# Wilfred List Impartial Umpire

## Re JD#165/2000

International Alliance of Theatrical Stage Employees, Moving Picture Technicians,
Artists and Allied Crofts of the United States and Canada,
Local 856

VS

## Teamsters Canada

This is a complaint by IATSE that Teamsters Canada violated Article IV, sections 3 and 4 of the Canadian Labour Constitution.

Section 3 reads, in part:

"No affiliate shall organize or attempt to represent employees as to whom a collective bargaining relationship exists with any other affiliate or otherwise seek to disrupt or disturb such relationship except as hereafter provided in this Article...."

The section defines a "collective bargaining relationship as "any situation in which any affiliate, or any local or other subordinate body thereof:

- (a) has been recognized by the employer as the collective bargaining representative for the employees involved for a period of one year or more; or
- (b) has been certified under the provisions of any federal, provincial or territorial labour relations legislation;
- (c) has established a representative relationship under a government bargaining procedure.

There was agreement among the parties at a hearing before me in Toronto on January 16, 2001 on IATSE's complaint that neither paragraph (b) nor (c) was relevant since no certification was involved, nor was there a representative relationship under a government bargaining procedure. Rather, the employer voluntarily recognized IATSE as the bargaining representative for a unit of employees.

Also at issue is whether the Teamsters union violated section 4 of Article IV.

# It reads in part:

Each affiliate shall respect the established work relationship of every other affiliate. For the purposes of this Article an "established work relationship" shall be deemed to exist as to any work of a kind which members of an organization have customarily performed at a particular plant, office, institution or work site, whether their employer is the plant operator, a contractor or other employer..."

The section than goes on to state that "No affiliate shall by agreement or collusion with any employer or by exercise of economic pressure, seek to obtain work for its members as to which an established work relationship exists with any other affiliate, except with the consent of such affiliate."

At the hearing in Toronto on January 16, IATSE was represented by James B. Wood, IATSE's international vice president and Director of Canadian Affairs, and IATSE representative Sharon McIntyre.

The Teamsters union was represented by Roy A. Finley, international representative from Calgary.

Specifically, IATSE's complaint is that the Teamsters raided Local 856 in Winnipeg by recruiting its members employed by VZS: Winnipeg Pictures Inc. in the movie company's transportation department.

The Teamsters applied to the Manitoba Labour Relations Board on November 1 for certification as bargaining agent for a unit of VZS employees composed of persons employed within Transportation, catering and wrangling departments in Manitoba.

The transportation department employees (about 14, five of them full-time) include those who drive the large trucks typically seen on city streets during filming of a movie.

Mr. Wood said IATSE had a collective agreement with VZS: Winnipeg Pictures prior to November 1, 2000 when the Teamsters made its application to the Manitoba labour board. IATSE made no claim to represent wranglers or catering employees.

It is relevant at this point to outline an exchange of letters between Mr. Finley and myself prior to the hearing on January 16.

A date for that hearing had been agreed on by both sides early in December and

confirmed by me via a facsimile letter to the parties on December 6.

On January 5, Mr. Finley wrote me asking for a postponement of the hearing pending the autoome of a hearing that is to be held by the labour board on March 15 and March 16 to deal with the Teamster's application for certification.

Mr. Finley wrote that it was the Teamsters information that no collective agreement had existed between IATSE and the employer when the Teamsters union filed its application for certification on November 1. He submitted a copy of a document from IATSE that was received by the Manitoba Labour Relations Board on November 6 and that purported to be a collective agreement between IATSE and the employer.

Mr. Finley said the date document was received by the board, as evidenced by a date stamp, raised the question whether an agreement was in fact in place on Nov.1. He said that issue would be brought before the labour board. Mr. Finley wrote me that it seemed premature for the Umpire to hold a hearing prior to a ruling by the labour board on whether a collective agreement was in effect on Nov. 1.

(At the hearing before the Umpire, Mr. Finley agreed with Mr. Wood that the date that an agreement was filed with the labour board was not relevant in determining when it took effect.

(But at the hearing Mr. Finley alluded to other issues that might reflect on the validity of an IATSE agreement that he said would likely be raised at the labour board hearing. He declined to deal with those matters at the hearing before me on the ground that it was for the labour board to determine after hearing from witnesses whether there was a valid agreement.

(One of the issues, it appeared, would be the ratification process by which members are called upon to approve or reject an agreement).

In my response to Mr. Finley, I noted that I had the responsibility within the framework of the CLC constitution to decide whether IATSE' had established, through appropriate documentation, and/or witnesses, that it had a bargaining relationship, as defined in Article IV of the CLC constitution.

I also noted that the CLC constitution requires a hearing to be held by the Umpire within 30 days from the filing of a complaint. That period, dating from Nov. 6, had long since passed. I informed Mr. Finley that under all the circumstances, it was appropriate to go ahead with the hearing as scheduled on January 16.

This extended background, especially Mr. Finley's reference to the issue that will be before the labour board of whether a valid collective agreement exists, does not bear

directly on my decision that will follow here, but it underlines some of the complexities of the case.

Mr. Finley said at the Taronto hearing that if the labour board rules that IATSE has a valid agreement it would bring the Teamster's case for certification to an end.

Mr. Wood laid out some of the history of film production in Manitoba and the place of unions relating to the film work.

In 1989, a Toronto-based union, The Association of Canadian Film Craftspeople (ACFC), established an office in Winnipeg and began to represent film technicians. In 1997 it merged with IATSE's local 63 and formed a film department. In 1999, IATSE granted a separate charter for the film technicians of Local 63, and the local became Local 856, the complainant in the present case.

Mr. Wood said that from 1989 until the present, the Transportation Department in film industry productions in Manitoba has been represented, along with technicians, in one unit. He said that was consistent with how the industry operates in 8 of Canada's provinces. Except for the practise in British Columbia and Alberta, technicians and Transportation Department employees are represented by a single IATSE unit.

In Winnipeg, from 1989 until the present, 54 separate collective agreements had been negotiated by either ACFC, Local 63, or IATSE Local 856. The list of productions were filed with me. Each of the agreements covered employees of the Transportation Department.

Mr. Wood said it was IATSE's belief that the Teamsters had not negotiated a single agreement in Manitoba covering employees in the film industry, a statement that was not disputed by Mr. Finley.

It is worth noting that agreements are negotiated for specific film projects, and the one for which bargaining rights was an issue before the me was called, "Robin Cook's Acceptable Risk."

Once the film is completed, the company folds its tent (or rather pulls out with its big... trailers), and the employees look for other work.

tranically, this scenario makes the outcome of the case before the Manitoba Labour Relations Board somewhat of an academic exercise, as both Mr. Wood and Mr. Finley agree. At the time of the labour board hearing the company will have long left the province and there will be no employees to represent. Mr. Finley conceded it was

unlikely, although it could not be entirely ruled out, that the film company would surface again in Manitoba.

However, there seems to be issues of principle and precedent in the dispute between the parties, although neither side made those points in any substantive way in their submissions.

Mr. Wood explained that historically, prior to filming and even the hiring of all the employees required, IATSE submits to the production company a letter of understanding and a standard pre-production agreement, the union's wish list, as Mr. Wood described it.

The next step is a letter of variance to that standard agreement, setting out changes relating to a company's concerns as they apply to the project. The process is then to have the variance agreement ratified by the crew.

A copy of the letter of variance signed by Jae Laurin, co-business agent for IATSE Local 856 and by Vannie Van Helmalt, production manager for VZS: Winnipeg Pictures Inc. was filed with me.

The agreement sets out that it shall apply to "all employees or Dependent Contractors hired by the company within the exclusive jurisdiction of the union as set out in Article 6, section (a).

That article gives IATSE exclusive jurisdiction for all work "in connection with and all Employees engaged in the trades, crafts, arts and all other occupations of the moving pictures, talevision and related industries."

The standard agreement also defines the role of employees of the Transportation Department.

Mr. Wood said the employer concluded negotiations for a collective agreement prior to Oct. 13, 2000 and a notice was posted for ratification at a meeting called for October 15, when the agreement was ratified. The terms of the agreement were retroactive to mid-September, 2000.

Although some employees had been hired for pre-production duties in mid-September filming began on October 17. The employer abided by the collective agreement in all respects, including making appropriate deductions and benefit contributions. I was presented with payroll records to support Mr. Wood's statement.

The ratification process was somewhat different than in most industries. There were about 14 Transportation Department Employees involved, but because many were

working at the time, only three showed up at the meeting. Each employee was handed two slips, one stating "I accept", the other was for a negative vote.

Ms. McIntyre presented me with a sheet indicating the agreement had been ratified. Attached to the sheet was three, "I accept" slips. There were none for rejection.

The Manitoba Labour Relations Act requires a secret ballot vote on acceptance or rejection of a collective agreement after reasonable notice and reasonable opportunity to cast a ballot.

Section 69 (3) of the Act states: "A majority of those employees in the unit or craft unit who may vote and who cast ballots on the question of acceptance or rejection of the proposed agreement shall determine the question." Thus the number who vote is irrelevant.

If Mr. Finley had complaints or evidence relating to the ratification process, he did not raise them at the hearing before the Impartial Umpire. His position was that the venue for dealing with any issues relating to the validity of the agreement was the Manitoba labour board.

Mr. Wood in his presentation said that a collective agreement had been negotiated, executed and adhered to. He anticipated an argument by Mr. Finley that the Teamsters union was not in violation of the CLC constitution because the IATSE agreement had been in effect for less than one year.

He argued that in no jurisdiction in Canada can a collective agreement be entered into for less than one year. After the first year, it is possible that the agreement technically expires during a renegotiation period during and after the expiry date. He said the language of section 3 of Article IV protects the affiliate from being raided simply because the first collective agreement has technically expired.

The length of time that the collective agreement has been in existence is not the issue, he said. Rather, the issue is whether there is a collective bargaining relationship in place.

As to section 4, Mr. Wood said that based on the evidence relating to the history of representation in the film industry's Transport Department in Manitoba, combined with evidence of a collective agreement with the employer, it is clear that the Teamsters violated section 4 of Article IV.

Mr. Finley said that the evidence clearly showed that if there was an agreement it had been entered into (retroactively) in September, 2000, so IATSE had not been

recognized as the bargaining representative for a period of one year or more, as set out in clause (a) of section 3, Article IV.

As for section 4, Mr. Finley said the reference is to an established work relationship related to work of a kind which members of an organization have customarily performed "at a plant, office, institution or work site..." The work environment in the instant case did not fit any of those categories, he argued.

Mr. Wood responded that clearly, there was an established working relationship with the employer, and it made no sense to suggest section 4 did not apply.

He underlined several times his view that the issue before the Umpire was "the spirit of the CLC constitution."

For his part, Mr. Finley stressed the Teamster case under Article IV was that IATSE had not been recognized by the employer as the collective bargaining representative for a period of one year, or ,more. Therefor, the Teamsters was not in violation of section 3.

### DECISION

On the evidence before me, I can only conclude on the issue of a collective agreement, that IATSE has met the test at the hearing that it had a valid collective agreement with the employer. If the Teamsters have arguments to the contrary that were not raised before me, they will have to be dealt with by the labour board. But as Impartial Umpire my responsibility is to determine whether there has been any violation of the relevant clauses of the CLC constitution on the basis of evidence presented at the hearing.

Having decided that there was a collective agreement, I must determine whether there was a "collective bargaining relationship" as defined in section 3 of Article IV.

Mr. Wood has argued that the length of time the agreement has been in existence is not the issue. "The issue is whether there is a collective bargaining relationship in place."

Under most circumstances there would be no question that the collective agreement was synonymous with an established collective bargaining relationship."

But sub-section (a) of section 3 of Article IV defines such relationship as one under which union has been "recognized by the employer as the collective bargaining representative for the employees involved for a period of one year or more."

It is clear that this is not the case here. In fact, given the the circumstances relating to filming, it would appear that it would be rare that an "established bargaining relationship" would exist for one year.

Unfortunately, from IATSE's perspective, subsection (a) of section 3, makes no allowance for any special or out of the normal circumstances.

It may be that the authors of section 3 never contemplated the type of situation found here. However, it is not within my prerogative to do anything but to accept the literal reading of sub-section (a)1.

If IATSE had been certified there would be no question in my mind that the Teamsters would have been in violation of section 3 of Article IV. But that is not the case.

I must therefor find that the Teamsters did not violate section 3 of Article IV because the section is explicit in defining a collective bargaining relationship that cannot be disturbed as one where the employer has recognized a CLC affiliate as the bargaining representative for a period of one year or more.

I must now determine whether there was a violation of section 4. Because most of the argument before me focussed on section 3, I invited both parties to submit to me in writing any amplification of their views relating to section 4: namely their reading of the section, its meaning and the bearing of the section on the content of the complaint.

Mr. Wood said work in the film industry is performed at a variety of sites and locations, and in that context it is reasonable to conclude that Winnipeg is the "work site" for the producers, who are the employers. The producers, he said, are clearly "contractors or other employers" as contemplated in Section 4.

The film industry, he added, is similar, in many respects to the construction industry, in that the locals of the affiliates maintain members by referring them to work on projects as required by different contractors. The separate contracts for each production are analogous to project agreements in the construction industry, Mr. Wood stated.

The action by the Teamsters violated section 4 as well as section 3, Mr. Wood concluded.

In his response to my invitation for further argument or comment, Mr. Finley wrote that section was written to deal with specific cases in which another union attempts to overturn an established working relationship by an agreement or the exercise of

any means other than the certification process. He said he believed that the reference to "established work relationship" applies to "plants, offices or institutions, or work sites, which Mr. Finley said is a reference specifically to the construction industry.

With respect to Mr. Finley's view, I must conclude that in the film industry, as it operates in Winnipeg and was described to me at the hearing, fits the definition of "work site", as argued by Mr. Wood.

But my reading of Section 4, with its definition of an "established work relationship" which must be respected, is precedent to the sentence that follows:

"No affiliate shall by agreement or collusion with any employer or by the
exercise of economic pressure, seek to obtain work for its members as to
which an established work relationship exists with any other affiliate, except
with the consent of such affiliate."

I must conclude from a reading of the above that the purpose of the section is to prohibit a union from breaching an "established work relationship" by obtaining work for its members by agreement or by collusion with an employer or by the exercise of economic power in situations where there is an established work relationship with another affiliate. That is not the case in the complaint before me.

My conclusion as to the meaning and purpose of section 4, seems to be reinforced by a reading of the last sentence of the section, as follows:

 Cases involving mergers or reorganization of plants or companies under circumstances which eliminate the separate bargaining entities of previous bargaining units, will be referred directly to the President."

For all of the above, I find that the Teamsters union has not violated either Section 3 or Section 4 of Article IV.

I recognize that Mr. Wood and IATSE feel deeply aggrieved and are bitter that the Teamsters union has encroached on what they see as their long-established jurisdiction by attempting to displace them as the bargaining agent for the Transportation Department. It may be that the Teamsters union has not adhered to the spirit of Article IV. But my finding, for the reasons set out, is that Teamsters Canada has not violated the provisions of the Article.

Wilfred List Impartial Umpire January 24, 2001

9 ¤f 9

JAMES B. WOOD
INTERNATIONAL VICE PRESIDENT
International Alliance of Theoretical Stage Employer, Moving Picture Technicians,
Artists and Allied Crafts of the United States, its Territories and Canada AFL-CH), CLC

258 ADELAIDE ST EAST #403 TORONTO, ONTARIO, GANADA MSA 1N1

Tel: (416) 362-3569 - Fax: (416) 362-3483

o 3 6

Kenneth V. Georgetti President Canadian Labour Congress 2841 Riverside Drive Ottawa, ON K1V 8X7 February 6, 2001

### VIA FACSIMILE

Dear Brother Georgetti:

I have just received your correspondence in regard to the report issued by Impartial Umpire Wilfred List. Having reviewed the report, it is evident to me that the decision rendered by the Umpire is self-contradictory in nature. I submit the following points for your consideration.

- 1. On page 7 of his report, Mr. List agrees that Local 856 had a collective agreement in place with the employer at the time that the application for certification was made by the Teamsters. On page 8 of his report, Mr. List states "If I.A.T.S.E. had been certified there would be no question in my mind that the Teamsters would have been in violation of Section 3 of Article IV." Given that there is no distinction in the CLC Constitution between voluntary recognition agreements and certifications, I fail to understand how Mr. List has found no violation of Section 3.
- 2. Mr. List has been successfully convinced by the tenuous argument put forth by the Teamsters that, since the agreement was not in force for a one-year period, there has been no violation of the CLC Constitution. This conclusion was reached despite the fact that, on page 6 of his report, Mr. List acknowledges my point that no collective agreement can be negotiated for a period that is less than one year. Given this point, even a literal read of Section 3 would indicate that as soon as a collective agreement is entered into it is for a minimum of one year going forward. When Mr. List reaches the decision point of his report, however, he fails to honour this position and takes the absurd view that the one year period is a period that looks back after one year, not forward as with the signing of a collective agreement.

The absurdity of this decision is beyond words. The I.A.T.S.E. states that a collective agreement is in place, the Impartial Umpire agrees that a collective agreement is in place and even the Teamsters agree that a collective agreement is in place (they just

take the position that it has not been in place for one year), and still the Impartial Umpire somehow determines that there is no violation of the CLC Constitution.

Additionally, I would like to point out that the decision rendered by Mr. List in regard to Article IV, Section 4 is grossly inconsistent with the decision rendered by Impartial Umpire Vic Pathe on the same issue. Subsequent to a hearing involving the I.A.T.S.E. and the CEP, Vic Pathe found the I.A.T.S.E. guilty of violating Section 4 during our dispute with the CEP. In that case we were not even accused of interfering with a specific collective agreement. I am completely confounded as to how two Impartial Umpires could reach such radically different conclusions when presented with a very similar issue.

This decision makes a mockery of the CLC Constitution and all that it is intended to stand for. Please advise me how this egregious error will be corrected.

Thank-you for your time and attention to this matter.

Fraternally yours,

James B. Wood

c.c. Thomas C. Short, International President C. Gus Bottas, CLC Delegate

I.A.T.S.E. Local 856

Maj-d8-61 11:20m

953 1109 204 P.019 **ស្តេចប**ារ មេរេន

T-481 P 62/02 F-61D

From MYERE WEINDERG MYERS WEINBERG

Barristers and Solicitors

A, Lional Weinburg, C.C. Raph Torin Daugha E. Johnston Mariette Pelietier Helen Krahn

A. Larry Kussin Tory Marques win B. HAVIO ingle (Aintratheire rennie Wenessin, Q.C. Jethay P., Harris Paul R., Makawa Laure A.E. Diament

Robert L. Petsek, G.C. Garti H. Smorrep, G.C. Dennis M. Bassyminy Pillet Lucito

12040000000

Michael D. Kay Valente J. Martin une i ambour

WHITEPS CHRECT LINE (264) 943-9604 Ref. 873

marificatel Berginen and in the contract of th

VIA PAX (945-1296)

Mai Myers, Q.C. (Pint/red)

PRO No. 14021-145 Raphy to Paul R. McKerina

March 5, 2001

Manitoba Labour Board 402 - 258 Portage Avenue Winniper MB R3C 0B6

ATTENTION: Janet Duff

Dear Medam:

General Teamsters Local Union 979 and VZA: Winnipeg Picture Inc. Application for Certification Case No. 698/00/LRA

After having met with a representative of IATSE Local \$56 and their legal counse; Mr. Lawrie Cherniack, General Teamsters Local Union 979 hereby seeks leave of the Manitoba Labour Board to withdraw its Application for Cartification which was dated November 1, 2000, and filed with the Board. You will note that I am copying Mr. Chemiack with this correspondence.

Yours muly,

MYERS WEINHERG

PAUL R MCKENNA

/llp

ee: Chemiack, Smith

Lawrie Chernisck (Via Fax: 477-1256)

se: General Tenanture Local Union 979 Phil Brauen (Vis Fax: 633-2554)

MAR - 5 2001

Manitobe Labour Board

724 Cargill Building 240 Casham Avenue Winnipeg, Manifeba Canada R3C 6.17 Telephone (204) 342-0801 Fechinile (204) 558-0525 Website www.htyersfirm.com