

BRITISH COLUMBIA LABOUR RELATIONS BOARD

BRITISH COLUMBIA AND YUKON COUNCIL OF FILM UNIONS

(the "BCYCFU")

-and-

INTERNATIONAL PHOTOGRAPHERS GUILD OF THE MOTION PICTURE AND
TELEVISION INDUSTRY, I.A.T.S.E. LOCAL 669

("Local 669")

-and-

MOTION PICTURE STUDIO PRODUCTION TECHNICIANS,
I.A.T.S.E. LOCAL 891

("Local 891")

-and-

TEAMSTERS, LOCAL 155

("Local 155")

-and-

UNION OF B.C. PERFORMERS

(the "UBCP")

-and-

DIRECTORS' GUILD OF CANADA (B.C. DISTRICT COUNCIL)

(the "DGC")

-and-

ASSOCIATION OF CANADIAN FILM CRAFTSPEOPLE

(the "ACFC")

-and-

COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION

(the "CEP")

-and-

ACTRA-BRITISH COLUMBIA

("ACTRA-BC")

-and-

ACTRA PERFORMERS GUILD

("APG")

-and-

ALLIANCE OF MOTION PICTURE AND TELEVISION PRODUCERS

(the "American Producers")

-and-

CANADIAN FILM AND TELEVISION PRODUCTION ASSOCIATION

("CFPTA")

-and-

JAMES SHAVICK ENTERPRISES LTD.

("James Shavick")

-and-

CANADIAN BROADCASTING CORPORATION

(the "CBC")

PANEL: Richard S. Longpre, Vice-Chair
Brent Mullin, Vice-Chair
Keith Oleksiuk, Vice-Chair
Lisa Hansen, Member
Linda McKenna, Member

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Barry Dong, for American Producers and others
David Chesman, for the ACFC
Allan Krasnick, for American Producers, CFTPA and others
Brad E. Danks, for James Shavick
Bruce Greyell, for BC Producers Branch, CFTPA
Suzanne Thibaudeau, Q.C., for CBC
John J. Steeves, for ACTRA BC
Daniel J. Rogers, for the CEP
David P. Kozak, for Teamsters Canada
M. Patricia Gallivan, for the DGC-BC
R.R.E. DeFilippi, for APG

CASE NO.: 22492

DATES OF HEARING: October 23, 24 and 25, 1995

DATE OF DECISION: December 15, 1995

DECISION OF THE BOARD

I. INTRODUCTION

1 On April 12, 1995 IATSE Locals 891 and 669, Teamsters Local 155 and UBCP applied to the Minister of Labour, under Section 41 of the *Labour Relations Code* seeking that the Board be directed to consider whether a council of trade unions is an appropriate bargaining agent within the film industry in British Columbia. On April 20, 1995 the Minister directed the Board to conduct an Inquiry into the appropriateness of a council as bargaining agent.

2 The Panel commenced the Inquiry on May 20, 1995. In the months, following the Panel met informally with the parties to this Inquiry. Formal hearings commenced in October 1995. The Panel then undertook a unique step. On November 8, 1995 we issued a working document that we referred to as an "Interim" decision which set out the basic framework for our conclusions. Submissions from all parties on the Interim decision were sought. This final decision reflects our review of those submissions and our final conclusions.

II. BACKGROUND

3 It is useful to briefly review the Inquiry. Broad-based participation in the Inquiry was encouraged. Virtually all trade unions currently representing workers in the B.C. film industry attended; all members of the BCYCFU, the BCYCFU itself, the Association of Canadian Film Craftspeople ("ACFC"), the Communication, Energy and Paperworkers Union ("CEP"), ACTRA-British Columbia ("ACTRA-BC"), the ACTRA Performers Guild ("APG") and the Directors' Guild of Canada ("DGC"). The film producing community was represented by two main groups: the Alliance of Motion Picture and Television Producers (the "American Producers") and the Canadian Film and Television Production Association ("CFTPA").

4 We received submissions from a number of parties which defined the film industry. All were of great assistance. For example the CFTPA's November 21, 1995 submission defined the British Columbia film industry as follows:

There are in fact four production sectors which make up the film and television industry in British Columbia: the Non-Resident sector (largest and mainly U.S. based which often work with or in conjunction with B.C. indigenous production companies); the British Columbia based sector; the Non-Theatrical sector (i.e. corporate/industrial,

documentaries), and the Film and Television Industry Service sector (i.e. legal, accounting, post-production).

The CFTPA's submission went on to estimate the extent of the sectors to the British Columbia film industry:

It is estimated that between 75% and 80% of B.C. production is derived from the non-resident sector, predominantly companies headquartered in the U.S., with some Canadian production originating from outside B.C. However, the B.C. based production sector and the non-theatrical sector accounts for approximately \$50m and \$40m respectively annually, not an insignificant amount.

5 The focus of our Inquiry has been on the "non-resident sector" and the British Columbia sector in television and film. This decision does not address productions outside these sectors; such as production of commercials and CBC productions. Thus, for the purpose of this decision, the term film industry includes feature films, television drama, episodic and series television, and movie of the week (MOW) productions.

6 The key legislative objective of the Inquiry was to determine the appropriateness of the proposed bargaining council. In approaching this task we adopted the view that the fundamental purpose of Section 41 is to provide a stable and effective collective bargaining framework. We further adopted the view that to achieve such a collective bargaining framework required us to carefully take into account the unique nature of the British Columbia film industry.

7 The Inquiry was divided into two phases. The first phase was to make the Panel "aware of the industry, the role of various parties in the industry and the fundamental concerns and suggestions each party [had] with the proposed Council" (Panel's June 23, 1995 letter to Inquiry parties). Written submissions were sought from all parties covering a number of issues. Meetings were held individually, collectively, and in adversarial forums. Professor Joe Weiler was previously commissioned by the Minister of Culture to study the film industry. Professor Weiler reviewed various themes from his report with the Panel and all trade unions. This report has not yet been released to the public. The submissions and meetings provided the Panel with a candid insight into the forces which are driving change within the film industry and its distinction from virtually all

other industries. Update reports by the Panel kept Inquiry participants and observers informed of the Inquiry's proceedings.

8 For the most part, the parties share a common view of the economic characteristics of the industry in British Columbia, including the dominant role of the American Producers in terms of employment levels and capital expenditures on production services. The parties also share a view of the importance of the indigenous producers in the industry and their contribution to the production services and post-production segments of the industry.

9 In addition, there was general agreement that a significant element in determining where a project will be filmed is based on the relative quality of work in those areas referred to as "below the line" production costs. These are production costs normally exclude up-front costs such as producer, director, screenwriter and lead cast costs. They also exclude film distribution costs. The parties indicate that labour represents approximately 55 to 65 percent of the "below the line" production cost. As such, the relative cost of labour is a major factor in determining the production location. The degree to which a film producer can forecast production costs with reliability plays a significant role in the location decision. The actual cost experience determines the producers' preparedness to return to British Columbia for future productions in an industry characterized by highly mobile capital.

10 The parties also shared a common view with respect to the advantage of British Columbia as a production location relative to other North American cities. These relative advantages are considered to be: (a) the exchange rate between the Canadian and US dollar; (b) the availability of a trained workforce; (c) logistical advantages for the LA producers (same time zone, language, and travel time); (d) our locations; and (e) the contributions made by local unions to date in establishing the industry in this province.

11 On October 6, 1995 the Panel wrote to the parties explaining that the second and final phase of the Inquiry had begun. The general framework for the second phase was summarized as follows:

1.If existing problems in collective bargaining in B.C. are not addressed a significant amount of work could be lost. Once lost, such work may be difficult to recapture.

2. There is a general agreement that long term "master" agreements help stabilize labour relations and are in the interests of all parties.
3. In recognition of the production schedule within the film industry, collective bargaining should take place in the Fall of 1995.
4. American Producers, with an open invitation to Canadian Producers to join them, wish to bargain collectively with a Council of Trade Unions.
5. There is an understood distinction between projects normally worked on by members of the proposed Council, other than actors, and projects performed by non-member unions. The Council's initial structure should formalize the collective bargaining structure its members currently have.
6. There is general agreement that an independent tribunal responsible for resolving jurisdictional and collective agreement disputes within the industry is necessary. The tribunal might also be responsible for keeping the industry informed of its competitive relationship within the North American environment.

12 The final phase has been divided into three stages. The first stage included the informal meetings and the formal hearing from October 23 to 25. Starting from the premise that Local 891 and Local 155 would be in a council, the issues were: inclusion of Local 669 into a council; the jurisdiction of a council; the council's constitution and by-laws; and the structure and jurisdiction of an independent tribunal within the film industry. Underlying all of these issues was the appropriateness of a council.

13 The second stage will address the proposed inclusion of UBCP as a member of a council. UBCP and ACTRA-B.C. are presently in discussion with Mediator Stephen Kelleher, Q.C. regarding a resolution to their lengthy dispute over the representation of substantially the same group of performers in this province. The third stage will address whether the Director's Guild should be included in the Council.

14 During the course of the formal hearing on October 23 to 25 we found agreement between the various participants in the film industry on certain issues and unanimity on one point: since all

parties needed time to respond to changes made by the Panel to the 1996 collective bargaining structure in the province an expedited decision was needed.

15 The American Producers and the CFTPA assured the Panel, the BCYCFU and its members that they would negotiate master collective agreement[s] with a council on certain terms. This was a very positive, even crucial, development.

16 In the past, collective bargaining in the film industry has been marked by two related features. First, producers have not entered into master or standard collective agreements with the unions in the industry. Instead, negotiations have been on a production-by-production basis with a specific corporate vehicle or structure used for a particular production. That has resulted in a proliferation of collective bargaining in the industry. We understand, for instance, that Local 891 may have to negotiate as many as 70 to 80 separate collective agreements each year. Overall the film industry recognizes the need to rationalize its approach to collective bargaining.

17 Second, within the existing structure the unions face an array of employers. Virtually every production is produced by a particular corporate vehicle or structure which operates as a separate employer. The majority of work in the British Columbian industry, however, is financed, generated, and determined by the major studios and production companies we have referred to as "American Producers" in these proceedings. As well, reliance by unions on the Code to maintain collective bargaining rights is difficult, costly and time consuming.

18 The offer of the American and Canadian Producers to engage in industry bargaining is thus a significant step forward for the industry in British Columbia both in terms of coordinating and rationalizing collective bargaining and improving the province's ability to compete with other jurisdictions throughout North America.

19 Not surprisingly, the Panel has not accepted all of the terms proposed by the producers or all of the BCYCFU's terms. Generally, however, we found that producers and trade unions sought many of the same goals and were close to agreement on the basic design of a council as a bargaining agent within the film industry. We have tried to find reasonable resolutions to the differences.

20 Key to the entire process is the parties' agreement that the Council structure should be reviewed by the Board within two years. The complexity of the film industry dictates that the

structure of a council be responsive to the rapidly changing industry. A review within two years will ensure this occurs.

III. DECISION

(1) Appropriate Bargaining Unit

21 The Panel is satisfied a council of trade unions (the "Council") within the film industry constitutes an appropriate bargaining agent. Indeed, it is essential. Our conclusion is premised primarily on the well recognized need for a long term master agreement within the B.C. film industry and the elimination of the proliferation of collective bargaining that currently takes place in this province.

22 The Panel has decided to include Local 669 as a member in the Council along with Local 155 and Local 891. In practice, Local 669 is included with Local 155 and Local 891 in arriving at an assessment of "below the line" labour costs. Its inclusion in the Council is consistent with the existing collective bargaining structure in the film industry.

(2) Collective Bargaining and Ratification

23 The parties have negotiated extensively with each other in recent years. Acceptable terms of a collective agreement are well known and understood. We anticipate collective bargaining will start with that knowledge and understanding in place. Certain aspects of the collective bargaining process have been left to the parties to resolve by agreement. We recommend that the parties develop a protocol agreement prior to the commencement of collective bargaining. The protocol agreement should include delineating "side table" and "main table" issues, the time to be allotted for side table negotiations, and the number of side table issues that can be pursued at the main table. The Panel retains jurisdiction and will be available to deal expeditiously with disagreements arising in the course of the following collective bargaining and ratification processes:

- (a) The American Producers and the CFTPA have agreed to negotiate a master collective agreement (the "Master") with the Council. The Master will be comprised of terms and conditions common to all members of the Council and an addendum of terms and conditions unique to each of the members.

- (b) The Council, on behalf of each member, will address the addendums at side table negotiations. The Council on behalf of all of its members, will address common terms and conditions at main table negotiations.
- (c) The Master must contain an enabling clause that permits each member to agree to amend the terms of the Master, including the addendum. The Council's constitution will direct that a designated agent of each member's executive has unilateral authority under the enabling clause to amend the Master as it pertains to the member for a specific production. Each member's response to a producer's request will be given by the trade union's agent within 72 hours of the request for the amendment(s). Once the amendment is agreed to by the parties, it is binding and not revokable for the specific production.
- (d) The CFTPA and American Producers will notify the Council that the Master has been agreed to as soon as possible.
- (e) Each member of the Council will hold a ratification vote amongst its membership and non-members eligible to vote. Each Executive Board will decide whether to hold a mail ballot. The ratification votes will be counted individually. The Executive of each member within the Council will then cast a single ballot of acceptance or rejection of the Master collective agreement consistent with the ratification vote; majority acceptance by the Council's members binds the Council to the Master.
- (f) All non-members of a trade union (sometimes referred to as permittees) who have sufficient attachment to the industry will be entitled to vote. A permittee must have worked at least 20 days in the past six months within the specific trade union.

While each trade union must generally notify members and non-members of the vote, the non-members must satisfy the trade union's scrutineers that they meet the relevant criteria.

- (g) The producer group is, of course, entitled to seek a last offer vote pursuant to Section 78 of the Code.

(h) The Council, its members, the American Producers, and the CFTPA have agreed to schedule collective bargaining as soon as possible. The parties will attempt to complete collective bargaining within a month of the commencement of bargaining. The ratification process will be completed within 35 days of the parties reaching a memorandum of settlement.

24 Consistent with Board policy, ratification is based on majority acceptance by the Council members. Individual members of the Council do not have a veto power. However, there are existing provisions of the Code that provide a member with the ability to make an application alleging egregious or abusive behaviour in collective bargaining. We do not wish to leave the impression that a member should make an application where the bargaining result seems undesirable to it. We strongly endorse the normal give and take of the collective bargaining process. However, if a member convinces the Board that egregious or abusive circumstances exist some relief will be available. Subject to a stay being granted, the Master will remain in full force and effect until such time that some relief is made available in an expedited hearing into the matter.

(3) Jurisdictional Boundary of the Council

25 The BCYCFU sought exclusive jurisdiction over feature films, television drama, series and episodic television and MOW's over a specific below the line cost. The American Producers, the CFTPA and trade unions outside the BCYCFU initially objected to the BCYCFU having exclusive representational right to any jurisdiction within the film industry. However, through the course of the proceedings the American Producers and the CFTPA agreed the Master should apply exclusively to certain specified types of production: the Council would have exclusive jurisdiction over feature films and one hour dramatic productions for the NBC, ABC, and CBS. They suggested a below the line labour cost should also be used to distinguish the exclusive from the non-exclusive jurisdictional areas.

26 In reviewing response submissions to the "Interim" decision this issue continued to be the focal point in the proceedings. The purpose of a Council is to encourage a stable and rational forum of collective bargaining between producers, and employers and trade unions in the British Columbian film industry consistent with the current realities of the industry. The American Producers' and the CFTPA's willingness to engage in collective bargaining with the Council ensures a mutual attempt by the current main components of the industry to stabilize the industry. We find

that their willingness to recognize an area of exclusive jurisdiction of the Council is consistent with both the unique nature and the current situation of the film industry. Absent the existence of a Master collective agreement within a specific area of exclusive jurisdiction the significant advantages of the Council to this industry, namely stabilization and the securing of production work, may not be met.

27 The Panel has reviewed all submissions on this matter. We have decided to structure collective bargaining in the film industry in a manner that defines the exclusive jurisdiction of Council members, in their respective trades, in two specific areas of production. First, the Council will have exclusive jurisdiction on feature films with a below the line labour cost of the three members of at least \$4 million dollars Canadian. We add that submissions remained elusive on the basis on which a cost determination could be incorporated into the definition of the exclusive jurisdiction. We thus remain open to further submissions to more clearly delineate this threshold. Second, the Council will have exclusive jurisdiction on one-hour dramatic productions for the NBC, ABC and CBS. MOW are not included in the exclusive area. FOX and other television companies were raised in submissions. Once other matters are in place, the Board will consider, if requested, whether FOX and other television corporations should be included in the one-hour dramatic productions within the exclusive jurisdiction.

28 The Council's Master does not bind the producers with whom it is negotiated and ratified: a producer is not an "employer". The Council has been found to be the only appropriate bargaining agent representing the only appropriate bargaining unit within the exclusive jurisdiction for the work of the trades it covers. The Master therefore will apply to all employers undertaking productions in the exclusive jurisdiction. The automatic application of the Master to all employers in the exclusive jurisdiction does not automatically bind those employers in subsequent productions in the non-exclusive jurisdictional area. The Code otherwise applies in all respects to the non-exclusive jurisdiction.

29 The Council is requested to negotiate a "supplemental Master" with the CFTPA and the American Producers to cover the non-exclusive jurisdiction. The American Producers and the CFTPA will negotiate the supplemental Master but as producers they are not bound by the supplemental Master; again a producer is not an "employer". Once an employer becomes signatory to the supplemental Master, however, the collective agreement continues to apply pursuant to the Code.

30 The Council's Constitution will provide that ratification of the supplemental Master will be conducted similarly to the Master's ratification; indeed, ratification may take place simultaneously. Amendments to the supplemental Master to address specific productions will also occur through the enabling provision of that supplemental Master. The designated agent from each union will again respond to an employer's request for such an amendment within 72 hours. The supplemental Master will be the collective agreement for each Council member where they work in the non-exclusive jurisdiction, regardless of whether or not they are working with other members of the Council.

31 With respect to the issue of the geographical boundaries of the Master, the Council requested that the area of both exclusive jurisdiction and non-exclusive jurisdiction be "province-wide". Most other parties argued that the geographic area of the exclusive jurisdiction should be restricted to the "studio zone" of the Lower Mainland. In addressing this issue, we note the appropriateness of the Council will be reviewed within two years. As well, the existing collective agreements between the Council's members and employers are "province-wide". In these circumstances, we have decided to continue a province-wide geographical boundary of the exclusive jurisdiction. One issue in particular that arises with the province-wide jurisdiction is the hiring of employees from the areas in which the film is being produced. If the issue of local hires is not resolved in collective bargaining, any party may bring this matter to the Board.

(4)Constitution and By-Laws

32 The Board will meet with the Council to review the terms of the Council's constitution and by-laws to ensure they satisfactorily implement our decision; in particular, in respect to collective bargaining, enabling provisions, ratification and the establishment of exclusive and non-exclusive jurisdictions.

33 The constitution will permit Council members to work only with other Council members on work performed in the exclusive jurisdiction. Within the non-exclusive jurisdiction, Council members will not be restricted in that manner by the Council's constitution.

34 The Board remains available to address necessary changes to the constitution and by-laws during the next two years.

(5) Existing Collective Agreements

35 The exclusive jurisdiction of the Council does not apply where production in the exclusive jurisdiction is undertaken pursuant to an existing collective agreement. For example, James Shavick Enterprises, with an existing collective agreement with the ACFC, and Cannell Studios, with existing collective agreements with Council members, will not be affected by the exclusivity of the Council's jurisdiction. Applications can be made to the Board where the imposition of the Council causes a conflict with existing agreements and the parties cannot reach a resolution to that conflict.

(6) Independent Tribunal

36 We propose a committee consisting of representatives from each Council member and any other trade union that wishes to participate. The committee will meet with the B.C. Film Commission, the Labour Relations Board Data Information Committee and producers to develop an accurate, expedited process for the accumulation and distribution of information. The Board will monitor the progress of this effort.

37 The Board maintains its jurisdiction over all disputes arising under the Code as well as disputes relating to the constitution of the Council. We will attempt, however, to develop a Film Industry Umpire. The Umpire's scope of jurisdiction and cost will be discussed with the parties in the province's film industry. Our intent is that this individual would deal with as many film industry disputes as possible. The Umpire's adjudication of these disputes could be made reviewable under Section 99 of the Code.

IV. CONCLUSION

38 Several submissions question the jurisdiction of the Board to grant exclusive jurisdiction to the Council in a specific area. In response to this issue we provide the following reasons at this time.

39 The Minister directed the Panel to determine whether a council is an appropriate bargaining agent for a bargaining unit. Section 41 of the Code reviews the broad authority given the Board to impose a council as an appropriate bargaining agent. The statutory rights of a party in Sections 18, 19, and 21 of the Code do not fetter our discretion under Section 41. As well, the Code grants the Panel the authority to approve and implement a council other than the council applied for by the BCYCFU. We note specifically Sections 41(1) and (3):

41. (1) To secure and maintain industrial peace and promote conditions favourable to settlement of disputes, the minister may, on application by one or more trade unions or on his or her own motion, and after the investigation considered necessary or advisable, direct the board to consider, despite section 18, 19 or 21, whether in a particular case a council of trade unions would be an appropriate bargaining agent for a unit.
- (3) After a determination under subsection (2) and if the board considers it necessary or advisable the board may certify a council of trade unions as the bargaining agent, or vary a certification by substituting for the trade union or trade unions named in it a council of trade unions as bargaining agent for that unit.

Section 41(5) continues the theme of broad jurisdiction:

41. (5) The board may make orders and issue directions it considers necessary or advisable respecting the formation of councils of trade unions and the fair representation of the trade unions comprising the council of trade unions.

Likewise, Section 41(6), specifically Section 41(6)(f), addresses the Panel's jurisdiction in broad and general terms.

40 Section 41 sets out the Board's authority to approve an appropriate council. Section 41 also permits the Board to make an order or issue a direction consistent with our decision on appropriateness. In particular, Sections 41(5) and (6) provide the Board with authority to grant exclusivity consistent with our obligation to provide a stable and effective collective bargaining framework.

41 Our decision on appropriateness is grounded in establishing an effective and workable council that addresses the conclusions drawn from a lengthy review of the industry. The Panel sees our application of this jurisdiction consistent with the objectives of the Inquiry. In determining that the Council and its bargaining unit is appropriate, the object was to secure industrial peace and to promote collective bargaining settlements in the film industry. The five-person panel of the Board undertook a lengthy review of the issue of appropriateness within the context of this fundamentally unique industry. It is an industry that bears little, if any, similarity to other sectors of the British Columbia economy. It is also an industry which has been having considerable labour relations difficulties in the recent past. Our decision is in the best interest of various parties in the industry itself and the economy of the Province of British Columbia.

42 We have decided that in virtually all circumstances the only appropriate unit in the exclusive jurisdiction will be the Council's bargaining unit. There are several significant factors in our determination. First, the CFTPA and the American Producers are willing to recognize an exclusive jurisdictional boundary for the Council. The reasonableness of the exclusive designation is well established by their acceptance. Second, the exclusive jurisdiction has little, if any, existing practical effect on other trade unions in the industry. These Council members have dominated the representation of employees in the designated exclusive jurisdiction. In our meetings with ACFC and the CEP, in particular, neither demonstrated a presence within the exclusive jurisdiction. Third, the Board will remain able to review and amend the Council's jurisdictional area if necessary. We will review requests on an expedited basis. Finally, the Council's structure has been put in place for two years at which time it is subject for review.

43 The Panel acknowledges that generally an existing collective agreement will continue, unfettered by this decision. In addition, future applications, by these or any other party, to the Board dealing with the appropriateness of a proposed certification or the recognition of an agreement as a collective agreement under the Code will be guided by the principles and conclusions set out in this decision.

44 The Panel will now move to the second stage of this Inquiry: the proposed inclusion of the UBCP as a member of the Council. This stage will include ACTRA-BC and the APG. We will contact the parties in the near future.

LABOUR RELATIONS BOARD

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