

**IN THE MATTER OF AN ARBITRATION**

**BETWEEN:**

MOUNTY PRODUCTIONS LTD.  
("Fantastic Four 2")  
(the "Employer")

**AND:**

BRITISH COLUMBIA COUNCIL OF FILM UNIONS AND  
IATSE LOCAL 669  
(the "Union")

(Fantastic Four 2 – Work Permits Grievance)

**ARBITRATOR:**

David C. McPhillips

**COUNSEL FOR THE EMPLOYER:**

Barry Y. Dong and Kacey A. Krenn

**COUNSEL FOR THE UNION:**

E. Casey McCabe

**DATES AND PLACE OF HEARING:**

February 5 and 6, 2007  
Vancouver, B.C.

**DATE OF AWARD:**

March 7, 2007

The parties agree this Board has the jurisdiction to determine this matter. The grievance alleges that the Employer, during the production of the feature film, Fantastic Four 2, employed two individuals as videographers who were not members of the Union and who had not been granted work permits by IATSE 669. The Union claims monetary damages to compensate for the camera work done by those individuals.

### FACTS

Following a major dispute in 1995, the British Columbia Labour Relations Board created the British Columbia and Yukon Council of Film Unions to represent three of the unions in the industry: Teamsters Local Union No. 155, I.A.T.S.E. Local 891 (production technicians, special effects, electrical) and I.A.T.S.E. Local 669 (photographers, camera crew). The American producers of Canadian productions are represented by the Canadian affiliate of the Alliance of Motion Picture and Television Producers ("AMPTP"). The AMPTP represents major producers such as Twentieth Century Fox, Paramount, Universal, Warner Bros. as well as independents. Canadian production companies are represented by the Canadian Film and Television Production Association ("C.F.P.T.A.").

Since 1995, the AMPTP and the B.C. Council of Film Unions have negotiated a Master Agreement which contains general provisions which apply to all three unions as well as separate Appendices which contain provisions related to each of the unions (Appendix A – IATSE Local 891; Appendix B – Teamsters Local 155; Appendix C – IATSE Local 669).

The AMPTP and the Joint Council negotiated a one-year contract in 1995 and then entered into a three year Agreement covering the period from 1996 to 1999. The evidence is that work permits, which are the subject of this grievance, were a major issue in those latter negotiations and then again in the negotiations for the 2003-2006 Master Agreement. The provision in the Master Agreement relating to Work Permits is Article Three:

**Article Three: Work Permits****3.01 Work Permit Application:**

- (a) The Individual/Employer must apply for a Work Permit in the applicable form attached to this agreement and the individual shall not commence work in British Columbia until the Employer has a copy of the Work Permit signed by the individual and endorsed by the applicable Council-member Union. See Appendix "E" for attached forms.
- (b) The properly filled out Council Union Work Permit Application, signed by the applicant, must be accompanied by the following information prior to the Council's consideration of such a request:
  - 1. The reasons for the necessity of that individual being permitted.
  - 2. A list of credit/credentials/professional awards and achievements and/or a professional resume of the requested permittee.
  - 3. Proof of the requested permittee's union affiliation and standing if applicable.
- (c) All permit requests for Individuals who are not members of the Council-member Union must be submitted with at least five (5) working days notice prior to the call. If there is no response to an application within five working days from the date of submission, the application will be deemed granted.
- (d) Work permits granted under Section 3.03 are in addition to and separate from permits granted under Section 3.02 and Section 3.04. Furthermore, all work permits granted under Section 3.02, Section 3.03 and Section 3.04 will not result in the hiring of a counterpart position under Section 3.05.
- (e) The Employer hiring any person not represented by the Council for any job classification described in the appendices to this agreement shall secure a Work Permit from the appropriate Council-member Union and if necessary, secure clearance from the Human Resources Development Canada (HRDC) in cooperation with the appropriate Council-member Union.
- (f) The rates, conditions, and/or terms of this Master Agreement must be fully met, except when another collective agreement applies which does not diminish the terms of this Agreement

**3.02 Guaranteed Permits:** For a feature motion picture as defined in Section 1.04 of this agreement, the Employer will be allowed an aggregate of six (6) permits, with a limit of one (1) per department.

Notwithstanding the foregoing, this language is not intended to alter the practice of granting work permits to non-Council represented Employees on all feature and television productions covered by this Agreement as outlined herein.

**3.03 Qualified Permits:**

After the Employer has given reasonable consideration (including the granting of an interview if requested by a Council-member Union) to available qualified applicants, the Council will grant to the Employer work permits for persons who satisfy the following criteria:

- (a) Persons who hold two (2) screen credits on dramatic productions (including situation comedy) that have employed the proposed Director, Producer, or Director of Photography; or
- (b) Persons who:
  - (i) hold three (3) screen credits in the position for which the persons will be employed; or
  - (ii) have personally received at least one (1) nomination for an international recognized industry award (e.g., Academy Award, Emmy Award, Golden Globe, Genie, Gemini, British Academy Award); or
- (c) Persons who will operate specialty equipment not available in British Columbia; or
- (d) Persons for whose position the Council-member Union is unable to supply qualified personnel.

Unless mutually agreed to, permits issued under Section 3.03 (a) and (b) above will be limited to one (1) per Department, provided, however, Council-member Unions will not unreasonably deny granting additional work permits consistent with past practices.

**3.04 Personal Services Employees:** Permits will be granted for a personal Make-Up Artist, personal Hair Stylist, and/or personal Dresser, for an individual Cast member, and that Cast member's Stunt and/or Photo Double. If the permitted Employee is unavailable to implement these duties then an IATSE 891 member will be assigned as needed.

**3.05 Counterpart Job Classifications:** If the Employer chooses to hire an individual who is not a member of a Council-member Union and does not qualify for a work permit as set out in this Agreement, the company must hire a counterpart position. This counterpart position shall be filled at the discretion of the applicable department in concert with the Council Union. In the situation where a permit being granted is contingent on a counterpart position being hired from the Council-member Union, the member must be employed for at least the same work hours.

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Mounty Productions Ltd. is a company created by Twentieth Century Fox Film Corporation ("TCF" or "Fox") to produce the full length feature film, Fantastic Four 2 ("Fantastic Four and the Silver Surfer"). Tim Story from Los Angeles was the Director for the film, Stewart Bethune was the Unit

Production Manager and Ross Fanger was the Co-Producer/Production Manager. Mounty Productions is a member of the AMPTP and it is not disputed that it was bound by the terms of the Master Agreement.

IATSE, Local 669 (International Photographers Guild) is the Union which represents the camera crew. The Business Agent for Local 669 since June, 2006 has been Don Ramsden, who for many years was an officer of IATSE 891 and from 2002-2006 was its President. The previous Business Agent for Local 669 was Gerry Rutherford, who held the position from 1994 until January, 2006.

The job classifications and wage rates for High Budget Feature Films for Local 669 are contained in Appendix C of the Master Agreement. The chart below was included in the March 30, 2003 – April 1, 2006 Master Agreement and the parties agreed in 2006 to an across-the-board increase of 3% for the 2006-2009 Master Agreement.

B.C. Local 669 Rates: From April 3, 2005 Through Conclusion.

HIGH BUDGET FEATURE FILM	Daily Employee Hourly	Weekly*	
		Employee Weekly	Hourly Base
Classification			
Director of Photography	\$79.44	\$5,270.33	\$75.29
Operator	\$52.82	\$3,505.14	\$50.07
First Assistant	\$39.65	\$2,629.66	\$37.57
Second Assistant	\$27.93	\$1,855.03	\$26.50
Motion Picture Video Coordinator	\$31.06	\$2,061.79	\$29.45
Motion Picture Video Assistant 1	\$23.34	\$1,549.26	\$22.13
Motion Picture Video Assistant 2	\$17.52	\$1,161.55	\$16.59
Stills Photographer	\$43.31	\$2,873.94	\$41.06
Electronic Director of Photography	\$58.14	\$3,857.41	\$55.11
Electronic Camera Operator	\$43.60	\$2,893.64	\$41.34
Electronic Camera Assistant	\$29.07	\$1,929.09	\$27.56
Trainee	At least the Provincial Minimum		
*Feature film Weekly rates are based upon a 60 hour guaranteed work week.			

Mr. Ramsden testified that the camera department is the only area in the Master Agreement where there is a minimum crew required. The Agreement guarantees that there will be a Director of Photography and Operator, First Assistant, Second Assistant and Stills Photographer, although on rare occasions that number has been reduced. As well, Local 669 does not use a hiring hall and members

“hustle their own work”, primarily through interviews. The use of trainees is optional under the Master Agreement but when they are used they are supplied by the Union on the basis of seniority.

Mr. Rutherford testified the most difficult chore for Local 669 members is “getting your next job”. In that regard, Mr. Ramsden testified that the interview process set out in Article 3.03 is particularly important as this is the way members expose their qualifications and skills to the various producers. Even if the members are not hired for a particular project, the interview process enhances their profiles for future work. Mr. Ramsden testified that not everyone proposed by the Union was expected to be interviewed in each case and the interviews would often be conducted on the telephone.

The dispute in this case is centered on the Union’s refusal to exercise its discretion to grant work permits to two individuals from Los Angeles, Travis North and Kimberly Nunez-North, a husband and wife team who for the last four years have done business as “North Projects”. Mr. North and Ms. Nunez-North have extensive experience in music videos for a period of almost ten years.

Mr. North also has experience working as an Assistant Coordinator within Twentieth Century Fox (February, 2001 to March, 2003). Mr. North then worked for Ralph Winter, a producer in Ralph Winter Productions, from March, 2003 to February, 2004. While working there, Mr. North met Mr. Story who hired Mr. North in February, 2004 to be his personal assistant. Mr. North’s responsibilities included researching locations, films, pictures, reading scripts and performing various administrative duties for Mr. Story. Ms. Nunez-North during the last three or four years has significant experience as a producer/cinematographer and editor of music videos. During 2005, she also produced two short films.

Mr. North testified that he developed a personal relationship with Mr. Story beginning in the summer of 2005. This included having family meals together and Mr. North and Ms. Nunez-North both became good friends with Mr. Story’s wife and daughter.

Mr. North and Ms. Nunez-North each testified that Mr. Story approached them in the spring of 2006 and proposed that North Projects produce ten (10) 2 to 3 minute web-blogs for use on the Internet capturing the Director’s vision for the film Fantastic Four 2 and his work throughout the entire

production. Mr. Story had already approached Twentieth Century Fox with the idea and had indicated to them he wished to use North Projects to do the work as he was friends with Mr. North and Ms. Nunez-North. This would allow Mr. North and Ms. Nunez-North better access to Mr. Story and Mr. Story would be very comfortable working with them and, as a result, he would be more candid with them than he would be with others. Mr. North and Ms. Nunez-North also testified that Mr. Story had wanted to be able to be interviewed while at home, in the car, and on the set at any time and wanted to be very informal in recording the process of making this feature film.

Mr. North and Ms. Nunez-North also testified this project was not in any way intended to be a typical behind-the-scenes film for inclusion on the DVD release of the movie but was more of a personal insight into the Director's work. They also testified that there has been no contract entered into between them and with Twentieth Century Fox for any other use of the material they have prepared in the process of creating the web-blogs, although that remains a possibility.

The process of creating these ten web-blogs involved pre-production work in Los Angeles beginning May, 2006, pre-production work in Vancouver during August, 2006, work during the actual production of the film in Vancouver (August 31-December 15) and post-production work in Los Angeles (December 15, 2006 – June 15, 2007) up to when the movie will be released.

The evidence is Twentieth Century Fox sent a letter to North Projects on August 31, 2006, setting out the terms of the proposed deal with them. Ms. Nunez-North testified that certain items were the subject of ongoing negotiations and, as a result, the contract was not actually signed until October 6, 2006. The contract states:

Per our discussion, please find below the service agreement between Twentieth Century Fox (TCF) and North Projects for the feature film Fantastic 4 and the Rise of the Silver Surfer:

*Project Expectations & Deliverables:*

North Projects shall deliver the following:

- All on-set B-roll, those cast interviews approved by TCF and t.b.d., as well as behind-the-scenes, covering the prep & shoot of the movie for the full production schedule of 23 weeks.
- 10 -2-3 min video blogs fully edited & finished per TCF specs for posting on the movie's website. Creative t.b.d. and subject to approval by TCF.
- Additional green screen shots of all principal talent for Internet use. To be obtained while production shoots this footage.
- 1 – 2:30 full edited and finished "Making Of" featurette.

Any additional content is not covered by this agreement and will be bid out separately.

North Projects will provide all required editorial equipment, for a weekly rental. (See rates on page 3). TCF shall reimburse North Projects for any additional equipment acquired for use on the movie, with prior approval. This equipment may be made available for purchase by North Projects at a price t.b.d. at the end of production.

TCF shall provide the following:

- 1 Sony HDV Camera package (see attached list).
- All tale stock required for shooting.
- Additional EPK crew for cast interviews as determined & approved by TCF.

Conditions:

North Projects is hired and rentals are paid on a weekly basis only. Payment will be made for actual weeks worked only. In the event production closes, both TCF and North Projects are released from this contract and no further payments will be made from that point forward. Rates reflected below are solely estimated totals of payment through the end of production.

Any additional days required by pushing last day of shooting, at the discretion of and the approval by TCF. At the end of production, TCF reserves the right to hire North Projects for additional days over and above this agreement, i.e., for post production.

Start/End Dates (Assumes last day of production 12/13/06, & inc. all travel):

	<u>Start</u>	<u>End</u>
T. North	7/31/06	12/16/06
K. North	7/10/06	12/16/06



Labor & Equipment rates, includes travel, housing & per diem:

Description	Rate	Quan	Sub	Fringe	Total
<b>Labor</b>					

Cameraman – T. North  
 Editor – K. North  
 Edit Equip. & 24P Panasonic Camera  
 HD/Super & Tape Stock (Provided by Fox)  
 Camera (Assume Fox Loaned)

**Travel & Living**

Travel To/From Vancouver  
 Camera Man Per Diem US\$455/WK  
 Camera Man Housing CN \$933/WK

**Misc./Other**

Work Permits (2)

**Total**Misc. – Specs

North Projects agrees to adhere to all Fox policies and specs for EPK'S and creative content including but not limited to:

- Tape logs for all tapes and a Vendor Summary for the entire project are required.
- Tapes should be numbered starting with #1 in ascending order.  
(Please see attached memo)
- Releases must be obtained for any & all persons appearing on camera not covered by the general release signed by crew members. Crowd releases must be posted during any and all shooting.

Misc. – Camera

All shoot masters will be digitized in by North Projects in Vancouver then vaulted there and then delivered to TCF upon request or at the end of production.

The evidence is that while in Vancouver, Mr. North and Ms. Nunez-North were paid through "Cast and Crew" which is a company created for the purposes of paying the crews on film productions in British Columbia. It was explained by Mr. North and Ms. Nunez-North that although they were paid in

the same manner as the rest of the crew, their salaries were actually reimbursed by Twentieth Century Fox.

Prior to the crew arriving in Vancouver, the Employer requested on July 12, 2006 a work permit from Local 669 pursuant to Article 3.02, for Larry Blanford to work as the Director of Photography on the film. This was granted by the Union as a matter of course. On July 14, the Employer requested a further permit for John Bleibtreu as the Second Unit Director of Photography, based on "Mr. Bleibtreu's credits and established working relationship" with the second unit director, E.J. Forrester. This initial request for a permit for Mr. Bleibtreu, which was made pursuant to Articles 3.03(a) and (b), was followed up with a letter of July 19, outlined the reasons for the request:

Further to my earlier correspondence regarding a permit request for Josh Bleibtreu, please allow me to clarify the request. Our second unit director, EJ Forrester, did consider local 669 members for the 2<sup>nd</sup> unit DOP position. As you might know EJ has worked in Vancouver and Alberta on numerous occasions with 669 member Roger Vernon. EJ believes that Roger is a very talented DOP but in this particular instance he feels that Josh Bleibtreu has more "action" experience that is specific to a movie like "Fantastic Four". EJ also considered John Clothier for the position and in fact had hired him for "Shooter". When EJ made the change to this movie we had already been thinking seriously of hiring John as the A Cam/Stedi-cam operator for main unit. However, again EJ still felt that the DP position should be filled by an individual who had as large and critically acclaimed body of work as possible in that category.

EJ did look at the 669 availability list to insure there was not somebody available with the appropriate experience that he had overlooked. As I have mentioned before, movies like this and others with large FX and stunts will typically hire DOP's who have the best credits and qualifications regardless of where they may be from.

Please let your membership know that this movie will have full time "A" and "B" camera crews and part time "C" camera on main unit and an "A" and "B" camera for second unit. In addition there will be a plate unit and undoubtedly a splinter unit down the road. With the exception of the two non-669 DOP's everyone else will be hired locally.

Please do not hesitate to contact me at your earliest convenience should you require further info.

The work permit for Mr. Bleibtreu was granted by IATSE 669 on July 25, 2006.

On July 26, the Employer then made a further request for two work permits for Mr. North and Ms. Nunez-North. Mr. Bethune's letter to Mr. Ramsden states:

RE: Work Permit Request for Two Behind the Scenes Videographers:

On behalf of Mounty Productions, Ltd., I would like to take this opportunity to request work permits for Travis North and Kimberly Nunez-North as Videographers for the behind the scenes footage for "Fantastic Four 2".

We understand that there are operators available within the Local for this job and our Director, Tim Story did consider using Local 669 operators, but he has a lengthy prior relationship with both Mr. North and Mrs. Nunez-North. Mr. Story feels that they will be able to obtain the best coverage behind the scenes with the least amount of discussion and direction because of his close work with them in the past. He also feels that since they both will be traveling back to Los Angeles at the end of the shoot they will be able to continue filming the behind the scenes of the editing and visual effects process and finally that they will be able to give the much needed input to the actual editing of the behind the scenes project itself.

Both these positions are not being paid for by the Canadian production company Mounty Productions, Ltd., but by the Marketing Department at Twentieth Century Fox in Los Angeles.

Pending your approval we request that Mr. North and Mrs. Nunez-North's permits be effective July 31, 2005 through to January 30, 2007 to allow for any unforeseen delays in our schedule.

On July 27, Mr. and Ms. North each submitted work permit applications to Local 669 for the positions of "Behind the Scenes videographers" and included their resumes with the application. Although the discussions with Local 669 concerning their work permits were to continue throughout the fall, Mr. North and Ms. Nunez-North did obtain the necessary work permits from HRSDC in August which enabled them to work in Canada. They arrived in Vancouver in early August and continued the work on the web-blogs they had started in Los Angeles. In August, they worked during the pre-production process prior to the actual shooting of the production which began on August 31.

It is agreed by the parties that Mr. North and Ms. Nunez-North did not qualify for work permits under any of Article 3.03(a), (b) or (c) of the Master Agreement. The issue between the parties was to become whether they should have received work permits because there were no Local 669 qualified

members available or whether the Union was unreasonable in withholding approval, given the past practice of these parties.

In late July, Mr. Ramsden sent an e-mail to members enquiring whether there was interest in this "behind the scenes videographer" work. A number of members replied in the affirmative and so Mr. Ramsden wrote to Mr. Bethune suggesting names of potential Local 669 candidates. Mr. Ramsden's letter of August 3 stated:

As a follow up to yesterday's letter, please accept these names as potential interviews for your promotional piece on your production:

Lester Lightstone  
Doug Baird  
Roger Williams  
Gundar Lipsbergs  
Jason Wessel

Attached to this letter are their resumes on file at our office. As your staff calls them for interviews, it might be useful to remind them to arrive with their most current credits as all of the above are working videographers.

I expect a few more requests in the next day or so and will try to get those off as soon as they arrive.

The next day, Mr. Ramsden wrote again, adding two more names (Steven Miko and Nenad Stevanovic) for the consideration of Mr. Bethune.

Mr. Bethune replied to Mr. Ramsden on August 11, stating as follows:

As requested we have had our producers and director review the resumes forwarded to us by IA 669. The purpose of the videographers work in this case is to give an intimate portrayal of Tim Story during the production of Fantastic Four 2. Despite the admirable qualifications of Lester Lightstone, Doug Baird, Roger Williams, Gundar Lipsbergs, Jason Wessel, Steven Miko and Nenad Stevanovic, Tim Story feels that having videographers with whom he has a close and personal relationship with will have greater access to him and his work which will in turn enhance the quality of the taped coverage.

This sentiment is shared by FOX Marketing who have had an ongoing relationship with Travis and Kimberly on this production since its inception. Marketing will be relying heavily on this already established relationship to ensure its objectives are met right through post production.

Based on the above please have the Executive Board reconsider this permit request for Travis North and Kimberly Nunez-North.

Your help and cooperation in this matter is appreciated.

Mr. Ramsden was later informed in discussions with members that none of the suggested candidates had received interviews. Mr. Ramsden testified that, although there were no interviews, he accepted at face value Mr. Bethune's claim that he had "considered" the candidates who had been referred to him.

Mr. Ramsden testified that he arranged a meeting with Mr. Fanger and Mr. Bethune to discuss the matter. They explained that they were requesting these two permits because this was a video diary capturing the director going through the process of making a full length feature film. This had been the director's own idea and he had wanted an "intimate" portrait which would also require access to him during private moments.

Mr. Ramsden testified he understood the Employer's position and he took the request to the Local 669 Executive Board. The evidence is there had been a new Executive Board elected (8 out of 12 members were new) and both Mr. Ramsden and Mr. Rutherford testified the new Board had removed Mr. Rutherford from his position in early 2006 because they felt he had been "too generous" in providing work permits. As a result, Mr. Ramsden, who had only been in the job since June, 2006, was required at this time to seek approval from the Executive Board for the granting of any work permits.

Mr. Ramsden testified that the Executive Board was adamant that the permits would not be granted to Mr. North and Ms. Nunez-North. The Board felt that permits had been granted too readily in the past and they decided it was time "to draw a line in the sand" and "clamp down" on the granting of these work permits. Mr. Rutherford's description is that the new Executive Board, which had terminated his contract, was into a "stricter enforcement and less cooperative" mode.

On August 15, Mr. Ramsden formally replied to the Employer indicating that the permits would not be granted by Local 669. Moreover, he stated that, if the Company insisted on using Mr. North and

Ms. Nunez-North, the Union would seek a "match" pursuant to Article 3.05 of the Master Agreement.

His entire letter states:

We have considered your "request for re-consideration" regarding further permits for two video workers from the US.

During the time of everyone's "consideration" this Union Local has submitted a list of seven "available and qualified" workers for your consideration. On the surface it appears we are at an impasse. To our knowledge, none of these people have been interviewed by anyone in your company. If that assumption is inaccurate, I would be pleased to stand corrected.

We remain firm in our resolve to have Fantastic Four hire from the Local's availability roster. There are already two foreign workers permits in the Camera Department on your production. Now it would appear the view of the company is; two more are required.

Of course however you always have at your disposal clause;

**3.05 Counterpart Job Classifications:** If the Employer chooses to hire an individual who is not a member of a Council-member Union and does not qualify for a work permit as set out in this Agreement, the company must hire a counterpart position. This counterpart position shall be filled at the discretion of the applicable department in concert with the Council Union. In the situation where a permit being granted is contingent on a counterpart position being hired from the Council-member Union, the member must be employed for at least the same work hours.

This language is unequivocal and we intend to assert our bargaining rights.

On August 15, Mr. Bethune responded to Mr. Ramsden as follows:

I have received 669's response to our plea for reconsideration of this company's permit request for videographers Travis and Kimberly North. Please be aware that Mouny Productions Ltd. feels strongly about the necessity of having these two individuals fulfill the videographer requirement for this movie.

The Director and Producers of this movie are committed to doing whatever is necessary to have these videographers on our team which may include among other things a direct request to HRDC to approve a work permit allowing these individuals into Canada to work on this film.

Please remind the Union executive that the Producers of this movie, 20th Century Fox, have been British Columbia's largest film industry client having spent well in excess of \$500 million U.S. dollars on film production here in the last four years. To not allow this relatively small request seems somewhat short sighted at best.

On September 20, the Union filed the formal grievance in this matter. The grievance letter sets out the alleged breaches and the requested remedy. It states:

Re: Grievance: Non Members hired to do Bargaining Unit Work  
Travis North and Kimberly Nunez-North.

Dear Stewart,

It has come to our attention that despite our conversations, meetings, and correspondence, two people have been hired and are working in our jurisdiction in violation of the Collective Bargaining Agreement.

This morning I informed the Joint Council and reviewed the documentation and I have their concurrence to proceed to grievance and arbitration.

We say the company has violated;

1. Article 3 Work Permits
  - a. 3.01 (f)
  - b. 3.03
  - c. 3.05
2. Article 1.19 Subcontracting
3. Appendix "C"
  - ...b. C2.06 Video Camera Crew
  - c. C2.07 Electronic Press Packaging

We reserve the right to claim against any other clause in the collective bargaining agreement that may arise from these issues.

To remedy this we seek full compensation for the loss of the work. This may include but is not limited to, full wages for two electronic camera operators at scale plus fringe, as well as any monies Local 669 would have received in fringe from the existing workers in the way of 2% working dues, Health and Welfare contributions and any other relevant fee and fringe. Our claim is that the compensation should be calculated beginning July 31, 2006 until the two workers are wrapped at the end of the production.

After having conversations and correspondence regarding this matter, with clearly no resolution to the problem then I would seek to waive any further grievance discussions and proceed directly to third party arbitration. The Agreement provides for several options including the statutorily available expedited arbitration.

I am amenable to move forward in any way or venue that gets this issue resolved. Please let me know in which direction you would like to proceed.

Articles C2.06 and C2.07, to which reference is made in the letter, are contained in Appendix "C" of the Master Agreement. Those provisions state:

- C2.06 Video Camera Crew:** If the Employer chooses to shoot in Video format, the Employer will use a Local 669 Electronic Director of Photography, Electronic Camera Operator and/or Electronic Camera Assistant as needed.
- C2.07 Electronic Press Packaging:** When an Employer that has executed a Letter of Adherence to this Master Agreement hires a video unit on a motion picture set or location for purposes of electronic press packaging, behind the scenes documentaries, and/or entertainment news programming, such video unit shall be covered by this Master Agreement.

As required by the terms of the Master Agreement, Local 669 kept the Joint Council of Unions informed about this dispute and the Council passed a motion "approving that this issue proceed to grievance including to arbitration if necessary".

Alison Rein, Vice President, Creative Content – Theatrical Marketing, sent a letter to Employer Counsel on November 29 outlining Twentieth Century Fox's position on this matter. It states:

I am writing to you to confirm that Travis North and Kim North were hired by me in the Theatrical Marketing Department in order to document the filmmaking process on *Fantastic Four: The Rise of the Silver Surfer*. This footage is for a series of web blogs we will produce for the internet. The Norths were referred to me by the film's director, Tim Story. Both Tim and I felt that having videographers with him throughout filming would allow a level of comfort and accessibility that would not be achieved otherwise. The North's have a history with the director, crew and talent and this allows us to get material that is more intimate and necessary for the internet audience.

Please note that a local union crew from Image Pacific has been consistently hired to film all materials necessary for the EPK and other publicity outlets.

Please feel free contact me if you have any questions...

Mr. North and Ms. Nunez-North testified that on this project Ms. Nunez-North's primary function was the editing of the material, although Mr. North also contributed to that process. They both were involved in preparing proposed ideas for Mr. Story's approval and prepared all the interview questions. Mr. North testified his roles included being the primary camera operator, production, editing, logging of tape, attending meetings and conference calls, graphics and concept creation.



With respect to the actual camera work for which Mr. North used a Sony HandyCam (a high end consumer product), Mr. North made seventy-five tapes, totaling approximately sixty to seventy hours of film. It is estimated that during the pre-production and production periods in Vancouver he worked with the camera on ninety-four (94) days, sometimes for as little as 20 minutes on a particular day. He described the camera work for the web-blogs as "very focussed shooting". Ms. Nunez-North estimates that over the entire period she used the camera on less than five occasions on five separate days.

Neither Mr. North nor Ms. Nunez-North attended on the set every day and when they did it was for various lengths of time. The evidence of Mr. North is that on occasion Mr. Story would call them at the last minute and ask them to come to the set to discuss the project, sit in on meetings or film something. Mr. North also testified he and Ms. Nunez-North worked on their own timetable and did not work with the rest of the production crew. There was also filming done in the pre-production in Los Angeles as well as during the post-production period there which will continue until June, 2007.

Mr. North also testified that he felt that it was important for him to do all the camera work for the sake of "continuity", that is, the consistency in style of shooting (e.g. angles). Mr. Ramsden and Mr. Rutherford agreed in their testimony that such continuity is important to the process and that it is "one of the factors" that needs to be considered. As well, Mr. North testified it was easier for him to actually hold the camera while he conducted the interviews on the set than it would be to have had a separate person hold the camera. As well, some of the camera work arose on very short notice, as events developed around Mr. Story.

Mr. North also testified that the work done by North Projects in creating these web-blogs had nothing to do with the theatrical release or the creation of the Electronic Press Kit (EPK) and other publicity material. All that filming was all done by Image Pacific which employed Local 669 members for their camera work.

The Board also heard evidence related to the general industry context in which these events unfolded. Mr. Ramsden and Mr. Rutherford both testified that it was cooperation between the

production companies and all the film unions which has permitted the film industry to grow in British Columbia. It also was stated that the rise in the Canadian dollar and the granting of tax breaks by other jurisdictions have created problems for the industry here and that the "leaders" in the industry on both sides are acutely aware of that fact.

With respect to the granting of work permits, Mr. Ramsden testified in cross-examination that the historical practice at Local 669 was that if an individual did not qualify for one of the "automatic" permits under Article 3.03(a) or (b) or (c), then the Union would decide if it was reasonable under the circumstances to grant a discretionary permit. Under the new Executive Board, however, the practice of deciding whether to grant permits has become "more formalized". Mr. Ramsden stated that the practice had been "fairly easy" and was now tightened up. In that regard, Mr. Rutherford, who was called as a witness by the Employer and testified under summons, testified the previous Executive Boards understood that relationship building was critical and that "you have to pick your fights" and that they had to make "long term decisions in the best interest of the membership".

Mr. Ramsden agreed under cross-examination that there has always been "an element of cooperation" beyond subsections (a) (b) (c) and (d) of Article 3. He described the granting of these discretionary permits as being "more an art than a science" and there existed a "delicate balance" in making these decisions. Mr. Rutherford described the situation as "nothing is ever black or white". Mr. Rutherford also described it as a "give and take" process and that sometimes the Union would "push back". As well, in some instances the Employer would threaten to "pull the show" if permits were not granted and on those occasions the Union would have to decide how real was that threat.

Mr. Rutherford agreed in his evidence that sometimes "intangibles" had to be considered, particularly with individual requests from the Director or the Director of Photography with respect to personal relationships. The evidence is that when directors decide to hire specific individuals, that type of situation has to be handled carefully. It is important for the production companies to keep the directors on side and accede to their wishes or it will hurt Vancouver's reputation in the industry. On the

other hand, it is critical for the Union membership that the film work being done in British Columbia is performed by local individuals. Obviously, widespread use of work permits has a direct and negative impact on the bargaining unit.

The evidence before this Board is that in 1997, when the present Master Agreement was being created, it was agreed by the parties it was important that the historical practices with respect to work permits be continued. During the 2003-2006 negotiations as well the producers were very concerned that operations would go forward "consistent with past practice". As a result, a clause to that effect has been inserted by the parties into the Master Agreement at the conclusion of Article 3.03 indicating that past practices will be continued.

Mr. Ramsden agreed that these new web-blogs (which began with the film, The Blair Witch Project) are new technology and are akin to advertisements in fan magazines and there has not been a lot of experience with them in the industry. Mr. Ramsden agreed that trying to deal within the Master Agreement with the type of work done by Mr. North and Ms. Nunez-North here was like "trying to put a square peg in a round whole". Mr. Ramsden stated this was a "new animal" and the parties will have to "get it in its cage". There will likely be more cross-jurisdictional work in the future and that matter will have to be addressed by the parties in negotiations.

There is also no dispute between the parties that the work that both Mr. North and Ms. Nunez-North did involved a number of crafts such as editing, interviewing, writing, and setting up meetings that were clearly not within the jurisdiction of Local 669. As a result, it is only the camera work which is being claimed by Local 669.

Mr. Ramsden and Mr. Rutherford agreed in their testimony that the Union has a good relationship with Twentieth Century Fox and that the Company has been a "prolific" employer of union members in British Columbia. As well, it was agreed that Twentieth Century Fox provided "generous crewing" for this production which involved the Company using more cameras than usual for the shooting of Fantastic Four 2, both in terms of having an extra crew and having additional members of

Local 669 on the crews themselves. Mr. Ramsden also agreed that the actual camera work done by Mr. North which Local 669 is claiming involved something less than 75 hours of filming, was "a modest amount of shooting", particularly with respect to this production.

Finally, there was limited evidence presented that when situations like this have arisen in the past, for example, during the production of films such as X-Man 2, X-Man 3, Fantastic Four 1 and Marriage, there have been arrangements made between the parties under which the Company would make payments to the Union for use as contributions to disabled members or for the Union's Skill and Upgrading Fund. There have been situations where payments have been considerable (even full "matching") when extensive camera work has been done or more nominal payments (\$5000) when the work has been more incidental and there had been no record kept of the actual time worked on the camera. However, there is no documented evidence leading to any fixed outcome for addressing the resolution for these types of work permits requests.

#### DECISION

The Union asserts in this grievance that the granting of work permits is a major issue for Local 669 and claims damages under Article 3.05 as well as damages for the failure of the Employer to interview any of the six candidates proposed by Local 669.

The Union claims that the camera work performed by Mr. North and, to a lesser extent, Ms. Nunez-North, constituted camera work which is within the jurisdiction of qualified I.A.T.S.E. Local 669 members. The work permit applications for Mr. North and Ms. Nunez-North characterized their positions as "Behind the Scenes videographer". It is submitted that is clearly within the jurisdiction of the Local 669 as Article C2.07 states that if an employer "hires a video unit on a motion picture set or location for purposes of electronic press package, behind the scenes documentaries, and/or entertainment news programming, such video unit shall be covered by this Master Agreement".

It is asserted that Mr. North and Ms. Nunez-North did not qualify for work permits under 3.03(a) (b) or (c) of the Master Agreement. Further, the Union asserts they also did not qualify under 3.03(d) as there were a number of qualified local camera operators available for the position.

The Union submits that these provisions in the Master Agreement constitute the mandatory requirements for the issuance of work permits and this Arbitration Board must give effect to the true intention of the parties: Sealy (Western) Ltd., 20 L.A.C. (3d) 45 (Wakeling); The Tribune (Division of Cariboo Press Ltd.), 4 L.A.C. (4th) 390; Canada Safeway Ltd., 103 L.A.C. (4th) 1 (McPhillips). As well, this Agreement must be administered fairly and reasonably in light of the language contained therein: International Nickel Co. of Canada Ltd., 14 L.A.C. (2d) 13 (Shime); School District No. 70 (Alberni), 103 L.A.C. (4th) 395 (Jackson).

Local 669 strongly asserts that personal friendship, nepotism or favoritism ("flavour of the month") should not be considered as legitimate components of the qualification requirement under Article 3. The Union also asserts that the five to nine month personal friendship between the families of Mr. Story and Mr. North does not qualify as a "lengthy prior relationship", which is how the Employer described the situation in their letters and discussions with Local 669.

Moreover, it is asserted the Master Agreement has specifically addressed the issue of personal relationships in Article 3.04. That provision states:

**3.04 Personal Services Employees:** Permits will be granted for a personal Make-Up Artist, personal Hair Stylist, and/or personal Dresser, for an individual Cast member, and that Cast members' Stunt and/or Photo Double. If the permitted Employee is unavailable to implement these duties then an IATSE 891 member will be assigned as needed.

The Union argues that personal relationships with the members of camera crew are not included as exceptions in that provision, and, thus, that concept should not be introduced elsewhere in the Master Agreement.

The Union also asserts that the personal relationships between Mr. Story and Mr. North/Ms. Nunez-North could have been taken advantage of in the writing, editing and production of the material.

The only work claimed by Local 669 is the actual holding of the camera during the filming done in Vancouver and personal relationships should have no bearing on the exercise of that mechanical skill.

Further, the Union asserts that the Employer expressly stated to Local 669 in its application for the work permit of Josh Bleibtreu that “(w)ith the exception of (these) two non-669 D.O.P.’s everyone else will be hired locally.” As well, the Union argues that Mr. North and Ms. Nunez-North were paid through Cast and Crew just as other members of the production were.

With respect to the prior practice of the parties, the Union submits that the evidence is very general and the lack of specifics forecloses the possibility of arriving at objective criteria upon which to judge the reasonableness of a decision to deny a work permit. As such, any prior experiences which do exist do not meet the arbitral requirement that a practice must be clear and consistent: Corporation of City of Victoria, 7 L.A.C. (2d) 239 (B.C.L.R.B.); City of Penticton, 18 L.A.C. (2d) 307 (B.C.L.R.B.); Sudbury Mine, Mill & Smelter Workers, Local 598, 19 L.A.C. 210 (Weiler); Northwest Territories, 65 L.A.C. (4th) 211 (Hope).

As well, the Union asserts that the material created by Mr. North and Ms. Nunez-North is the property of Twentieth Century Fox and could still be used for other purposes, including, for example, creating a DVD for marketing purposes.

With respect to remedy, the Union asserts that in the absence of an appropriate in-kind remedy, the “matching” requirement (Article 3.05) should apply as it constitutes a “liquidated damages clause”.

Once again, that provision states:

**3.05 Counterpart Job Classifications:** If the Employer chooses to hire an individual who is not a member of a Council-member Union and does not qualify for a work permit as set out in this Agreement, the company must hire a counterpart position. This counterpart position shall be filled at the discretion of the applicable department in concert with the Council Union. In the situation where a permit being granted is contingent on a counterpart position being hired from the Council-member Union, the member must be employed for at least the same work hours.

It is argued here that because the Employer decided to proceed with its plan to use Mr. North and Ms. Nunez-North to film the web-blogs despite the fact no work permits were granted, the Employer must accept the natural consequences of that decision which is the hiring of a "counterpart position" who will be employed "for at least the same work hours".

In this case, the evidence indicates Mr. North and Ms. Nunez-North filmed on the set on 99 different days. The actual number of hours or even minutes which were involved on each of those days was not recorded but the Master Agreement contains a minimum daily 8 hour call-out provision (Article Four). The Union asserts that the appropriate matching position for the work done by Mr. North and Ms. Nunez-North is the Electronic Camera Operator and the wage rate for that position is \$44.91 (the previous rate of \$43.60 plus 3% increase under the 2006-2009 Master Agreement).

Therefore, the amount of wages claimed by Local 669 is \$35,568.72 (8 hours x 99 days x \$44.91) to which fringe benefits of 18% must be added (Article 8.02) for a total owing of \$41,971.11. Out of that amount, 2% would be owing to the Union as union dues under the terms of the Master Agreement.

Finally, Mr. McCabe asserts that the failure of the Employer to interview Local 669 candidates was a breach of Article 3.03 of the Master Agreement. It is submitted that the failure to do so was a substantive, and not a mere technical, breach of that provision. As a result, a declaration that a breach occurred is not sufficient and damages should be awarded: Burrard Yarrows Corporation, Vancouver Division, 30 L.A.C. (2d) 331 (Christie); B.C. Rail Ltd., 135 L.A.C. (4th) 339 (Hope). It is also submitted by Local 669 that the breach in this case was significant and, therefore, more than nominal damages should be assessed.

For its part, the Employer asserts that it was extremely generous in its crewing of the film Fantastic Four 2 and the claim for damages by Local 669 in this case constitutes what is characterized in the industry as the "shakedown approach".

The Employer submits, first, that the unique work done by Mr. North and Ms. Nunez-North was not even within the jurisdiction of Local 669 and that work permits were not actually required. The jurisdiction of IATSE 669 under the Master Agreement extends only to various aspects of camera operations and Mr. North and Ms. Nunez-North performed multiple tasks or functions on the project, including writing, producing, developing and editing which are not functions within Local 669's jurisdiction. Although they may have been identified as "videographers" in the Employer's application to Local 669 for work permits for them, this term did not accurately describe their actual role. It is submitted that members of IATSE 669 would never be expected to perform the multitude of functions that Mr. North and Ms. Nunez-North performed in relation to the creation of the web-blogs. It is argued that, in fact, many of the functions performed by them could very well fit within the jurisdiction of one of the other film industry unions, including IATSE 891.

It is asserted that the evidence indicates that Ms. Nunez-North, particularly, while in Vancouver did not perform any primary functions within I.A.T.S.E. 669's jurisdiction. Her functions fundamentally involved the planning and creative aspects of the project, including writing and editing. She used her own editing equipment, which includes extensive computer and video systems, as well as complex editing software. In nine months, she may have operated the camera on a maximum of five occasions. It is submitted that IATSE 669 certainly cannot have a claim for the work done by Ms. Nunez-North in these circumstances, since the majority of her work on the project did not involve camera operation at all. It is also submitted that although Mr. North did almost all of the camera work for the project, he also performed other functions in relation to the project, including writing, graphics, interviewing and editing.

In the alternative, the Employer submits that if work permits were required, they were unreasonably denied by the Union. First, the Employer asserts that the Master Agreement requires in Article 3.03(d) that the Union provide work permits to "(p)ersons for whose position the Council-Member Union is unable to supply qualified personnel". In that respect, the Employer asserts that the work done by Mr. North and Ms. Nunez-North in creating these ten 2 to 3 minute web-blogs was not the



type of work done by Local 669 members. This was a relatively new type of artistic creation and involved extensive multi-disciplinary work, of which the operation of the camera was a very incidental part. It involved considerably less than 75 hours of filming over a nine month project when one includes both the pre- and post-production periods which can be compared to the thousands of hours of footage taken for the movie itself. The Employer asserts that in the process undertaken by Mr. North and Ms. Nunez-North it would make no sense to carve out from the creation, writing, editing and producing of the web-blogs the camera work for a Local 669 member. It was this multi-disciplinary requirement of a "bundle of skills" which constitutes a qualification under Article 3.03(d) and was one which no member of Local 669 possessed. On that basis, Local 669 should have granted the work permits.

Additionally, the Employer asserts that the camera work required to complete this project involved personal access to Mr. Story and, thus, the personal relationship or friendship between Mr. Story and Mr. North/Ms. Nunez-North was fundamental to the success of this project. This ready access to Mr. Story at all times, including personal moments at home, also constituted a legitimate qualification under Article 3.03(d) of the Master Agreement and work permits should have been granted on that basis.

The Employer asserts that it has the right to determine the appropriate qualifications for the position: Delta School District, 46 L.A.C. (4th) 216 (Laing); Reynolds Aluminum Co. of Canada Ltd., 18 L.A.C. 109 (Weiler); Canadian Food and Allied Workers Union, Local 175, v. Great Atlantic and Pacific Co. of Canada, [1976] O.J. No. 32 (Supreme Court of Ontario); Corporation of Township of Richmond, 7 L.A.C. (4th) 430 (Larson). It is also asserted that there was no bad faith in this case in the sense of an employer manipulating the job qualifications to subvert a just claim for work on the part of a Local 669 member: Delta School District, supra. As well, it is asserted that personal traits of individuals can be a legitimate consideration: Canadian Food and Allied Workers Union, Local 175 v. Great Atlantic and Pacific Co. of Canada, supra.

The final submission of the Employer is that is precisely the type of situation when Local 669 has issued work permits in the past. That has been particularly true in this case where there is a multi-

disciplinary project which does not fit comfortably within the classifications negotiated in the Master Agreement. It is asserted that the failure of Local 669 to do so in these circumstances constituted a breach of the final section of Article 3.03 which states that "...Council-member Union will not unreasonably deny granting additional work permits consistent with past practice". The Employer asserts that the practice of Local 669 had always been a "consistent practice of accommodation" and it is not the prerogative of the new Executive Board to alter that approach.

In response to the Union's argument with respect to Article 3.04, the Employer submits that provision deals with Personal Services Employees for cast members and has absolutely nothing to do with the situation here. With respect to the method of payments to North Projects, it is argued that although the money was channeled through Cast and Crew in Vancouver, the evidence of the witnesses is that the contract was between Twentieth Century Fox and North Projects and that Mounty Productions was not involved in the actual payment of money to Mr. North and Ms. Nunez-North.

As well, it is pointed out by Mr. Dong that all the regular production work associated with the marketing of the film, such as behind the scenes DVD's etc., was being filmed by Pacific Imaging, using Local 669 members. That should be distinguished from the work done under the auspices of North Projects which was a distinct undertaking and involved a personal project of the Director.

The Employer also asserts there was no breach of the Master Agreement due to its failure to interview Local 669 members. The Master Agreement requires that "reasonable consideration" to available qualified candidates be given and that was done here by Mr. Bethune and Mr. Fanger, who discussed the matter between themselves as well as with Mr. Ramsden. In the alternative on this point, the Employer argues that should the Board determine the failure to interview the Local 669 candidate was a breach of the Master Agreement, it was a technical breach only and that a mere declaration to that effect is the appropriate remedy.

With regard to the Union's claim for monetary damages, the Employer submits, first, that the Union's claim identified the wage rate of an Electronic Camera Operator when that of Video Coordinator

Assistant I would be more appropriate. Further, the Employer asserts that this is not the type of situation where the "matching" language in Article 3.05 was intended to come into effect.

Given those extensive submissions, there are a number of interrelated issues to be confronted. To begin, in the opinion of this Board there is no doubt that the work done by Mr. North and Ms. Nunez-North was generally not the type of work done by Local 669 members. The evidence is that there were a number of tasks intertwined in the process of creating the web-blogs that included the filming, the interviews, the editing, the creation of ideas, the meetings to discuss proposals and the actual attendance at production meetings. Mr. North and Ms. Nunez-North participated in varying degrees in each of those activities. This was a cross-jurisdictional activity which involved a number of crafts and, if broken down into their component parts, could theoretically give rise to potential claims from a number of unions. Indeed, Mr. Ramsden candidly stated in his testimony that newer technology is creating growing difficulties in this regard for the industry and the parties will have to address those issues in collective bargaining.

However, even if one could separate out the camera work done by Mr. North, there is the problem with artistic continuity. It must be realized that the creation of this twenty to thirty minutes of web-blogs (including the camera work attached thereto) was a twelve month project of which only slightly more than four and one-half months was done in Vancouver. Mr. North had done all the interviews and filming which had occurred in pre-production in Los Angeles between May and August, 2006 and is doing so again between December, 2006 to June, 2007 in the post-production phase in Los Angeles. This continuity involves an element of "style" which is obviously important and this was confirmed by both Mr. Ramsden and Mr. Rutherford. In my view, that legitimate concern of the Employer must be respected in these circumstances. As well, there were certain times, even during the filming in Vancouver, where it would be impractical to have had a Local 669 member hold the camera, most apparently in private moments over breakfast or late in the evening in Mr. Story's residence.

While this Board is cognizant of the dangers of placing any emphasis on "flavour of the month" requests, this project does not appear to fall into that category. The requests to have Mr. North and Ms. Nunez-North who had a personal relationship with Mr. Story work on this project appears to have a rationale basis rather than a purely subjective desire of one or more individuals.

However, the Employer's position that there was no requirement for work permits at all is somewhat compromised by a couple of factors. First, the Employer actually made application to Local 669 in this case for work permits for Mr. North and Ms. Nunez-North. Moreover, in making application for Mr. North and Ms. Nunez-North in this case, the Employer identified them as "Behind the Scenes videographers" in the permit application which is clearly a position within Local 669's jurisdiction. As well, the evidence is that in relatively similar situations with respect to recent productions (X-Man 2, X-Man 3, Fantastic Four 1, Marriage), work permits have been sought by the producers.

Another factor to consider is that the Employer also assured the Union in its July 19 letter that Mr. Blanford and Mr. Bleibtreu would be the only exceptions for whom work permits would be sought and that "everyone else will be hired locally". To then follow that up within a week with a further application for two more work permits was guaranteed to upset the Union. In the same vein, the method of paying Mr. North and Ms. Nunez-North through Cast and Crew certainly created a misleading perception from which Local 669 and more importantly, its members, could assume they were doing bargaining unit work.

When all these factors are considered, it is not appropriate to conclude that the work done by Mr. North and Ms. Nunez-North was such that no work permit was required. Rather, the critical question is whether Local 669 should have granted the work permits. The resolution to that particular dilemma lies within history. The AMPTP and the Council of Film Unions have expressly incorporated into the Master Agreement the statement that "Council-member Unions will not unreasonably deny granting additional work permits consistent with past practice" (emphasis mine). The evidence is that this phrase was

included in Article 3.03 to ensure the existing practices within the industry with regard to the issuance of work permits would be continued.

The evidence before this Board leads to the inevitable conclusion that in the past Local 669 would have granted the work permits for Mr. North and Ms. Nunez-North and in doing so would have negotiated appropriate financial compensation from the Employer. The testimony of Mr. Ramsden and Mr. Rutherford makes it clear that the new Executive Board of Local 669 has recently decided to change the previous ground rules and tighten up the process of granting work permits. However, in the opinion of this Board, that is not something that can unilaterally be decided by one of the parties given that it was expressly agreed in the Master Agreement that previous practices with respect to work permits would be continued. If the existing approach is to be changed, it should be at the bargaining table and the express language in Article 3.03 referring to consistency with past practice should be removed.

The issue then becomes what would the appropriate contribution have been if the Union had indicated it would grant the work permits as long as the Employer made such an appropriate contribution. The limited number of previous examples indicates a range of \$5000 to a total "matching" for all the work done. In this case, the facts indicate that something at the lower end of the scale would likely have been agreed to.

First, given the multi-jurisdictional nature of Mr. North's and Ms. Nunez-North's work, it is not a situation where there was discreet camera work performed by a non-member of the bargaining unit. Even during the time using the camera, Mr. North was often involved in talking to or interviewing subjects. Second, the amount of actual camera work done by Mr. North was relatively incidental. Mr. North estimates that of the seventy-five tapes which have been completed so far, four were done in Los Angeles and on each of the other tapes, there was less than an hour of film recorded. A reasonable estimate is that there was between sixty and seventy hours of actual film taken over a five month period in Vancouver. Therefore, the amount of filming done by Mr. North was miniscule compared to the camera work done on the actual production itself. Moreover, the sixty to seventy hours of filming was

also a very small portion of all the work performed by Mr. North on the project in the four and one-half months he was here in Vancouver.

A final factor to be considered is that Twentieth Century Fox hired an extensive number of Local 669 members for the filming of Fantastic Four 2. There was an extra crew hired for the production as well as extra members being placed on each crew. There is also the fact that the regular marketing (EPK) work was done exclusively by Local 669 members working for Pacific Imaging. In this case, there is no element of bad faith or contract avoidance and indeed, the Employer was very up front about requesting work permits for Mr. North and Ms. Nunez-North rather than simply having them work and claim that no work permits were required.

It must be emphasized that calculating the appropriate contribution is not an objective exercise. The evidence is that the granting of permits (and compensation therefore) was described as a very "gray area", a matter of "give and take", a "delicate balance" and "more an art than a service". Based on the situations where financial arrangements have been made in the past in circumstances somewhat akin to these, it must be concluded that the amount paid to the Union in this case would not have been a "match" under Article 3.05 of the Master Agreement. After considering all of the factors, this Board concludes that the Employer should remit to the Union an amount of \$7,500.00 as a contribution to the Union's Skill and Upgrading Fund. Out of that amount, 2% should be remitted as Union dues.

The spectre of the material contained on the film shot by Mr. North for the creation of the web-blogs being used for other purposes was raised during the hearing. In the opinion of this Board, the testimony of the witness implied that this might be a real possibility. Rather than make assumptions that this residual body of work will or will not be used and attempt to surmise how it might be utilized and assess whether the present level of damages should be adjusted, it is more appropriate to simply indicate to the parties that if this material is used for other commercial purposes, the parties should discuss whether a further financial contribution to the Union is appropriate. Failing agreement on that point, the

Union is permitted to apply to this Board for a determination whether a further contribution would be appropriate in the circumstances and what that contribution should be.

The final element of the Union's claim relates to the Employer's failure to grant interviews to the Local 669 members who were identified by Mr. Ramsden to the Employer. Article 3.03 expressly states that "(a)fter the Employer has given reasonable consideration (including the granting of an interview if requested by a council-member Union) to available qualified applicants..." the Council will grant work permits to certain individuals. Given the fact the Employer had decided that the personal relationship with Mr. Story was a critical qualification, it is understandable at one level why no interviews were held. However, under this provision it is not sufficient that an employer merely consider applicants (which it is agreed was done here) but there is an express obligation to grant an interview if that is requested by the particular union. Mr. Ramsden established in his evidence that for Local 669 members this is a critical part of the ongoing process of obtaining work and that is why that process was expressly included in the Master Agreement.

As a result, it is my view that this is a substantive right negotiated by the Joint Council of Film Unions which was breached on this occasion. It is so declared and the Union is to be awarded \$1,000.00 in damages for the breach of its contractual rights in that regard. That money is to be allocated to Local 669 members as the Union sees fit.

Finally, it should be observed that this is a difficult case and the parties will have to address in bargaining the likely ramifications of an increase in these types of cross jurisdictional activities involving new technology. Mr. Ramsden described the situation with Mr. North and Ms. Nunez-North as trying to put a "square peg in a round hole". It is clear the parties will have to formally address in the future the shape of either the peg or the hole.

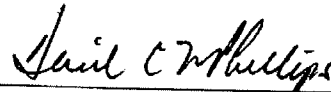
AWARD

The Union's grievance is allowed. It has been concluded that the Employer breached the Collective Agreement in having Mr. North and Ms. Nunez-North work without the appropriate work permits and that the Union acted unreasonably in denying those work permits rather than following past practice and negotiating a financial compromise.

Therefore, the Employer is ordered to pay the Union \$7,500.00 as compensation (of which 2% is Union dues) as a contribution to the Union's Skill and Upgrading Fund. Further, it is declared the Employer breached the Master Agreement in failing to grant any interviews to identified Local 669 members and for that breach the Union is awarded \$1,000.00 in damages which is to be allocated to the members of the Local.

This Board will remain seized and retains the jurisdiction to deal with any matters arising from the interpretation or implementation of this Award.

Dated this 7<sup>th</sup> day of March, 2007.



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David C. McPhillips  
Arbitrator