

Case Name:

## **Citadel Theatre (Re)**

RE: An application for certification as bargaining agent brought by the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Local 210 affecting The Citadel Theatre

AND RE: An application under Section 12(4) of the Labour Relations Code brought by the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada, Local 210 affecting The Citadel Theatre

[2005] Alta. L.R.B.R. LD-004

[2005] A.L.R.B.D. No. 3

Board Files: CR-03464 and GE-04536

### **Alberta Labour Relations Board G.A. Lucas (Vice-Chair)**

January 24, 2005.  
(14 paras.)

#### **Appearances:**

No appearances mentioned.

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#### **LETTER DECISION**

¶ 1 G.A. LUCAS, VICE-CHAIR:-- The International Alliance of Theatrical Stage Employees and Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada, Local 210 (the "Union") presently holds representation rights, under Certificate No. 368-92, for a bargaining unit of employees of The Citadel Theatre (the "Employer") described as

All production department employees except clerical, security, janitorial, and front of house personnel, stage management, actors, and projectionists.

¶ 2 On June 24, 2004, the Union submitted two applications to the Board. The first seeks certification for a bargaining unit of employees of the Employer described as

All stage door employees.

The second application seeks to have the Board reconsider and amend Certificate No. 368-92 by

deleting "security" from the listed exceptions, a category it says is the classification of employees commonly known as stage door employees.

¶ 3 The Officer's report of July 7, 2004 recommended that both applications be dismissed. The Officer suggested the certification application would inappropriately fragment a unit of seven employees from a much larger group of other unrepresented employees and, with respect to the reconsideration application, suggested the stage door employees did not share a community of interest with the production employees so the amendment sought to the existing certificate would result in an inappropriate unit.

¶ 4 The Union objected to both of the Officer's recommendations, arguing that a stand-alone "security" unit is always an appropriate one for certification. With respect to the reconsideration application it argued the Officer's conclusions about there being no community of interest are unfounded, unwarranted and not based on facts.

¶ 5 In view of the fact both applications were otherwise timely and had the appropriate level of support of the affected employees, the Board ordered a representation vote be held in respect of each of them with the ballots being sealed pending the results of a Board hearing into the outstanding matters. The vote was held on July 15th and, by agreement of the parties, the Board's hearing was scheduled for September 7th.

¶ 6 On September 7th a panel of the Board (Lucas, Drisdelle, Kushner) began its hearing into the matters at issue but as not all of the evidence was heard during that day, the hearing was adjourned and resumed on September 24th. During the course of these hearings the Union called as its witnesses Jose Ricardo Bukowski (usually called "Richard") who is the senior stage door employee; and, Shelia Clesby who is the head of electrics and a shop steward. The Employer called John Raymond, who is an assistant professor in the drama department at the University of Alberta, and a former production director at the Citadel Theatre; Yuri Andryjowycz who is the front of house manager; and Penny Ritco, who is the managing director. Also, both counsel made extensive submissions in support of the position of their respective client.

¶ 7 Based upon these presentations, it appears that live theatre has an interesting, although somewhat perplexing, method of classifying and grouping those persons who are employed in such an undertaking. In keeping with what is something of an established tradition, the Employer divides its employees between those in the production department, sometimes called the backstage employees, and those called front of house employees. At times, employees in the production department are distinguished between those who "build" a show and those who "run" it. For example, scenic carpentry refers to persons who build the sets and stage carpentry refers to those who operate and manoeuvre the sets. In wardrobe, some employees build the needed costumes, if they are not already available from an extensive inventory, and wardrobe running refers to employees who make sure the necessary costumes are on hand for the actors and, if necessary, may assist actors in dressing for their roles. Similarly, wigs are both built and are run. Employees in properties build or acquire needed props or furniture as well as running the props and furniture by ensuring they are available where needed for performances. There are scenic painters who, not surprisingly, paint scenery; audio employees ensure any audio cues, either musical or sound effects, occur as required by the script, and also hang speakers; employees in electrics obtain or build necessary lighting equipment, ensure lights are hung and focused, and during a production will ensure lighting is provided as required by the lighting plot; and, at times, forklift operators or riggers may be required. Most production employees have university or community college training in their respective fields of endeavour or are possessed of extensive experience.

¶ 8 In addition to staging theatrical performances, the Employer also rents out its facilities to third

parties for various functions such as business presentations or weddings. Some of these functions may involve the use of the theatrical stages that are not then being used by the Employer for its own purposes or may involve the use of classrooms, rehearsal rooms, or the second floor lobby area. If sound systems or special lighting are required by these third parties, in conjunction with their rental of the facilities, then production employees may spend some of their working hours assisting with the rentals. The Employer's witnesses estimated the production employees spend about 15% to 20% of their time on rentals and the rest of their working time on theatrical productions. Apart from this involvement of the production employees with rentals, it is the stage door employees who provide most of whatever assistance the third parties may require in connection with their use of the Employer's facilities, and it is estimated their assistance could vary from 10% to 40% of their shift.

¶ 9 Other persons who participate in the theatrical productions staged by the Employer, such as actors, playwrights, musicians and designers, are usually independent contractors who offer their services pursuant to the terms of collective agreements their respective professional organizations bargain on a national or international basis with an organization that is representative of theatre owners.

¶ 10 Front of house, as used by the Employer, refers to those areas of its building that are usually accessible to the public and includes employees who work in the box office, or act as ushers and hand out playbills, or work in the coat check, or who are involved in food and liquor sales, or who do maintenance, or cleaning. For administrative purposes, the stage door employees report to the Employer's front of house manager. However, the box office employees, who are otherwise considered to be front of house employees, are included in a group for which both the marketing director and finance director share responsibility, presumably because some of these employees, in addition to selling tickets on the night of the performances, are also involved in calling the public to encourage them to purchase tickets or renew season ticket subscriptions. Of the 80 ushers working for the Employer, only 14 are paid part-time employees and the remaining 66 are volunteers. Similarly, the persons who check coats are all volunteers; at present, the food and liquor sales are contracted out to a third party who runs a restaurant in the building; cleaning is also contracted out; and some security services, in the main lobby area, are contracted out. In the main, the witnesses could make clear distinctions between those employees who are production and those who are front of house, but this same clarity was lacking when discussing the stage door employees.

¶ 11 Stage door employees, at least in the opinion of one of them, are considered as being a jack-of-all-trades, and to some extent this view was shared by the Employer's witnesses. There are seven employees in this category; three are full-time and four are part-time. The three full-time employees work day, afternoon or night shifts of 8 hours each and so are available for the Employer on a 24-hour basis. The nature of their duties varies to some extent depending upon the shift being worked. For example when working the night shift, from midnight to 8:00 a.m., the stage door employee spend almost all of his time in doing what is called security work, meaning he is patrolling throughout the theatre complex ensuring doors are locked and lights are turned off. During a day shift, the employee spends about half his time doing various kinds of security work, such as locking and unlocking doors, patrolling, providing any necessary escorts for actors or other production employees in and out of the attached parking garage or around the theatre complex. The other half of his time is spent in providing general assistance to others: for example moving chairs, tables or pianos to the side stage area where the production employees will then place them on the stage where needed for a production; assisting with deliveries for the production department if employees from that department are not available; setting up chairs and podiums for meetings; assisting those who are renting the facilities by handling their deliveries, setting up signs and displays, setting up and taking down chairs and tables, and may help with lighting if the necessary production employees are not on duty; delivers boxes of playbills to the box office; and may answer questions from the general public about the theatre or related facilities.

¶ 12 A stage door employee who works the afternoon shift performs duties much like the day shift employee does although if a "talk-back" is being held following a production he is the one who usually has to turn off the lights when the meeting ends as the production department employees will have gone for the day by that time. As well, he may spend more time answering questions from the public prior to a production beginning if he is in the lobby area.

¶ 13 The part-time stage door employees work an eight-hour shift on weekends during which time they perform the same duties as the full-time stage door employees. As well, a part-time stage door employee comes in for a four-hour shift when a production is being staged and during this shift remains in a corridor backstage to ensure that the public does not venture into that area. When he begins this shift he will check with the stage manager to ascertain if any invited guests are expected in the backstage area. The presence of this backstage employee is in addition to the full-time stage door employee who is patrolling or engaged in duties elsewhere in the complex.

¶ 14 At the conclusion of the hearings the Board gave an oral decision and indicated it would be confirmed in writing and this letter serves that purpose. The decision was as follows (edited for style):

The Union seeks representation rights for those employees of the Employer who are commonly referred to as "stage door" employees (and who, in its opinion, are excluded from the existing production department certificate by reason of the reference to an excluded class of employees described as "security"). It seeks these representation rights through either the certification of a stand-alone unit of stage door employees or through a reconsideration application to delete the existing exclusion of "security" from its current production department certificate.

The Employer objects to both applications. It says we should not certify a stand-alone unit because the unit would not be viable and, in any event, would represent an unwarranted degree of fragmentation. It opposes the reconsideration application essentially on the ground of there being no community of interest between the stage door employees and the balance of the production department employees.

We have heard the evidence of witnesses called by each party and have heard the submissions of their respective counsel. Based upon this we have been able to reach a conclusion upon the Union's applications.

Dealing first with the reconsideration application, the evidence of one of the Employer's witnesses was that the duties of the stage door employees can be divided into essentially three kinds - he said one third were security type duties, one third were customer relations, and one third were jack of all trades duties. His evidence, in conjunction with that received from Richard Bukowski, who is a stage door employee, leads us to conclude that the majority of the duties of stage door employees are related to a supporting role in the theatre's production department. The Employer suggested the stage door employees are, in the context of the production department, what might be called as "grunts" - meaning those who perform the necessary physical labour that supports the work of the other production employees. While it is true some of the duties do involve the performance of manual labour that is not the sole extent of their support function. More of these support duties would fall within what the Union referred to as "security" work, although we think that may be extending the usual meaning of "security" as used in a labour relations context. Rather, these security type duties are comprised of watching the premises so as to keep out those who ought not to be there and providing protection to performers and other production employees from other

persons who either do not properly belong backstage or from those who might wish to accost the performers and production employees in or adjacent to the Employer's premises.

The support role played by the stage door employees is sufficient to cause us to conclude a community of interest does exist with others in the production department unit.

As a result, we grant the reconsideration application and delete the term "security" from the certificate. But to ensure there is no misunderstanding we amend the Union's application and direct the words, "and stage door employees" be inserted into the certificate, immediately following the words, "all production department employees". It follows that the Union's certification application is dismissed.

The parties should make arrangements with the Board's officer to count the ballots cast in the vote on the reconsideration application.

G.A. LUCAS, VICE-CHAIR

QL Update: 20050207  
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