

**International Alliance of Theatrical Stage Employees and Moving  
Picture Operators of the United States and Canada, Local 210,  
Applicant and Edmonton Symphony Society, Respondent.**

[1990] Alta. L.R.B.R. 121

8 C.L.R.B.R. (2d) 183

Board File: CR-00293

Alberta Labour Relations Board

**Andrew C.L. Sims, Q.C., Chairman,  
S. Boyd and F. Kuzemski, Members**

April 4, 1990

For the Applicant: V. Leginsky.

For the Respondents: P. Ponting, Q.C.

Certification - Labour Relations Code, S.A. 1988, c. L-1.2, s. 31(a) - Proof of Support - Whether unit of symphony orchestra "stage and production employees" includes musicians.

Appropriate Bargaining Unit - Labour Relations Code, S.A. 1988, c. L-1.2, s. 32(1)(c) - Whether craft-based unit of symphony "stage and production employees" appropriate.

Appropriate Bargaining Unit - Labour Relations Code, S.A. 1988, c. L-1.2, s. 32(1)(c) - "Reasonably similar" unit - Amended unit may be similar despite absence of 40% support.

Certification - Employer - Symphony orchestra society being true employer of stage and production crew - Neither Union nor concert hall acting as employer.

Certification - Labour Relations Code, S.A. 1988, c. L-1.2, s. 35(2) - Collective agreement bar - Symphony society bound by lease covenant to observe lessor's union agreements - Lease term not giving rise to collective agreement between symphony and union.

The Union applied to be certified for a unit of "stage and production employees" employed by the

Symphony Society. The Society argued that it was not the employer; that the unit applied for included musicians, hence the Union lacked the necessary 40% support; that a craft-based stage and production unit was inappropriate; and that the application was barred by an existing collective agreement, being the Society's lease covenant to abide by its lessor's union agreements.

The Board allowed the application and ordered a representation vote. A unit of "stage and production" employees does not include musicians. It is a trade usage that refers to the stage crew and the technical back stage group. The Union therefore had more than 40% support in the unit applied for. The Board amended the unit to make clear the exclusion of musicians. The amended unit was "similar to" the unit applied for. An amended unit is not dissimilar from the unit applied for only because the union does not enjoy 40% support in the unit applied for.

The amended unit was appropriate for collective bargaining. There is a natural division between the interests of stage and production employees, musicians, and front house staff.

The Symphony Society was the employer of the employees in question. The concert hall requisitioned employees through the Union on behalf of the Society, on a production-by-production basis. The employees worked in a composite crew with employees of the concert hall. They worked primarily under direction and control of the producer of the event, not the concert hall. Requisitioned employees were paid directly by the Symphony Society. Nor was the Union itself the employer. It did not direct the work. It merely administered a hiring-hall type of arrangement for the real employer.

Finally, there was no collective agreement bar to the application. The Symphony's lease with the concert hall bound it to observe the hall's "union contracts". The lease, together with the hall's agreement with the Union respecting stage work not covered by a collective agreement, did not give rise to a collective agreement between the Symphony Society and the Union.

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## REASONS FOR DECISION

Andrew C.L. Sims, Chair: The Edmonton Symphony Society provides the City with a professional symphony orchestra. While it performs in a variety of locales, the symphony performs its major concert series at the Northern Alberta Jubilee Auditorium. The Provincial Government runs the Jubilee through the Department of Culture.

This is a certification application brought by Local 210 of the International Association of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada ("IATSE"). They seek certification as the bargaining agent for certain stage and production employees, employed, they allege, by the Edmonton Symphony Society (the "Symphony"). The

Symphony raises objections to this application.

IATSE filed its application on March 8th, 1990. It sought certification for "All employees when employed as stage and production employees" and named the Edmonton Symphony Society as the employer. The Union claimed the support of seven of the eight employees it estimated to be within the unit. It substantiated its claims by membership evidence.

A Board officer prepared a careful report describing the details of the Symphony's operations and the unit applied for. She recommended an alteration to the unit to read "All production employees except office personnel." She found 10 employees within the unit, seven of whom supported the Union. After finding all the statutory prerequisites met, she recommended a representation vote. The Society raised several objections to her report, reviewed below in the context of the specific statutory requirements. The relevant parts of sections 30-37 of the Labour Relations Code read:

30 A trade union may apply to the Board to be certified as the bargaining agent for the employees in a unit that the trade union considers appropriate for collective bargaining.

31 An application for certification shall be supported by evidence, in a form satisfactory

to the Board, that

- (a) at least 40% of the employees in the unit applied for, by
  - (i) maintaining membership in good standing in the trade union, or (ii) applying for membership in the trade union and paying on their own behalf a sum of not less than \$2 not longer than 90 days before the date the application for certification was made,

or both, have indicated their support for the trade union, or

- (b) at least 40% of the employees in the unit applied for have, not longer than 90 days before the date the application for certification was made, indicated in writing their selection of the trade union to be the bargaining agent on their behalf.

32(1) Before granting an application for certification the Board shall satisfy itself, after such investigation as it considers necessary, that

- (a) the applicant is a trade union,
- (b) the application is timely,
- (c) the unit applied for, or a unit reasonably similar thereto, is an appropriate unit for collective bargaining,
- (d) the employees in the unit the Board considers an appropriate unit for collective bargaining have voted, at a representation vote conducted by the Board, to select the trade union as their bargaining agent, and
- (e) the application is not prohibited by section 36.

(2) Before conducting a representation vote the Board shall satisfy itself, on the basis of the evidence submitted in support of the application and the Board's investigation in respect of that evidence, that at the time of the application for certification the union had the support, in the form set out in section 31(a) or (b), of at least 40% of the employees in the unit applied for.

(3) The Board shall conduct any representation vote and shall complete its inquiries into and consideration of an application for certification as soon as possible.

33(1) In processing an application for certification,

- (a) the Board may accept the unit applied for if, in the opinion of the Board, that unit is an appropriate unit for collective bargaining, or

- (b) the Board may

- (i) alter or amend the description of the unit applied for, (ii) include employees in or exclude employees from the unit applied for, or the unit as altered or amended, or (iii) do any other things it considers appropriate,

if, in the opinion of the Board, any altered or amended unit is reasonably similar to the unit applied for and is appropriate for collective bargaining.

(2) Certifications for firefighters shall be granted on the basis that all firefighters of an employer who hold ranks lower than that of deputy chief shall be included in 1 bargaining unit.

37 When the Board is satisfied with respect to the matters referred to in section 32(1) and satisfied, after considering any other relevant matter, that the trade union should be certified, the Board shall grant a certificate to the applicant trade union naming the employer and describing the unit in respect of which the trade union is certified as bargaining agent.

Condensed into a checklist, these provisions require that the Board consider:

1. Has the Union named the employer of the employees it seeks to certify (s. 30 and s. 1(l) and s. 1(m))?
2. Has the Union provided satisfactory evidence of 40% support in the unit applied for? (s. 31 and s. 32(2)).
3. Is the applicant a trade union? (s. 32(1)(a) and s. 1(x))
4. Is the application timely? (s. 32(1)(b), s. 35 and s. 55)
5. Is the unit applied for, or a unit "reasonably similar thereto", appropriate for collective bargaining? (s. 32(1)(c) and 33)
6. Is the application prohibited by s. 36? (s. 32(1)(e) and s. 36)
7. Has a representation vote, in the unit the Board decides is appropriate, resulted in a majority of voting employees selecting the Union? This step can only follow step 2 (s. 32(1)(d), s. 32(2) and s. 56)

We canvass each of these items in turn, but in a different order.

### ITEM 3: Is the Applicant a Trade Union?

Rule 25 provides:

An organization that has previously been found by the Board to be a trade union or employers' organization shall, in the absence of evidence to the contrary, be deemed to be a trade union or employers' organization in respect to any subsequent proceeding.

IATSE, Local 120 holds other certificates. IATSE satisfies this requirement as no one offered evidence to contradict their status.

### ITEM 6: Is there a s. 36 Prohibition?

Section 36 concerns employer domination of a trade union and applications resulting from prohibited picketing. The Board presumes s. 36 is satisfied unless a party raises a particularized

objection based on that section. We have no such objection.

ITEM 2: Proof of 40% Support in the Unit Applied for.

The Union applied for a unit of employees consisting of:

"All employees when employed as stage and production employees."

The employer argued that, if the Symphony is the employer (a matter they dispute - see below), IATSE does not have the necessary 40% support.

When the Symphony perform a concert, they use (to use a neutral term) a number of individuals (another neutral term). These people fall into four main groups:

1. Musicians
2. Front House Staff
3. Technical Production Staff
4. Office Staff

IATSE says they intended to apply for group 3, which they called stage and production employees. By this, they say they mean the people who handle the stage set up, the lighting, amplification and related "back-stage work". They disavow any intention to seek certification for the musicians. The musicians have their own Union. They were not part of the support offered or the total estimate of employees. IATSE does not usually represent musicians. However, the Symphony argues that the musicians are nonetheless within the scope of the unit applied for.

The Symphony offers dictionary and other definitions of the words "stage" and "production". The Board finds these definitions unhelpful. Neither word is mysterious, either in a general or labour relations sense. Stage and production employees, when used in a certification application involving a Symphony orchestra, obviously refer to the stage crew and the technical employees and not the "cast", the "talent" or the "performers". While these latter persons may appear "on stage" and be involved "in the production", stage and production employees clearly refers to the more technical "back stage" group. Nothing in the evidence or argument of the Employer convinced us otherwise. In fact, such evidence as we heard confirmed the more restricted trade usage.

The front house employees include ticket takers, bartenders and others who serve the audience. Office staff include those who conduct ticket sales or do clerical or administrative work. Neither group falls within the "stage and production employee" group as we view it. The Employer's argument on this point stands or falls on the inclusion of the musicians, and we find it must fall. The Union has provided satisfactory proof of 40% support within the unit applied for.

### ITEM 5: Appropriate Unit

An Applicant trade union must apply for a bargaining unit it believes is appropriate for collective bargaining. It bases its proof of the threshold 40% support on the unit it believes is appropriate. However, the Board must scrutinize the proposed unit for appropriateness which involves two aspects. The Board uses standard wording in its unit descriptions designed to reduce conflicts caused by unnecessary diversity and ambiguity in unit description terminology. The second aspect concerns the more direct "workability" of the proposed unit, given the structure of the Employer's operations, the workplace interests of the employees, and the existence of any other bargaining relationships affecting the application.

Section 33(1)(b) (quoted above) gives the Board the discretion to "alter or amend the description of the unit applied for" if the altered or amended unit "is reasonably similar to the unit applied for and is appropriate for collective bargaining". This has two functions. It allows the Board to fashion appropriate units, often meeting concerns expressed by employers during the certification process. It also ensures, through the "reasonably similar" requirement, that the trade union's proof of threshold support is sufficient to justify the taking of a vote.

However, we do not accept one argument advanced by the Symphony. A unit does not cease to be "reasonably similar" just because in the unit applied for there is 40%, but in the altered or amended unit there is not. The question is simply, looking at the two unit descriptions, is one "reasonably similar" to the other? We see this provision, particularly in contrast to its legislative predecessors, as specifically designed to avoid a "numbers game" before the Board. The main test of Union support, under the Code, is the representation vote. As long as the amended unit is reasonably similar to the unit applied for, the question of 40% support in the amended or altered unit is irrelevant. A difference in the number of included employees is a factor in deciding similarity. However, that is a different proposition than argued by the Symphony.

In some industries, the Board has standard unit description policies which consolidate the Board's industrial experience. The Board has no such policy in this industry. The Symphony urges the Board to resist fragmenting the Symphony's employees. It argues that it is inappropriate to carve out the stage and production employees from other employees of the Symphony. Instead, it wants an "all-employee" unit.

The Symphony argues we should restrict any bargaining unit to employees when employed at the Jubilee Auditorium. The evidence shows it only uses IATSE people at that location. When it performs at the Citadel, it uses a stage crew provided by the Citadel, consisting of IATSE employees under contract to that institution. Apparently, it does not use any additional stage and production employees (beyond its full-time staff) in the Park, the Cathedral, the Convention Centre, or its other venues. However, it does have at least three full-time people who fall within the stage and production employee group. It would make little sense to cover their employment at one venue but not another. We do not find such an amendment appropriate.

IATSE bases its position on community of interest. It represents the carpenters, electricians, and similar "behind-the-scenes" employees that make a production go smoothly. These employees have little in common with tuba players on the one hand or coat check attendants on the other.

The Symphony argues, at a minimum, that the Board should not allow a trade carve-out unit without engaging in industry consultation. We believe, in this case, that such consultation is unnecessary. The evidence and our experience tells us there is a natural division of employees. Performing artists like symphony musicians have different employment concerns from lighting and amplification employees who may illuminate Brahms one night and Bon Jovi the next. The stage and production employees' community of interest with the front house staff is even less apparent. Such historical evidence as we have confirms that the Symphony follows the common industry practice of requisitioning its stage crews from IATSE. Musicians, in contrast, have a longer term affiliation with the Symphony through a standard form contract negotiated periodically between the Symphony and the Musicians Union. While these groups share experiences such as the intermittent employment caused by a seasonal, performance-based, schedule, they do not share a lot of other employee concerns.

The Symphony argued one could read "stage and production" employees to include musicians. To end this concern, the Board decides, using section 33(1)(b)(i), to alter the unit to read:

"All stage and production employees except performers and office personnel".

We find performers were not included in the unit applied for, and make this alteration for clarity only. We find the two units to be reasonably similar, a fact conceded by Counsel for the Symphony once we found musicians outside the "stage and production" wording. The Board finds the altered unit appropriate for collective bargaining and reasonably similar to the unit applied for. We find this considering all the evidence, including the evidence that follows about who is the Employer, and who does what at the Symphony,

#### ITEM 1: Who is the Employer?

The Applicant argues the Edmonton Symphony Society is the employer. The Symphony argues that either the Jubilee Auditorium or IATSE itself is the employer.

If the Jubilee is the Employer, a further factor emerges. The Department of Culture of the Government of Alberta owns and operates the Jubilee. The Public Service Employee Relations Act governs its employees, who fall within the general service of the Province. The General Service constitutes one bargaining unit. Section 99 of that Act deems the Alberta Union of Public Employees the employee's bargaining agent. This is, in substance, nothing more than an objection that the Symphony is not the Employer. If so, the application fails. It matters little which Act persons thus found to be employees of the Jubilee come under. The application alleging the



Symphony as employer would fail in any event. However, the relationship between these employees and those admittedly employed by the Jubilee auditorium is an important fact considered below.

At this point, we need to review what happens when the Symphony puts on a performance at the Jubilee Auditorium. The Symphony performs in several locations. The Jubilee is home base for its Master Series and several other regular productions over the symphony season. However, the Symphony also performs out of town, in Hawrelak Park, the Convention Centre, St. Joseph Basilica and the Citadel Theatre. The Symphony sets its schedule a year or more in advance when they book their performance dates with the Jubilee's management. Later, but in furtherance of this booking, they enter into a License Agreement. The pertinent terms of this document are as follows. These terms are taken from the licence for the concert on the March 8th date of application. However, the document is a standard form used for all performances.

### ADDITIONAL PAYMENTS

3. If the Licensor at any time in its discretion decides, or if the Licensee requests and the licensor agrees, that any of the services, accommodations, equipment or material in excess of those services, accommodations, equipment or material agreed to be supplied by the Licensor herein is required for the use of the premises, then the Licensee shall immediately upon the receipt of an account pay for such excess services, accommodations, equipment or material.

The Licensee shall pay all monies payable hereunder to the Licensor at the office of the Manager of the Licensor in lawful money of Canada and in a manner that is acceptable to the Licensor.

### SERVICES

5. The Licensor shall at its own expense:

- (a) provide janitorial services that the Licensor considers necessary to maintain the premises and keep the premises in a clean and sanitary condition; and
- (b) provide all of the following, namely; heat, light, water and ventilation by such means and in such amounts that the Licensor considers necessary for the ordinary use of the premises; and
- (c) make available to the Licensee those services, accommodations, equipment or material as determined by and provided by the Licensor during normal

working hours in connection with the premises.

#### INFORMATION REQUIRED OF LICENSOR

6. As a condition of the Licensee being allowed the use of the premises for the performance, the Licensee shall provide to the Licensor immediately upon request any or all of the following information which information shall be as to form and content satisfactory to the Licensor:
  - (a) acceptable proof that the person or persons either signing on behalf of the Licensee hereunder, or the Licensee, have authority to both enter into this Agreement or perform it; and
  - (b) acceptable proof of financial responsibility of the Licensee; and
  - (c) all permits, licenses, insurance or evidence or other such information or legal authorization required by the Licensee; and
  - (d) any contracts made between the Licensee and anyone else in connection with the use of the premises and the performance which contracts may be subject to the approval of the Licensor; and
  - (e) copies of any signs, tickets, programs and any other printed material in connection with the performance for approval, including that printed material relating to advertising and promoting the performance, before any signs, tickets, programs, and any other printed material may be displayed in public or distributed to the public. The Licensee shall bear all costs relating to the obtaining, printing, or distributing of signs, tickets, programs and any other printed material; and
  - (f) such other information as the Licensor may require.

#### CONDITION OF PREMISES

11. The Licensee shall take the premises as he finds them and the Licensee shall quit and deliver up the premises at the end of this Agreement in the same condition as at the commencement hereof, reasonable wear and tear excepted. All stage work and stage equipment used in connection with and necessary to any performance shall be provided by the Licensee at his expense and shall be subject to the approval of the Licensor.

#### RULES, REGULATIONS AND PROHIBITIONS

13. The Licensee covenants to observe and perform the following rules and regulations and such regulations as the Licensor may from time to time make, which additional rules and regulations shall be deemed to be incorporated in and form a part of this Agreement after written notice thereof is provided by the Licensee.

#### LABOUR

15. The Licensee agrees to observe all union contracts and labour relations agreements presently in force or which may be in force which affect or may affect the Licensor.

In addition, Symphony and the Jubilee operate under a Lease Agreement which reads, in part:

For the purposes of clarification, it is necessary that this explanation of our rental rates be attached to, and form part of, your legal and contractual obligations under the terms of this Lease.

Our current rental schedule for the Main Theatre is as follows:

Single Performance:	\$1,275.00
Two Performances on the same day:	\$2,100.00
Overtime hours before midnight:	\$ 300.00 per hour or part thereof
Overtime hours after midnight:	\$ 400.00 per hour or part thereof

Included in these rentals are the following:

4 hours of fit-up and/or rehearsal time.  
4 hours of performance time, starting one hour before scheduled performance starting time.  
One Stage Carpenter, one Stage Electrician, and one Audio Technician.  
Ushers and Ticket Takers/Hat and Coat Checkers.  
2 Hours of strike time before midnight.

If you require additional fit-up and/or rehearsal time over and above the allowable four hours, you will be additionally billed at the rate of \$50.00 per hour before midnight and \$ 100.00 per hour after midnight. All strike time after midnight will be billed.

If the performance time runs longer than the four hours, starting one hour before the scheduled performance time, then the extra time shall be billed as follows, for each hour or part thereof:

Before midnight:	\$ 300.00 per hour
After midnight:	\$ 400.00 per hour

SPECIAL REFERENCE: CLAUSE #27: If cancellation of a performance is not made within seventy-two hours (72 hours) of the scheduled performance time, then the licensee shall pay the FULL RENTAL required under the terms of this license agreement.

As this Addendum shows, the Jubilee provides, as part of the lease, "One Stage Carpenter, one Stage Electrician, one Audio Technician, Ushers and Ticket Takers/Hat and Coat Checkers". The lease (clause 13 B(2)(c)) gives the Jubilee the liquor concession.

Each month or so an employee of the Jubilee, Mr. Chris Good, the Head Stage Carpenter, meets with the Symphony's production manager to assess the stage and production requirements for the upcoming month's Symphony performances. They discuss staging, lighting and amplification needs and decide whether they can meet these requirements with the crew provided by the Jubilee. If not, as Mr. Good explained, they can bring in more people, or the lessee (the Symphony) can scale down its production. The requirements differ with each production. It is not hard to see that Beethoven's 9th may take a larger crew than Air on a G String. If they need more people, Mr. Good calls Mr. Patt, the business agent for IATSE, Local 210.

Local 210 dispatches the various types of employee to the site on the night in question as requested. This is done on a seniority basis from IATSE's roster of available members. The crew thus dispatched works beside the regular Jubilee auditorium crew, provided under the addendum. Together they handle the performance. Once the performance is over, IATSE sends the Symphony a bill for its members' time. It adds a 9% surcharge for "Employer Contribution to Employee General Benefit Fund". The Symphony's accountant takes this bill and orders pay cheques for the persons listed in the invoice. Comcheq, a commercial payroll house, actually prepares the cheques drawn on the Symphony's account. Once prepared, the IATSE business agent picks up the cheques and

distributes them to the members involved.

Three groups carry out the back-stage operations surrounding a concert: the requisitioned IATSE personnel, the Jubilee's crew and the Symphony's own employees. The Symphony employ Mr. Julian Mayne the Stage Manager, Michael Kryrmchak, the Assistant Stage Manager, Margo McCready-Kirillo, the Production Manager and Lorna McFarlene, the Production Assistant.

Mr. Good described how they handle a production. His evidence focused on the Symphony, but included the various other productions staged at the Jubilee. His job is to meet with the lessees who produce the shows. They decide whether the Jubilee's crew can handle the technical work and whether they need more manpower. He said "if they want the extra facilities, I advise them how many people they are going to need to do this and give them a rough estimate. If they give us the go-ahead, then I phone IATSE." He went on to say that he would talk to a lessee "...get advice as to what they want and translate this into instructions for the IATSE crew".

Asked about discipline, Ms. McCready-Kirillo knew of no case where the Symphony had ever disciplined an IATSE person or sent anyone home. Mr. Good said that a Lessee might come to express a complaint to him. If so, he would pass it on to the Union steward. The steward would make sure the IATSE member performed the work properly. In his view, it was the Union steward's job to make sure the employees worked in accordance with the constitution. At the end of the performance, Mr. Good would ask the lessee if they had any more need of the crew and, if not, tell them to go home.

Mr. Good testified that he decides on the position of the seating for players in the Symphony. However, he confirmed several matters upon which he took the lessee's instructions. These included decisions as to what instruments to amplify, lighting effects, platforms, use of the orchestra pit vs. backstage, scenery, microphone arrangements, etc. In the Symphony's case, Mr. Mayne would give him these instructions which he would pass on to any IATSE members on the set.

The last important element in this question is the relationship between IATSE, the Jubilee Auditorium, and the Symphony Society. The Symphony apparently only uses IATSE personnel when performing at the Jubilee. At the Citadel Theatre, an IATSE crew, employed directly by the Citadel, comes as part of the lease. The Symphony has never negotiated wage rates directly with IATSE or with the Jubilee. In the fall of 1989, IATSE asked them to enter into a collective agreement. They either declined or IATSE did not pursue the matter further. They do have a document entitled "Wage Scale and Working Conditions for Stage Work not Covered by a Collective Agreement Effective October 1, 1989". This is an IATSE document. It refers to obligations upon employers throughout the document but has no employer signatures. It sets out wages and working conditions for the type of work done by the persons involved in this application. It also refers to the 9% premiums the Symphony pays to IATSE. Article 4(d)(i) reads:

4(d) The Employer shall also pay the following:

- (ii) Nine percent (9%) of gross wages shall be paid to the Treasurer of I.A.T.S.E. Local 210 as an administrative fee.

The document also sets out the wage rates which IATSE billed the Symphony and which the Symphony paid the IATSE members.

The impression of the Symphony witnesses, and of Mr. Good for the Jubilee, was that the Jubilee has an agreement with IATSE. This agreement apparently provides that all performances in the Jubilee use IATSE people for production or stage work above that performed by the Jubilee's own crew. Mr. Good said itinerant shows could use their own crews but that these would probably be IATSE members anyway. We have no evidence from IATSE about whether or not such an agreement, oral or written, exists.

In summary, there are three arguments about who employs these IATSE people.

Symphony Version #1: This Symphony rents the hall from the Jubilee. The Jubilee provides the crew. If its steady crew is insufficient, the Jubilee hires additional people through IATSE and back-charges the Symphony for the costs under Section 3 of the lease agreement.

Symphony Version #2: Neither the Symphony or the Jubilee employ the IATSE personnel. IATSE acts like a labour broker, provides employees that it directs through its shop steward on site, bills the Symphony for the cost and passes the money out to the members involved.

IATSE AND AUPE version #3: The Symphony rents a hall from the Jubilee. That hall comes equipped with certain Jubilee employees. They are there in the Jubilee's interest as well as forming part of the rental deal. If the Symphony needs extra people, it is up to them to hire them. The Symphony simply tells the Jubilee, who pass on their lessee's requirements to IATSE. It supplies employees to be employed directly by, and paid by, the Symphony (or any other lessee).

Direction and control over these employees is indirect. The IATSE people are skilled technicians. They work at the Jubilee often, for many different productions, and know by experience and training what needs to be done. They work with the Jubilee's staff as a composite crew. This inevitably involves their discussing production requirements with Jubilee staff. The IATSE people are transient, supplied on a seniority-based roster. The Jubilee's crew members are full-time, and thus inevitably the ones who deal directly with the people planning the production.

The lease addendum stipulates a core stage crew of Jubilee employees. It would be surprising if this were not so. It would be unusual for the owners of a large auditorium with expensive audio and lighting systems to turn over their whole facility to an often out-of-town producer without maintaining their own technical presence to explain the system's features, protect it from improper use and otherwise protect the property. The presence of the Jubilee employees and their role in discussing the production with the IATSE crew, does not convince us the employees work for the Jubilee.

The evidence of direction and control, particularly from Mr. Good, points to him acting as a conduit for the producer's instructions. The producer decides all the important matters and the composite IATSE/Jubilee crew carry out his directions.

The evidence of wage payment and responsibility for wages point to the Symphony as the employer. They make out the cheques to the employees directly, although IATSE distributes those cheques. The Symphony Society keeps track of who it pays over the year and prepares appropriate T-4 slips. The Jubilee plays no part in the payment process except perhaps providing them with IATSE's tariff of cheques.

The lease between the Jubilee and the Symphony supports the IATSE argument as much as it supports that of the Symphony. We believe Article 3 simply says the licensee will pay for anything extra the Jubilee provides. While extra employees might fall within this clause, nothing within it requires the Symphony to use only Jubilee stage hands employed by the Jubilee. Article 15, about observing Union contracts, adds nothing to who is the employer of the IATSE people. However, it may influence how the Symphony can direct the Jubilee's portion of the composite stage crew.

The lease is a standard form. It applies to many productions staged at the Jubilee - not just the Symphony. We are told such productions often bring in their own crews, who would not become Jubilee employees. We view this simply to be a convenience arrangement. When a production wants employees beyond those Jubilee employees included in the lease, the Jubilee arranges to have IATSE supply trained people to work for that production. The Jubilee has IATSE's tariff on hand, and if the production wants to use extra employees, it hires them in that way paying that rate.

The Symphony's alternate argument is that IATSE itself is the employer, acting as a labour supplier. They base this argument, in part, on the Board's earlier decision in:

International Association of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Local 210 v. Calgary Centre for Performing Arts [1988] Alta.L.R.B.R. 257

That case and this bear considerable similarity. IATSE sent out a stage crew to the Jubilee to work on an "Oak Ridge Boys" Concert. The Oak Ridge Boys were a touring band. However, they did not rent the hall directly. Instead, the Calgary Centre for the Performing Arts rented the Jubilee Auditorium and were responsible for presenting the concert. IATSE supplied the employees as in this case, and issued a bill to "Oak Ridge Boys Donald Snider (who worked for C.C.P.A.)/Calgary Centre for Performing Arts. The bill was verified with the Oak Ridge Boys and paid from the ticket sales money collected by the BASS ticket agency.

The Board's decision was that the Calgary Centre for the Performing Arts was not the employer. The Board said, at p. 260:

Here, in our opinion, there was no wage flow, either direct or indirect, from

C.C.P.A. to the workers nor, in our view, did the C.C.P.A. bear the ultimate burden of the workers' remuneration.

The workers were not hired by C.C.P.A. nor, on the evidence before us, did C.C.P.A. set or agree to the wage rates, either directly with the workers or indirectly through Local 210. C.C.P.A. did not direct the workers nor did it even know their names. It did not pay the workers in any fashion. No arrangements were made with Local 210 for it to perform payroll functions on behalf of C.C.P.A. nor was there any evidence that would suggest that Workers Compensation Board payments were remitted under the C.C.P.A. account. We have inferred that they were not. By all of the pertinent criteria normally used, there was no employer-employee relationship whatsoever between C.C.P.A. and the workers.

Counsel for Local 210 submitted that the relationship that exists in this matter is similar to that used when a construction trade hiring hall is used to obtain manpower. We disagree. In the unionized construction industry, a company may well request a tradesman through the union's hiring hall. However, unlike this situation, the tradesman is dispatched to the company requesting same and the company decides whether to hire the individual. Further, the wage rate for the tradesman is usually agreed upon by the union and the company through a collective agreement or by some other agreement prior to the dispatch of the tradesman. Working conditions may also be the subject of the agreement.

In this matter there was no evidence that any such agreement or relationship existed in any form between C.C.P.A. and the workers or between C.C.P.A. and Local 210. C.C.P.A. engaged Local 210 to provide labour services not dissimilar to that of a company and a temporary employment agency.

This last paragraph suggests IATSE might be the employer. However, we distinguish the present case on two grounds. First, IATSE in that case, and not the other parties involved, made up and distributed the pay cheques. Second, the issue in the case was whether the Calgary Centre for the Performing Arts was the employer. Its role appears to have been as sponsor of the event, but not producer. The Oak Ridge Boys people directed the IATSE people, and probably also bore the cost through the charge to the ticket sales. The Board did not need to decide if the Oak Ridge Boys were the employers. Unlike the previous panel, we do find the arrangement in this case similar to the Union hiring hall situation and do not find IATSE, Local 210 to be the employer.

For these reasons, we find IATSE has correctly named the Edmonton Symphony Society as the



employer

#### Item 4: Is the Application Timely?

The Code allows four main timeliness objections. First, that there is a collective agreement in place and the application does not fall within one of the section 36(2) window periods. Second, that the Union has not had its constitution filed for 60 days. Third, that a strike or lockout is in effect. Fourth, that the application is barred by a prior revocation (s. 52(2)) or by an earlier certification application that failed (s. 55).

In this case, the employer argues a collective agreement exists between IATSE and the Symphony Society. The Jubilee, it argues, has an agreement with IATSE that its people must always be used on productions at the Jubilee. We should infer from IATSE's failure to offer evidence that this is an agreement in writing. This agreement includes the document "Wage Scale and Working Conditions for Stage Work Covered by a Collective Agreement Effective October 1, 1989". This, the Symphony argues, is like an open offer to enter into a collective agreement.

The Symphony signed a lease with the Jubilee saying (Clause 15) "The Licensee agrees to observe all Union contracts and labour relations agreements presently in force or which may be in force which affect or may affect the Licensor." By signing this lease, and by actually taking on and paying IATSE people, the Symphony argues it is entering into a collective agreement, thus taking up the open offer referred to above. We find this argument strained. IATSE and the Symphony have not dealt with each other over a collective agreement except in the fall of 1989 when the Symphony declined IATSE's overture. We find it hard to fashion a collective agreement out of a document headed "Wage Scale and Working Conditions for Stage Work NOT Covered by a Collective Agreement. This argument fails and we find the certification application timely.

Thus, the Board finds all the requisites of a certification application met. What remains is Item 7, the Representation Vote, which we direct. The Director of Settlement will arrange a suitable time and method for determining whether the applicant has the necessary employee support.