

Summary of the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry

The Building and Construction Trades Department, AFL-CIO, on behalf of its affiliated National and International Unions and their Local Unions, joined with five employer associations¹ to establish the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the Plan). This jurisdictional dispute resolution procedure has been in effect since 1984. The Plan replaced such predecessor dispute resolution procedures as the Impartial Jurisdictional Disputes Board and the National Joint Board. The parties have adopted amendments to the Plan over the years. The terms of the Plan, the Procedural Rules and Decisions and Agreements of Record are available on the Building and Construction Trades Department's website, <http://www.bctd.org/BCTD/media/Files/Plan-for-the-Settlement-of-Jurisdictional-Disputes---Effective-May-1,-2011.pdf>.

Under the current Plan, stipulation of all parties is no longer required to process jurisdictional disputes, requests for the issuance of a change of original assignment determination and requests for the issuance of directives. The moving party, however, must be stipulated to the Plan. This modification is intended to enable each craft to utilize the Plan's procedures to establish a body of arbitral decisions that it may use to demonstrate to owners and contractors the work to which it has a rightful claim. Stipulation is still required for the Plan to process impediment to job progress

¹ The Association of Union Constructors, Mechanical Contractors Association of America, Inc., National Electrical Contractors Association, North American Contractors Association and Sheet Metal and Air Conditioning Contractors National Association.

disputes.²

Jurisdictional Disputes

When a jurisdictional dispute arises, the National or International Union challenging the assignment, the employer or the signatory employers' association representing the employer, notifies the Plan Administrator. The Plan encourages the parties to settle the matter at the local level. Accordingly, the notice to the Administrator must advise whether the unions have met or attempted to meet with the local parties to resolve the matter. In the United States, the unions involved in the dispute may voluntarily agree to mediation through the Federal Mediation and Conciliation Service (FMCS). Upon receipt of notice of the dispute from the Administrator, the parties have five days to resolve the matter. If FMCS mediation is chosen, the Administrator contacts the FMCS and a mediator will have three days within the five-day time frame to mediate the dispute.

If the dispute is not resolved within the five-day period, the involved National or International Unions or the contractor responsible for making the assignment may request the matter be arbitrated. The parties then have three days to select an arbitrator from a permanent panel of arbitrators knowledgeable in the construction industry. Once selected, the Arbitrator must hold the hearing within seven days.

² A Union may become stipulated to the Plan by virtue of its National or International Union being affiliated with the Building and Construction Trades Department, a signed stipulation form setting forth that it is willing to be bound by the Plan or a provision in a collective bargaining agreement. An Employer may become stipulated to the Plan by virtue of its membership in a stipulated association of employers with authority to bind its members, a signed stipulation form setting forth that it is willing to be bound by the Plan or a provision in a collective bargaining agreement.

Hearings on disputes arising in the United States are held in Washington, D.C. Canadian disputes are heard in Canada. Attendance at the hearings is limited to one full-time union representative designated by the President of the National or International Unions involved and one full-time employee of the responsible contractor involved in the dispute. The Arbitrator issues a decision within three days of the close of the hearing. The Arbitrator's decision only applies to the job in dispute.

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;
- b) Only if the Arbitrator finds that the dispute is not covered by an appropriate or applicable agreement of record or agreement between the crafts to the dispute, he shall then consider the established trade practice in the industry and prevailing practice in the locality. Where there is a previous decision of record governing the case, the Arbitrator shall give equal weight to such decision of record, unless the prevailing practice in the locality in the past ten years favors one craft. In that case, the Arbitrator shall base his decision on the prevailing practice in the locality. Except, that if the Arbitrator finds that a 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 and established trade practice in the industry rather than the prevailing practice in the locality; and
- c) 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.

The Arbitrator's decision is final and binding. There is no appeal procedure on

the merits. If the Arbitrator's decision fails to explain why a lower-ranked criterion was relied upon rather than a higher-ranked criterion, a party may appeal to the Plan's Joint Administrative Committee to have the case decided by another arbitrator. The Arbitrator may not award back pay or damages for a misassignment of work nor may any party bring an independent action for damages based on the Arbitrator's award. The losing party pays the fees and expenses of the Arbitrator if all parties are stipulated to the Plan. If not all parties are stipulated to the Plan, the Arbitrator determines which party or parties shall be responsible for the fees and expenses. Court enforcement of a decision, if necessary, may be pursued by a party seeking to confirm the decision. A party may recover damages but only for the period of non-compliance with the arbitrator's decision.

Change of Original Assignment

Under the Plan, a contractor may not change an assignment of work from one craft to another unless directed by a Plan Arbitrator or there is agreement between the crafts involved. If it is alleged by an involved union that a contractor has changed an original assignment, the Plan provides that the Administrator may issue a determination regarding the alleged change of original assignment. The sole issue is whether there has been a change of original assignment, not whether the assignment was correct. Any party may appeal the Administrator's original assignment determination to a Plan Arbitrator.

Impediments to Job Progress

The Plan prohibits work stoppages, slowdowns, NLRB and court actions, and grievances under a collective bargaining agreement where the issue involves a

jurisdictional dispute or assignment of work by a stipulated contractor. A party alleged to be engaging in an impediment to job progress is given 24 hours to cease such activity. If it is contended that the impediment has not ceased, the Administrator selects an arbitrator to hold a hearing within 24 hours. The sole issue at the hearing is whether there has been an impediment to job progress. The Arbitrator must issue a decision within three hours of the close of the hearing.