Cited as:

Calgary Centre for Performing Arts (Re)

Re: An application for certification as bargaining agent brought by the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada AFL-CIO, CLC, Local 212, Calgary, Alberta affecting Calgary Centre for Performing Arts, Calgary, Alberta

[2000] A.L.R.B.D. No. 19

[2000] Alta. L.R.B.R. LD-006

Board File: CR-02717

Alberta Labour Relations Board

J.L. Wallace, Vice-Chair

January 24, 2000.

LETTER DECISION

1 On December 14, 1999, the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States and Canada, Local 212 ("IATSE" or the "Union") applied for certification for a bargaining unit of employees of the Calgary Centre for Performing Arts (the "Employer") described as "all stage employees except performers, musicians and front of house employees." The Union possessed the necessary 40% support among employees in the unit applied for and so the Board held a representation vote. The Employer raised three objections: that the unit applied for was not appropriate for collective bargaining, that the Union made the application when the employee complement was unrepresentative of the normal workforce, and that the Board should exercise its discretion to deny voting privileges to casual employees employed on the date of application.

2 At the close of the hearing the Board (Wallace, Halpen, Campbell) gave an oral decision dismissing these objections, with the exception of a direction to destroy three ballots cast in the representation vote. Following are the edited reasons given by the Board.

> "This hearing involved an application by IATSE for a unit of all stage employees except performers, musicians and front of house employees employed by the Calgary Centre for Performing Arts at its Jack Singer Concert Hall.
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> The application is complicated by the fact that the Employer's workforce contains both regular full-time employees referred to in the industry as the "house crew", and a large pool of casual employees who work intermittently and usually for short periods of time on individual shows at the Concert Hall. The application was made on a day on which an unusually large complement of casual employees (18 of them) was engaged.
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> The Employer objects to this application on three bases:
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> - that the unit is not an appropriate unit for collective bargaining because it combines groups with dramatically different employment interests. The Employer argues that we should require separate units for the house crew and casual employees.
> - alternatively, we should consider the employee complement on the date in question to be unrepresentative of the workforce because it had been swelled by casuals on the application date. In this way, the application presents a danger of the wishes of the house crew being "swamped" by those of casual employees with seriously divergent interests. The Employer says that we should dismiss the application using our residual discretion in section 37 of the Labour Relations Code to dismiss a certification application for "any other relevant matter."
> - alternatively, we should exercise our power to depart from the Board's Voting Rule 16 to exclude the ballots of the casual employees, again because they are unrepresentative of the core workforce and have seriously divergent interests from the "house crew."
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> We have received evidence, including evidence of collective bargaining relationships at the Winspear Centre in Edmonton and collective agreements between the union and other performing arts organizations that are tenants of the Calgary Centre for Performing Arts. We have also heard the views of two

employees present at the hearing who filed letters of objection to the Union's application.

After considering this evidence and the argument given by the parties, we have decided as follows.

First, we find that the unit applied for is appropriate for collective bargaining. Generally, this Board favours larger, more inclusive bargaining units over smaller ones. Generally we do not divide employees according to whether they are full-time, part-time or casual. The Board has often said that its experience has been that the institution of collective bargaining is very flexible and very accommodating of divergent interests within one bargaining unit. Practically, when a union seeks an inclusive bargaining unit, the onus is usually on the employer to show that there are seriously conflicting interests within the bargaining unit, or significant operational problems that would result from combining employees in one unit, or some other factor that makes the unit unsuitable.

We are not satisfied that the evidence in this case shows any such thing. If anything, the collective agreement voluntarily negotiated with the Union's sister local at the Winspear Centre in Edmonton illustrates the ease with which collective agreement terms can be arrived at that appear to accommodate the different interests of full-time versus casual employees.

This is an industry that uses casual employees to a significant degree. We think that it is generally appropriate that house crews and casual employees be covered by one collective agreement and that there not be scope for separate bargaining units, multiple sets of negotiations, and an increased potential for industrial disputes. In the absence of strong evidence of conflicting interests, operational problems, or other unsuitability, we are not disposed to split this workforce.

Second, we do not consider this a case in which to dismiss the application on a discretionary basis under section 37. While it is clear from the "build-up" cases like Rocky Mountain Ski Corp. [1994] Alta. L.R.B.R. 475, that we can dismiss a certification application under that section where the support comes from an employee group that is grossly unrepresentative of the group that would ultimately be represented by the Union, that is not the case here.

Of the employees identified as casuals by the officer, a significant number of them accumulated a large number of hours, over 100 hours, in the last year. Such employees have a large number of calls in a year. For example, we heard that most calls are for the minimum four hours, and no more than eight hours. At four hours a shift, an employee with 100 hours could have as many as 25 call-outs during a year. We think that such employees have enough of an established and continuing interest in employment with the Calgary Centre for Performing Arts that it would be unjust to ignore their wishes entirely.

Matching the Employer's record of hours worked to the list of employees who voted, we note that of the 21 employees who voted, five were members of the full-time house crew. Of the 16 casuals, our review shows that ten of them had over 100 hours worked in the last year. Six of these had over 200 hours. The remaining employees had 63, 34, 33, five, zero and zero hours before the date of application. We do not believe that this employee complement contains so many people with so little connection to the workforce that it is grossly unrepresentative of the persons who would be covered by a certificate and any collective agreement. For these reasons we dismiss the Employer's second objection.

For the same reasons, we do not accept the third objection. We do not believe it appropriate to exclude the casual employees generally using our power under Voting Rule 16.

We do, however, see merit to the Employer's objection to this limited extent: We believe that there are a small number of employees who voted who have not yet established any significant or ongoing interest in working with this employer. We note that three employees worked less than ten hours in the previous year. In fact, these employees worked either one shift or no shifts at all in that time. We think it best to exercise our discretion under Voting Rule 16 to exclude them for purposes of the vote and to destroy their ballots without counting. The ballots so disqualified are those of Kerri Bowser, Pieter Boon, and Christopher Greschner."

3 We accordingly directed that the ballots be opened and counted consistent with these directions.

cp/i/qldrk