a decision of record applies.
 - If a decision of record applies, then the Arbitrator must weigh the decision of record, the established trade practice, and the prevailing practice in the locality equally, unless the prevailing practice in the locality in the last ten years favors one craft.
 - If it does, then the Arbitrator may rely solely on the prevailing practice.

Insulators-OPCMIA Decision of Record

Asbestos Plaster for Boiler Rooms, etc.

(Subject of dispute between the Operative Plasterers and Cement Finishers' International Association and the International Association of Heat and Frost Insulators and Asbestos Workers.)

DECISION RENDERED APRIL 28, 1920

In the dispute between the Asbestos Workers and Plasterers on the matter of plastering boiler rooms, etc., it is decided that the insulation and finishing coat on ceilings with asbestos and other insulating material, where the groundwork has been prepared and installed by the Asbestos Workers, shall, including the application of insulating material on boilers, tanks, vats, etc., be awarded to the Asbestos Worker.

Jurisdictional Disputes - Examples

- Example 4 – Efficiency, Cost, Continuity, Good Management
 - Contractor A assigns drywall finishing to the Carpenters.
 - The Painters file a jurisdictional dispute under the Plan, claiming that the work should have been assigned to them.
 - Arbitrator concludes that there are no applicable agreements between the crafts and that there is no established trade practice or prevailing practice in the locality.
 - Arbitrator upholds contractor's assignment.

Enforcement of Decisions



- If a party fails to accept and comply with a decision, any party to the dispute may seek court enforcement of the decision or ruling
 - Prevailing party in lawsuit is entitled to attorneys' fees
 - Although monetary damages are typically prohibited by the Plan, a party may seek back pay or damages from a party that fails to comply with an arbitrator's decision within 7 days
- Decision may be enforced only if all parties are stipulated to the Plan

A white sign with the words "ON STRIKE" in black, bold, capital letters, mounted on a red stick. The sign is set against a background of orange and red gradients.

ON
STRIKE

Work Stoppages and Other Impediments to Job Progress

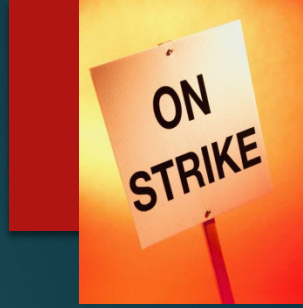
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ON
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- Strictly prohibited – Definition includes:
 - Filing of grievance under CBA or local plan not recognized by NABTU (Grievance for not holding a pre-job conference not a violation)
 - Filing action with NLRB or Court
- All parties must be stipulated to the Plan



Work Stoppages and Other Impediments to Job Progress



- Internationals given 24 hours to stop alleged impediment
- If alleged impediment does not cease, Administrator selects an arbitrator
- Arbitrator holds hearing within 24 hours if violation still exists

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ON
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- Sole issue at hearing is whether work stoppage or other impediment has occurred
- Decision issued within 3 hours after close of hearing
- Losing party pays arbitrator's fees and expenses and any subsequent attorney's fees and court costs necessary for enforcement
- If losing party fails to comply, any party to the dispute may seek court enforcement of the decision

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

