

**ECOLINE, INC., v. Local 12 Heat & Frost Insulators and Local 12 Funds,**

**06-civ-4403 (2d Cir. 2008)**

This case involves the enforceability of a Joint Trade Board Award to which the Employer objected on conflict of interest grounds. The Local 12 Joint Trade Board is comprised of five (5) union representatives and five (5) employer representatives. The Joint Trade Board functions as an arbitration panel to hear and settle all disputes between Local 12 and its employers. The employer, Ecoline, was a member of the Insulation Contractors Association of New York (ICANY), the multi-employer group that negotiates the terms of the Local 12 Heat & Frost Insulators collective bargaining agreement. When Ecoline was delinquent in its employee benefit contributions five (5) times in one calendar year, Local 12 and the Funds commenced Trade Board proceedings to secure compliance with timely remittance of the contributions.

At the Trade Board Hearing Ecoline admitted that it was late on its payment obligations, but said that cash flow issues necessitated its payment history. Ecoline also argued, however, that the Joint Trade Board did not have the power to decide the dispute because each person on the Trade Board was also a member of the Board of Trustees of the Local 12 Funds, a party to the hearing. Ecoline also argued that, as business competitors, the employer representatives on the Trade Board were conflicted and should not be allowed to sit in judgment of the claims.

The Trade Board dismissed Ecoline's objections as to the composition of the hearing panel, but reduced the Award amount in sympathy with the company's

other arguments. Ecoline, dissatisfied with the Award, sought to vacate the Award in Federal District Court. In its Petition, Ecoline once again raised its defense relating to the composition of the Trade Board, under the Federal Arbitration Act, as "evidently partial" against the company. Ecoline also raised a new defense, that the Award sought monies that would be illegal under L.M.R.A. Section 302. The company dropped its claims of bias on the part of the employer representatives as business competitors. Local 12 and the Funds argued that the Award should be upheld, as Ecoline agreed to the method of dispute resolution under the CBA and that the company demonstrated no bias on the part of the Trade Board in reaching its decision. Furthermore, they argued, the bargaining parties complied with both §301 in appointing members to the Trade Board and §302 in appointing members of the Boards of Trustees. It could not be the case that complying with these two fundamental principles of labor law could somehow be converted to a violation of the law. Moreover, the CBA contained no restrictions on the rights of the parties to appoint whomever they chose to the Trade Board. Finally, as there is a clearly defined exception to Taft-Hartley for monies remitted in accordance with arbitration awards, the claimed §302 violation must fail.

District Court Judge Irrizary referred the matter to Magistrate Judge Ramon Reyes, who upheld the Award. The District Court overruled Ecoline's objections to the Magistrate's Report and Recommendations, and Ecoline appealed to the Second Circuit.

On appeal, Ecoline withdrew its claim that the Award was illegal under Section 302 and focused solely on its claim of evident partiality. The Second Circuit rejected Ecoline's argument noting that the company agreed to the resolution of all disputes under the CBA by the Trade Board, comprised of individuals appointed by Local 12 and the ICANY. Because the CBA did not limit the power of those appointments, the Court stated, Ecoline was on notice that Trade Board members could have other duties, including Trustee duties.

The Court also noted, on the facts of the case, that Ecoline (as a member of the Employer Association) was aware of the identity of the individuals on the Trade Board and the Board of Trustees and that it did not demonstrate partiality, as would be required to vacate the Award.

The Court left open the question of whether the LMRA would trump the FAA in a case where the Employer could demonstrate such partiality; but the Court did note that partisan arbitrators are permissible, as long as such partiality is inherent in the parties' agreement to arbitrate.

The case is important from two perspectives: first, it clearly affirms the rights of bargaining parties to charter their own course when deciding how to resolve disputes between them. Second, it severely limits the ability of those who are discontented with the process to challenge the award such bodies render.

*Denis A. Engel, Esq., argued the case for Local 12 and the Local 12 Funds. Erin O. Doherty, Esq. was also on the brief.*