

*Case Name:*  
**Theatre Junction Society (Re)**

**Re: An application for certification as bargaining  
agent brought by the International Alliance of  
Theatrical Stage Employees of the United States its  
Territories and Canada (IATSE) Local 212, Calgary  
affecting Theatre Junction Society**

[2007] A.L.R.B.D. No. 33

[2007] Alta. L.R.B.R. LD-029

Board File No.: CR-03899

Alberta Labour Relations Board

**G.A. Lucas (Vice-Chair)**

Decision: April 27, 2007.

(31 paras.)

**Appearances:**

No appearances mentioned.

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LETTER DECISION

G.A. LUCAS, VICE-CHAIR:--

***Application***

1 The International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada, Local 212 (the "Union") filed a certification application with the Board on March 6, 2007 seeking to represent those persons

employed by Theatre Junction Society (the "Employer") in a bargaining unit described as:

*All employees except office, clerical, performers,  
designers and front of house personnel.*

2 The Board's Officer, in her investigation report of March 16, 2007, indicated the bargaining unit applied for covered technical employees, was similar to other units the Union has with other employers, reflected historical practices in the theatre industry, and recommended it be found to be appropriate for collective bargaining. She also found the Union's application was timely and had the support of at least 40% of the six employees she found to be included in the bargaining unit.

3 Each of the Union and the Employer filed objections with respect to certain employees who the Officer had either included or excluded from the bargaining unit. Since the Board found the application had the required support it directed a vote be held with the ballots to be sealed. When the vote was conducted on March 27th three persons who had been excluded from the bargaining unit appeared and, upon representing they were employed within the bargaining unit, were given ballots. Since their ballots, along with that of one of the included employees, were the subject of objections, those four ballots were double sealed.

### ***Hearings***

4 Hearings into the dispute over the double sealed ballots were held on April 11th and 12th, 2007. Pursuant to section 9(10) I sat alone to hear and decide the issues arising under section 12(3)(o) as to whether the persons in question were included or excluded from the bargaining unit.

5 The Employer's objections related to the three double sealed ballots of the persons who the Officer had found to be excluded from the bargaining unit. These three were Katerina Boulet, Pieter Bruelemans and Sarah O'Brien. However, prior to the April 11th hearing the Employer withdrew its objection to the Officer's finding that Sarah O'Brien was an excluded employee with the result it only argued that Ms. Boulet and Mr. Bruelemans should properly be included in the unit. The fourth double sealed ballot was that of Jason Schaub in respect of whom the Union objected to the Officer's finding that he was included in the unit.

6 Over the course of the two day hearing the Employer called six witnesses: Carol Armes who is the Employer's general manager; Mr. Bruelemans; Andrea Bradley, who is the Employer's business manager; Mr. Schaub; Ms. Boulet; and, Lynanne Sparrow, who is the Employer's producer/production manager. The Union called three witnesses: Damian Petti, who is the Union's president; Mr. Osler; and, Mr. Sherman. During the testimony of these witnesses 11 exhibits were entered in evidence, and two of those exhibits comprised binders each having a number of separate tabbed documents. Based on that evidence and the submissions of counsel for both parties I have made the determinations set out below.

### ***Evidence***

7 Live theatre (a term which in this case includes the "performing arts"), at least to those of us on the outside, appears to be something of a paradox. It has over its long history acquired or developed many traditions (sometimes called "industry practices") not the least of which is a somewhat peculiar way of grouping and classifying those persons who are engaged in its undertakings. A consequence of this particular tradition has seen the emergence of a number of trade unions who seek to represent specific groupings of persons or employees engaged in the workings of the theatre. Not unexpectedly, these unions tend to be protective of their respective jurisdictional claims. Also, it is no surprise that most employers tend to support the traditional groupings of the persons or employees engaged by them, presumably because that is the way things have always been done in the theater. As a result when one of these unions seeks to obtain certification for "its" group the practice, at least before this Board, is to describe a bargaining unit of "all employees" followed by a number of specific exclusions. These exclusions take the form of a word or two that signals to the other unions no encroachment on someone else's jurisdiction is sought or intended.

8 In this case, following talks with the representatives of the parties and speaking with some affected employees, the Officer was able to discern the description of the employee group the Union was seeking to represent. This enabled her to form a listing of those who were performing the functions of the target group and those who were excluded from that group.

9 The proposed bargaining unit was found to comprise the technical employees (sometimes called "stage technical employees") and according to the Employer's organization chart includes three full time "heads", being the head lighting technician (Kris Ladd), the head sound technician (Kam Sherman), and a head rigging/stage carpenter technician (Donnie Osler), along with a technical crew of part time or casual employees. On the date of the Union's application there were two casual crew technicians working, one who is a full time employee elsewhere in the Theatre but who sometimes also works as a casual crew technician when a technical crew is required to load in (set up) a show or strike (tear down) a show. The other casual technical crew member at work that day was the wardrobe technician.

10 The "heads" and the casual technical crew work under the direction of the technical director, Pieter Bruelemans, who is the subject of one of the Employer's objections. There is also an assistant technical director but he was away on a leave of absence at the time in question so was excluded on that ground. Lastly, the Officer included Mr. Schaub in the proposed unit and he is the subject of the Union's objection.

11 The Employer describes itself as a small non-profit operation with a volunteer board of directors. It obtains about 50% of its funding from the private sector so fund raising is an important part of the duties of the general manager and of the artistic director. A unique feature of the Employer that is apparently not shared by other theatre groups in Calgary is that it owns its own building, called The Grand Theatre, which it purchased in 2004. It refurbished the building at considerable expense and commenced carrying on operations there in March 2006. There is a restaurant located in the building, called the Velvet, which is operated by a third party and none of

the employees of the Employer work for that third party.

**12** In addition to staging its own theatrical productions utilizing its resident company of artists, the Employer also purchases national or international shows which it presents in the Theatre, and also rents out the Theatre to other groups for concerts, performances and private use. If the Theatre equipment is being used by a party staging one of the purchased shows or putting on a private rental event, the Employer's technical staff will be involved. The maximum seating capacity of the Theatre is approximately 380 but since there is retractable seating a variety of seating plans can be accommodated.

**13** The evidence disclosed that each of the full time employees has an individual written employment contract. Also, the Employer has a written set of employment policies applicable to all employees and, in addition, a set of "guidelines" for the group called the "full time support staff", a separate set of guidelines for the group called the "part time technical staff", and a third set for the group called the "management/administrative staff". Two provisions of the employment policies, listed under the heading of "Duties", which were argued to be of significance, are:

Employees shall ultimately be responsible to the senior management of Theatre Junction and, on a day-to-day basis to their immediate supervisor, or his or her designate.

Employees will perform the duties and exercise the functions normally performed by others in a similar position within a Canadian performing arts organization of a similar nature to Theatre Junction.

**14** The individual employment contracts of each of the "heads" contain a number of terms that refer to the technical director, for example: the "heads" report to the technical director and to the production manager; they are to carry out such other work as may be determined by the technical director; and their hours of work must be pre-approved by the technical director. As well, the employment policies contain some terms that refer to the "supervisor" and it was not disputed the supervisor of the "heads" was the technical director. Included are the following terms: full time staff will receive an annual formal performance review with their supervisor; supervisors are responsible to correct undesirable practices and substandard performances; employees may not be compensated for hours not worked due to factors such as illness but, instead, may be granted time off in lieu of excessive overtime as approved by their supervisor; employees shall give advance notice to their supervisor of absences; a failure to notify the supervisor after an absence of two consecutive days may result in an assumption of voluntary resignation; employees should inform their supervisor or general manager of harassment; and, all grievance issues should be first addressed with the employee's supervisor.

**15** In addition, the guidelines applicable to the full time support staff, and which indicate they apply only to the "heads", contain a number of terms that refer to the "supervisor". Among these terms are the following: they must inform the supervisor of lateness; they shall consult their

supervisor before implementing any change to their "call" (i.e. a shift of work); they will give their supervisor stipulated periods of advance notice for days off; they shall notify the supervisor as soon as possible of an absence due to illness; and, time off in lieu (of overtime) will be pre-arranged with the supervisor.

**16** *Pieter Bruelemans*. In May, 2005 Mr. Bruelemans was hired as technical director to commence employment on September 1, 2005. He works full time hours and is paid an annual salary on a bi-monthly basis. He reports to Ms. Sparrow, the producer/production manager, although he does not necessarily see her on a daily or any other pre-set regular basis unless there are problems with respect to a particular production. The Officer had excluded him on the basis he performed managerial functions which the Employer denied. It said he did not have the authority to hire and fire or discipline employees, although he did make recommendations, and said he works with the other technical employees as part of a team.

**17** Mr. Bruelemans' employment contract indicates he has a general responsibility for, among other things, training all technical resources, assisting in the preparation of production budgets as related to technical matters, managing production budgets, and, securing technical resources within budget and supervising all technical resources. Other duties and responsibilities mentioned in his job description include setting technical policies and standards, supervise and manage set construction and production design, provide general leadership for technical staff as required, and, responsible for recruitment, scheduling and supervision of all technical staff. He also testified he had an involvement in the hiring of the three "heads" in that he attended interviews, assessed their technical qualifications and made recommendations to the general manager and production manager as to who to hire. As well, he maintains the list of those persons who form the casual technical crew and calls those persons to report for work when their services might be required. He also removes persons from that list, for example, when they move away from Calgary, or when he and the "heads" might agree someone is not capable, or, in one instance, when someone failed to report for work after being called that person was not called again.

**18** Two of the three "heads" who testified said they considered Mr. Bruelemans to be their manager and, insofar as they were concerned, he was held out by the Employer to be in a managerial position. On one occasion he issued a written warning to Mr. Osler for a failure to give sufficient notice of being late or absent from work and which indicated a subsequent written warning could lead to further discipline up to a termination. When he handed this warning to Mr. Osler there was no mention made that the production manager had approved of the action being taken. He has also given Mr. Osler verbal warnings about being late and about certain production issues.

**19** Mr. Osler also indicated that he and Mr. Ladd had a number of meetings with Mr. Bruelemans, some of which were also attended by Ms. Armes and some by Ms. Sparrow, at which the document that came to be called the "full time support staff guidelines" were negotiated and eventually agreed upon.

20 When Mr. Sherman was hired as head sound technician he said the only interview he had was with Mr. Bruelemans. Afterward, when back in Saskatchewan, he was told by Mr. Bruelemans he was hired and employment contracts and policies and guidelines were sent to him for signature. He subsequently had a discussion with Mr. Bruelemans about changing the start date of his employment.

21 *Katerina Boulet.* Ms. Boulet was hired in August 2006 as a production assistant reporting to the production manager, and as an assistant education coordinator reporting, in that role, to the business manager. Among the production duties identified in her employment contract are: assisting in various administrative duties, including scheduling, phone calls and filing; assisting with communications between the office, performers, technical crew and rental groups; assisting with the set up and strike of various events; attending and assisting at Theatre events; and, driving the production vehicle as needed. The assistance she provides the business manager with respect to education matters are stated to include: making phone calls to schools to promote the education programs; attending at schools to promote those programs; supervising mentorship workshops; handling communications between mentors and students; and, assisting with coordination of mentorship nights. As well, Ms. Boulet signed a statement acknowledging the guidelines that pertain to her position are those relating to the management/administrative staff. She is not covered by the full time support staff guidelines.

22 Ms. Boulet testified she performed a wide variety of tasks; she described her role as doing any and all jobs that needed doing. In that capacity she has had some involvement with most of the other people working in the Theatre; mainly doing whatever it is the others asks her to do. She also does the laundry, cleans the dressing rooms and the "green room" (where the performers can relax and have access to food and refreshments), obtains liquor licenses for opening night events and organizes those events. She prepares weekly schedules of what events are going on in the Theatre, or in the studio, or in the restaurant that she posts in various locations. She does a lot of driving either in picking up persons at the airport or in going shopping for various props or other needed supplies. She estimates that almost half her time is spent on education related duties and that about half of her production related duties involves work performed in the office. The Officer had excluded her from the bargaining unit on the basis her prime function was not technical duties related to productions and the majority of her work could be classed as office or clerical work.

23 *Jason Schaub.* In July 2006 Mr. Schaub was hired as operations manager, reporting to the general manager, and is sometimes referred to as a facility operations manager. The Employer represents to the public, in its programs and on its web site, that he holds that position and the Union had assumed he would be excluded from the bargaining unit as being a manager. The Officer included him in the unit and although she did not provide reasons for doing so it was undoubtedly because of the information provided to her by the Employer describing him simply as "Facility Operations - Technical". Although the Union's initial objection to his inclusion was based on the argument he was a manager it was apparent from the evidence he did not exercise any managerial functions. Accordingly, the Union argues he should be excluded on the basis he was not a technical

employee who would normally fall within its technical employee bargaining unit. Accordingly, it urged the Board to make this clear by amending the bargaining unit to specifically exclude the "facility operations manager" position.

24 Mr. Schaub's duties, as set out in his employment contract, indicate he is to be responsible for general maintenance, repairs, upkeep and cleaning of the Theatre including the physical and electronics systems, heating, venting and air conditioning systems, plumbing systems and fire and security systems. Other duties mentioned in his job description include: managing the facility budget as communicated by the business manager and monitor overhead expenditures; maintain vendor relationships; oversee renovations and office moves; liaise with inspectors and City personnel who need access to the building for ongoing permits, licenses, etc.; coordinate cleaning requirements and ensure cleaning contractor meets requirements; act as a liaison for the restaurant regarding construction issues that arise and resolution of deficiencies in the lounge/restaurant. He also testified he is usually the first to arrive in the mornings and opens the doors and turns on the lights. He makes sure the loading dock is available, as needed, for productions and other uses and will help trucks get unloaded. He states that if anything goes wrong with the building he wants to know about it and get it fixed or resolved.

### ***Determinations***

25 Although the dispute related to the specific inclusions and exclusions from the bargaining unit as represented by the double sealed ballots, the Employer raised some arguments dealing with the appropriateness of the bargaining unit. Based upon its unique attributes including the ownership of its own theatre and its relatively small size, the employees are required to wear many hats. As a result, it would prefer an all employee unit without the exclusions identified by the Union. On the other hand, the Union argues the bargaining unit it seeks mirrors exactly what the Employer has done in the structuring of its own work force and also is consistent with industry practices. The fact the Employer structures its work force in a manner consistent with the Union's proposed unit is seen in its own organization chart showing the "heads" and technical crew joined together, reporting to the technical director. Also it has a set of guidelines applicable only to the "heads", along with another set applicable only to the part-time technical staff,

26 **Pieter Bruelemans.** I find the Officer properly excluded him based on his apparent exercise of managerial functions. As well, I am satisfied that the position of technical director is excluded from the scope of collective agreements the Union has negotiated with other employers in the past. His involvement in the disciplining of the "heads" and in the hiring of them, or at least making meaningful recommendations as to who should be hired, are an indication of the exercise of managerial functions. The fact Ms. Sparrow or Ms. Arnes may have some ultimate authority to determine wage rates or to have some involvement in the termination of employees (although there was no evidence of anyone being terminated) does not detract from the conclusion that in my opinion he exercises managerial functions. To now include Mr. Bruelemans in the bargaining unit would give rise to a potential conflict of interest with those persons who reasonably perceive him to

be their manager.

**27 Katerina Boulet.** Although Ms. Boulet is undoubtedly one of those employees who performs an important and vital function in the operations of the Employer, her prime function is not, in my opinion, that of a technical employee. In live theatre, those persons engaged in "running" the production refers to people engaged in the technical, or behind the scenes, work of ensuring a production is properly staged. It is not a term that is normally used to describe someone who runs errands or attends to the many and varied tasks Ms. Boulet is asked to perform. As well, she appears to spend a considerable amount of her time in the office attending to duties such as preparing schedules or promoting the educational aspects of her job duties. Accordingly, she might well be excluded on the basis of the "office" exclusion from the bargaining unit.

**28 Jason Schaub.** The task of ensuring the physical plant, in which theatrical productions are staged, functions properly and is well maintained is one normally undertaken by the owner's employees. Apparently, a theatrical company which is the owner of its own theatre is an exception. After giving much thought to the role of Mr. Schaub I have concluded he is not a technical employee within the meaning normally attributed to that term in the theatre industry and, therefore, should be excluded from the unit. There may be occasions on which he happens to be physically present on the stage when a production is being set up or torn down and so might offer to assist in whatever tasks are assigned. However, his prime function is not the same as that of a technical employee and his primary obligation and duty is to see to the proper working of the theatre structure and its component mechanical parts. There is no mention of the word "technical" in his contract and its only appearance in his job description is in relation to the duty to liaise with, among others, the technical crew. An attempt was made to equate the general "maintenance" work he undertakes with that of the "maintenance tasks" the "heads" perform during off-peak times. In his case it is a major part of the duties he is to perform while for the "heads" it is merely an incidental aspect of their job.

**29** In order that Mr. Schaub's position be excluded from the bargaining unit it appears necessary that an amendment to the unit description be made. In order to accomplish this the Board must be satisfied, pursuant to section 35(1)(b), that the amended unit is reasonably similar to the unit applied for and is appropriate for collective bargaining. In this case the amendment is sought because the position in question turned out to be other than the managerial one its name might otherwise imply. Although it might seem incongruous to specifically exempt a so-called managerial position from a bargaining unit description nevertheless that seems to be the only means of ensuring an inappropriate position is not inadvertently included in a unit. In this case, I am satisfied the unit amended by adding the words, "facility operations manager" immediately following the word "except" is reasonably similar to the unit applied for and is appropriate for collective bargaining.

**30** The result of all of the foregoing is that the four double sealed ballots shall be destroyed without being counted. The outcome of the Union's certification application will be decided by a count of the remaining ballots cast in the representation vote conducted by the Board on March 27, 2007. The Board's Officer will contact the parties to make appropriate arrangements to carry out



that count.

31 If the Union's certification succeeds the bargaining unit description shall be:

*All employees except facility operations manager, office,  
clerical, performers, designers and front of house  
personnel.*

G.A. LUCAS, VICE-CHAIR

cp/e/qlemono