

Cited as:
**Teamsters Local Union 115 and International Alliance of
Theatrical Stage Employees, Local 891**

**IN THE MATTER OF An Arbitration Under The Labour Relations
Code
Between
Teamsters Local Union 115 (the "Teamsters"), and
International Alliance of Theatrical Stage Employees, Local
891 ("I.A.T.S.E")**

[1998] B.C.C.A.A.A. No. 394

Award no. A-199/98

British Columbia
Collective Agreement Arbitration

R.S. Longpre, Umpire

Award: June 8, 1998.

(13 pp.)

Appearances:

Linda Dennis, for the Teamsters.

J. Miriam Gropper Q.C., for I.A.T.S.E.

AWARD

I. INTRODUCTION

1 This decision is a continuation of a dispute between the Teamsters and I.A.T.S.E over the performance of security work within the British Columbian and Yukon Council of Film Unions (the

"Council"). Security work in the film industry is performed in four areas: pre-production and post production, during the production of the film and off-site security work relating to the film's production. The dispute focuses on whether this work should be divided between I.A.T.S.E. and the Teamsters.

2 In 1995, the Labour Relations Board established an Inquiry into the make up of the unions within the film industry: see *British Columbia and Yukon Council of Film Unions et. al.*, BCLRB No. B448/95 (upheld on appeal BCLRB No. B337/96). On a production where the work performed by Council members will exceed four million dollars, referred to as the "exclusive" area of the film industry, producers must be signatory to the Council's Master collective agreement. Where the work performed by Council members totals less than four million dollars, the "non-exclusive" area, the Council does not have sole jurisdiction over the work to be performed.

3 An issue arose concerning jurisdiction over security work within the Council. In my decision, dated October 28, 1997, I set out the issue before me as follows:

.....whether jurisdiction over security work within the Council should continue to be shared by members of I.A.T.S.E and the Teamsters. If so, on what terms should the work be shared. If not, which Union should have jurisdiction over the work. (p. 2)

The October 28 decision concluded that the "jurisdiction to perform security work within the terms of the Council's collective agreement should be limited to one of the Unions": either the Teamsters or I.A.T.S.E. A subsequent decision, dated January 9, 1998, provided a method to determine which Union would have sole jurisdiction over this type of work. The Teamsters succeeded.

4 The issue before me now is whether the Teamsters' sole jurisdiction over security work applies to Council members working under collective agreements in both the exclusive and the non-exclusive areas. I.A.T.S.E. concedes the former but argues that jurisdiction over security work in the non-exclusive area should be shared between I.A.T.S.E. and the Teamsters as set out in the Jurisdictional Agreement. It was agreed the matter would proceed through written submissions.

II

PRELIMINARY ISSUE

5 At an informal meeting with the parties on April 6, 1998, a question was raised whether the Umpire had the authority to determine work jurisdiction over work performed by Council members in the non-exclusive area. In their subsequent written submission, the Teamsters advanced several reasons why the Umpire had jurisdiction in the film industry generally. They referred to the Inquiry's decision, the referral of this dispute to the Umpire by Mr. Don Cott, Assistant Deputy Minister, I.A.T.S.E.'s early position on the Umpire's jurisdiction and the American Producers' submission prior to the original decision: all refer to the "film industry umpire".

6 For the purposes of this dispute, I.A.T.S.E agreed to my jurisdiction.

III. ARGUMENT

7 I.A.T.S.E filed their first submission on May 8, 1998. They started with a key proposition: the October 28 decision did not automatically apply within the non-exclusive area. I.A.T.S.E. noted that in practice, however, the original decision was applied in the non-exclusive area and has had a very negative impact on I.A.T.S.E members' ability to perform security work in the film industry. Work previously performed by I.A.T.S.E members, within the non-exclusive area, was no longer available to them. I.A.T.S.E argued that the Jurisdictional Agreement, (also referred to as the "Cott Agreement") signed by the parties on October 29, 1996, should apply in the non-exclusive area of work. Their submission reads:

This union's position is that the Umpire's previous decision is applicable to the work done under the Master Collective Agreement to which the Council is a party which falls within the exclusive jurisdiction of the Council. This union accepts, albeit reluctantly, that the decision essentially grants the whole of the security work to the Teamsters within that area. We say that there is a place for I.A.T.S.E. within the security and that the Umpire, having an opportunity to ensure that that place remains, ought to do so in the non-exclusive area. We had, in our submission in respect of this matter earlier, asserted that the parties had addressed their minds to a concurrent jurisdiction and had made a specific agreement which was entered into by the parties in October of 1996 (the "Jurisdictional Agreement"). We urged you at the earlier proceedings to compel the parties to it to abide by the agreement, and if there was a serious commitment to do so that the agreement was viable. Our position was that the Teamsters had taken an aggressive approach to that jurisdictional agreement (which is a euphemistic description of the Teamsters' conduct) and in doing so had not only breached the terms of that agreement, but effectively ousted I.A.T.S.E. from the jurisdiction which it had enjoyed and which it intended to continue to enjoy under that Jurisdictional Agreement. (I have changed the "Cott Agreement" to "Jurisdictional Agreement" to be consistent with the decisions.)

I.A.T.S.E argued that a sincere commitment by both Unions would ensure the Teamsters would not continue to breach the Jurisdictional Agreement:

It cannot be said that granting the Teamsters the jurisdiction over security in the whole of the industry is the only way to secure industrial stability. If that is the case, a Council of Trade Unions is of no benefit. The answer to industrial stability would be one union. This union states that the Council approach has demonstrated that the three members of it can act cooperatively, provided each is prepared to respect the jurisdictional boundaries, and abide by the agreements

which have been made, presumably in good faith, to address those areas where jurisdiction may be somewhat shared. Indeed, this union submits that requiring the unions to cooperate in shared jurisdiction is a demonstration of the cooperation which the Council requires. On the other hand, rewarding one union for an aggressive and non-cooperative approach to that jurisdiction is undermining the cooperation which is required. Furthermore, while this union considers industrial stability to be an important consideration, it is not the only consideration. This union is here to represent its members, and ensure that they have the opportunities for work which they enjoyed before the Council was created by the Board. It is not in the interests of its members to have them become casualties of the creation of the Council.

I.A.T.S.E concluded by noting that sole jurisdiction over security work in the non-exclusive area was unnecessary. It was not "the only possible method of resolving the jurisdictional dispute". In these circumstances, security work should not be taken away from I.A.T.S.E members: "In essence they are unemployed."

8 The Teamsters' submission, dated May 7, 1998 set out "five options" to the dispute:

1. the decision be applicable to the whole of the industry in respect of productions unionized to both Teamsters 155 and IATSE 891.
2. the decision be applicable to all work done under the auspices of the Council of Film Unions regardless of the applicable collective agreement
3. the decision be applicable to all work done under the Master Collective Agreement to which the council is party
4. the decision be applicable to all work done under the Master Collective Agreement to which the council is party which falls within the exclusive jurisdiction of the council
5. the decision be applicable to only work done under the Master Collective Agreement within the exclusive jurisdiction in respect of which there are no certifications.

The Teamsters advocated the first option, or alternatively, the second option.

9 The Teamsters reviewed passages from the Inquiry's decision and summarized them as follows:

These passages indicate that instability was the most significant concern which the panel sought to address in the creation of the council - instability in the multiplicity of bargaining and in the jurisdictional skirmishes between unions, including the actors, but also between other unions representing the same work jurisdictions, such as the Teamsters and ACFC. The purpose of the council was

to rationalize bargaining and to promote stability in the industry which was suffering from multiple collective bargaining and the ongoing dispute between two unions representing actors.

As long as there is an advantage to these disputing unions to negotiate collective agreements outside of the Council in order to one-up each other on the security jurisdiction, the purposes for which the council was created will not be fully achieved. Particularly, the Board's indication of their desire that a supplemental master be negotiated for projects outside of the exclusive jurisdiction will collapse if a limited approach is taken to the Umpire's jurisdiction in resolving jurisdictional disputes between unions in this industry.

The Teamsters went on to argue that the Board created a film industry umpire and not just a Council umpire. Based on these principles, the Teamsters addressed each of the five options.

10 The Teamsters argued that an Umpire's decision should be applicable to the entire industry. The Teamsters argued that the purpose of the Council will be best served giving the Umpire complete jurisdiction over film industry disputes: stability will be best achieved. Attempts by a party trying to avoid the Council should not be permitted.

11 As an alternative, the Teamsters argued that an Umpire's decision should have Council wide application. The Teamsters' submission reads:

The contemplation of the Council's Unions operating as a single trade union with a single collective agreement will be defeated if there is a benefit to be gained by avoiding it, such benefit being an attempt to wrestle security jurisdiction away from each other. If by avoiding the Council, or some lesser applicability, one of the Union can seek to be the first out of the gate with a collective agreement or certification, the benefit of expansion of rationalized bargaining will be defeated. Such a result would erode what the Board sought to accomplish in the creation of the council in the first place, and would certainly erode the Board's hope that Master Collective Agreements even outside of the exclusive jurisdiction would become the norm. Such a result is to be avoided in the Teamsters submission.

The Teamsters went on to quote passages from my October 28 decision. They referred to the need for and the general acceptance of the Umpire. The Teamsters' submission concluded:

Council wide application is the smallest boundary of application which serves the purposes and objectives the Umpire stated in these quoted passages. It is also the smallest boundary of application that still ensures the objectives of the Board. If the Umpire does not adopt industry wide application, Teamsters say at least Council wide application should be adopted.

12 The Teamsters then argued that the Teamsters' sole jurisdiction can not be tied only to the Master collective agreement: "Given that there are few, if any, projects which are signed up to Letters of Adherence [to the Master] without any change to the Master, this parameter for application is itself fraught with potential for further dispute."

13 The Teamsters also addressed whether its sole jurisdiction of security work should be tied to the Council's exclusive area of jurisdiction. They argued that this option "would not foster the necessary relationship between the unions as members of the Council or between Council and employers."

14 Finally, the Teamsters argued that non-exclusive jurisdiction over security work can not be tied to the certification. They pointed out the confusions and difficulties that would follow.

15 In reply, I.A.T.S.E. reviewed the circumstances of one particular member, Mr. Mike Zosiuk. They explained that my original decision is being applied to work in the non-exclusive area. They explained the negative impact the original decision had on his employment in the non-exclusive area. I.A.T.S.E.'s submission concluded that the effect of my earlier decision on it members was unemployment."

16 In reply, the Teamsters submitted that the employers never applied the Jurisdictional Agreement: it was never in place within the film industry. The Teamsters went on and reviewed examples of security work that I.A.T.S.E. members performed: security work that Teamsters members would have done under the Jurisdictional Agreement. They also noted that I.A.T.S.E. members had not elected to move to the Teamsters' seniority list: "Any work they [I.A.T.S.E.'s members] may not have access to is a result of their own conduct...."

IV

DECISION

17 It is useful to start with a brief review of the October 28 decision and why I concluded sole jurisdiction over security work was appropriate. There was general agreement that cooperation between the Unions in the Council was essential. It existed in most circumstances: it had not existed with respect to security work. My October 28 decision reads:

A basic premise of such a Council structure is cooperation of individual unions in a single bargaining unit. Such cooperation appears to exist in most circumstances between the Unions. Cooperation does not exist in this one area [security work]. A change towards stability, consistency and clarity in which Union's members will perform security work would be more consistent with the purpose of the Council. (p. 13)

18 The parties also agreed that the Jurisdictional Agreement had not succeeded. It was a mediated

compromise over security work. Without the cooperation of both parties and employers, it did not achieve the necessary result. Because of that, Cott referred the matter to the Umpire. I also noted that as a compromise agreement, the Jurisdictional Agreement did not attempt to examine whether one Union's representation of security workers better met the purpose of the Council.

19 I also found that there was considerable discretion in the Jurisdictional Agreement. Significant changes in the industry, which everyone agreed would continue, made the Jurisdictional Agreement less clear and more likely to be applied inconsistently. Equally important, expedited resolution of disputes arising from the Jurisdictional Agreement would nonetheless take some period of time: delay would have a negative impact on the specific film and the film industry generally.

20 In the October 28 decision, I concluded that "past collective agreements, past practice and the Jurisdictional Agreement itself did not support the continued division of security work within the Council" (p.15). Accepting at this time I.A.T.S.E.'s argument that that conclusion applied only to security work in the exclusive area of film production, the issue is now: what distinctions are there between the exclusive and non-exclusive areas of work that justify a different conclusion to the non-exclusive area?

21 I begin with noting that I see no difference in whether Council members are working in the exclusive or the non-exclusive areas. I see no difference in whether Council members are working under the Master collective agreement, an amended Master, or under a supplemental agreement. The needs of the employers, the demand for security workers and the work to be done remain virtually the same in exclusive and non-exclusive areas.

22 I.A.T.S.E. argued that there is "room" for members of both Unions to work in the non-exclusive area. Certainly there appears to be much work. The availability of security work, however, is not the issue. The issue is whether the purpose of the Council is advanced by dividing security work between two Unions. An employer often wants the flexibility of having employees with the ability to perform the same kind of work: in this case, that would mean all members of both Unions performing the entire range of security work. The Jurisdictional Agreement, however, did just the opposite. It limited the type of security work a Teamsters member or an I.A.T.S.E. member could perform on a site. These limitations were not supported by the producers.

23 I.A.T.S.E. argued that the Jurisdictional Agreement should be given a chance. On June 2, 1997, Cott wrote to the parties setting out the scope of the Jurisdictional Agreement:

I have reviewed my file on the jurisdictional agreement including the jurisprudence around the Security issue provided by the parties and find that at no time was it advanced by either party the proposition that the agreement would apply only to productions done under the master agreement. Therefore it is my finding that the jurisdictional agreement applies to all productions to which the parties are signatory in British Columbia.

24 The Jurisdictional Agreement, by agreement of the Teamsters and I.A.T.S.E., was intended to bring a consistent division of jurisdiction over security work to both the exclusive and non-exclusive areas: indeed, to all film productions. It was meant to be a solution to all security work disputes. I.A.T.S.E. now seeks to have a different division of work between the exclusive and non-exclusive areas. A division that in many situations may be difficult to make. The application of the Jurisdictional Agreement in this manner was never intended.

25 I.A.T.S.E. argued that in the past the Teamsters took an "aggressive approach," inconsistent with the Jurisdictional Agreement, to secure the majority of security work. The Teamsters refute that claim. Regardless, the issue of whether sole jurisdiction in both areas is appropriate turns largely on the purpose of the Council. In any event, it was the level of participation of both Unions' members that resulted in the Teamsters being given sole jurisdiction in at least the exclusive area. That same level of participation currently exists in the non-exclusive area.

26 I.A.T.S.E. referred to a significant loss of work for its members as a result of the October 28 decision. I.A.T.S.E. members who had performed security work had the opportunity to be merged onto the Teamsters' existing seniority lists. (Later in the decision I will deal with those who did not seek membership with the Teamsters following the January 9 decision.) If there are unique situations, I can deal with those members individually. I understand a person's frustration if his/her likelihood of security work was much greater as a I.A.T.S.E. member than it will be as a Teamster; however, the integration of I.A.T.S.E. members onto the Teamsters lists will also have a negative affect on Teamsters' members and permittees.

27 In light of the above, all security work performed under a collective agreement with the Council will be performed by a Teamster member or permittee, unless some other arrangement is agreed to by the members of the Council. The Teamsters argued that my decision should apply to any production unionized to both the Teamsters and I.A.T.S.E. The Inquiry intended a broad jurisdiction for the film industry umpire; however, without submissions on this point from other parties, its not appropriate for me to decide that issue. I add that if a separate certification is applied for by either Union, the Labour Relations Board will no doubt consider the Umpire's decisions in determining whether the proposed bargaining unit is appropriate.

28 Few, if any, I.A.T.S.E. members chose to become Teamster members following my original decisions. From I.A.T.S.E.'s submissions, I understand that is because some members believed the Teamsters' sole jurisdiction over security work applied only to the exclusive area. Those members will now have a different understanding. Accordingly, I.A.T.S.E. members should be given another opportunity to decide whether they wish to be Teamster members or permittees. I.A.T.S.E. members who take membership in the Teamsters for this purpose should be entitled to maintain membership in I.A.T.S.E. to work in other positions.

29 All terms of transfer in my January 9, 1998 decision will continue to apply at this time except as amended below. Following my January 9, 1998 decisions the Teamsters gave the I.A.T.S.E. a list

of members and permittees. I.A.T.S.E. gave the Teamsters written confirmation of I.A.T.S.E. members who wished to be placed on the Teamsters' lists. In an attempt to give I.A.T.S.E. members an opportunity to reconsider their decision at this point in time, all I.A.T.S.E. members will have the following opportunity.

- * Within three weeks from the date of this decision, I.A.T.S.E. members will give I.A.T.S.E. written confirmation of their decision to accept a transfer to either to the Teamster members or permittees lists for the purpose of security work within the Council.
- * Within four weeks from the date of this decision, I.A.T.S.E. will give these confirmations to the Teamsters.
- * The Teamsters will confirm each person's position on the members or permittees list within a week of receiving the confirmation.

30 I remain seized to deal with matters arising from this decision.

qp/d/sfr