

BRACKET EXTENSION DECISION

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ARBITRATION OPINION AND DECISION

OTIS ELEVATOR CORPORATION
BOSTON, MA
AND
INTERNATIONAL UNION
ELEVATOR WORKERS, AFL-CIO

FMCS CASE NO. 00-13775
CONSTRUCTION INSTALLATION DISPUTE
ARNOLD M. ZACK, ARBITRATOR
DATE OF DECISION: 3/2001

On January 3, 2001, I held hearing in Boston, MA, to arbitrate the following dispute. Robert Matisoff, Esq. represented the Union. Peter B. Robb, Esq., represented the Company. A transcript was taken of the proceedings and I received post-hearing briefs on February 20, 2001.

THE ISSUE

The parties agreed upon the issue to be decided as follows:

"What shall be the disposition of the dispute cited in the September 25, 2000 letter from Joe Byrka to Dana Brigham?"

THE FACTS

For many years prior to the 1980's, bargaining unit personnel were responsible for attaching the vertical rails on which elevators rode, to the building structures to stabilize the vertical movement of the elevators. Bargaining unit members attached brackets to the building structure, which also often supported the building's floors as well.

In the late 1980's, the Company began to require general contractors to construct walls, generally of sheet rock at the elevator wall line. According to the testimony in 40% to 60% of the constructions, this required the attachment of extensions from the building structure to the elevator hoist wall where elevator brackets were to be attached by bargaining unit members, in approximately half of these cases, the building general contractor using his own personnel attached the extensions, In the other half of the cases, Otis was asked to attach the extensions, which were then installed by the bargaining unit personnel.

The present dispute arose at the Brighton Landing construction site where the Union challenged the Company's permitting the building's general contractor to install the extensions by people other than the Otis bargaining unit personnel.

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The Union and Company agreed to arbitrate the dispute as to whether or not the welding of extensions is IUEC work.

In a letter to Dana Brigham dated September 25, 2000. Joseph Byrka Director of Labor Relations, wrote in part

In the recent past the IUEC and Otis have had many discussions regarding "extension brackets" as defined by the Brighton Landing project in Local 4's jurisdiction. This disagreement is whether or not the welding of these "extensions" is IUEC work or work of the contractor. The parties agreed for Otis to pay 1/2 hour per bracket on the Brighton Landing job and to arbitrate the issue. That arbitration is pending waiting. dates from the arbitrator. Additionally, it was agreed the monies paid in the above noted instance would be returned to Otis should Otis prevail in the arbitrator's decision.

The pertinent provisions of the parties' agreement read as follows:

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| Article IV Work Jurisdiction Par. 2 (b) | The erecting and assembling of all elevator equipment to wit: electric, hydraulic, steam, belt, dumbwaiters, residence elevators, parking garage elevators (such as Bowser pigeon Hole, or similar types of electors), shuttles, compressed air and hand-power. |
| (f) | The installation of all grating under the control of the Company. The installation of all counterweight screens, overhead work, either wood or iron, and all material used for mounting of elevator apparatus in machine room, overhead or below. |
| Par. 4 (a) | It is agreed that when sinking, drilling, boring or digging cylinder wells for hydraulic lifts; hydraulic elevators or screw lifts, the Company shall employ Elevator Constructor Mechanics and Elevator Constructor Helpers. |
| Par. 8 | Inserts and/or bond blocks are to be set by Elevator Constructor Mechanics in the primary jurisdictions of local unions at the option of the Company. Inserts may be set by others outside of the primary jurisdictions of local unions where a full day's work cannot be provided. |

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POSITION OF THE UNION

The Union contends that Article IV guarantees to Elevator Contractors in the employ of the Company the erecting of all grade rails and the installation of "all material used for mounting elevator apparatus in machine room, overhead or below."

It recognizes that there are certain situations listed in Article IV, Par. 3, where work can be done on a prefabricated basis, and in Par. 4, involving hydraulic elevators, and in Par. 5, involving hoisting of materials, and also in Par 7 and 8. It contends that other arbitrators have concluded that Article IV protects the Union members against being deprived of bargaining unit work by an employer unless the union has expressed its consent:

Here, the Union asserts, the Company has urged building owners and their general contractors to perform work that is traditional bargaining unit work. It insists that the installation of both rails and brackets is

bargaining unit work since they are used to mount elevator apparatus below the overhead machine room, and that the Company itself acknowledged in its opening statement that installation of brackets is Article IV work. Additionally, the Company has conceded that Elevator Constructors have installed bracket extensions, and it asserts that bargaining unit employees should install bracket extensions extending into the hoistway, extending from the structural steel or wall to the edge of the elevator hoistway, as well. Bracket extensions into the hoistway, as well as those to the edge of the hoistway are installed only for the purpose of attaching rails and are not a part of the steel beam structure holding up the building. Both use the same materials and installation method and is necessary to erecting and mounting guide rails, bargaining work specified in Article IV, Par. 2(e) and (f). Both consist of welded steel angles, both are subject to the same forces and for both information on load and force must be calculated by Otis and transmitted to the owners' structural engineer.

The Union asserts that the Company's decision to adopt the Flexible Installation Technology System can not be permitted to block employees from doing work reserved to the bargaining unit, that openings can be cut in the sheet rock to allow employees to affix brackets, or they could be affixed before the sheet rock is mounted. It points to the Union witnesses who testified consistently that Elevator constructors have long and exclusively installed bracket extensions until the new system was introduced, and to the fact that Company witnesses provided contradictory testimony as to the past practice and extent to which bargaining unit employees still do this work. It cites the only instance where extensions were done by others at Brighton Landing, noting that the Company failed to meet the Union's request for other jobs where brackets were installed by others. It therefore urges I draw the Inference from the Company's failure to produce evidence to the contrary that there is simply no documentary evidence to support the Company's assertion that general contractors have routinely installed bracket extensions over the past ten years.

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Even if the new system has advantages, the Union continues, the Company does not have the right to violate Article IV because of such advantages. It cites Article II, Par. 2, as holding that the initiation of new developments does not diminish the right of the employees to the work jurisdiction specified in Article IV, and notes that there is no restriction under Article IV to the limits or confines of the hoistway. It notes that under the standard agreement in effect until 1987, inside the primary jurisdiction of the local inserts, were to be set by Elevator Constructors, and that the Company failed to achieve language in its own agreement which would have removed inserts from the Union's jurisdiction.

The Union emphasizes that historically when the Company sought to have work done by others than its own employees, it negotiated exceptions to the protected jurisdiction.

The Union concludes that the installation of bracket extensions like the installation of the brackets themselves is part of the process of erecting guide rails, work expressly granted to the bargaining unit, and that the Company should not be allowed to evade that jurisdiction by stating that the work is now the responsibility of owners or general contractors. It urges that the grievance be sustained, that the Company be directed to cease such conduct in its bids and contracts, that the disputed work be assigned to Elevator Constructors, and that those affected be made whole for lost earnings.

POSITION OF THE COMPANY

The Company contends that it can not be held responsible for assignment of work that it does not control, that the general contractor, O'Conner-Dimeo retained control over the design and material of the support for elevator rails and rail brackets, that the supports are of varying types installed by non-Otis employees, and that Otis does not employ structural engineers who could determine appropriate structural support.

The Company further contends that it is not obligated to force a general contractor to assign work to Otis employees and that there is no contract provision so providing. It notes that elevator constructors under Article IV have jurisdiction over work assigned by Otis, and that there is nothing in that language which

mentions general contractors or even encourages Otis to seek assignment of any particular work. It asserts that attachment of extensions to I-beams have always been under the control of general contractors, and that Otis' authority to subcontract work presumes that Otis has control of the work assignment and that Otis decides to contract the work out. Otis asserts that accordingly, it has used bargaining unit Elevator Constructors to weld extensions to I-beams when and if Otis had been given that work by the general contractor.

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The Company points out that Otis subcontractors with the general contractor have not excluded the installation of rail bracket extensions by Otis employees, but have shifted responsibility for providing adequate structural support for the rail brackets on the general contractor. There has been no effort by Otis to ask the contractor to require contractors to install all extensions, and when asked by the contractor, Otis attaches extensions using elevator constructors.

The Company asserts that there is no past practice of Elevator Constructors installing all supports for rail brackets, that most elevators are installed by attaching rail brackets to supports other than the so-called extensions. According to the Company, the practice has been to use employees other than Elevator Constructors to weld extensions to I-beams, and that that practice has continued during three Otis-IUEC contracts. It estimates that workers other than Elevator Constructors install the rail bracket extensions about 80% of the time before Otis began work at the jobsite, with Otis being selected to attach the extensions to the I-beams in about half the remaining situations. It notes that none of the Union witnesses testified as to who installs rail bracket extensions where Otis is on the job and that none of the 150 Elevator Constructors currently employed by Otis was called to testify as to current practice. It noted that in the 1400 to 2100 elevators installed by Otis in the Boston area over the last seven years, the Union was able to uncover only one job where Elevator Constructors welded rail bracket extensions to I-beams, which the Company notes is conclusive evidence that the work does not belong to IUEC. In the 1994 Dover Elevator Company case cited by the Union, the Company notes that the contractor had control over whether the extensions would be used and who would fasten them, and there the Union abandoned its grievance, abandoning all hope of establishing a past practice.

Accordingly, the Company urges the grievance be denied.

DISCUSSION

There is no question that Article IV reserves to the bargaining unit elevator constructor mechanics and elevator constructor helps the work associated with erecting and assembling elevator equipment. Nor, is there any question that that jurisdiction includes the "erecting of all guide rails" as well as the installation of all materials used for mounting elevator apparatus in machine room, overhead or below". Despite the strength of the protections afforded to bargaining unit employees in the erecting and assembling of elevator equipment, it must follow that the work they are to perform is dependent on contractors building the structure into which the elevator is to be installed, While the building owners or contractors will presumably design and construct the building with the expectation that the Otis Company and its employees will be responsible for erecting and assembling all elevator equipment, neither Otis nor its employees have any inherent right to determine how the structure is to be built or how close to the proposed elevator way the structural components of the building will be placed. It is only when the building owners or contractors agree with Otis to have the employee in this dispute erect and install the elevator that Otis has any jurisdiction over the elevator installation: and it is only when Otis has secured the authority to erect and install the elevator that its employees have the jurisdiction to assert the contractual right to perform the work under that Installation agreement.

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If the builder contracts with Otis to build the elevator making the necessary connections and installations from the structural mainframe of the building up to and including the elevator installation, then Otis would have the authority to do so, and the responsibility to live up to the work assignments negotiated in this collective bargaining agreement with the Union. But, if the builder contracts with Otis to confine its connection and installation work to be within the more immediate area where the elevator is to be placed, such as the hoistway, then Otis is limited to that contracted work and its bargaining unit employees are still entitled to exercise their jurisdictional authority for that work which Otis has achieved the contractual right to perform. It is within the authority of the builder to determine the scope of its contract with Otis. The bargaining units access to work can only flow therefrom based upon its negotiated agreement with Otis for the work Otis was contracted to perform.

It therefore follows that the installation of brackets is bargaining unit work. If Otis was contracted to install the connection between the structure and the area where it traditionally contracts to install the rails and brackets that are a part of its usual elevator erection and installation. It also follows that if the building owner, or contractor opt to bring the building structures and the connections thereto up to the face wall of the hoistway or hoist shaft, and contract with Otis to do other work within that immediate hoist shaft that is within its authority, even though it might restrict the work expectations of bargaining unit employees or indeed Otis as well.

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The Union asserted that until recently no one other than elevator constructors installed bracket extensions whenever necessary to connect to the building structure. Management witnesses stated that employees other than bargaining unit elevator constructors installed the extensions about 80% of the time before Otis even began to work at the jobsite. Although Union witnesses testified to installation of brackets and extensions adjacent to or within the hoistway, none of the bargaining unit personnel whom the Union claimed were called to testify on that exclusivity when the bracket extensions existed outside the hoistway. The Company on the other hand in response to a request for total U.S. records, apparently provided the Union with a list of some 20 jobs in the Boston area where the extensions were installed by other than bargaining unit personnel.

Although the Company some ten years ago introduced a new system of sheet work installation at the hoistway, and although that new prerequisite has highlighted the focus of extensions at or just beyond the hoistway walls, the evidence is persuasive that even before the sheet rock change, it was the province of the contractor to determine whether Otis or the building contractor would bring the structure or its connectors to the hoistway for Otis to make the requisite connections for the elevator installation.

Although Otis may have requested and expected general contractors to assume responsibility of installing extensions, there is no persuasive evidence that it undertook to do so to keep that work from bargaining unit personnel. Indeed the evidence shows that the contractors were given the option of having Otis install those extensions if it so preferred.

In the light of the foregoing, I must conclude that the Employer did not violate the parties' agreement when it confined the extension bracket installation work to that done within or at the hoistway wall when the contractors opted to have extension work beyond that sheet rock hoistway wall done by non-bargaining unit employees.

DECISION

The grievance cited in the September 25, 2000 letter from Joseph Byrka, Company Director of Labor Relations, to Dana Bringham, IUFC General President, must be denied.

(signature on file)
Arnold M. Zack

