



Ontario
Labour Relations
Board

Commission
des relations
de travail de l'Ontario

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TO THE PARTIES LISTED ON APPENDIX "A"

Dear Sir/Madam:

**Sheet Metal Workers' International Association, Local 30,
v. Adam Clark Company Ltd., International Association of
Bridge, Structural, Ornamental and Reinforcing Iron
Workers, Local 721 and Millwrights Union, Local 2309**

I enclose herewith a copy of the Board's Decision dated February 17, 2006 in the above matter.

Sincerely,

A handwritten signature in black ink that reads "Tim R. Parker".

Tim R. Parker
Registrar

TRP/s
Enclosure

APPENDIX "A"

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ONTARIO LABOUR RELATIONS BOARD

2429-03-JD Sheet Metal Workers' International Association, Local 30, Applicant v. **Adam Clark Company Ltd.**, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 and Millwrights Union, Local 2309, Responding Parties.

BEFORE: Mary Ellen Cummings, Alternate Chair.

APPEARANCES: Jerry Raso and Art White for the Sheet Metal Workers' International Association, Local 30; no one appearing for Adam Clark Company Ltd.; James Robbins and Aaron Murphy for the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721; Denis Ellickson, Ian McIsaac and Don Schulz for the Millwrights Union, Local 2309.

DECISION OF THE BOARD; February 17, 2006

1. This is a dispute about a work assignment, brought pursuant to section 99 of the *Labour Relations Act, 1995*, S.O., c.1, Sched. A, as amended (the "Act"). The work in dispute was described in a previous decision of the Board as follows:

The dispute arises out of the performance of work in the General Motors Paint Facility in Oshawa, Ontario. The work in dispute is the installation of shroud bracket assemblies on Phosphate and LPO Conveyors at the General Motors Paint Facility project in Oshawa.

2. The Sheet Metal Workers' International Association, Local 30 ("the Sheet Metal Workers") sought to amend the description of the work in dispute to include "...and drip pans" after "shroud bracket assemblies". After hearing the submissions of the union parties, since Adam Clark did not participate, I concluded that the amendment should be permitted because there was no prejudice to any party. Consequently, the Board amends the work in dispute to read:

The dispute arises out of the performance of work in the General Motors Paint Facility in Oshawa, Ontario. The work in dispute is the installation of shroud bracket assemblies and drip pans on Phosphate and LPO Conveyors at the General Motors Paint Facility project in Oshawa.

3. I declined the Sheet Metal Workers' request to call *viva voce* evidence about the purpose for the shroud bracket assemblies and drip pans because I was not satisfied that the goal of characterizing them as being part of an air-handling system could not be accomplished on the basis of the written briefs. I anticipated that the *viva voce* evidence would simply be more opinion evidence and no more significant or helpful than the type of information parties typically include in their consultation briefs.

4. General Motors was building a new paint booth at one of its car plants in Oshawa, Board Area 9. Adam Clark Company Ltd. ("Adam Clark") won the contract to install the conveyor system which, at its simplest, carries the parts to be painted, through the various steps in

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the application of paint. The conveyor system was installed by members of the Millwrights Union, Local 2309 ("the Millwrights") and of the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 ("the Ironworkers"). Members of the Sheet Metal Workers installed a significant amount of duct work on the project, although not as part of the contract performed by Adam Clark.

5. The work in dispute concerns shroud bracket assemblies, which are fitted around the conveyor system, and drip pans, which are located below the overhead conveyor system. The assemblies and drip pans are made of sheet metal. The Sheet Metal Workers contend that the shroud bracket assemblies and drip pans are part of the air handling system, because of the materials used, and because pressurized air passes through the hollow space created by the shroud. Moreover, the Sheet Metal Workers contend that the plastic brushes on the shroud brackets are intended to prevent air from escaping from the hollow space. The Millwrights and the Ironworkers maintain that the shroud bracket assemblies and drip pans have nothing to do with the air handling system, but are part of the conveyor assembly, with the purpose of preventing corrosive de-ionized water from landing on the conveyor, and to prevent contaminants from landing on the travelling car parts. The Millwrights and Ironworkers submit that brushes are an odd way to create an air seal, and are not used for that purpose. Instead, the brushes prevent splashing.

6. It is noteworthy that the installation of the shroud bracket assemblies and drip pans was let out by the owner in the contract related to the conveyor system. Counsel for the Ironworkers relied on that fact as an indicator that the construction industry, broadly speaking, considers shroud bracket assemblies, also called paint shields, to be part of the conveyor system, not part of the ventilation system. Counsel for the Millwrights argued that the Board should focus on the dispute within the context of what Adam Clark was contracted to perform; it was engaged to install a conveyor system, not an air-handling system. Further, paint shields and pans to collect dripping paint or other products are a common component of a conveyor system, particularly an overhead conveyor system.

7. Counsel for the Millwrights submitted that a shroud bracket could be part of both an air-handling system and a conveyor system. However, air-handling systems do not typically require rollers, drip pans and grids, and those elements are always found in conveyor systems. In this case, the shroud bracket assemblies are commonly associated with the installation of a conveyor system, and consequently, the Millwrights assert, their installation was properly assigned to Millwrights and Ironworkers.

8. All of the union parties agree that the conveyor was assembled in the following order; first the rails, then the carrying brackets, then chains, then shrouds with brackets. The duct work was installed and attached as necessary to the conveyor system after the conveyor was assembled.

9. The criteria typically considered by the Board in a dispute about work assignment are collective bargaining relationships; trade agreements between the competing parties; employer practice; area practice; safety, skills and training, economy and efficiency and finally, employer preference. Employer practice and area practice are typically more important than the other factors.

10. In this case, all of the trade unions have collective agreements with Adam Clark and no collective agreement particularly favours a claim to this work. There are no relevant trade agreements. All three unions have the skills and training to perform the work well and to perform it safely. I will now set out the employer and area practice.

Employer Practice

11. The Sheet Metal Workers contend that Adam Clark has no employer practice in the ICI sector anywhere in Ontario because it is not satisfied that the information relied on by the Millwrights and the Ironworkers possesses enough detail for the Board to be satisfied that it identifies the same work.

12. The Ironworkers rely on an October 27, 2004 letter from Adam Clark that was sought in the context of this jurisdictional dispute. In that letter, Adam Clark contends that the "...scope of work in the installation of a conveyor includes all of the conveyor parts, which include but are not limited to shrouds, shroud brackets, roller guides isolators, drip pan brackets and drip pans". Adam Clark went on to list projects where it had installed conveyor systems at Toyota Cambridge, February 1997, 1998 and 2000; paint shops at CAMI, Ingersoll, 1998; Ford E-Coat Phosphate/Conveyor, Ford Oakville, 1991; paint lines GM/Suzuki, Ingersoll, 1991 and miscellaneous contracts at Ford, Oakville and Honda, Alliston. The Ironworkers included a mark-up meeting for the Toyota Cambridge job in February 1997, which assigned all aspects of the installation of the conveyors to a composite crew of Ironworkers and Millwrights. Among the described items were "install screen guard supports, screen guards..." The Ironworkers and Millwrights assert that this describes the shroud brackets and shrouds that are in issue before me. The Ironworkers have also filed a time sheet from that job, which shows that drip pans were installed by Ironworkers/Millwrights.

13. Adam Clark also provided the Ironworkers with a similar letter in September 1997, indicating their practice of assigning all aspects of the installation of conveyor systems to a composite crew of Ironworkers and Millwrights. Again, the component parts of the installation of a conveyor system included "...protective screens and drip pans...".

14. In response to the Sheet Metal Workers' contention that Adam Clark has no demonstrated practice, the Ironworkers contend that the Sheet Metal Workers have not shown that Adam Clark did not install the shrouds, shroud brackets and drip pans, as Adam Clark has claimed or that they were installed by another trade or by a different contractor.

15. I accept and agree with the argument of the Ironworkers and Millwrights. The Sheet Metal Workers have not filed any material that would call into doubt the clear assertion of Adam Clark that it has performed this precise work in a number of car plants, as part of the installation of the conveyor systems. The material provided by Adam Clark details the work in dispute and the locations where it was performed. I find that Adam Clark has a practice and that it exclusively favours the Ironworkers and Millwrights.

Area Practice

16. The area practice in Board Area 9 is not very illuminating, in part because the work assignments relied on by each union were made by contractors not in contractual relations with all of the competing unions. For instance, the Sheet Metal Workers rely on three projects undertaken by Giffin Sheet Metals Limited at General Motors Oshawa, Phases 1 and 2; Truck Plant and J Car. Giffin describes the work as "...the fabrication and installation of all conveyor guarding and shrouding running though all Phosphate and E-Coat Machines..." Those assignments would support the Sheet Metal Workers, as against the Ironworkers, but the Millwrights have no collective agreement with Giffin, so the assignments are less significant. Further, the Ironworkers' bargaining rights with Giffin only date to 1998, and the Giffin material

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does not say when the work was performed by the Sheet Metal Workers, so it cannot be said with any certainty that Giffin chose the Sheet Metal Workers in the face of any competing bargaining rights.

17. The Ironworkers and Millwrights rely on assignments from Adam Clark in respect of area practice. Adam Clark completed a chart, at the request of the Ironworkers, detailing its assignments in respect of "...the installation of drip pans/drip trays on conveyors or machinery." Adam Clark identified "miscellaneous contracts over 15 years" at General Motors Oshawa. The rest of the information that the Ironworkers have provided from various contractors describes general assignment practices, without reference to projects or locations, or describes projects outside Board Area 9. Adam Clark's practice has particular significance since it is bound to collective agreements with all of the competing unions.

18. The Sheet Metal Workers also rely on a chart completed at their request by Tek-More in May 2004. That employer was asked to identify where it had assigned sheet metal workers to perform "All work in connection with the installation of Conveyor Shrouds as part of an air Handling system in the Greater Toronto Area...". Two projects, Paragreen, performed in 1991, and General Motors, North Plant, fell within Board Area 9. Tek-More also sent a letter in September 2003 identifying that it has fabricated and installed "Conveyor Housings, Drip Trays, Pans" at two projects: Peregrine (Booth Conveyor Shrouding) in 1993 and ACYS (Booth Conveyor Shrouding) in 2002, all in Board Area 9. In some ways, that information supports the assessment made by counsel for the Millwrights. Much depends on context: when shrouds are installed as part of an air-handling system, it is not surprising that the contractor assigned the work to sheet metal workers who were installing the rest of the air-handling system. However, I note that Tek-More is bound to the Sheet Metal Workers and to the Ironworkers, but not to the Millwrights.

19. The Sheet Metal Workers insist that the shroud bracket assemblies and drip pans in the matter before me are part of the air-handling system, but the information before me does not support that characterization. The shroud assemblies and drip pans were installed as part of the conveyor system, and play a role in respect of the conveyor system, protecting both the conveyor and the car parts travelling by conveyor. While the shroud assemblies may also have a use in the movement of air, that does not appear to be their primary role and it is certainly not their exclusive role. Consequently, the area practice in respect of Tek-More does not fully support the Sheet Metal Workers' claims, because two of the five installations were in respect of air-handling systems, rather than conveyors in paint booths. But overall, I conclude that the area practice slightly favours the Sheet Metal Workers.

Economy and efficiency

20. In cases such as *Ecodyne Ltd.*, [1997] OLRB Rep March/April 197, the Board has said that "...economy and efficiency can be important considerations but cannot operate to trump collective bargaining rights" (¶18). Economy and efficiency slightly favour the Ironworkers and the Millwrights who were installing the conveyor system; but since the shroud bracket assemblies and drip trays were installed at the end of the process, this factor does not favour either trade.

Employer preference

21. Adam Clark did not participate so its preference was not explicitly stated. Its practice has been to favour the Ironworkers and Millwrights exclusively.

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Analysis and conclusions

22. As set out above, the only relevant factors are employer practice and area practice. Employer practice favours the Ironworkers and the Millwrights absolutely. Area practice slightly favours the Sheet Metal Workers. As set out in *Ecodyne* (above), "Employer practice can be of important consideration, except where it is at odds with the established area practice" (¶23). Adam Clark's practice is not at odds with the area practice for a number of reasons. First, there is not a lot of area practice. Second, Adam Clark is the only contractor who is bound to all three collective agreements, so it provides the only true example of an employer choosing among all of the competing unions. Otherwise, the area practice largely reflects that a contractor engages the trade with which it has bargaining obligations. Third, the area practice reflects to some degree the theory of the Millwrights: where a contractor has been engaged to install shroud brackets as part of an air-handling system, it hired sheet metal workers; and where the shroud brackets are part of a paint booth conveyor system, the practice is more mixed.

23. On balance, I am not satisfied that the work assignment made to the Millwrights and the Ironworkers should be interfered with, and I dismiss the application.

"Mary Ellen Cummings"
for the Board