

ONTARIO LABOUR RELATIONS BOARD

1761-06-JD Ellis-Don Corporation, Applicant v. Labourers' International Union of North America, Local 506, Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America, Carpenters Union, Central Ontario Regional Council, **Bramcor Group (Ontario) Ltd.**, Responding Parties.

BEFORE: Bruce W. Binning, Vice-Chair.

APPEARANCES: Chris Fiore appeared for the applicant; Elizabeth Mitchell, and Joe Inacio appeared for Labourers' International Union of North America, Local 506; Sean McFarling and Leslie Hanecak appeared for Carpenters and Allied Workers Local 27; Jay Rider appeared for Bramcor Group (Ontario) Ltd.

DECISION OF THE BOARD; February 12, 2008

1. This is an application under section 99 of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act") concerning a work assignment made in relation to the on-site erection of temporary construction fencing.

Work in Dispute:

2. There was some confusion between the parties at the pre-consultation hearing held on October 11, 2007 as to what work was performed. It was clarified by letter dated December 19, 2007 to read:

The Work in Dispute: The on-site erection of temporary construction fencing, more particularly described as the installation of plywood hoarding, chain link panels and gates.

3. The project that is the subject of the work assignment complaint is the Don Mills Shopping Centre located at 939 Lawrence Avenue East ("the Project"). Ellis-Don contracted Bramcor to erect a temporary fencing system around this project in the Spring of 2006. The contract was for the supply of all labour and equipment necessary to install the fence as per the Ellis-Don site supervisor's instruction.

4. Labourers Local 506 are claiming that the work should have been performed by a composite crew of Labourers and Carpenters with a majority of work performed by Labourers.

The criteria:

5. The Board has developed standard criteria for the determination of jurisdictional disputes arising in the construction industry. The Board typically applies the following criteria:

(a) Collective bargaining Relationships;

- (b) Trade Agreements between the competing Unions;
- (c) Employer Practice;
- (d) Area Practice;
- (e) Safety, Skills and Training;
- (f) Economy and Efficiency.

See *Canada Millwrights Ltd.*, [1967] OLRB Rep. May 195; *Anchor Shoring Ltd.*, [1974] OLRB Rep. Aug. 528; *Tilechem Ltd.*, [1982] OLRB Rep. July 1074; *Sayers & Associates*, (2005), 109 C.L.R.B.R. (2d) 196 (Ont.).

6. Both trades have the skill and ability to perform the work safely. There are no relevant trade agreements.

7. From the submissions of the parties it is clear that the area practice in regard to the amended work in dispute set out in paragraph 2 above favours a composite crew. Although I do not make a finding that Ellis-Don was the employer, I note that Ellis-Don contributed significantly to the area practice of using composite crews.

8. The work was performed by Bramcor which is bound only to a collective agreement with the Carpenters who performed all the work. Consequently, the practice of Bramcor is less significant because it is a single trade contractor.

9. Turning to the factor of economy and efficiency, the work was intermittent which may favour the Carpenters. The parties' submissions show that the work was performed a few hours a day, over ten days. The Carpenters were able to perform this work in conjunction with other tasks. However, the area practice including the practice of Ellis-Don referred to in paragraph 5 strongly favours a composite crew.

10. The Board finds that the work should have been performed by a composite crew.

11. In making that finding, the Board makes no finding as to how many carpenters and how many labourers should be on the crew.

12. The issue of damages is remitted to the parties.

13. This panel is not seized.

“Bruce W. Binning”

for the Board