

Case Name:

**International Brotherhood of Teamsters,
Local Union 155 v. Alliance of Motion Picture
and Television Producers**

**IN THE MATTER OF an Arbitration
Under the Labour Relations Code, R.S.B.C. 1996
AND IN THE MATTER OF A Dispute under the
Jurisdictional Resolution Agreement
Between
International Brotherhood of Teamsters, Local
Union 155 ("Teamsters 155"), and
International Alliance of Theatrical Stage
Employees, Local 891 ("IATSE 891"), and
International Photographers Guild of the Motion
Picture and Television Industry ("IATSE 669"), and
Alliance of Motion Picture and Television Producers
("AMPTP")**

[2002] B.C.C.A.A.A. No. 277

Award No. A-206/02

British Columbia
Collective Agreement Arbitration

S. Lanyon, Arbitrator

Heard: (Vancouver, B.C.) November 7, 8, 9, 22, 26, 27 and
28, 2001; January 7, 8, 18, April 9, 10, 11, May 24 and June
10, 11, 26 and 28, 2002.

Award: July 31, 2002.

(101 paras.)

(Re: Jurisdictional Dispute: Forklifts et al. and Golf Carts et al.)

Appearances:

Linda Dennis, for Teamsters Local 155.
Kate Young, for IATSE 891.
Casey McCabe, for IATSE 669.
Barry Dong and Brian Dartnell, for AMPTP.

AWARD

I. Introduction

- 1** This proceeding initially concerned two dispute notices filed under the Jurisdictional Resolution Agreement ("JRA"). The JRA was established to resolve jurisdictional disputes that arose between the three members of the Film Council - IATSE 891, IATSE 669 and Teamsters 155.
- 2** The first dispute notice deals with the Teamsters claim that it has exclusive jurisdiction to operate forklifts. This claim arose on the production of "Get Carter". The second dispute concerns the Teamsters claim that it has the exclusive right to operate golf carts. This claim arose on the production of "Secret Agent Man".
- 3** The parties, anticipating a long evidentiary hearing (correctly as it turns out), agreed to a process of investigation/mediation. This investigation/mediation took nine days: June 19, 20, 21, 27, July 10, 23, November 22, December 1, 2000, and January 22, 2001. The parties agreed that if the investigation/mediation proved unsuccessful some preliminary findings of fact should be made.
- 4** However, the evidence soon widened in scope, and most, if not all, was in conflict. This resulted in a policy hearing held on June 21 and 22, 2001, (as well as written submissions dated July 25 and August 9, 2001). An award was issued on September 24, 2001. The purpose of this Award was to provide an interpretation of Article 4.1 of the JRA which lists the factors that the Umpire must consider in making an assignment of jurisdiction.
- 5** Subsequent to the publication of this Award all parties requested that I issue an Interim Report setting out some preliminary conclusions resulting from the interviews conducted in the investigation/mediation. The interviews were conducted by the parties themselves in the absence of the other parties to this dispute. I was free to ask questions. These interviews were reduced to writing and forwarded to all the other parties. These interviews did not of course meet the requirements of natural justice.
- 6** Thus the fundamental conflicts that arose throughout the evidence could not be resolved

without a hearing. Nonetheless, all parties requested an Interim Report and one was issued on October 10, 2001. The parties could not agree on the effect or purpose of this Interim Report.

7 This of course necessitated a full evidentiary hearing. This hearing took some 18 days. It is understood by all the parties that the only evidence before this tribunal is the evidence that was adduced in the arbitration hearing.

8 The investigation/mediation took nine days. The policy hearing took an additional two days plus written submissions. The arbitration hearing took 18 days, for a total of 29 days.

II. Facts

Original Dispute Notices

"Get Carter": Forklifts (November 5, 1999)

9 Laurie Edmundson, a set dresser and member of Local 891, was operating a forklift at a grain terminal in Vancouver. Her task was to set lamp standards in place for the purpose of dressing a set. She states she had driven a forklift for approximately 50 feet when a Teamster, Wylie Vlahovic, told her to step off the forklift. He told her that driving forklifts was Teamsters work.

10 Vlahovic had been dispatched as a cable truck driver. He stated in evidence that IATSE members were able to operate forklifts in the studio for the Construction Department but it was his view that they should not operate forklifts on locations. He phoned Mike Evans, the Teamster dispatcher, and asked that he dispatch a forklift operator to the location.

11 Larry Tardiff, a member of Teamsters 155, worked the forklift for the next few days. He states that his duties included moving set pieces into their final position for filming. He would be shown where to put these pieces by an IATSE member. Any set pieces that were put into final position by hand were done by the IATSE set decorators.

"Secret Agent Man": Golf Carts (June 20, 2000)

12 This production used the tunnel that runs from the Post Office to the Waterfront. It is approximately 3/4 of a mile in length. Kevin O'Leary, generator-operator/ electrician, and a member of IATSE 891, used a golf cart to lay cable in the tunnel. It was more efficient to use the golf cart than to lay the cable by hand. He loaded the golf cart with equipment and this left room for only one person. In addition, the Grip Department, Lighting/Electrical, Special Effects and the Set Decoration Department all used golf carts. These golf carts were provided by the Teamster Coordinator.

13 However, the following day the Teamsters changed their position stating that only Teamsters could operate golf carts. An initial compromise was reached which enabled IATSE 891 members to use golf carts for their own crews and equipment and the Teamsters would use golf carts to move

casts and ancillary supplies. However the Teamsters once again changed their position stating that IATSE 891 would not be provided with any golf carts. The Teamsters then dispatched five extra drivers to drive the golf carts.

14 On the third day of the production the Teamsters left the golf carts and returned to their other duties. IATSE 891 went back to operating the golf carts which included using them for the wrap-up of the production.

The Broader Jurisdictional Dispute

15 During the course of the investigation/mediation, and this arbitration hearing, the evidence of forklifts expanded to include Genie Lifts, Man Lifts, Condors, Z-Booms, Lighting Cranes, Chapman Cranes, Blue Chip forklifts, Hyster forklifts, Scissor Lifts, Skytracks and specialty ordered equipment (i.e. forklifts and Cranes).

16 Similarly, the evidence of golf carts expanded to include All Terrain Vehicles (ATV's), Gators, Snowmobiles, and Bobcats and Backhoes. Evidence was adduced of the way in which all of these various types of equipment are employed in the different departments of a film production: the Transportation Department, Construction Department, Paints Department, Greens Departments, Lighting/Electrical, Grip Department, Set Decorating Department and Special Effects Department. In addition evidence was heard about the practices on both locations and in the studio. Evidence was also adduced concerning the practices in pre-production, production and post- production. And finally, evidence was adduced over a large number of productions over a good number of years - in some cases back to the 1980's.

17 The evidence concerning the two original disputes, "Get Carter" and "Secret Agent", was expanded to include jurisdictional disputes arising on productions such as "24 Hours" (forklifts), "Snowqueen" (forklifts), "I Spy" (Snowmobiles), "Beggars and Choosers" (golf carts), "X vs. Sever" (forklifts) and "Stealing Sinatra" (Bobcats).

18 I do not propose to recount the evidence of each of the witnesses - some 32 in total. Instead, I will summarize the evidence of each of the parties.

Teamsters 155.

19 The following persons testified on behalf of the Teamsters: Rob Vreugde, Bruce Scott, Don Briscoe, Larry Tardiff, Mike Evans, Rob Steeves, Dave Kennedy, Wylie Vlahovic, Mike Murphy, Jack Vlahovic and Ross Pike.

20 In general, the Teamster witnesses stated that the operation of any mobile equipment fell within their jurisdiction. Several pointed to the Collective Agreement, and in particular B1.02, which states that "...all transportation equipment used in pre-production, production, post-production for any purpose whatsoever must be driven or operated by Teamsters...". All the

Teamster witnesses stated that they are vigilant in enforcing this jurisdiction.

21 Several transportation coordinators, (Vreugde, Steeves, Murphy) stated that their practice is to order all the equipment for a production. They, along with the Teamster captain, are also responsible for the coordination of the equipment on a production. When they order any equipment they state that they attempt to ensure that a Teamster is assigned to each piece of equipment. They do this to safeguard the Teamster's jurisdiction. As well, the Teamster dispatcher, Evans, will also on occasion, dispatch a Teamster to ensure that the Teamster's jurisdiction is preserved. It is important to note that both the Teamster coordinators and the dispatcher will do this even in circumstances where no such Teamster is requested.

22 Finally, the Teamster coordinators will ensure that Teamster Owner-Operators are the first to be dispatched when equipment that is owned by them is ordered.

23 Several Teamster witnesses (J. Vlahovic, Scott and Pike) stressed that there should be more Teamsters employed in the film industry. They stated that the crews in Canada are smaller than those in the United States; that the Teamster crews in British Columbia are in fact "thin". They state that increased Teamsters' crews will not adversely affect production in British Columbia because of the low dollar. Increasing the number of Teamsters would in fact prove more efficient since there would be a greater number of Teamsters available to move equipment.

24 As well, assigning the Teamsters exclusive jurisdiction would simply make better use of the existing pool of Teamsters already on the production. And in those exceptional circumstances, where a Teamster was not available, an IATSE member could be employed to operate a piece of equipment for that single occasion. However the Teamsters would want to understand why there was not a Teamster available for that period of time and ensure that it would not happen again.

25 A few Teamsters (Scott, Briscoe and Evans) stated that a "mixed or shared practice," in which more than one union operates the same piece of equipment, would not promote cooperation in the film industry. Indeed, they thought that it would prove detrimental, because cooperation under these circumstances, would be seen as an abdication of the Teamster's jurisdiction. Thus, this kind of cooperation would be resisted.

26 In regard to the loading and unloading of trucks more than one Teamster stated (Scott, Briscoe, Kennedy and Murphy) that they are insistent about the loading or unloading of any vehicles they drive. However, they admitted that some IATSE and Teamster members cooperate in loading and unloading, and that some Teamsters (day call drivers), may not participate at all in the loading or unloading of their vehicles.

27 A practice among some Teamsters was to deliver the equipment or materials to the location, unload the equipment or materials and place them where directed. This initial "first drop" may be to a temporary location, awaiting its use in the production. Some Teamsters testified that they would move a piece of equipment into its final position at which point IATSE would assume jurisdiction -

for example a crane. Once its use was completed a Teamster would then reload the equipment, and return it to its owner. The Teamsters state this is the case for pre-production, production and post-production in either the studio or at a location. In addition, some Teamsters state they have participated in the actual and final placing of set decorations, in assisting and creating special effects, in assisting in the moving of construction sets, in the laying of cable, in the operation of a lighting crane and in the movement of cameras.

28 It was the evidence of some Teamsters that they operate 95% of all golf carts, ATV's and Snowmobiles on a production. They employ these vehicles to move cast, crew and equipment. They state that they have the jurisdiction to drive ATV's, golf carts and Gators when these vehicles are used to create camera movement when a camera is hand held, rather than hard mounted. It was repeatedly emphasized by Teamster witnesses that they have exclusive jurisdiction over the transportation of all cast, over Hiab Cranes, camera or inset cars, and any specially ordered equipment (forklifts, Cranes etc.).

29 This jurisdiction over all mobile equipment operates either in the studio or on location and in pre-production, production and post-production. It operates in regard to all departments in a film production.

30 However, there is recognition that the Construction Department orders and uses its own forklift and that this may also include the Paint and Greens Department when it is operating the construction forklift. Also there is a recognition that once a piece of equipment is in place, and is operated for the purposes of filming, IATSE would normally take over jurisdiction of that equipment.

IATSE 891

31 Witnesses called on behalf of IATSE 891 are as follows: Rob Maier, Ken Anderson, Frank Haddad, Elmar Theissen, Rory Cutler, Beth Hanham, Joanne Quirk, Laurie Edmundson, Mike Vezina, Rick Stranan, Andrew Mulkani, Kevin O'Leary, Gavin Craig, John Sleep, Steve Davis.

32 In general, IATSE 891 witnesses stated that all mobile equipment, employed by any of its members in the performance of their duties, is a "tool of the trade". This is the case whether such equipment is used in pre-production, production and post-production and whether or not it is employed in the studio or on location.

33 The Construction Department has its own forklift and also orders any other equipment it requires. The Construction Department builds and tears down sets. They load and unload their own trucks. The Teamsters will assist in loading and unloading however the IATSE labourer will operate the forklift.

34 The Greens Department is responsible for all man made ground coverings: soil, rocks, sod, plants, etc. They employ Genie Lifts, Scissor Lifts, forklifts, Bobcats and Backhoes. The Greens

Department does not employ Teamsters. They do all their own loading and unloading.

35 The Paint Department most often uses forklifts and Scissor Lifts. The forklift would be employed to move barrels of paint and sets. The Scissor Lift is employed to assist in painting. They do all their own loading and unloading.

36 The Lighting/Electrical Department lays cable, thus bringing power to the set. They also rig the lighting. They use lighting Cranes, Z-Booms, Skytracks, etc. They also move their own equipment using golf carts, Gators and ATV's.

37 The Special Effects Department has its own budget. It is responsible for ordering its own equipment, hiring its own crew and the design and execution of all special effects. It uses every "imaginable" piece of equipment. They employ all types of vehicles. The Teamsters normally deliver this equipment to the site, but from that point forward the special effects department operates the equipment. The Teamster's drivers, connected to the Special Effects Department, spend 75% to 80% of their day doing delivery and pick-ups for the department. They do not operate special effects equipment or vehicles in the execution of any special effects. Special effects does their own loading and unloading. The special effects coordinator can assign Teamsters to assist IATSE members in any number of duties.

38 The Set Decoration Department is responsible for the interior and exterior dressing of all sets. They have responsibility for their own budget and procure sets within that budget. They are responsible for ensuring that the sets remain undamaged and must ensure their safekeeping. The Teamsters pick-up and deliver sets. The loading and unloading is most often done by IATSE members of the Set Decoration Department with the assistance from some Teamsters; however many Teamsters do not assist in loading or unloading. The forklift will be used not only for loading and unloading but also for the placement of heavier sets.

39 The Grip Department is responsible for the movement of cameras and the creation of lighting effects. They must understand the creative requirements of a particular shot and have a role in both the framing and in the content of a particular shot. They load and unload the grip and electrical trucks. They employ cranes for lighting and may use ATV's Snowmobiles or Gators for the movement of their equipment. IATSE stated that when a vehicle is employed to create camera movements, and the camera equipment is either hard mounted or hand held, that vehicle falls within its jurisdiction.

40 In general IATSE 891 states that the Teamsters role in regard to mobile equipment ends at the edge of the set. From that point forward the jurisdiction to operate the equipment, including the placing of it into position, and the operation of it during filming, falls solely within IATSE 891's jurisdiction.

41 Finally, in those circumstances where Teamsters are operating equipment on set, they state that it is under the direction of IATSE.

IATSE 669

42 The witnesses for 669 were: Gerry Rutherford and Jan Kiesser.

43 IATSE 669 states that the operation of a camera is ultimately under the direction of the Director of Photography ("DOP") who is responsible for the visual presentation of a movie. The DOP, in conjunction with others (i.e. key grip), will decide how a particular shot will be done. This includes both the assignment of people and the decision as to what equipment will be used. These decisions are part of the creative decision-making process of producing a film and rests solely with the DOP. It is not something which should be constrained with rigid jurisdictional practices.

44 The camera operators are responsible for the framing and content of a particular shot and their knowledge and experience is essential when it comes to the movement of a camera. If this camera is mounted or hand held on mobile equipment the experience and knowledge of IATSE 669 and 891 members is essential.

45 IATSE 669 opposes the assignment of Teamsters to all pieces of equipment. To do so would be to increase the size of Teamster crews, resulting in this jurisdiction being less competitive. Finally, they state that both strict jurisdictional lines, and repeated jurisdictional disputes, will harm the film industry in this Province.

The Employer

46 The Employer, in general, opposes the idea of any Union having exclusive jurisdiction over any piece of equipment. The Employer's witnesses stated that IATSE regularly operates mobile equipment in construction, set decoration, special effects, electrical/lighting and camera. IATSE also regularly loads and unloads equipment and materials.

47 Further, the rule in regard to the movement of equipment on golf carts, ATV's and Gators, in some parts of the U.S., has been that whatever amount of equipment can be placed on a push cart, a similar amount can be placed on a golf cart, and its operation is not limited to the Teamsters.

48 The Employer states that the factors that have made British Columbia attractive over the past number of years has been the 63[cents] dollar, the expertise of crews, the various locations, the time zone and our labour stability. However the 63[cents] dollar is present in all of Canada and productions are beginning to move to other provinces; for example Ontario and the Prairies. These jurisdictions also have favourable tax policies. In addition, there is growing opposition in the U.S. to what is termed "runaway productions".

49 Finally, labour stability is a significant factor in deciding where to shoot a film. The Council of Film Unions has provided this stability. However, recent jurisdictional disputes have clearly disrupted this labour stability.

III. Positions of the Parties

50 The arguments of the parties were extensive. I will summarize those arguments.

Teamsters 155

51 The Teamsters argue that their certifications, along with the recognition, scope and classification clauses of the Collective Agreement (particularly B1.02), assign them the exclusive jurisdiction over all mobile equipment for any purpose. They argue that although exclusivity to operate all mobile equipment may not have been demonstrated, that is not the test. All that is required is to demonstrate what has been the most dominant practice. Exclusivity in practice is impossible to show and in any case is an undesirable test. Such a rule would only further jurisdictional disputes.

52 However, exclusivity in the assignment of jurisdiction, the Teamsters argue, is necessary for good labour relations. "Bright line" jurisdictional rulings will provide both clarity and stability. Further, exclusivity is consistent with the past awards by Umpire Longpre in the Security and Divers Classifications. A mixed practice will do the opposite. It will not foster cooperation because it will result in increased disputes about the assignment of work.

53 In addition to clear jurisdictional lines the Teamsters argue that the Umpire should recognize that the core work of the Teamsters is the operation of all mobile equipment for any purpose whatsoever. Such a ruling would ensure the integrity of the Teamsters bargaining unit.

54 The Teamsters state that the current model of cooperation cannot continue if it results in IATSE extending itself into the Teamster's jurisdiction. They state that there are insufficient Teamsters to cover all equipment and as a result IATSE runs equipment that falls within the exclusive jurisdiction of the Teamsters. This they argue slowly erodes the integrity of their bargaining unit.

55 Conversely, the Teamsters argue that during production there are a pool of Teamsters available to drive equipment and that proper coordination through radio communication could meet most of the needs of a production during filming.

56 In addition, the Teamsters argue that the decisions of Umpire Longpre provide not only a model for exclusivity but also that the Golf Cart, ATV and Gator Award (September 29, 1998) provides a substantive framework for the jurisdictional dispute in forklifts: that is, the movement of all personnel and equipment from stores to shooting site, from shooting site to shooting site, and within a shooting site, that employed a forklift, would be performed by Teamsters. The inefficiencies that may arise, if any, can be dealt with once a Teamster Captain confirms that a Teamster is not available to operate a forklift. In that circumstance, IATSE would be entitled to operate the equipment.

57 In regard to the issue of the movement of cameras on mobile equipment, the Teamsters state that the Longpre Award makes a distinction between mounted cameras which fall within IATSE jurisdiction, and hand held cameras, which fall within the Teamsters jurisdiction.

58 The Teamsters further argue that they have the jurisdiction to do all loading and unloading; that they have the exclusive jurisdiction over Hiab Cranes, the driving of all cast members, and specialty leased vehicles. Finally, the Teamsters recognize that the Construction Department, which may include the Paint and Greens Department, operate their own forklift.

IATSE 891

59 IATSE 891 reviewed all the equipment used in each department. It stated that this equipment is employed as a tool of trade in each of the departments; and that when it is operated as a tool of trade it is within the exclusive jurisdiction of IATSE. In some cases the Teamsters will assist in the operation of this mobile equipment but that is the decision of the IATSE department heads.

60 IATSE 891 also argues, that any equipment which is used to perform what they term "ancillary duties", for example loading or unloading, or the moving of materials around a studio or a location, or the moving of equipment into position, this work has in the past, been a shared duty, and therefore should not be assigned exclusively to the Teamsters. Indeed, in some cases this shared jurisdiction has been under IATSE's direction. IATSE 891 acknowledges that Teamsters normally drive cast, operate camera cars, Hiab Cranes and specialty-leased equipment.

61 In general however, IATSE 891 states that there is an absence of evidence demonstrating that the Teamsters have exclusive jurisdiction over all mobile equipment. Further, to award the Teamster's exclusive jurisdiction would be to create inefficiencies and to increase the cost of production in this province. This would inevitably result in the B.C. Film Industry becoming less competitive.

62 When it comes to the operation of mobile equipment, IATSE states that there is no distinction between a location and the studio and no distinction between pre-production, production and post-production.

IATSE 669

63 The drawing of jurisdictional lines, argues IATSE 669, must not compromise the creative integrity of a film. The Director of Photography, along with the key grip, and others, must be able to choose the most skilled and efficient employees regardless of which union they belong to. This is in regard to any mobile equipment, especially if it is involved in the process of actual filming.

64 IATSE 669 states that a trade union is certified to employees, not to equipment. In addition, jurisdiction cannot be used as minimum staffing guarantee.

65 Further, what is crucial when assigning an employee to a particular piece of equipment is the purpose for which that equipment is being used. If that purpose is in furtherance of IATSE's craft, then that equipment is a tool of the trade and falls within the jurisdiction of IATSE.

66 Finally, the Teamsters claim of exclusive jurisdiction over all mobile equipment would lead to increased numbers of Teamster employees' on a set. This would leave the B.C. film industry in an uncompetitive position.

The Employer

67 The Employer argues that all mobile equipment should be categorized as a tool of the trade; and that an exclusive jurisdiction model would result in added inefficiencies and costs. In the past year film production in British Columbia has begun to fall; especially in regard to episodic T.V. and Movies-of-the-Week. Provinces in other parts of Canada are now more competitive. Other jurisdictions such as New Zealand, Australia, Prague, and the Carolinas are aggressively competing for film production; and there is a strong reaction in California against what is termed "runaway productions".

68 The Employer states that the jurisdictional disputes are beginning to hurt the industry in British Columbia. Labour stability was essential in attracting productions in this province and the Council of Trade Unions provided that stability. At the inception of the Council production in British Columbia in 1995 was approximately 432 million dollars and by 2000 had grown to 1.1 billion dollars. Over this period of time the 63[cents] dollar has remained fairly constant. What has attracted work has been the stability of this new collective bargaining scheme. The resolution of jurisdictional disputes was an important ingredient of that stability.

IV. Analysis and Conclusion

69 The Labour Relations Board in British Columbia Yukon Council of Film Unions, BCLRB No. B448/95, upheld on appeal, BCLRB No. 337/96, constituted a Council of Trade Unions in the film industry under Section 41 of the Labour Relations Code. The constitution of this Bargaining Council is under the jurisdiction of the Labour Relations Board and must be interpreted consistent with the Board's policies and practices. The purpose of the Bargaining Council is to secure and maintain industrial peace including the settlement of jurisdictional disputes.

70 The Labour Board also stipulated that an independent tribunal was to be established to adjudicate jurisdictional disputes. This is now the role of the jurisdictional Umpire. The Umpire is an arbitrator under the Labour Relations Code and the decisions of the Umpire are reviewable by the B.C. Labour Relations Board.

71 The purpose of the jurisdictional resolution agreement (JRA) is to resolve jurisdictional disputes expeditiously. Article 2 of the JRA sets out an investigation/mediation process that must be completed within 2 days. Article 3 establishes the adjudication procedure and sets out the

requirement of a fair hearing: "...provide all parties involved within an opportunity to present their evidence."

72 Article 4.1 sets out the specific criteria that an Umpire must consider in making a jurisdictional assignment. It reads as follows:

4.1

In making a decision assignments and distribution of work, the Umpire must:

- (a) consider the practice and experience of the British Columbia film industry;
- (b) apply previous jurisdictional decisions involving the parties;
- (c) have regard to the real substance of the matters in dispute and not be bound by a strict legal interpretation of the issue in dispute;
- (d) have regard to agreements between similarly situated trade unions;
- (e) have regard to the film industry's need for efficiency and its capacity to provide services at reasonable cost.

73 In the policy decision referred to previously *Teamsters v. IATSE 891 et al.*, September 24, 2001, this Umpire dealt with the interpretation of the above Article 4.1. That award concluded that the following three factors were to be given significant weight in the determination of jurisdictional disputes: (a) consider the practice and experience of the British Columbia film industry; (c) have regard to the real substance of the matter in dispute and not be bound by a strict legal interpretation of the issue in dispute; and (e) have regard to the film industry's need for efficiency and its capacity to provide services at reasonable cost.

74 First, the issue of past practice. The past practice evidence of all the parties consists primarily of individuals, who, while working on a particular production, operated a specific piece of equipment. Even if that use was consistent it was most often periodic or intermittent. For example, a forklift would not operate continuously for eight hours but rather be used periodically to load or unload a vehicle, or to move material. Other equipment, such as a crane, would be used several times a day, or used continuously for several days, and have little or no use after that.

75 I have no reason to disbelieve any witness who has stated that they operated a particular piece of equipment on a specific production. However, that is not the primary issue. As stated in the policy decision, past practice evidence is given its greatest weight when that practice, either expressly or implicitly, has been agreed to by all parties.

76 Further, past practice in the film industry must be seen in the context of a multi-employer environment. This environment invariably leads to a variation of practices. This makes the exclusivity of practice a practical impossibility. Thus, if the onus placed on a party, was to

demonstrate exclusivity, this would likely increase jurisdictional conflicts as each side would be compelled to dispute any and all work assignments. This would convert the exercise of jurisdiction from that of a "shield" to that of a "sword". I therefore agree with the Teamsters submission that the onus in regard to past practice is to only demonstrate a "predominant" practice and not an "exclusive" practice.

77 Therefore, in regard to the evidence of past practice I have given the greatest weight to that evidence that establishes a predominant practice that has been uncontested on most, if not all productions.

78 The second factor that is given greater weight is the direction to the Umpire to have regard to the real substance of the matters in dispute and not be bound by strict legal interpretations. The Teamsters argue that Article 4.2 of JRA, the Teamster's certifications, and certain provisions of the Collective Agreement (the scope, recognition and classification clauses) establish their jurisdictional claim over all transportation equipment for any purpose. I have considered this contractual language and it has formed part of my conclusions; for example, if the Teamsters certification or collective agreement contained no reference to the jurisdictional issues in dispute that would have considerable weight. However, the fact that the Teamsters do include this contested equipment in their certification or collective agreement is not determinative.

79 The real issue in dispute is not the jurisdiction claimed by a Union based upon the extent to which that Union has been able to negotiate jurisdictional language in its collective agreement, or to successfully assert in any specific dispute, but rather the actual past experience that has either been expressly or implicitly acknowledged by all the parties, and the purpose for which the equipment has been employed. All jurisdictional language will be read in this context.

80 Fourth, bright jurisdictional lines are considered important by all parties. However, they are not an end in themselves. Employees, not equipment, as IATSE 669 argues is what is certified. Teamwork and cooperation are crucial to the success of any film production. Safety, skill and efficiency are criteria upon which any successful film production rests. What is not desirable is a process which assigns each and every task of particular job, or piece of equipment, to a different trade union.

81 The final significant criteria is the film industry's need for efficiency and its capacity to provide services at a reasonable cost. This arose from the B.C. Labour Relations Board's concern with "...the Province's ability to compete with other jurisdictions throughout North America." The importance of the Bargaining Council was to restructure collective bargaining. The Council's collective agreements are, of course, key to the competitiveness of the film industry in this Province. The actual cost experience of producing a film determines whether a producer is prepared to return to British Columbia. Labour stability is one of those crucial factors.

82 The arguments of the Employer and both IATSE locals is that jurisdictional disputes harm the competitiveness of the industry. Indeed, that was the very rationale for establishing the JRA.

Further, they argue, to acquiesce to the Teamsters jurisdictional demands would be to expand crews, increase costs and make this jurisdiction less competitive.

83 The Teamsters' coordinators testified that they attempt to staff every piece of equipment they order with Teamster members. They do so they state to preserve the Teamsters jurisdiction. They also believe that the Teamsters' crews are "thin". They believe that these crews ought to be increased in size. This would provide more work for Teamsters and also preserve their jurisdiction. The operation of mobile equipment they state is at the core of their jurisdiction. This goes back to the view that it is within their exclusive jurisdiction to operate all equipment for any purpose.

84 First, I accept IATSE 669's argument that Union's are not certified to a particular piece of equipment. Second, it is crucial to understand the purpose for which a piece of equipment is being used. A computer may be used for one purpose by an office assistant, for another purpose by a person doing research, and yet a third purpose by a member of management. Each person operates a computer in furtherance of his or her particular responsibilities and duties.

85 It is clear that the overriding purpose of the Teamsters in film production is the transportation of equipment, material, cast and crew. To accede to the Teamsters claim for jurisdiction in this case is clearly inconsistent with the evidence of past practice and Article 4.1 as a whole. It would simply result in what some Teamsters state is their goal - expanded crews. And this may result in greater inefficient and uneconomic practices - the duplication of work, excessive staffing, and increased costs. This would lessen British Columbia's competitiveness.

86 In view of the parties' request for a clear jurisdictional lines I have decided to be as specific as is desirable. I therefore conclude the following:

- A. Forklifts (including Man Lifts, Genie Lifts, Condors, Z-Booms, Lighting Cranes, Chapman Cranes, Blue Chip forklifts, Scissor Lifts and Skytracks)
 - 1. In general, I conclude that where the use of this equipment is in furtherance of specific duties that are at the core of a particular craft, they are a tool of the trade.
 - 2. In regard to the specific IATSE departments I conclude the following:
 - (a) Construction

It is not contested that the Construction Department operates its own forklift.

- (b) Paints and Greens Department

It is acknowledged that these departments often use the Construction forklift. However, these departments also employ other forklifts i.e. Scissor Lifts, Bobcats and Backhoes. When this equipment is used to paint sets or to lay ground coverings they are a tool of the trade.

(c) Lighting/Electrical Department

This Department provides power to the set and rigs Lighting Cranes. It is uncontested that the operation of Lighting Cranes, once rigged, falls within IATSE's jurisdiction.

(d) Special Effects Department

This Department uses many types of forklifts for the creation of special effects. When they do so they are a tool of the trade.

(e) Set Decoration Department

A forklift is employed when placing sets in their final position. When they do so they are a tool of the trade. Cranes (i.e. Scissor Lift) are also used for the dressing of the set. When they do so they are a tool of the trade.

(f) Grip Department

This Department is responsible for camera movement. Any forklift or crane used for that purpose is a tool of the trade.

3. It is largely uncontested that Teamsters have jurisdiction over Hiab Cranes and any special order equipment (i.e. cranes, forklifts).
4. Loading and Unloading.

This has often been a mixed practice. IATSE has termed it an "ancillary" duty. However, as stated, the primary purpose of the Teamsters is the

transportation of goods and loading and unloading generally falls within this purpose. However, from the evidence the following was clear: first, some Teamsters insist upon loading and unloading their own trucks; second, other Teamsters do not load or unload at all; third, Teamsters and IATSE on many occasions cooperate in loading and unloading; and, fourth, some IATSE departments do their own loading and unloading.

87 It is the Teamsters jurisdiction to deliver goods to a location. If they have loaded that material or equipment, and are responsible for that load, it is their jurisdiction to unload. Further, they are entitled to place the equipment into what might be termed its "first drop" (a term borrowed from the construction industry); that is, the material that they have delivered to the set will be unloaded by them and they are entitled to move that material to where it will sit until it is used. For example a crane may be dropped at a site where it will be rigged. The Teamster is entitled to unload the crane and place it where it will be rigged. However, once the crane is rigged with lighting and is to be moved, it is within the jurisdiction of IATSE.

88 Further, movement of cranes within a set for the purpose of filming will clearly fall within IATSE's jurisdiction. Movement of equipment from storage to shooting site, from shooting site to shooting site is within the Teamsters jurisdiction. Positioning of equipment for a first drop is within the Teamsters jurisdiction. Positioning of equipment for the purpose of filming is in IATSE's jurisdiction.

89 Certain equipment is loaded or unloaded by specific crews who are knowledgeable about the equipment. For example the camera truck. If the camera truck had been loaded by certain individuals then that individual is entitled to unload that truck or retrieve any goods from that truck during filming. This has been the general practice to date and should continue.

B. Golf Carts, ATV's, Snowmobiles and Gators.

1. This equipment mostly raises the issue of who moves equipment, cast, and crew within a set; most often at a location. If something or someone is moved simply for the purpose of transporting them then that generally falls within the Teamsters jurisdiction; for example, the transportation of the cast. However, the transportation of equipment and material on site does arise as an issue. A clear example has been the various IATSE department's use of golf carts to help them transport their equipment.

90 When IATSE transports their equipment with push carts the Teamsters claim no jurisdiction. However, if they transport that same equipment using a golf cart the Teamsters state that that is their jurisdiction. However, when work is performed that clearly falls within a specific union's jurisdiction, for example, the movement of equipment by push carts, and technological change results in that same work being done using different equipment, this does not usually result in a union losing that work solely based on the change of equipment. Lou Shore, on behalf of the

Employer, stated that a rule used in some U.S. jurisdictions, is that the amount of equipment or material equivalent to what can be placed on a push cart, can be placed on a golf cart, and be driven by any of the respective crafts. This of course preserves the Teamsters original jurisdiction of transporting goods on a set that begins with the pick-up truck, and includes all larger size vehicles. I adopt this U.S. rule.

2. Cameras (Mounted or Hand-held)

91 I conclude that IATSE locals have the jurisdiction to drive vehicles which are being used for the purpose of filming. (The obvious exception is camera or inset cars.) There is no distinction between hand-held cameras or cameras that are mounted. The expertise of IATSE is equally compelling in both cases. Therefore both fall within the jurisdiction of IATSE.

3. Longpre Award

92 The Longpre Award was made on a without prejudice basis. However it was agreed to by the unions. The Employer was not a party to this agreement. I confirm the Longpre Award wherever it is not in conflict with this Award. Where it is in conflict this Award prevails.

4. Ordering of Equipment

93 Who is entitled to order equipment is a decision of management. It is not a jurisdictional issue.

5. Location/Studio

94 All parties agree and I conclude that in making a jurisdictional assignment no distinction should be made between what takes place in the studio and what happens on location.

6. Pre-Production, Production and Post-Production

95 All parties agree and I conclude that in making a jurisdictional assignment no distinction should be made between what takes place in pre-production, production and post-production.

7. Mixed Practice/Cooperation

96 Many Teamsters and IATSE have traditionally cooperated. They do so for example in the loading and unloading of trucks. What is most important is that this cooperation be preserved and encouraged. Therefore, as a matter of jurisdictional policy any such cooperation or mixed practice will not prejudice a jurisdictional claim. In other words, where parties can show that the shared work was done cooperatively no adverse inference will be drawn against either party in regard to their jurisdictional claims.

C. Management Decision-Making

97 If there is a jurisdictional dispute as to who performs a particular piece of work management of course makes the decision. If there is a disagreement over the decision then the matter is grieved under the Jurisdictional Resolution Agreement. A make-whole remedy for any improper assignment of jurisdiction is monetary (wages). Thus the rule that the union works now and grieves later is applicable to all jurisdictional disputes. Any work stoppage resulting from a jurisdictional dispute is subject to discipline as is any other misconduct.

D. "Get Carter"

98 Laurie Edmundson was unloading a truck with a forklift and placing at least some sets into their final position for filming. The Teamster member, Wylie Vlahovic, admitted that he unloaded the set decorations and placed them in final position for filming. I find that this work was within the jurisdiction of IATSE. Had the unloading of the truck been simply a first drop, then that would have been the Teamsters jurisdiction.

E. "Secret Agent Man"

99 Golf carts were used for the purpose of laying cable. Laying cable is within the exclusive jurisdiction of IATSE 891. As well, other equipment loaded on the golf cart was roughly equivalent to that of a push cart. Therefore the "push cart" rule applies. I find that the golf carts in this instance were within IATSE's jurisdiction to operate.

F. Natural Justice

100 This hearing was clearly an adjudication under Article 3 of the Jurisdictional Resolution Agreement. Therefore the fundamental principles of natural justice apply and each party was entitled to "present their evidence". This is what Article 3 of the JRA requires.

101 The Dispute Notices in "Secret Agent Man" and "Get Carter" are dismissed.

qp/e/qlmmm