

Jurisdiction 2

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

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August 2, 2011

Edwin D. Hill, International President
International Brotherhood of Electrical Workers
900 Seventh Street, N.W., 11th Floor
Washington, DC 20001

Terry O'Sullivan, General President
Laborers' International Union
of North America
905 16th Street, N.W.
Washington, DC 20006

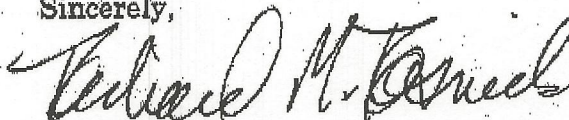
Comet Electric
7760 Deering Avenue
Canoga Park, CA 91304

RE: CA 6/14/11

Gentlemen:

Enclosed is a copy of Arbitrator Pagan's original decision in the above-referenced case.

Sincerely,



Richard M. Resnick
Administrator and Counsel to the Plan

Enclosure



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In The Matter of Arbitration

Between

**Laborers' International Union of
North America**

And

**International Brotherhood of
Electrical Workers**

And

Comet Electric, Inc.

Plan Case CA 6/14/11

Opinion

And

Decision

A hearing regarding this arbitration was held on July 28, 2011, at 1:00 PM: in the offices of Sherman, Dunn, Cohen, Leifer & Yellig, P.C., 900 Seventh Street, N.W., Washington, D.C. The undersigned was appointed to hear the case through the Procedural Rules and Regulations for the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry. At the conclusion of the hearing the record was closed by the undersigned.

Appearances

**For Laborers' International Union of
North America**

Gregory A. Davis

**For International Brotherhood of
Electrical Workers**

Jim Ross

For Comet Electric, Inc.

Adam Saitman

Issue

The parties stipulated to the issue as a jurisdictional dispute between Laborers' International Union of North America and International Brotherhood of Electrical Workers over the breaking of ground, digging and backfilling of ditches and trenches, replacing ground whether soil, asphalt, concrete, etc. and traffic control, flagging, at the Automated Traffic Surveillance and Control System at the Harbor Gateway II Project in the City of Los Angeles.

Factual Findings

The instant dispute arose when Comet Electric, Inc. (hereinafter referred to as Comet) assigned the work at issue to employees represented by the International Brotherhood of Electrical Workers (hereinafter referred to as IBEW) and the assignment was contested by the Laborers' International Union of North America (hereinafter referred to as LIUNA). All of the parties are stipulated to the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (hereinafter referred to as Plan). The dispute was properly submitted to the Plan and scheduled for arbitration.

The provisions of Article V. Section 8. of the Plan set forth the criteria that the undersigned must follow when rendering a decision. At the outset of the hearing the IBEW and LIUNA agreed that there is no National or International Agreement governing this dispute. The IBEW and LIUNA further agreed that the standard of prevailing practice in the locality, as found within Article V. Section 8. (b) of the Plan is controlling in this dispute.

As the complaining party, LIUNA has argued that the work at issue has been the subject of an MOU between IBEW Local # 11 and LIUNA District Council of Laborers in Los Angeles which recognizes the work as being within the jurisdiction of LIUNA. LIUNA further cites a Directive from the Plan covering the same work in Los Angeles. LIUNA has also submitted into evidence

various letters from local contractors indicating that LIUNA has historically performed the work at issue in the area of the instant dispute. It is the position of LIUNA that the work in dispute is being performed during the majority of available work hours on the type of project involved in this matter. LIUNA contends that Comet has made an improper assignment of work and that the work should be performed by members of LIUNA.

It is the position of the IBEW that the prevailing practice in the locality lies with the IBEW. In support of this position the IBEW relies upon a listing of contractors performing projects to modernize or upgrade traffic control systems within the Los Angeles area. Also submitted for consideration are various letters from electrical contractors addressing the issue. The IBEW further contends that the work at issue is incidental and intermittent and that this represents an area wide practice allowing the IBEW to perform the work when it is known to be properly the work of LIUNA.

Comet supported the position of the IBEW and emphasized the incidental and intermittent nature of the work as being subject to the established local practice. Comet also reviewed various certification and training conditions present on the project.

Opinion / Decision

With respect to traffic control and flagging, LIUNA failed to present specific evidence in support of its claim. The IBEW and Comet offered evidence regarding the NECA / IBEW Intelligent Transportation Systems Program and its certification for International Municipal Signal Association Work Zone Safety. Also provided was a list of Comet employees who are IMSA certified. It was noted that traffic control on the project consists mainly of trailered electronic signs.

The IBEW and Comet arguments characterizing incidental and intermittent work as being a recognized local practice are rejected for the following reasons.

Reference to an arbitration case *A.J. Diani Construction Company, Inc. and I.U.O.E. Local NO. 12* merely mentions a purported verbal understanding between the IBEW and the I.U.O.E regarding incidental and intermittent as being work of less than four hours per day concerning the operation of a Ditch Witch. Clearly, LIUNA is not a party to the purported verbal understanding. Any understanding between the IBEW and I.U.O.E. has no authority over LIUNA. The Award of the arbitrator in the case stated that the issue of the grievance was actually a jurisdictional dispute and was not arbitrable.

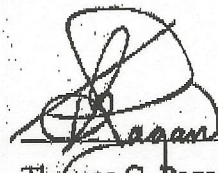
Reference to a U.S. District Court Case *Construction Laborers Trust Funds For Southern California Administrative Company, et al. v. Mission Gate Enterprises, et al.* did not validate the concept of incidental and intermittent, but rather ruled that LIUNA trust funds had no established right to contributions because LIUNA had not perfected its claim through a jurisdictional dispute proceeding at the Plan.

It is noted that evidence revealed that the total number of work hours available on the project each day is four hours. This is attributed to Los Angeles public works peak hour regulations. This amount of working time applies to all employees and it should therefore be considered a normal work day for the nature of the project.

After careful consideration of all of the evidence provided to the undersigned in this matter, I find good and sufficient reason to determine that with the exception of traffic control and flagging, the work in dispute in this arbitration properly falls within the jurisdiction of LIUNA under the Plan criteria of *prevailing practice in the locality*.

This decision by the undersigned shall only apply to the Automated Traffic Surveillance and Control System at the Harbor Gateway II Project in the City of Los Angeles.

August 1, 2011


Thomas G. Pagan
Arbitrator