

Between
Grey Fox Pictures Inc., B.D.F. Productions Ltd., Desperado
Productions Canada Inc., Film Three Productions Inc., and
Motion Picture Studio Production Technicians of the
International Alliance of Theatrical Stage Employees and
Moving Picture Machine Operators of the United States
and Canada, Local No. 891, and
British Columbia District Council, Directors Guild of
Canada

[1981] B.C.L.R.B.D. No. 66

No. 66/81

British Columbia Labour Relations Board

Heard: April 27, 28, 29 and 30, 1981

Judgment: October 7, 1981

Panel: Roy Gautier, Vice-Chairman

Herb Fritz, Member

Arnold Smith, Member

Counsel: Katharine P. Young for IATSE Christopher M. Trower for the Guild

I

This case concerns a series of competing certification applications regarding four motion picture producing companies. The Board received four separate applications for certification by the Motion Picture Studio Production Technicians of the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Local No. 891 ("IATSE"), for the employees employed by:

Grey Fox Pictures Inc. B.D.F. Productions Ltd. Desperado Productions Canada Inc.
Film Three Productions Inc.

In its applications, IATSE seeks to be certified for units described as: "employees in British Columbia, except actors, actresses, cameramen and cameraman assistants, and production manager, the location manager, the unit manager, the production office assistants, the director, the first assistant director, the second assistant director, the third assistant director, the casting director, all producers, and those employees who are represented by the Brotherhood of Teamsters, Miscellaneous workers, wholesale and Retail Delivery Drivers and Helpers' Union, Local No. 351".

As well, the Board received four separate applications for certification by the British Columbia District Council, Directors Guild of Canada (the "Council"), for the employees employed by the

four motion picture producing companies named above.

In its applications, the Council seeks to be certified for units described as: "Directors, Production Managers, Location Managers, Unit Managers, Assistant Directors, Trainee Assistant Directors, Production Assistants, Production Designers, Art Directors, Set Designers, Assistant Art Directors and Art Department Trainees".

II

The competing applications for certification by IATSE and the Council overlap in the categories of production designers, art directors, set designers, assistant art directors, and art department trainees. Historically, the film industry has designated these categories collectively as the "Art Department". The evidence revealed a looseness in terminology with respect to the categories of art director and production designer. It appears that these two titles have been used interchangeably in the North American motion picture industry to designate the head of the Art Department, although the title of art director is more prevalent in the Canadian motion picture industry. where the head of the Art Department is called a production designer, his or her assistant is termed an art director. where the head of the Art Department is called an art director, his or her assistant is called an assistant art director. whatever terminology is utilized, only one person, whether titled production designer or art director, functions as the head of the Art Department. The remaining Art Department employees are that person's assistants or trainees.

III

In largely uncontested testimony, witnesses for both IATSE and the Council provided an overview of the history, structure and jurisdiction of IATSE and the Directors Guild of Canada (the "Guild").

The American motion picture industry has been characterized by an east-west jurisdictional split. In the eastern United States, art directors are represented by United Scenic Artists whereas in Hollywood they are represented by IATSE Local N0; 876. Because art directors in Hollywood were so numerous, they were able to form their own local. In Canada, members of the Art Department have not been sufficiently populous to warrant a separate local. As a result, they have been lumped in a local with electricians, gaffers and grips in the case of IATSE or in a local with directors, location/unit managers and production managers in the case of the Guild.

Founded in 1892 on a craft-oriented structure, IATSE encompasses approximately 810 locals in North America. There are two IATSE motion picture locals in Canada: in Toronto and in Vancouver. Each of these locals claims jurisdiction over the members of the Art Department who are the subject of these applications. In Ontario, the art directors withdrew from IATSE approximately eight years ago and joined the Guild. Karen Bromley, the production designer on the film "Desperado", testified that the art directors in eastern Canada chose to leave IATSE because they did not feel that it functioned as a representative of their interests. She stated that IATSE is a union dominated by electricians and grips whose concerns are very different from those of art directors. Because set dressers, prop men, and painters carry out duties for art directors, she was of the view that it was inappropriate for art directors to attend IATSE meetings where issues concerning that group were discussed and determined. It was her opinion that the Guild provided a suitable niche for the art directors because its membership comprised the creative team of the motion picture business. Bromley considered the art directors to be an integral part of this creative team. notwithstanding the exodus of Toronto-based art department members from IATSE to the Guild some years ago, IATSE takes the position that its Toronto local has not relinquished jurisdiction over the Art Department categories.

In western Canada, IATSE Local 891 in Vancouver claims jurisdiction over art directors and members of the Art Department. IATSE's first certification for motion picture company employees in British Columbia included the disputed Art Department categories, production managers,

assistant directors, and location/unit managers. George Chapman, business agent for Local 891, testified that this proved to be an unworkable arrangement because it put IATSE in the position of representing the creative/technical people as well as the managers with whom these employees had to negotiate on each job. As a result, IATSE relinquished what it viewed as the managerial categories to the Guild, i.e. the production managers, assistant directors, and location/unit managers. However, IATSE maintained its claim for jurisdiction over the members of the Art Department.

From the evidence it appears that an east-west jurisdictional split with respect to the Art Department currently prevails in Canada: IATSE functions as the representative of the majority of Art Department members in western Canada while the Guild functions as their representative in eastern Canada. A letter which the Guild sent to Chapman on August 18, 1980, outlines the historical jurisdictional arrangement between these two organizations:

With respect to USE Local 891 jurisdiction the D.G.C. have recognized the category of Production Designer/Art Director all provinces of Canada except in British Columbia.

In B.C. the D.G.C. and IATSE 891 have had an historical relationship unique in the industry. Our interrelationship dates to those days when even D.G.C. categories, were part of the IA umbrella. The Directors Guild of Canada in British Columbia today continues to enjoy a close understanding with IATSE Local 891. It is our wish to forge ahead so as to jointly work an even more flourishing industry. In light of our unique relationship, we do not claim to represent in any Guild Basic Agreement with producers, the category of Production Designer/Art Director.

We are fortunate to have within our membership some individuals who have joined the D.G.C. in the Production Designer/Art Director category who are also members of IATSE Local 891. We feel this is to their benefit. Having membership in both our organizations allows the individuals, to work, in their profession, right across the country. In other words, MA they work in British Columbia they work in IATSE Local 891 jurisdiction, and, when they work on pictures based outside of B.C., they may enjoy the working basic a t of the Directors Guild of Canada. Rather than view this situation as one of potential conflict for those members, we hope that you will join with us in encouraging our joint members to be faithful to both our organizations, and adhere to this unique policy.

Until recently, IATSE and the Guild appeared to have developed a viable working relationship in which their members could be "permitted" back and forth as required on a particular film. However, in the past few years, that relationship soured, culminating in both organizations claiming jurisdiction over the Art Department in the four films which are the subject of this application. As a result of this jurisdictional dispute, the executive board of IATSE made a finding that the Guild was a rival union whose activities were in conflict with those of IATSE. Under IATSE's by-laws, any member belonging to a rival union is subject to expulsion from IATSE. This jurisdictional dispute has also forced some production companies to pay assessments to and sign contracts with both IATSE and the Guild for employees in the Art Department.

The Guild was founded by Canadian directors in 1961, at a time when there was a negligible feature film industry in this country. One of its avowed purposes has been to build a Canadian based film industry. In furtherance of that goal, the Guild has concentrated on the professional development of its members, by organizing seminars and facilitating interchanges with its members' international counterparts. The Guild also has a high profile with the government. It was instrumental in lobbying the Canadian government for the creation of the Canadian Film Development Corporation to promote and encourage Canadian feature films. In response to representations from the Guild, the Canadian Tax Department allocated a point for Canadian art directors in the capital cost allowance system for feature film productions as an incentive for film

producers to employ Canadians in that position.

The Guild contacted the Vancouver and Toronto IATSE Locals in 1963 to request that the first assistant directors join the Guild as they had done in the United States. This changeover eventually occurred by agreement between IATSE and the Guild.

The Guild's constitution and by-laws were drafted in rough form in 1962 and were largely tailored for directors. Since then, they have been amended to reflect the Guild's augmented membership of assistant directors, production managers, and art directors. Article 4.21 of the Guild's constitution provides for the establishment of District Councils. Ottawa, Montreal, and Vancouver have District Councils which elect representatives to the National Executive Board. Although the British Columbia District Council has been in existence for ten years, its first official charter was issued in the summer of 1980. The National Executive Board subsequently approved the Council's constitution and by-laws. The Council has an office in Vancouver and employs one person who acts as its executive secretary.

At a national level, the Guild has established the Guild Basic Agreement to which film producers would be signatory. Article 4.21(g) of the Guild constitution provides:

All collective agreements entered into between any District Council and any employer or employers within the territory of the said District Council shall be subject to final approval of the Executive Board. It is the essence of the Guild that it is its intention to reach the state where all work of Directors in Canada shall be established upon equal minimum terms and conditions of employment.

The parallel provision in the Council's constitution provides:

1. It shall be the duty of the Council to adhere in its bargaining policies to the Guild Basic Agreement as adopted by the Guild National Executive and amended from time to time.
2. Whenever the exigencies of collective bargaining require any deviations from the Guild Basic Agreement including the granting of permits to non-members the following procedure shall apply.
 - a. An authorized representative of the Council or an elected bargaining committee as the case may be shall negotiate the proposed terms of a contract with an employer.
 - b. The said representative or committee shall submit the terms of any agreement which he/she or the committee is prepared to recommend to the National Executive.
 - c. Once such terms have been approved by the National Executive of the Directors Guild of Canada they shall be submitted for ratification to the employees who are to be covered by the proposed collective agreement.
 - d. The Chairman of the Council or any authorized representative may sign a collective agreement and therefore bind the Council, the Guild and any members or employees affected provided that the said agreement is the Guild Basis Agreement, the said amended agreement has been approved by the Guild National Executive and ratified by the members and employees affected by such agreement.

At a special meeting held on November 12, 1980, the Council adopted its constitution and by-laws and elected its executive officers. All present members in good standing in the Council were, at that meeting, accepted for membership in the Council.

Directors in the Guild frequently alternate between functioning as directors and as producers. For example, the National Executive Director of the Guild, Bob Barclay, has acted as a producer in the past. As a natural progression, producers frequently rise from the ranks of directors and assistant directors. Two years ago, the Guild resolved that anyone who acted as a producer could not serve on the Guild Executive and that if a Guild member produced a feature film, he or she must withdraw his or her Guild membership. Article 4.3 of the Council's constitution provides:

Any member, or any applicant for membership who acts in the capacity of producer or any other capacity which would constitute an employer or the representative of an employer shall have his rights suspended or his application for membership held in abeyance, as the case may be, during such time as he or she is acting in any such capacity.

Phil Borsos, the director on the film "**Grey Fox**", produced the package for the film to the point of pre-production, at which time he hired a producer to produce it. From that point, Borsos acted in a capacity akin to that of a co-producer. Borsos, in his testimony, distinguished between his role as a co-producer and his role as a director; he described himself as "wearing two hats". As a director, Borsos was covered by the Guild contract on "**Grey Fox**". The producer on that film negotiated on Borsos' behalf for his residuals as director.

Considerable testimony focused on the hierarchy and respective job functions of the individuals involved in the making of a motion picture. At the apex of a film production is the "engager" - the producer. The producer is responsible for the entire film project, creatively and financially. The ultimate authority to hire and fire the employees working on a film resides in the producer, although he may delegate that responsibility to the production manager. The producer works closely with the director.

There are four or five other key positions on a film project: director, writer, director of photography, production designer and assistant director. The latter four individuals all work in close conjunction with the director. In essence, the director's role is to take a script and translate it into a film. The role of the director is almost exclusively a creative one, in the performance of which he relies on the logistical support of other skilled individuals. The director has a direct dialogue with the key personnel on the film. He is responsible for casting, which entails an element of hiring.

As the producer's representative, the production manager supervises everything in the producer's stead on set and on location. With the exception of the key creative people, the production manager negotiates collective agreements with the various unions representing film employees as well as personal service contracts, called "deal memos", with the individual employees themselves. It is commonplace in the film industry for individuals to be covered by both a collective agreement and a personal service contract. Both the IATSE and Guild basic agreements specifically allow for the negotiation and signing of individual contracts containing conditions and terms of employment superior to those in the collective agreement. Although the production manager negotiates the collective agreements with the unions, it is generally the producer who executes them on behalf of the production company. Paul Tucker, the production manager on "**Grey Fox**", negotiated the agreement between the producer and the Guild for that film. As a Guild member, that agreement applied to his own position.

The production manager's expertise lies in quantifying creative ideas in financial terms. He attempts to accommodate all requests for money on the film without exposing the producer to cost overruns. His approval is required for petty cash slips used to obtain money from the film accountant. When questioned about his supervisory functions, Tucker stated: "I supervise everybody, I suppose, except for the director or associate producer." In some instances, the production manager hires under advice from the producer. Generally, the heads of the various departments are given as much leeway as possible in hiring the individuals with whom they want to work. The responsibility for firing depends on which individual is being fired. If it is an

important individual or a complex situation, the firing is done by the producer; if it is a clear cut situation, the production manager can handle it.

The first and second assistant directors' functions are primarily administrative ones. They get everything in place for the director, in order that the director may be free to concentrate on the creative aspects of the film. They work closely with the production manager, particularly in relation to scheduling and the budget.

The head of the Art Department, whether termed a production designer or art director, supervises the preparation and execution of all the visual elements of the production in order to achieve the overall artistic "look" of the picture within the allocated budget. To effect that look, the production designer/art director works closely with the cameramen, set decorator, propsmaster, construction co-ordinator, make-up and costume departments, and special effects people. The production designer/art director has ongoing discussions with the producer and director as the film progresses. He travels with the director prior to shooting to choose locations.

Trevor Williams, an art director/production designer of repute, outlined his role in hiring and firing. He stated that he recommends to the producer those individuals with whom he wants to work and the producer then hires those people. If those individuals do not perform their work adequately, Williams recommends to the producer that he let them go. Williams' assessment is that if the producer did not trust his judgment, he would not have hired him. Williams agrees that the description of a production designer/art director's functions in the Guild basic agreement is an accurate one, except that the role involves more co-ordination than supervision. Bill Brodie, the Guild production designer on "**Grey Fox**", testified that he worked with very skilled people. Although he might supervise some of their work, he functions more as a co-ordinator of their various skills to achieve the desired look of the film within the budget. He stated that he does not hire or fire.

The production designer/art director's assistant is involved in designing and co-ordinating the construction of the various sets and backgrounds. He attends to the procurement of props and the set dressing within the producer's budgetary restrictions. The assistant works closely with the construction co-ordinator as sets are built, as well as with the scenic artist, propsmen, and set dressers. The assistant prepares sketches, drawings and drafts and performs research. He does not do any hiring. The assistant's role is chiefly that of executing the production designer/art director's designs. The Art Department trainee conducts research and performs assorted tasks within the Department.

The location and unit managers organize accommodation, food and facilities for the crew and cast on location. They might ferret out five or six alternative shooting locations for the director and production designer to choose from.

Decisions with respect to overtime might be made by the director of photography, the director, production designer, construction co-ordinator, assistant director or production manager. Each department head has the responsibility for the budget in his or her particular department.

As the witnesses in the four days of testimony reiterated, the movie industry is unique. The individuals involved in that industry are highly skilled and specialized craftsmen who work together as a team in producing a film.

IV

These applications raise two principal issues: whether the Council is a trade union within the meaning of the Code and whether the bargaining units applied for by the Council and IATSE are appropriate for collective bargaining. A subsidiary issue was raised by one of the employers affected by these applications. B.D.F. Productions Ltd. initially contested the inclusion of the accountant in the IATSE application, but on June 29, 1981, notified the Board that it would attempt to settle that issue with IATSE without the Board's assistance.

The Council submits that the units applied for by IATSE are not appropriate for collective bargaining. Representation in the motion picture industry has traditionally been along craft lines. The bargaining units applied for by IATSE are, with the exception of the Art Department, composed of craftsmen and technicians, and their helpers. It is inappropriate to have production designers/art directors and their assistants in the same bargaining unit as the technicians whom they supervise. Because the proposed IATSE bargaining units include both groups, they are inappropriate for collective bargaining and the IATSE applications should therefore be rejected.

The Council submits that it is a trade union as defined in the Code. It is a provincial branch of a national organization or association of employees which has, as one of its purposes, the regulation within the province of relations between employers and employees through collective bargaining. It is a craft or professional union within the meaning of section 41(1) of the Code, comprising as it does the creative directorial, supervisory team. The only appropriate unit for such supervisory employees, and the one which the Board should certify pursuant to section 47, is a unit constituted of the directorial team in its entirety.

Any managerial functions which members of the Council exercise are necessarily incidental to their primary creative functions. The Council submits that the only members of management on a film production are the producer, assistant producer, associate producer, or executive producer.

The Council concluded its submission stating:

The underlying issue before this Board can only be resolved by only one organization being found to be the appropriate agency for Production Designers/Art Directors. All must be represented by the Guild or all by IATSE 891. There is no workable middle ground.

IATSE argues that the Council's applications for certification should be rejected on the following grounds: the Council is not a trade union as defined in the Code; the Council's applications constitute untimely raids; the Council is not applying to represent an appropriate bargaining unit.

IATSE submits that the Council is not a trade union because it is not an organization or association of employees. The majority of the Council's members are not employees but rather the top management on a film, e.g. production managers, directors. IATSE also argues that the Council is an association formed and managed by persons who are employers or who are acting on behalf of employers. Section 50 of the Code prohibits the certification of such an organization or association.

IATSE further submits that the Council does not have the status of a trade union because it does not have, as one of its purposes, the regulation of relations between employers and employees through collective bargaining. The Guild, as a national organization, is not an association of employees and has not been recognized as a trade union in any Canadian jurisdiction. The Council is thus not a local or provincial branch of a national organization of employees. Because the Council does not have the autonomy to make key collective bargaining decisions - such decisions are made by people located outside the province - it is not a local or provincial organization of employees. The Council is therefore not a trade union within the meaning of the Code.

At the time of the Council's applications for certifications there were, IATSE contends, valid collective agreements in existence between IATSE and the subject production companies. IATSE argues that the Council's applications for certifications should therefore be rejected because they are untimely raids on portions of units covered by existing IATSE collective agreements.

In the alternative, IATSE submits that the Council's applications for certification should fail on the grounds that the proposed bargaining units are not appropriate for collective bargaining.

IATSE contends that the bargaining units applied for by the Council run counter to the Board's preference for all-employee units. A separate supervisory unit exception to that policy is not warranted on the facts of this case.

With respect to its applications for certification, IATSE submits that the Board should respect the parameters of the bargaining units that have been voluntarily recognized by both the subject employers and IATSE. The Board, IATSE submits, has recognized the appropriateness of the units for which it is now applying. In August, 1980, the Board certified IATSE to represent a similar unit of employees of Filmways Productions Inc. IATSE's applications conform with the Board's general policy in favour of all-employee units. The employees in the proposed units share a community of interest; there is no conflict of interest which would justify separate units. The evidence revealed that there is a great deal of mobility among the categories of art director, assistant art director, draftsman, painter and set dresser. Art directors/production designers learn their skills by performing the jobs of the other technicians in the Art Department.

V

The threshold issue is whether the applicant Council is a trade union within the meaning of the Code. Section 1(1) defines a trade union as follows:

"trade union" means a local or Provincial organization or association of employees, or a local or Provincial branch of a national or international organization or association of employees in the Province that has as one of its purposes the regulation in the Province of relations between employers and employees through collective bargaining, and includes an association or council of trade unions, but not an organization or association of employees that is dominated or influenced by an employer.

(Emphasis added)

In *Jensen Mushroom Farms Ltd.*, BCLRB No. 58/80, [1980] 3 Can LRBR 165, the Board outlined the requirements for trade union status under the Code:

There are four elements that definition. First, an organization of employees must be in existence. Secondly, the organization must be local or provincial in character. Thirdly, it must have as one of its purposes the collective representation of employees within the province. Finally, there must be an absence of employer domination or influence.

(pp.165-6)

In an early decision, *Corcoat Engineering Ltd.*, BCLRB No. 115/74, [1974] 1 Can LRBR 530, the Board elaborated on the "local" or "provincial" stipulation in the definition:

That definition on its face conspicuously excludes either international or national unions from its scope. A "trade-union" under the Code must be a local or provincial organization of employees or a local or provincial branch of a national or international organization of employees. It cannot be a national or international organization of employees standing by itself.

There can be no doubt from the history of the statute that the exclusion of international unions was a deliberate policy step by the legislature. It occurred in 1954 when the old Industrial Conciliation and Arbitration Act was replaced by the Labour relations Act. The former statute defined a "trade-union" as "an international, national, or provincial organization of employees, or a local branch chartered by an in

good standing with such an organization". The narrower definition was substituted and has been continued ever since, even into the new Code. It stands in contrast to the definition under s. 2 of the Trade Unions Act which does include an "international or a national organization" for purposes of its own statutory provisions.

I have not been able to find an historical record of the reasons for this new policy judgment made in the 1954 B.C. legislation. However, this definition of a trade-union is strikingly similar to the definition of a trade-union under the Trade Union Act of Newfoundland, as enacted in 1960. The Cohen Report provided this explanation for the change in that province.

"A further condition of qualifications a trade union within the meaning of the Act was introduced in 1960. As of that date a trade union was to be a local organization of employees, which branch was a provincial entity. The reasoning behind this provision seems to be one of convenience in administration and enforcement of labour legislation by assuring the existence of some local legal entity amenable to such procedures as are contemplated by the Act. A Labour Legislation Review Committee which reported in 1958 and which recommended this provision made the following observations:

'All unions should be formed within the Province to ensure that there will be within its jurisdictional administrative body responsible for the government of the affairs of the union under the laws of the Province, generally and particularly the Trade Union Act, and the Newfoundland Labour Relations Act. It is envisaged that as the law now stands, a union from outside the Province could acquire membership in Newfoundland and carry on any union activities here without the necessity of having any responsible governing body in this Province. This would not only make it difficult to enforce the provisions of our labour legislation against such a union, but it may well prejudice the enforcement of the rights of its members in Newfoundland against its own administration. The Committee does not refer to international unions which form local unions in this Province. In such case the union is formed and located here with proper local authorities set up under its constitution to govern its affairs and assume responsibility for its actions.'"

One may reasonably surmise that this same type of consideration influenced the B.C. Legislature in 1954. ...

Under the Canadian constitution, labour relations is principally within the legislative jurisdiction of the provinces. Each province is entitled to develop its own statutory framework for regulating collective bargaining. However, the ability of any province to achieve its own objectives will be frustrated if key collective bargaining decisions are made by people, located outside its boundaries. Under the B.C. Labour Code, if an extra-provincial employer is subject to a certification for its employees in British Columbia, it must appoint a resident with full authority to bargain towards and to conclude a binding collective agreement. International unions are simply denied any legal status to use the framework of the Code to establish a collective bargaining relationship in the first place.

(at pp. 534-5) (Emphasis added)

The Board's recent decision in Windermere Central Park Lodge, BCLRB No. 35/81, -[1981] 2 Can LRBR 345, underscored the rationale for the Code's requirement that an employer cloak a resident of the province with authority to negotiate and execute a collective agreement.

From the extracts of the national Guild constitution and the B.C. District Council constitution

excerpted above, it is apparent that any collective agreement entered into between the Council and an employer is subject to the final approval of an extra-provincial body - the National Executive Board of the Guild. This control mechanism on amendments to the Guild Basic Agreement is a necessary corollary to the Guild's objective as set forth in Article 4.21(g) of its constitution:

It is the essence of the Guild that it is its intention to reach a state where all work of Directors in Canada shall be established upon equal minimum terms and conditions of employment.

Given the constitutional limitations on the Council's authority to conclude a binding collective agreement, we are not satisfied that the Council is local or provincial in character as required by Section 1(1) of the Code. As a result, the applicant Council does not meet the definition of a trade union within the Code. The Council's applications for certification are accordingly dismissed.

VI

The remaining issue is whether the units which IATSE has applied for are appropriate for collective bargaining. Although the Board has stated its preference for single, employer-wide bargaining units (see *Insurance Corporation of British Columbia*, BCLRB No. 63/74, [1974] 1 Can LRB 403), its mandate is not to determine what is the most appropriate bargaining unit. Rather, under Section 42(1) of the Code, the Board must determine whether the unit for which the union has applied is an appropriate unit for collective bargaining.

The panel has carefully considered the evidence and submissions. The movie industry is indeed unique. Representation of the individuals within that industry has evolved into groupings along craft lines. e.g. actors and actresses are represented by ACTRA; cameramen and their assistants are represented by IATSE Local 659 based in Los Angeles. The individuals employed in this business are highly skilled and specialized craftsmen. Against this background of multi-union craft representation, the Panel has concluded that a defensible line can be drawn around the bargaining units applied for by IATSE. We have determined that the units are appropriate for collective bargaining.

The Council, in its submissions, emphasized that the members of the Art Department were more appropriately grouped with the "creative team" centered around the director than with the "technical team" traditionally within the fold of IATSE. The Council points to the gravitation of the art directors in Toronto to the Guild as evidence of the art directors' affinity for the directorial team. However, designating the most appropriate grouping is not the issue before us. Although the element of creativity may be more pronounced in the job functions of the Art Department employees than in the functions of other IATSE members, we are nonetheless satisfied that the individuals in the proposed bargaining unit have a sufficient community of interest for their collective interests to be reasonably reflected in a single set of negotiations culminating in a single collective agreement. The nature of film work is such that all the various employees covered in the unit description come into regular contact with one another and must, of necessity, often work in tandem. The fact that IATSE bargaining units, identical to those proposed in the subject applications, have had a history of successful collective bargaining in B.C. reinforces our conclusions in this regard. Many film production companies operating in B.C. have voluntarily recognized and entered into collective agreements with IATSE as the bargaining agent for similarly described bargaining units. IATSE has also been previously certified by this Board for such a unit.

In summary, we have determined that the units applied for by IATSE are appropriate for collective bargaining. As the panel is satisfied that more than 55% of the employees in the proposed bargaining units were members in good standing of IATSE on the date the Board received the application for certification, the applications for certification are granted.

In conclusion, we are of the strong conviction that the future expansion and well-being of the motion picture industry in British Columbia will be placed in jeopardy if the rift which has developed between the parties in the past year continues. In evidence, both parties agreed that, except for this dispute over the Art Department, their relationship has been excellent. We hope that the spirit of co-operation which characterized the relationship between IATSE and the Guild in the past will be restored. From the evidence led before us, it appears that members of the Art Department can derive significant professional benefit from membership in the Guild. e.g. the Guild symposium on the "Art of Film Design". Because of the present situation of the Art Department in eastern Canada, it could also be to the advantage of B.C. IATSE Art Department members to hold dual memberships in the Guild and IATSE to ensure their national mobility. It is our view that the Guild's August 18, 1980 letter to IATSE suggests a workable compromise. Obviously, there are some very talented individuals in the category of art director/production designer who play a key role in the motion picture industry in Canada. Many of these individuals are not resident in British Columbia but may, from time to time, be called upon by a production company which is making a film in the province. In view of all these circumstances, we urge IATSE to reconsider its declaration of the Guild's status as a rival trade union.


The Panel will remain seized of this matter in order that we may be of assistance to the parties in resolving any outstanding differences.

ROY GAUTIER
VICE-CHAIRMAN

HERB FRITZ
MEMBER

ARNOLD SMITH
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