

Cited as:

**International Alliance of Theatrical Stage Employees and
Moving Picture Operators of the United States and Canada,
Local 63 - and - Manitoba Theatre Centre**

**IN THE MATTER OF: The Labour Relations Act, and
IN THE MATTER OF: An Application by
International Alliance of Theatrical Stage Employees and
Moving Picture Operators of the United States and Canada,
Local 63 (I.A.T.S.E.), Applicant, and
Manitoba Theatre Centre, Employer-Respondent, and
Actors' Equity, Interested Party**

[1989] M.L.B.D. No. 30

Case No. 1322/88/LRA

Manitoba Labour Board

**J.M.P. Korpesho, Chairperson; W.J. Ptolemay and
J.A. Coulter, Board Members**

September 29, 1989

Summary:

Application for Certification -- Employee-- Board refuses certification for lone stagehand temporarily employed by special arrangement for travelling production -- Rule 28 of Board's Rules of Procedure applied.

The Applicant Union sought an Application for Certification for a unit consisting of "all stage property hands employed by the Manitoba Theatre Centre, Main Stage." At the time of application, the duties of Main Stage Property Hand were being carried out by only one person. It was found that he was performing the Property Hand duties alone on Main Stage because of a special agreement between M.T.C. and a touring production company. Prior to this agreement, the Property Hand was a member of the house crew at M.T.C. and was covered by an existing collective agreement.

Held: The Board dismissed the application, citing two reasons for their decision. First, the board was satisfied that the Property Hand's involvement was limited to the production of a single play. Given this short period of employment in this role, the Board concluded that he would not have sat-

ified the Board's definition of "employee" as set out in Subsection 28(c)(ii) of the Board's Rules of Procedure. Secondly, the Board found that other employees of M.T.C. also performed the same duties, both at the Main Stage and in the Rehearsal Hall. Any attempt to confine the unit to the Main Stage would result in unnecessary fragmentation.

Appearances:

R. Tonn, Counsel for the Applicant.

J.R. London, Counsel for the Employer-Respondent.

REASONS FOR DECISION

On November 23, 1988, the Applicant filed an Application for Certification for a unit described as:

All stage property hands employed by the Manitoba Theatre Centre, Main Stage, but no including construction property employees, or those excluded by the Act.

The Applicant concurrently filed an Application for a Board Ruling relating to the positions of Stage Property Hands.

The Employer-Respondent filed its Reply, and in regard to the Application for a Board Ruling further requested permission to file an additional response if deemed necessary.

The Board conducted a hearing, at which time both parties appeared and presented evidence through their respective counsel.

Initially, the Board was prepared to extensively canvas the issues raised in this matter. On review of the matter at issue, in this case, the Board is of the opinion that this is not the appropriate case to do so, as the rationale used by the Board in reaching a decision in this case is fairly straight forward.

The unit being sought by the Applicant would have limited the scope to those Stage Property Hands working on the Main Stage of the Manitoba Theatre Centre ("M.T.C."). On the evidence presented, the Board is satisfied that these functions are also carried out by Assistant and Apprentice Stage Managers in the Rehearsal Hall.

At the time this application was made, the duties of the Stage Property Hand on the Main Stage were being carried out by one person, being Mr. Bert Oja ("Oja"). This was as a result of a unique situation which arose as a result of an agreement being reached between M.T.C. and I.A.T.S.E. to enable the production, "1949", to travel from Toronto to Winnipeg.

Prior to this, Oja was employed by M.T.C. as part of the House Crew, and had performed numerous functions including carpentry, electrical, props, and lighting. These functions fall within the description of the unit covered by Certificate No. MLB-3348, issued by this Board November 14, 1978, and covered by an existing collective agreement.

On review of the circumstances of this case, the Board is satisfied that the application fails for two separate and distinct reasons. Firstly, the Board is satisfied that Oja's involvement as a Stage

Property Hand was limited to the production of the play "1949". His involvement was through a unique set of circumstances which, although agreed to by the parties, were not to be construed as a precedent. Therefore, we are satisfied that due to the short period of time of his involvement as a Property Stage Hand he would not have met the criteria of employee as set out in Rule 28, and particularly subsection 28(c)(ii), of the Board's Rules of Procedure, which states:

28 Any application before the board, where it is necessary to determine the percentage of employees who are members in good standing or the percentage of employees who support an application,

(c) but not including:

... (ii) an employee who within two weeks immediately prior to the date of filing of the application is taken on for a period of temporary employment not exceeding twelve weeks.

Secondly, this is a function which is already being performed by Assistant and Apprentice Stage Managers, both at the Rehearsal Hall and Main Stage. In this particular matter, limiting the scope of the unit to Main Stage would cause unnecessary fragmentization and potential chaos for both the employees and the Employer.

The Board, accordingly, dismisses the application for those reasons.

DATED at WINNIPEG, Manitoba, this 29th day of September 1989, and signed on behalf of The Manitoba Labour Board by

J.M.P. Korpesho, Chairperson (signed) W.J. Ptolemy, Board Member (signed) J.A. Coulter, Board Member (signed)

DISMISSAL NO. 830

February 27, 1989

WHEREAS:

1. On November 23rd, 1988, the Applicant filed as application for certification for a unit described as:

"All stage property hands employed by the Manitoba Theatre Centre, Main Stage, but not including construction property employees, or those excluded by the Act".
2. On December 7th, 1988, the Interested Party, filed documentation and advised that they took no position with respect to this application at this time, but reserved the right to intervene and participate in the proceedings.
3. On December 8th, 1988, the Employer/Respondent, through Counsel, following a granted extension of time, filed a nil return.

4. On February 8th, 1989, and February 9th, 1989, respectively, the Board conducted a hearing at which time the Applicant and the Employer/Respondent appeared before the Board and presented evidence and argument, each being represented by Counsel. The Interested Party did not appear before the Board.
5. the Board following consideration of material filed, evidence and argument presented, found:
 - a. The unit applied for is not appropriate for collective bargaining;

Therefore the Board has determined that the application for certification filed by the Applicant on November 23rd, 1988, should be dismissed.

T H E R E F O R E

The Manitoba Labour Board HEREBY DISMISSES the application.

DATED at WINNIPEG, Manitoba, this 27th day of February, 1989, and signed on behalf of the Manitoba Labour Board by

J.M.P. Korpesho, Chairperson

(signed)