

In the Matter of an Arbitration Between

IATSE LOCAL 600

Union

- and -

WARNER BROS. TELEVISION

Employer

AWARD & OPINION

NB 3779

Grievance 040315 and 102015
(Rush Hour)

Arbitrator: Norman Brand, Esq.

Appearances:

For IATSE Local 600
David Adelstein, Esq
Heather Pearson, Esq.

For Warner Bros. Television
Mitchell Silberberg & Knupp, LLP
by **Adam Levin, Esq.**
Grant Goeckner, Esq.

Date: April 22, 2020

Procedure

On April 2, 2015, IATSE Local 600 (“Union” or “Local 600”) filed a grievance with Warner Brothers Television (“Company” or “WBTV”) alleging the Company failed to properly pay, under the applicable Producer/IATSE Local 600 Agreement, David Nowell, JP de Lespinois, and Kevin LaRosa, Jr. for their work on “Rush Hour” on March 30, 2015. (U-1) On October 23, 2015, the Union filed another grievance alleging the Company similarly failed to properly pay Robert Gluckman, Michael FitzMaurice, and Peter Graf, for work on “Rush Hour” on October 5, 2015. (U-2) The parties were unable to resolve the grievances and moved them to arbitration. On December 5, 2016, the parties chose the undersigned as Arbitrator and scheduled hearings for September 27 and 28, 2017. The Arbitrator held hearings in Los Angeles, CA on those dates and January 10, 11, June 13, July 30, 31, December 13, 14, 2018; March 5, May 2, and December 2, 2019. Both parties were present at all hearings and represented by counsel. Each had a full opportunity to examine and cross-examine witnesses, present evidence, and argue its position. Neither party objected to the conduct of the hearings. A court reporter recorded the proceedings. At the close of the hearings the parties asked to file post-hearing Briefs and Reply Briefs. The Arbitrator declared the hearing closed when he received the Reply Briefs on February 18, 2020.

Issues

The parties stipulated the following issues:

1. Did Warner Brothers Television violate Article 1 of the Local 600-Producer Agreement by failing to employ Kevin LaRosa Jr., David Nowell, and JP de Lespinois pursuant to the terms and conditions of the

Agreement when operating a drone on WBTV's television pilot "Rush Hour" on March 30, 2015?

2. If so, what are the appropriate remedies?

3. Did Warner Brothers Television violate Article 1 of the Local 600-Producer Agreement by failing to employ Michael FitzMaurice, Robert Gluckman and Peter Graf pursuant to the terms and conditions of the Agreement when operating a drone on WBTV's television series "Rush Hour" photographed on October 5, 2015?

4. If so, what are the appropriate remedies?

Stipulations

The parties entered the following additional stipulations:

1. The matter is properly before the Arbitrator.
2. The Arbitrator will retain jurisdiction over the remedy.¹

Contract Language

ARTICLE 1. Scope of Agreement

This Agreement is made subject to the "Producer - I.A.T.S.E. and M.P.T.A.A.C. Basic Agreement of 2015."

This Agreement shall be applicable to the classifications of employees listed in the "Wage Scales, Hours of Employment and Working Conditions" set forth herein, employed by Producer to perform services in the County of Los Angeles, or hired by the Producer in the County of Los Angeles to perform services outside the said County, but within the limits of the United States, its territories and Canada, in the production of motion pictures and still pictures, regardless of the purpose for which they are produced, subject, however, to the limitations herein provided.

In the event the Producer elects to and does employ a person in the County of Los Angeles, California to perform work outside the limits

¹ These are the Arbitrators standard stipulations. The record reflects only a garbled version of them. (Tr. 6:8-11)

of the United States, its territories and Canada in any of the job classifications covered hereunder, in the production of motion pictures and still pictures, regardless of the purpose for which they are produced, subject, however, to the limitations herein provided, then the provisions of this Agreement shall apply to such person. However, such person and Producer may make any other agreement to apply to such employment, such as a "flat deal" contract, in the place and stead of the provisions of this Agreement, provided such other agreement requires not less than seventy-five (75) hours per week in pension and health contributions to be made on behalf of such person (which amount may be prorated for partial workweeks).

This Agreement shall cover the work of all phases of motion and still picture photography as described in any or all of the definitions and duties of the job classifications as hereinafter set forth. The employees covered hereunder shall not be restricted in the use of equipment necessary to the performance of their duties hereunder.

The phrase "motion picture and still pictures," as used herein, shall be deemed to mean motion and still pictures of any type or nature produced by the Producer.

The term "employee," as hereinafter used, shall be deemed to mean an employee subject to the terms and conditions of this Agreement.

Neither the Union nor the Producer shall take any arbitrary action to change conditions of the collective bargaining agreement without mutual approval in the form of a written amendment to the Agreement.

82. Subcontracting

Producer retains the right to purchase or rent stock film of any kind or nature. Producer will not have stock film "shot" to Producer's specification in the thirteen Western States, except under the conditions noted below:

The Producer shall not utilize the services of any individual, firm, partnership or corporation to perform work in Los Angeles County, California which would otherwise be performed by available qualified personnel subject to this Agreement unless such work is performed at wage rates and conditions no less favorable than those provided hereunder; except that no such limitation on the Producer's right to subcontract or sublet shall apply in the case in which specialized knowledge or techniques are required, or when the required facilities or equipment are not normally maintained by Producer in an operable condition.

Should it become necessary to subcontract to other than those subcontractors who comply with the wage rates and conditions

as specified herein, the Producer agrees to give the Union notice of its intention to so subcontract. Should the Union oppose such subcontract, the parties agree that the question of whether there are other subcontractors who could be used that comply shall immediately be placed in Step One of the grievance procedure as provided in Article 7. If the question is not there resolved, it shall then be placed in Step Three of such grievance procedure within five (5) days (excluding Saturdays, Sundays and holidays) from the time the Producer notifies the Union of its intent to so subcontract. Pending the determination of the same under such grievance procedure, as above provided, the Union agrees there will be no strike, work stoppage or interference of any nature with the Producer's operations or the subcontractor's operations by reason of such dispute.

In addition to the above exceptions, the Union will consider granting waivers in other cases where the conditions justify it.

95. Director of Photography

(a) The term "Director of Photography," as used herein, is hereby defined to mean a photographer who has heretofore been known and described in the motion picture industry as a Director of Photography and who is in active charge of photographing a motion picture, including supervision of the technical crew, process photography, underwater photography, aerial photography, process plates, inserts and special effects photography. Nothing contained in this definition shall be deemed to mean that the Director of Photography shall perform any of the duties ordinarily or customarily performed by the Director of a motion picture. Nothing contained in this definition shall be deemed to mean that the Director shall perform the duties ordinarily and customarily performed by the Director of Photography. Nothing herein shall be construed either to enlarge or diminish the duties of the Director or the Director of Photography as such duties are presently and were heretofore customarily performed in the motion picture and television industry.

A Director of Photography shall have the right to use an instant camera in production for lighting purposes.

96.1 Camera Operator

In the operation of cameras, this work shall be handled by a Camera Operator (except when done by a Director of Photography pursuant to Paragraph 96 and except process plate photography). Shooting composite process photography shall be the work of a Director of Photography.

98. First Assistant Photographer

The First Assistant Photographer shall maintain the camera for operating purposes at all times and all the necessary accessories. He shall, in actual shooting, regulate all focus changes, record meter readings, execute use of filters, gauzes, mattes and diffusion discs, handle various types of lenses and equipment and any further necessary or incidental work that may be required.

Facts

Background

The Motion Picture Association of America (“MPAA”), engaged a “lobbyist-type person, an expert in the aviation world....” to work with a committee of studio safety department personnel and six vendor UAS (“unmanned aircraft system” or “drone”) companies. They created the “requirements that the vendors would comply with in order to fly in[sic] commercials purposes.” (Tr. 1069:3-1070:9) On September 25, 2014, the FAA issued regulatory exemptions with specific requirements to six “aerial photo and video production companies” as a “first step” in allowing commercial drone operations.² The requirements apply to the operator (the entity holding the exemption), the Pilot in Command (“PIC”), and the Visual Observer (“VO”).³ There are no requirements that apply to the Camera Operator.⁴

² The exemptions were issued under Section 333 of the FAA Modernization and Reform Act of 2012. They are referred to as the “333 Exemption.” MPAA “facilitated” the requests of the six companies, on the committee, including Astraeus. (C-54, p. 2)

³ The majority of the requirements apply to the operator (Team 5 in its 333 Exemption.). The PIC must be a licensed pilot who has shown the operator he can safely operate the drone. The PIC must observe certain safety (e.g. pre-flight inspection, yield to manned aircraft) and operational limitations (e.g. cannot operate a drone from an elevated or moving platform, or within 500 feet of non-participating persons).

⁴ On August 29, 2016, the FAA took a further step with Part 107, which allows a person with a “remote pilot certificate with a small UAS rating” to commercially fly drones. The certificate requires passing a test; it does not require a pilot’s license. Part 107 has no operator requirements and makes the VO optional. (C-1)

Team 5 was initially a gimbal rental house. (Tr. 1798:20-1799:9) In May 2014 it registered an LLC whose business was “aerial photography.” (C-37)⁵ Team 5’s members “were all motion picture pilots, aerial coordinators or Camera Operators” (Tr. 1799:22-24) On September 29, 2014, Team 5 LLC Managing Partner Alan Purwin⁶ applied for 333 Exemptions on behalf of Team 5, himself, Helinet Aviation, and Shotover Camera Systems.⁷ (Tr. 1839:8-20) The Team 5 application describes two UAS of “propriety[sic] design, conceived and constructed by the petitioner.”(C-13, p.4)⁸ Team 5’s application for the 333 Exemption included a “Team 5 Flight Operations and Procedures Manual,” and a “Team 5 Motion Picture and Television Operations Manual.” (C-13, at 7) Kevin LaRosa, Jr. (“KL”) wrote these manuals. (Tr. 1785:13-18;1901:19-1902:24) Purwin copied the Team 5 manuals and its 333 Exemption application, changing the names, to use in applying for a 333 Exemption for himself and the two entities he owned.(Tr. 1839:8-20) The Team 5 333 Exemption says the “petitioner states...each UAS at minimum will have a crew ... for each [aerial filming] operation consisting of” the PIC, VO, “and the camera operator.” (C-13, p. 5) The FAA granted 333 Exemptions to Team 5, Helinet, Shotover Camera Systems, and Alan D. Purwin on February 3, 2015. (C-55) The 333 Exemption imposes duties on the “operator” (the entity to whom the exemption is granted) the Pilot in Charge (“PIC”) and the Visual

⁵ The members of the LLC were Ben Skorstad, Kevin LaRosa II (“KL”) Kevin LaRosa, Sr., Heliblack, LLC (owned by Fred North and Alan Purwin), Rabbit Show, Inc. (Dylan Goss), David Nowell Enterprises, Inc, and Peter Graf. (C-37)

⁶ Purwin owned Helinet and Shotover Camera Systems. He was a member of Team 5, LLC through HeliBlack LLC, which he co-owned with Fred North.(Tr. 743:11-12; 778:6-9; 1839:1-13). Purwin died some time before September 19, 2015. (C-38, p. 70)

⁷ All of the 333 Exemptions were to fly the drones Team 5 owned. (C-107, p. 8)

⁸ Team 5 is the manufacturer of the Gryphon Dynamics X8, which is one of the proprietary drones listed in its 333 Exemption. (C-112) The record does not disclose if it manufactured the other listed drone.

Observer (“VO”). The Camera Operator is not mentioned after the single statement about “a crew.”⁹

Team 5 had an office located on airport premises, adjoining Helinet’s maintenance hangar. (Tr. 1896:11-1898:9) Members of Team 5, LLC did the work necessary to fulfill the responsibilities of the operator. Goss was primarily responsible for operations at Team 5, with David Nowell involved in operations for the first few months. (Tr. 778:13-23) Graf serviced drones. (Tr. 812:20-22) KL maintained drones and trained drone pilots and Visual Observers. (Tr. 1945:23-1946:4; 1807:2-5) Team 5 did not pay any member of Team 5, LLC for his work. Their remuneration, if any, came in distributions through their partnership K-1. (Tr. 1804:3-23; 862:6-8) John Burton, an aerial production coordinator for Helinet, acted as the operations manager for a few months until Team 5 hired Kimberly, its only employee.¹⁰ (Tr. 1867:16-18; 832:3-18; 778:24-779:7) Team 5 requires Producers who rent its drones to employ only those people Team 5 has authorized to perform aerial photography with its drones.¹¹ KL and Michael Fitzmaurice could fly the drones; Fitzmaurice, Nowell, and Gluckman could work as Camera Operators or Camera Assistant/Techs; Graf, Jared Slater, and JP de

⁹ When a PIC flies a fixed focus camera attached to the drone for aerial photography, as occurred on October 5, the “drone crew” consists only of the PIC and VO. The difference is of no significance for the requirements of the 333 Exemption. The use of the term “drone crew,” however, created significant ambiguity in the hearing. WBTV usually used “drone crew” to include the PIC, VO, Camera Operator, and Camera Assistant/Tech. Local 600 usually used “drone crew” to include the PIC, Camera Operator, and Camera Assistant/Tech, but not the VO whose work solely in that capacity it does not claim is covered by the Agreement. For that latter signification, this Award uses “drone camera crew”.

¹⁰ When Kimberly began working for Team 5 is not reflected in the record. She was working in September 2015, when she provided Team 5 insurance documents to WBTV. (C-123)

¹¹ David Wagreich, owner of the drone company Astraeus, testified to a similar policy when renting out its drones. (Tr. 430:8-21) As discussed below, this is not an unusual policy for vendors that rent specialized equipment to production companies to use for filming.

Lespinois (“JP”) could work as Camera Assistant/Techs. (Tr. 1882:5-1884:5)¹² Team 5 was the vendor of the drones and related equipment on both days grieved.

March 30, 2015

On Monday, March 30, 2015, a WBTV production company filmed a scene for the pilot of “Rush Hour” in which a character standing on the skid of a helicopter shoots the pilot, jumps off, and falls into a pool as the helicopter goes out of control and crashes. (Tr. 754:1-755:9, U- 25)¹³ Nowell testified he brought this work to Team 5. (Tr. 770:22-771:3) He also chose the PIC, and Camera Assistant/Techs to work on March 30 and 31.¹⁴ (Tr. 789:12-17) KL believed Production “reached out” to Alan Purwin, who “directed it to Team 5 because it was clearly a drone shoot.” (Tr. 1870:21-1871:6)¹⁵ The record does not reflect when Production began talks with Team 5 about the drone shoot, but it was originally scheduled for March 16. On March 11, 2015, Burton filed a Motion Picture Plan of Activities (“POA”) with the FAA for Team 5 to operate the drone on the 16th. The FAA approved Team 5’s Certificate of Authorization (“COA”) for the shoot on that date. (C-115, p.1) At some point after March 11, WBTV told Team 5 it would not put the drone crew on WBTV timecards because it wanted Team 5 to provide the labor for the shoot. According to KL, Goss’s “thing” was that Team 5 could not have employees

¹² The Agreement has the category denominated “First Assistant Photographer” but the parties used “camera assistant” or “camera tech” to describe the position. This Award uses the term “Camera Assistant/Tech.”

¹³ The record suggests March 30 was Team 5’s first drone shoot after getting its 333 Exemption.

¹⁴ At that time, KL was the only one authorized to fly the Team 5 drones. (Tr. 812:12-16)

¹⁵ KL was not a consistently reliable witness. He gave this testimony in response to questions about the October 5 shoot, but it is certainly about the March 30 shoot. He did not recall that Nowell (a member of Team 5 LLC) or JP worked with him on this March 30 shoot. (Tr. 1800:22-24; 1882:24-1883:10) He had difficulty remembering events that occurred four years earlier. (e.g. Tr. 1870:2-11) While he did not appear mendacious, his demeanor often reflected his confusion, lack of memory, and nervousness.

because it did not have Worker's Compensation insurance. The only way to complete the job was by routing it through Helinet, which had Worker's Compensation insurance and a 333 Exemption that covered the Team 5 drones. (Tr. 1871:1-1872:9) On March 24, John Burton updated the Motion Picture/Television POA he had filed with the FAA, changing the shoot date from March 16 to March 30 and the waiver holder from Team 5 to Helinet. (Tr. 1860:2-6; C-115, p. 2)¹⁶

On March 19 David Nowell's agent negotiated a deal with WBTV to have him work as an Aerial DP for Rush Hour on its drone shoot on March 30, on a helicopter shoot on March 31, and to pay him for one day of preparation.¹⁷ (U-24, pp. 1-2) On March 23 Nowell emailed Carol Gable, the Rush Hour Production Supervisor, telling her JP would be the drone tech and KL the drone pilot. (U-25)¹⁸ Nowell spoke with David Connell, the DP on Rush Hour, to determine what lenses and filters he wanted for the camera. (Tr. 842:15-843:6) Nowell emailed JP on March 24 giving him the details of how the DP wanted the camera set up and telling him to call Carol Gable, the Production Supervisor, "to introduce yourself and talk rates and payroll, etc. Nothing is being billed through Team 5." (U-25, p. 3)¹⁹ Gable sent Nowell the storyboards for the scene on March 27. (U-25, pp. 5-15)

¹⁶ POA is the initialism for "Motion Picture Plan of Activities." The 333 Exemption holder must file this plan with the FAA 3 days before the planned operation. The POA Team 5 filed for the March 16 shoot and the update changing to March 30 are both stamped "Examined and Accepted," signed, and dated by an FAA inspector.

¹⁷ Nowell is a highly experienced Aerial Director of Photography ("Aerial DP") and Cameraman. (U-13, pp. 11-14) This was his first drone camera shoot. (Tr. 677:24-678:3)

¹⁸ He also said Peter Graf would be the Shotover tech for the helicopter shoot the next day. (John O'Hara subsequently replaced Graf.) The Shotover Camera Assistant/Tech prepared and mounted the camera for the helicopter. (Tr. 694:6-15) The drone Camera Assistant/Tech prepared and mounted the camera on the drone. (Tr. 73:7-9; 74:25)

¹⁹ Nowell attached Goss' order to the camera rental house for the equipment Connell specified for use on the original shoot date. (C-43 ,p.3)

On the morning of the shoot Nowell spoke with the Director and DP about the shots they wanted, sequencing, and his concern that the three cameras filming from the pool area would be visible in the drone photography. (Tr. 756) JP and KL unpacked the equipment. JP checked with the camera assistants on the required camera settings, mounted the camera on its gimbal, adjusted its motors, and checked its balance. KL inspected the drone props and motor, then JL re-checked everything. (Tr. 73:4-75:11) While filming, the Director and DP stood immediately to the left of Nowell directing him to use different angles or approaches, or approving shots. (Tr. 748:12-749:10) JP was to Nowell's right; KL was farther off and to the right of JP. The drone camera crew was linked by a wireless communication system. (Tr. 747:20-748:5) Nowell relayed the DP's directions for positioning or re-positioning the drone to KL when he was not close enough to hear the directions. (Tr. 753:10-22) Nowell operated the camera remotely using a computer, monitor, and joystick, attempting to get the shots the Director and DP wanted.²⁰ JL had a wireless system, which he used to focus the camera and adjust the iris at the direction of the DP. (Tr. 76:15-77:16, 752:7-23) It took several attempts to get the shot the DP wanted ("more on top of the helicopter") because of KL's concern about obstacles and safely operating the drone in the air currents created by the helicopter. (Tr. 76:20-23; 87:1-16)

Nowell turned in payroll cards for his drone camera prep day (March 29) and for operating the camera on the helicopter on March 31. WBTV paid him through his loan-out company. (U-24, pp. 3-5; U-25, p. 16) WBTV makes the appropriate payments into the Health and Welfare and Pension funds when paying him through his loan-out

²⁰ The equipment is identical to what Nowell uses as an aerial DP/Camera Operator working on a helicopter, except that it is wireless. (Tr. 711:4-712:2)

company. (Tr. 761:13-18; J-1, Paragraph 81(d))²¹ WBTV refused to put Nowell on payroll for March 30. He invoiced the production directly and WBTV paid the invoice. (U-24, pp. 6-7) Team 5 invoiced WBTV for the drone, gimbal, camera, Shotover mount for the helicopter, and associated equipment. (U-24, pp. 12-14) Helinet invoiced WBTV for helicopters, fueling, and associated equipment. Helinet's invoice included separate charges for two days of JP's time, and KL's work as a drone pilot on March 30.²² (U-24, pp. 10-11)

October 5, 2015

On Monday, October 5, the shoot was at the Universal Studios back lot. (Tr. 207:22-208:5) The scene required two drones: the "bad guy drone" and the camera drone.²³ A group of cops get in a car, see the bad guy drone coming, get out of the car and run down the street as the drone chases them and drops a small explosive device. They try to hide in a tree covered back yard, but the bad guy drone comes over the rooftop and drops another small explosive device. Somehow, they escape. (Tr. 144:4-23; C-110)

²¹ WBTV paid James O'Hara as a Local 600 camera technician for his work on the helicopter shoot March 31. It paid him through Cast & Crew, which processes payrolls for productions and contributes to the motion picture plans as a signatory employer. (U-24, p.16; Tr. 1661:2-6; 1666:1-11) The work he did as a Camera Assistant/Tech is virtually identical to the work JP did on the drone shoot. (Tr. 759:15-24)

²² JP spent one day preparing the Red Dragon camera rented from Team 5 at the Team 5 office and one day on the shoot. (U-8; C-41; Tr. 816:11-24; 834:20-835:1)

²³ KL flew the "bad guy" drone, which was not used for aerial filming. The Union does not claim the work of flying that drone is work covered by the CBA. (Tr. 250:6-11)

On September 24, Kimberly Springstadt, Team 5's only employee, provided Rush Hour Production quotes for renting two different drones. (Tr. 1867:16-20)²⁴ She wrote:

The rates vary, as crew are independent contractors and will be on production payroll, but are typically 825/10 for the tech, 825-1250 for the visual observer, and 1500/10-2500/8 for the pilot and Aerial DP. (C-118, p.2)

On September 27 Kimberly emailed KL, telling him "This [drone job] came through Team 5. ... We'll be handling POAs, which is why I told them the latest they could confirm is beginning of day Wednesday." (C-117) On September 28 she wrote Rush Hour Production to say she had met with Michael and learned different equipment and more people were required.²⁵ She delineated the required labor for the equipment, using the low end of the typical rate ranges she had previously quoted. (C-118) Team 5's invoices to WBTV contain no labor charges but include an \$80 "UAS POA filing charge." (U-9) In March Team 5 charged WBTV \$350 for "COA & POA."²⁶

Michael Fitzmaurice is a highly experienced Aerial DP and Camera Operator. (U-13) Team 5 contacted him to check his availability to do the shoot with its drone. He was available and spoke to the WBTV Rush Hour production manager about the logistics, pay rate, date, and location of the shoot. (Tr. 137:15-138:18)²⁷ Rob Gluckman was the Camera Operator for the camera drone and Peter Graf the Camera Assistant/Tech. (Tr.

²⁴ Nowell described her work as the "operations manager" work Burton did. She used the title "Rental Coordinator" on her email. (Tr. 832:3-6; C-118)

²⁵ Michael Tamburro is a pilot who flew aircraft used in WBTV productions. (Tr. 1336:1-6) He was the last addition to Team 5 LLC. (Tr. 769:7-17) At this time he used the title Head of Production, Helinet Aviation. He scouted the location for the October 5 shoot on September 26. (Tr. 105:21-25; C-116)

²⁶ POA is the initialism for "Plan of Activities"; COA is the initialism for "Certificate of Waiver or Authorization." (See, e.g. C-115, p.1, 3ff) Team 5's charges and what they signify is discussed below.

²⁷ Fitzmaurice did not learn he would be paid as a non-unit employee until the day before the shoot. (Tr. 137:15-138:25; 156:5-17)

139:14-23) When they arrived at the location Graf prepped the camera, attached the lens and filter, mounted it on the drone gimbal, attached cables, and set up the video downlink equipment that allows the Director and DP to view and review the images captured by the camera drone. (Tr.146:10-24; 155:1-9) He and Gluckman walked through the area where the scene would be shot with them. Fitzmaurice spoke with the Director, DP, and first AD to learn what the scene entailed and the Director's "vision" of the scene. The Director wanted to know what kinds of things Fitzmaurice could do with the drone and Fitzmaurice brought up "quite a few points of how I thought we could make that [the Director's vision] work better." (Tr. 148:7-21) He talked with the DP about the look of the show and exposures; the DP asked his opinion "on what would get that similar kind of look." (Tr. 149:7-15) Fitzmaurice and the DP talked about flying the drone to where the A and B cameras were positioned and about which would be filming at the same time as the drone. (Tr. 149:23-150:22)²⁸

The camera drone did two types of filming that day. It provided bad guy drone POV and filmed the bad guy drone in action. When filming the bad guy drone POV, Graf set the focus on the drone camera and acted as a secondary visual observer, communicating with Fitzmaurice to be sure he was aware of potential obstacles. (Tr. 145:7-13) Fitzmaurice flew the camera drone, framing images. (Tr. 143:7-11) When Fitzmaurice flew the camera drone to capture images of the bad guy drone interacting with the actors, Gluckman operated the camera remotely. (Tr. 143:12-144:5; C-14) WBTV paid Fitzmaurice, Gluckman, and Graf on its payroll, but as non-bargaining unit

²⁸ KL, who was flying the bad guy drone and his visual observer participated in the walk through. (Tr.148:22-149:1)

members (“non-unit”) employees, not entitled to the terms and conditions of the Local 600 Agreement. (Tr. 156:5-12; U-7)

Discussion

In its Brief, WBTV asserts that Local 600 must prove the work performed by the drone camera crew is covered by the CBA and “also that the CBA prevented WBTV from subcontracting that work” (Brief, 1:6-7) That is incorrect. The Union does not have the burden of proving WBTV could not subcontract bargaining unit work under Paragraph 82. Local 600 has the burden of showing the drone camera crews performed work defined as covered work in the Agreement but were not provided the benefits of employees under the Agreement. If it makes that showing, the burden shifts to WBTV to show that even if it was otherwise covered work, WBTV subcontracted the work in accordance with Paragraph 82. The question of whether the drone camera crew did covered work is discussed first.

Covered Work

Local 600

The Union argues WBTV violated the Agreement because Grievants were “employed ... or hired by the Producer ... to perform services ... in the production of motion pictures.” The services they performed are described in the “definitions and duties of the job classifications” of the Agreement. They performed those services under

the direction of the Production's Director and DP. WBTV violated the Agreement by not providing Grievants the terms and conditions of the Agreement.

a) March 30

Nowell did the work of a Camera Operator: framing, panning, tilting the camera to get the shots the DP wanted. The work he did as the drone Camera Operator was virtually identical to the work he does when he remotely operates the camera attached to a helicopter. (Tr. 759:2-13)²⁹ JP set up the camera and mounted it on the drone. While shooting he focused, started, and stopped the camera at the direction of the DP. This work is identical to what camera assistants do when pulling remote focus on a Steadicam. (Tr. 1465:14-24) KL did the work of a Camera Operator by positioning the drone so that Nowell could frame the shots the DP wanted. Even if there is a Camera Operator, the Union argues, the pilot of the drone performs Camera Operator functions.³⁰ He is analogous to the Steadicam Camera Operator, who moves through the set to tell the visual story the Director and DP want, while someone else controls the camera.

b) October 5

Gluckman did the work of a Camera Operator, operating the camera remotely while Fitzmaurice flew the drone. Graf did the work of an assistant Camera Operator when he prepared the camera, affixed lenses and filters, mounted it on the drone, and

²⁹ On both platforms the Camera Operator controls the camera using a laptop computer, joystick, and monitor showing the camera view. The only difference is that the Camera Operator is on board the helicopter.

³⁰ Steadicam operators are employed as Camera Operators covered by the Agreement. While the Company objected to every attempt to elicit this information from Steadicam Camera Operator Labonge, the record shows their work is Camera Operator work under the Local 600 Agreement. (Tr. 337-355; 1464:6-1465:13)

set up the video downlink. When filming the drone POV, using a camera drone with the camera focus fixed, Fitzmaurice performed Camera Operator functions. He produced the illusion of flight by photographing while flying the drone using specific movements.³¹ He considered lighting and composition and framed shots as a Camera Operator would. When flying the drone with Gluckman operating the camera, Fitzmaurice also performed the functions of a Camera Operator.

This evidence shows Grievants were employed by WBTV in the “production of motion pictures.” They filmed on the WBTV set. Their filming activity was completely integrated with the other Local 600 camera crews filming the scene. Grievants were directed and controlled by WBTV’s Director and DP. They arrived and left with the other film crews, took the same breaks, and received the same safety briefing. Their activities were indistinguishable from the other Camera Operators or Camera Assistant/Techs working that day. The only difference is that WBTV did not provide Grievants the terms and conditions of the Agreement.

WBTV

WBTV makes four arguments to support its position the work Grievants did was not covered by the Local 600 Agreement and, therefore, it was not required to provide them the benefits of the Agreement.

³¹ He used his hands to demonstrate the movements, so they are not reflected in the record. (Tr. 141:10-142:3)

First, it asserts the work performed by drone crews is not covered by the plain language of the Agreement. Drone photography is a “brand new system” and neither “drone” nor “drone photography” is mentioned in the Agreement.³²

Piloting a drone is not “the operation of cameras” that is covered under Paragraph 96.1 of the Agreement. The pilot does not have the ability to pan or tilt the camera independent of the movement of the drone. If the Camera Operator classification were interpreted to include people who pilot drones, that interpretation would conflict with the seniority provision of Paragraph 68. It would require putting drone pilots on the Industry Experience Roster (“IER”) as Camera Operators. Since there is no “drone pilot” classification, a Producer needing a drone pilot could not tell if she were hiring a Camera Operator who could pilot a drone. Similarly, a Producer could be obliged to hire someone like KL as a Camera Operator, despite the fact he has no Camera Operator experience.³³

Camera Operator In the grievances Local 600 claimed WBTV failed to engage Nowell as a DP and Gluckman as a Remote Head Technician. Neither position is the Camera Operator position in the Agreement. Consequently, the question of whether they were performing the work of a Camera Operator is not before the Arbitrator.³⁴

³² The Company’s discussion of the Visual Observer is omitted. The Union does not claim that work is Local 600 work.

³³ This hypothetical confusion does not exist for Steadicam operators. They are listed on the EIR as Camera Operators. Local 600 has a directory of specialties, one of which is “Steadicam.” Thus, if a PIC qualified to be on the EIR it would only be as a Camera Operator. A Producer who wanted a Camera Operator who could pilot a drone would look to the directory of specialties. (Tr. 365:3-366:4)

³⁴ The argument lacks merit. Nowell’s deal memo called for him to be hired as “Aerial DP” (U-24). The testimony shows he performed the duties of Aerial Director of Photography/Camera Operator, as he claimed. Gluckman performed the duties of a Camera Operator. Any failure to correctly characterize the work in the original grievances did not confuse the Company or hinder its defense. It was able to explore in depth what they did and what the Union claimed in twelve days of hearing over three years. Moreover, the claims are clearly encompassed by the stipulated issue statement.

First Assistant Photographer Paragraph 98 of the Agreement does not mention drones, drone technicians, aerial photography, or “any work associated with other platforms to which cameras are attached.” Therefore, the tasks performed by JP and Graf are not covered by the Agreement.

Second, WBTB asserts the bargaining history shows the Union tried and failed to get aerial photography assigned to Camera Operators. The Union proposed the following language during the 1985 negotiations.

B) Operation of Camera Equipment

This work shall be handled by a Camera Operator(s) (process plate photography excepted). This includes the operation of aerial cameras when in the line of sight with a Director of Photography. The Camera Operator(s) shall maintain the operation of all cameras unless otherwise stated by this Agreement. (C-34)

This proposal did not become part of the Agreement. WBTB asserts this failed attempt to guarantee Camera Operators “coverage of all aerial cameras” means Camera Operators who operate a camera affixed to a drone are not covered by the Agreement. (Brief 25:2)³⁵

In November 2015 Bruce Doering, National Executive Director of Local 600, met with Carol Lombardini, President of the Alliance of Motion Picture and Television Producers (“AMPTP”) to discuss distant location issues. (Tr. 573:3-12) Local 600 had already filed these grievances. It prepared a document for her describing different crew configurations and the work done on drone crews. (Tr. 573:3-12; U-22) On April 22,

³⁵ No witness identified the exhibit or explained the meaning of operating “aerial cameras when in the line of sight with a Director of Photography.” Union Counsel agreed to the exhibit’s admission solely on Company Counsel’s representation that it came from the AMPTP’s records. (Tr. 663:6-7; 1499:25-1500:2) The proposal was made 20 years before drones were available to be used in aerial photography. The evidence shows Camera Operators operating “aerial cameras” on helicopters are covered by the Local 600 Agreement. Neither the ambiguous exhibit, nor speculation about its meaning, provides a reliable basis for interpreting the Agreement.

2016, Local 600 Business Representative Michael Chambliss wrote David Wagreich, the owner of Astraeus.³⁶ Chambliss wanted Astraeus to demonstrate drone technology for Lombardini. The email began: "Local 600 has been in active negotiations with the AMPTP regarding formally putting the drone positions under our contracts." (C-17)³⁷ This evidence, WBTV asserts, shows Local 600 negotiated unsuccessfully to get drone crews included in the Agreement.³⁸

Third, WBTV argues the parties' past practices "undermine Local 600's grievances." Chambliss had a list of "members who are Directors of Photography, Camera Operators, and Camera Technicians trained and authorized by FAA approved companies to perform cinematography from UAS (drones)." (U-1) The list has both members and non-members, including persons not "qualified to perform covered camera work in the Western Region of the United States," (with more than half not on the IER. (Brief. 26:10, C-84)³⁹ Doering had discussions with the Grip Local 80, apparently because it expressed interest in representing drone crews.⁴⁰ Wagreich asked Chambliss and Doering about creating a bargaining unit of himself (as DP and

³⁶ "The business of Astraeus is to design and manufacture drones for image capture to the motion picture industry, and then service that industry with our equipment and crews that we train, we vet and train to use our equipment exclusively." (Tr. 383:22-384:1)

³⁷ Chambliss sent the identical email to Team 5 and Vortex.

³⁸ Both the document Doering produced for Lombardini, and Chambliss' assertion in his email, were created during the pendency of these grievances. Neither demonstrates the Union sought to modify the CBA to include any reference to drones during contract negotiations. There is no merit to the Company assertion that bargaining history shows the work of DPs, Camera Operators, or Camera Assistant/Techs who operate cameras attached to a drone are excluded from the coverage of the Agreement.

³⁹ It is not clear why a Local 600 business agent's private list (Tr. 129:2-3) of people interested in doing drone photography is evidence of an action by Local 600 that is inconsistent with its position in this grievance.

⁴⁰ Union Counsel asked Doering if any other IATSE local had expressed a desire to represent any of the drone camera crew. Company Counsel objected, interrupting Doering's attempt to describe a discussion he had with Local 80. WBTV's assertion about Local 80's interest is speculation based on the incomplete answer he gave before counsel interrupted him. (Tr. 529:7-8) Doering later testified that Local 80 never grieved or took any action with the International to claim jurisdiction over the drone crews. The International approved Local 600 filing these grievances.(Tr. 530:25-532:8)

Camera Operator) and the crew he normally required Production to use when it rented Astraesus drones. This bargaining unit could then become a signatory to the Agreement.⁴¹ This is inconsistent with Local 600's position Astraesus does not employ its drone crews and that those crews are already covered by the CBA.⁴² The work a camera drone pilot does is most comparable to the work of a camera ship helicopter pilot. When flying a helicopter with a locked off camera, the pilot is SAG, not Local 600. The pilot is SAG or possibly non-union when the camera is not locked off. Additionally, other industry camera platforms – Dollies, Lenny Arms, Camera Cars, Russian Arm vehicles, Technocranes – are moved by employees whose work is covered by other unions.⁴³

Fourth, when acting as PIC, KL was a supervisor because he directed the drone crew and ensured their compliance with Helinet's 333 Exemption. The NLRA provides that no employer can be compelled to include supervisors as employees for the purpose of collective bargaining. The Company concedes supervisors are currently included in the Local 600 bargaining unit but argues none of those positions has "the immense

⁴¹ Wagreeich decided Astraesus could not afford it because a signatory has to pay a regular amount regardless of the number of days in production. Astraesus worked too few days to make that more attractive than using a payroll company and passing the cost on to the production, if forced to pay the drone camera crew. (Tr. 408:10-16)

⁴² Wagreeich testified Astraesus has no employees. It pays people who provide engineering and other services as independent contractors. The people listed in various functions on its web site are not employees but people who contributed sweat equity and will profit if the Company becomes successful. (Tr. 412:15-21)

⁴³ The Company claims Grips change the physical location of the Technocrane and move the crane arm. That may be true, but the record shows that during filming the Camera Assistant/Techs move the crane up, down, and side to side. They operate a "pickle" that extends and retracts the arm. (Tr. 895:1-19) Panavision (the Technocrane owner) does not employ the Camera Assistant/Techs, but it assigns two of them to operate any Technocrane it rents to a Production company. The Camera Assistant/Techs are on the payroll of the Production and are paid in accordance with the Local 600 Agreement. (Tr. 886:22-889:3)

safety responsibilities of drone pilots.” Therefore, it would be inappropriate to “add them to the bargaining unit covered by Local 600.”⁴⁴

Local 600 proved Grievants “performed services in the production of motion pictures” that are covered by definitions in the Agreement

Article 1 provides that the Agreement covers “the work of all phases of motion and still picture photography as described in any or all of the definitions and duties of the job classifications ...” An “employee” is tautologically defined as “an employee subject to the terms and conditions of this Agreement.” Thus, an Arbitrator determining whether someone is subject to the terms and conditions of the Agreement must look to the work that person does for the Producer, in this case WBTB through Rush Hour Production.⁴⁵

Grievants Nowell and Gluckman remotely operated cameras attached to a drone to pan, tilt, and frame shots. Each was directly supervised by the Producer’s Director and DP, whose vision determined the look of the shots and their consistency with the overall look of the film. As Nowell testified, remotely operating a drone camera is nearly identical to remotely operating a camera attached to a helicopter. The equipment is the same: “a monitor and laptop and joystick...” (Tr. 684:16) When he remotely operated the camera on a helicopter the next day, WBTB recognized he was an employee covered by the Agreement, paid him through his loan out company, and provided him the other benefits of the Agreement. The work Nowell did as Camera Operator on the

⁴⁴ With the exception of the Visual Observer, KL directed no one with responsibilities for compliance with the 333 Exemption. He did not supervise the Camera Operator or the Camera Assistant/Tech to assure compliance with the 333 Exemption because they have no responsibilities under the 333 Exemption. The Director and DP supervised the Camera Operator and Camera Assistant/Tech, directing their activities in filming with the camera attached to the drone.

⁴⁵ Whether a Producer can hire a person to “perform services in the production of motion pictures” and pay that person as a non-unit employee is discussed below.

drone was “nearly identical” to his Camera Operator work on the helicopter. Gluckman did the same work when Fitzmaurice was piloting the drone. Neither performed this work for Team 5 or Helinet. None of the requirements of the 333 Exemption address operating a camera on a drone. Rather, the work they did is described in the definition of Section 96.1 of the Agreement. There is no factual basis for WBTV to say otherwise. Grievants Nowell and Gluckman did the work of Camera Operators for the Producer and were not provided the benefits of the Agreement.

Grievant JP unpacked the drone camera, got the DP’s required settings for lenses he attached to the camera, mounted the camera on its gimbal, adjusted the motors, checked the balance, and re-checked everything. During the shoot he remotely pulled focus, started and stopped the drone camera, in accordance with instructions from the Director or DP. Grievant Graf prepped the drone camera, attached the lens and filters in accordance with what the DP wanted, mounted it on the drone gimbal, attached cables, and set up the video downlink. He set the focus on the camera but did not pull focus when the drone was shooting the scene. The DP determined how JP and Graf each set up the camera. Both did the work of the Camera Assistant/Tech (First Assistant Photographer) described in Paragraph 98.

Grievant Fitzmaurice is an aerial DP and Camera Operator that Production hired to fly the drone in two different configurations. (Tr.137:24-138:25) Fitzmaurice flew the drone with the Camera Operator remotely panning and tilting the camera to capture scenes with the “bad guy” drone. He also flew the drone with the camera locked off to film POV shots.

For the POV shots Fitzmaurice used the drone to effectively pan and tilt the camera to frame the shots. He described how he composed the shots to tell the story, placing the camera, framing the shot, and using ambient lighting to advantage. (Tr. 174:5-175:9) He used his composition skills to capture the POV shots the Director or DP wanted. As he put it: "Composition skill is an artistic thing." (Tr. 174:5)⁴⁶ He also moved the camera to simulate flying while framing shots. (Tr. 141:16-21) Fitzmaurice described an earlier project where he was DP, using a drone he owned:

...it just became another way to move the camera and put a camera in position for me. So I would go from being on a camera on a tripod to then picking up the drone and flying it to then get an overhead shot... (Tr. 176:23-177:3)⁴⁷

Using the drone, he was able to position the camera to compose shots that were not possible from the tripod.

WBTV argues Fitzmaurice was not operating the camera but maneuvering he platform. Other trades maneuver platforms in ways that change the perspective of the camera, such as grips who push or drive dollies and SAG stunt drivers who drive cars with Russian Arms. Local 600 argues that the person flying a drone with a camera attached is analogous to the Steadicam Camera Operator who moves the rig attached to him to position the camera. He is always hired as a Camera Operator under the Agreement. With the possible exception of the helicopter pilot flying with a fixed camera, whose work is covered by the SAG contract, none of the trades moves a platform in a way that replicates the panning and tilting of a camera. When Fitzmaurice flew the drone for POV through the trees and over the top of a roof he could frame shots that are

⁴⁶ The transcript adds "s" to "skill" and "thing." It is likely incorrect. Nevertheless, the meaning is the same.

⁴⁷ This was before the 333 Exemption. Since the FAA approved Part 107, he can again fly his own drone to maneuver the camera, without any requirement beyond passing a test.

impossible for a helicopter. (Tr. 140:12-141:6) More importantly, neither the helicopter pilot, nor the other trades, engage in the artistic task of composing shots. Fitzmaurice's work is analogous to the Steadicam Camera Operator walking backwards and upstairs to achieve a shot. (Tr. 356:7-9) Like the Steadicam Camera Operator, he must simultaneously control the platform and a moving camera to compose and capture shots. The change in camera platform does not change the essentially artistic duties of the Camera Operator's job. When Fitzmaurice flew the drone with a fixed camera, his work was composing shots with the camera. He did the work described in Paragraph 96.1 of the Local 600 Agreement: "the operation of cameras." When doing that work he was employed by the Producer "in the production of motion... pictures..." Consequently, he was covered by the Agreement.

When the pilot flies the drone with a Camera Operator remotely controlling the camera it is the Camera Operator who pans and tilts the camera. The pilot does not move the drone to effectively pan and tilt the camera. According to WBTV, flying the drone with the Camera Operator remotely controlling the camera, is analogous to piloting a helicopter camera ship with a Camera Operator controlling the camera remotely from inside the helicopter. (Respondent's Opening Brief, 27:24-26) In both instances the pilot gets general directions from the Director or DP and specific requests from the Camera Operator, who uses his skills to capture the shot. It is different, however, when the camera ship is a camera drone. As Wagreich explained:

Because on a drone, it's an integrated system. The camera operator and the pilot work together very intimately in designing a shot, and neither one could get the shot on their own. (Tr. 383:13-16)⁴⁸

Fitzmaurice explained the difference between flying the drone for POV and flying the camera drone with Gluckman operating the camera:

When you have the other operator, it just becomes a dance partner. You're still achieving the same thing. (Tr. 175:15-17)

The "thing" they achieve is telling "a story with... composition ... an art...in split second time..." (Tr. 174:10-19)⁴⁹ Fitzmaurice and Wagreich described a Camera Operator piloting a camera drone as a collaboration that relies both Camera Operator's skills, in a three dimensional space, to compose the shot that expresses the Director's vision.

Thus, the analogy to a helicopter pilot depends on who is flying the drone. On March 30 KL was the only person authorized to fly the Team 5 drones. He has flown airplanes and helicopters for 100s of days in the moving picture and television industry. (Tr. 1794:7-16) He has never been a Camera Operator on a motion picture. (Tr. 1797:16-18) He undoubtedly learned to position the helicopter to help the Camera Operator to get their shots. It is fair to analogize what he did flying the drone to what he does flying a helicopter. In both instances, however, he exercised his flying skill. He did not exercise the artistic skill of composition used in the operation of a camera.

While the analogy succeeds when applied to KL's work on March 30, it fails when applied to Fitzmaurice's work on October 5. His many years of experience as an aerial DP/Camera Operator, as well as his experience using drones before the 333

⁴⁸ Wagreich is a Director, Cinematographer, and DP who has spent tens of thousands of hours operating cameras. He won an Emmy for his drone technologies. The Arbitrator finds his testimony about the artistic/technical aspects of drone photography is authoritative.

⁴⁹ Fitzmaurice worked on 20 feature films as aerial DP/Camera Operator. (U-13)

Exemption, made him a participant in creating and capturing the shot. The Director and DP consulted with him to learn what he and Gluckman could do to capture the Director's vision and the DP's "look." When Fitzmaurice flew the drone with Gluckman operating the camera, his piloting work was, as Wagreich testified, "critical to where the camera is placed and how it moves there ... to get the framing that ... [the Camera Operator] ... need[s]..." (Tr. 712:16-18) As a highly experienced aerial DP/Camera Operator, on October 5 Fitzmaurice brought his composition skills and understanding of how to execute a Director's vision to flying the drone in collaboration with Gluckman to capture the shot. They were both engaged in operating a camera in a three dimensional space. When doing that work Fitzmaurice was employed by the Producer "in the production of motion... pictures..." Consequently, he was covered by the Agreement.

Paragraph 82, Subcontracting

The Union proved that on March 30 Grievants Nowell and JP were doing work covered by the Agreement. Similarly, on October 5 Grievants Fitzmaurice, Gluckman and Graf were doing work covered by the Agreement. WBTv asserts, however, that it did not employ Grievants but subcontracted the work. WBTv asserts:

Paragraph 82 conferred upon WBTv the right to utilize a drone crew provided by a vendor (here Team 5/Helinet) without making benefit contributions on behalf of such personnel or otherwise complying with the CBA's minimum terms and conditions. (Respondent's Opening Brief, 2:22)

WBTB says it:

utilize[d] the services of Team 5/Helinet in connection with ... [both drone shoots.] (Respondent's Opening Brief, 36:6)

utilize[d] the services of Helinet Aviation Services, LLC and its drone crew of Kevin LaRosa Jr. and JP de Lespinois, as well as David Nowell Enterprises, Inc., and its worker David Nowell [on March 30] (Respondent's Opening Brief, 39:16-18)

utilize[d] the services of Helinet and its crew of Michael FitzMaurice, Robert Gluckman, and Peter Graf. [on October 5] (Respondent's Opening Brief, 39:19-20)⁵⁰

WBTB details every possible connection between Team 5 and Helinet, from Purwin's ownership interest in both to the common wall between Helinet's maintenance hangar and Team 5's office. WBTB concludes these connections show the two companies were so integrated that they constitute the corporate chimera "Team 5/Helinet".⁵¹ This chimera allows it to assert that although Team 5 was the drone vendor on both dates, Team 5/Helinet employed their drone crews." (Respondent's Reply Brief, 1:16) It takes a further step. WBTB asserts that Helinet was the COA holder on both dates, making the drone camera crew employees of Helinet. WBTB's arguments about the interpretation of Paragraph 82 and its basis for asserting it did not employ the drone camera crew, along with Local 600's counter arguments, are examined below.

⁵⁰ On October 5 WBTB rented and paid for drones from Team 5. WBTB and had no agreement with Helinet to provide drones or the drone camera crew. Helinet had no presence on the set. Nevertheless, because Helinet held the COA for the drone operation, WBTB insists it "utilized the services of Helinet and its drone crew." This is an unusual form of subcontracting.

⁵¹ In its Reply Brief, Respondent uses "Helinet/Team 5".

WBTB

WBTB makes six arguments to show the Paragraph 82 permitted it to subcontract the aerial photography to Team 5/Helinet, or Helinet, and David Nowell Enterprises, Inc. First, WBTB argues Paragraph 82 gives it the right to subcontract work if it meets any of five conditions.

- a. If specialized knowledge or techniques are required it can subcontract without regard to the wages and conditions contained in the Agreement.
- b. If the required facilities or equipment are not normally maintained by Producer in an operable condition, it can subcontract without regard to the wages and conditions contained in the Agreement.
- c. If the services are performed in Los Angeles County at wage rates and conditions no less favorable than provided in the Agreement it can subcontract them.
- d. If the services are performed outside of Los Angeles County, it can subcontract without regard to the wages and conditions contained in the Agreement.
- e. If there are no available qualified personnel subject to the Agreement, it can subcontract without regard to the wages and conditions contained in the Agreement.

Second, because specialized knowledge or techniques are required for drone aerial photography there are no limitations on the Producers right to subcontract. The 333 Exemption has extensive requirements for the Operator (Team 5), PIC and VO. The Team 5 manual also requires the "Gimbal Operator" to have specialized knowledge.⁵² Whenever the drone/drone camera crew performed drone photography they were discharging those obligations on behalf of the Operator. Consequently, they were employed by the Operator. Team 5 was the Operator and vendor of the drone

⁵² The Team 5 manual requires the "Gimbal Operator" to "have extensive knowledge of UAS operations and understand all aspects of the gimbal being carried by the UAS." This is not a requirement of the 333 Exemption. Nor is it unusual. Other specialized equipment vendors require only people they authorize to operate their equipment. As discussed below, those camera crew members are always employed by the production.

equipment. It told WBTV who was authorized to work with its proprietary drones. When Helinet updated the COA, changing the date and denominating Helinet as the 333 Exemption holder, Grievants became the "Helinet drone crew." On March 30 WBTV subcontracted with Helinet for part of the drone crew, KL (PIC) and JP (Camera Assistant/Tech). In addition, WBTV separately subcontracted with David Nowell Enterprises, Inc. for its "worker", David Nowell, as Camera Operator. (Respondent's Opening Brief, 39:1) On October 5 when WBTV paid the PIC, Camera Operator, and Camera Assistant/Tech as non-unit employees, they were employed by Helinet, with whom WBTV subcontracted for their services.

Third, WBTV did not maintain drone equipment in operable condition and was therefore entitled to subcontract for it in accordance with its policy at the time, which required: 1) contracting with vendors with a 333 Exemption; 2) the vendor to provide the drone crew and drone equipment; 3) the vendor to have WBTV required insurance; 4) the WBTV safety department to approve the vendor and flight plan.⁵³

Fourth, for both shoots WBTV provided wages and conditions no less favorable than those contained in the Agreement.⁵⁴

Fifth, the March 30 drone shoot did not take place in Los Angeles County. Because it took place in Ventura County WBTV could subcontract the work without regard to wage rates and conditions.

⁵³ Jeffrey Egan, Vice President for Feature Safety, testified about the Company's policy in March 2015. There is no evidence he worked on any labor relations policy. The only written policy Egan worked on is an Industry Wide Safety Bulletin that provides guidelines for working around UAS. (U-29) WBTV did not introduce any written policy from 2015 that forbade putting drone camera crews on its payroll. It introduced a 2018 list of drone vendors WBTV would allow Production to use because they "will comply with WBTV's LABOR and INSURANCE policies." (C-56) This is discussed further below.

⁵⁴ WBTV argues that individual drone camera crew members, payrolled as non-unit employees, are individual subcontractors under Paragraph 82. This is discussed below.

Local 600

WBTV's claim it subcontracted the drone camera crew from Team 5 (or Helinet) is a sham. WBTV employed the drone camera crew on both dates, under the direction and control of WBTV's Director and DP. The equipment rental companies Team 5 and Helinet performed no significant employer function. There are four reasons WBTV cannot claim it subcontracted the work of the drone camera crew.

First, WBTV incorrectly asserts Paragraph 82 gives it the absolute right to hire individual non-bargaining unit members to film a scene that is concurrently being filmed by bargaining unit members and directed by the Production's Director and DP. Hiring non-bargaining unit members is not subcontracting, despite Paragraph 82's negative reference to "any individual." WBTV's interpretation of Paragraph 82, that it has the unlimited right to hire non-bargaining unit members to do bargaining unit work under the direction and control of its Director and DP, renders Articles 1 and 2 meaningless. It is inconsistent with the parties' practices under Paragraph 82. Those practices show Paragraph 82 limits subcontracting camera work to individuals who work on a separate production unit, independent of the Producer's immediate direction and control.

Second, using the *Dynamex Operations West, Inc. vs. Superior Court*, 4 Cal. 5th 903(2018) framework, Local 600 argues that members of the drone crew were not employees of Team 5(or Helinet).

a) WBTV directed and controlled the work of the drone camera crew. On both March 30 and October 5, the drone camera crews were supervised and controlled by the WBTV Production's Director and DP, as was the rest of the production crew. The

Director and DP told the drone camera crew what, where, and how to film. They gave direction to the drone camera crew while it was filming to integrate the filming from the drone camera with the filming done by the ground based cameras. Team 5 was not present to direct or control the drone camera crew.⁵⁵

b) The work performed was in the usual course of business for WBTV, not Team 5. The drone camera crew filmed actors and scenes for the episodic series "Rush Hour." WBTV is in the business of producing filmed entertainment. Team 5 is an equipment rental company that owns and maintains drones, cameras, and gimbal systems, which it rents to productions. Helinet owns and operates helicopters it rents to productions for use in aerial photography.

c) The drone camera crew work is not usually performed by a worker in "an independently established trade, occupation or business of the same nature as the work performed." The pilot-operator,⁵⁶ Camera Operator, and Camera Assistant/Tech do not work as independent contractors. Traditional camera crews have always worked as employees of the Producer, not as third party subcontractors. The only significant subcontracting of Local 600 work is the use of special visual effects subcontractors who do much of their work at a different location.

Third, Team 5, did not employ the drone camera crew on March 30 or October 5. Nowell's agent negotiated his compensation for the drone shoot with WBTV. A Rush Hour Production Executive signed the "Deal Memorandum" on March 31, 2015, for work beginning March 29. JP and KL negotiated their own rates with Production. WBTV refused to put Nowell on the Production payroll for March 30 and paid him directly on an

⁵⁵ Purwin flew one of the helicopters rented from Helinet. He did not direct the drone camera crew.

⁵⁶ This is the term Local 600 uses for the PIC operating the drone with the camera.

invoice from his loan-out company. WBTV insisted Team 5 pay JP and KL. It could not. Helinet, which rented and flew the helicopter the drone camera crew was filming, agreed to invoice for their services so they could be paid for their work. There is no evidence Team 5 ever employed any member of the drone camera crew. No representative of Team 5 was at either shoot, and no one from Team 5 exercised any supervision or control over the drone camera crew. Their work was supervised and controlled by WBTV's Director, Assistant Director, and DP.

On October 5 WBTV paid the drone camera crew of Fitzmaurice, Gluckman, and Graf directly for their work. Fitzmaurice negotiated his pay rate directly with the Rush Hour Production manager. (Tr. 138:3-18) WBTV rented the drones used in the shoot from Team 5. It had no presence on the set. WBTV's Director and DP supervised and controlled the drone camera crew.

Fourth, Helinet did not employ the drone camera crews. On March 30, its primary involvement in the shoot was renting two helicopters to WBTV. When WBTV refused to put the drone camera crew on payroll, Helinet agreed to invoice for KL and JP because that was the only way the shoot could be accomplished. Consistent with this arrangement, Helinet amended the Team 5 "Plan of Activities" to substitute Helinet as the 333 Exemption holder. Changing the FAA exemption does not turn a helicopter rental company into the drone camera crew's employer. Team 5 was still renting the drone equipment for the shoot to WBTV, insuring it, and naming WBTV as an additional insured. WBTV's Director and DP directed and controlled the work of the drone camera crew.

WBTV failed to prove it subcontracted Grievants' work as permitted by Paragraph

82, Subcontracting

WBTV asserts Paragraph 82, Subcontracting, provides four grounds that give a Producer the "absolute right to utilize the services of any individual, firm, partnership or corporation to perform work covered by the Local 600 CBA."⁵⁷ It argues that it exercised those rights on March 30 and October 5. Each of these interpretations of permissible subcontracting under Paragraph 82 is examined below, as is WBTV's claim it subcontracted Grievants' work on March 30 and October 5.

Does WBTV have the "absolute right" to subcontract with individuals to do bargaining unit work?

WBTV asserts that in Los Angeles County Paragraph 82 gives it "the absolute right to utilize the services of [subcontract with] any individual" if the "services are performed at wage rates and conditions no less favorable than those provided under the CBA." (Respondent's Opening Brief, 35:2-9) That is, WBTV can hire individuals to do the work covered in the Agreement's job descriptions, for "the production of motion

⁵⁷ WBTV employs the circumlocution "utilize the services of" instead of "contract with" or "subcontract to" because subcontracting normally involves WBTV and some entity (or individual) entering into an agreement for services or equipment at a price. As more fully discussed below, WBTV argues it "utilized the services of Helinet and its drone crew ..." on October 5 when there is no evidence of any agreement to rent a drone from Helinet, with or without a drone camera crew. WBTV's claims for "utilizing services" rely on Paragraph 82, Subcontracting. Consequently, the Arbitrator examines them as subcontracting claims.

pictures,” so long as it pays the individual no less than the “total labor costs”⁵⁸ it would have incurred if it had hired them under the Agreement. On October 5, the drone camera crew filmed on the same set in LA County as the A and B camera crews employed by WBTV under the Local 600 Agreement. The same Director and DP directed the A and B camera crews and the drone camera crew. They coordinated the work of both crews to position the drone shots. All the Camera Operators and Camera Assistant/Techs on the set performed the duties and functions described in the Agreement for those classifications. They operated cameras on different platforms – handheld, on a dolly, on a tripod, and on a drone. (Tr. 150:18-22)⁵⁹ The only difference is that WBTV paid the A and B camera crews as Local 600 bargaining unit members but paid the individual drone camera crew members as non-unit employees.⁶⁰ WBTV’s interpretation of Paragraph 82 permits it to choose which of the Camera Operators and Camera Assistant/Techs, who are all filming a scene together under the direction of the Producer’s Director and DP, it will deem “subject to the terms and conditions of” the Agreement, and which it will deem subcontractors.⁶¹ If that interpretation were correct, WBTV – rather than Article 1 – would determine the scope of the agreement’s coverage. “It is axiomatic in contract construction that an interpretation that tends to nullify or render meaningless any part of the contract should be avoided ...” *Elkouri and*

⁵⁸ This is “the wages, overtime, hazard pay, and benefits that would have been due under the CBA.” (Respondent’s Opening Brief,40:24)

⁵⁹ Wolfson conceded that introducing a new camera platform on which Camera Operators and Camera Assistant/Techs do their work does not require bargaining to bring that work under the coverage of the Agreement. He noted that it could be a variation of a system already in place. He agreed the Agreement covers Camera Operators working in helicopters. (Tr. 1477:8-1479:2)

⁶⁰ WBTV paid the individuals no less than the total labor costs it would have incurred if it had employed paid them under the Local 600 Agreement.

⁶¹ Similarly, WBTV asserts Paragraph 82 gives it the absolute right to subcontract covered work outside of Los Angeles County (the March 30 shoot was in Ventura County) at any rate of pay.

Elkouri: How Arbitration Works (6th ed. 2003) p. 463 (internal citations omitted) WBTV's interpretation cannot be correct. Paragraph 82 does not permit WBTV to unilaterally determine the scope of the Agreement's coverage. It did not have the right to hire Grievants, on either date, as individual non-unit employees to do bargaining unit work.

Did WBTV have the right to subcontract the work of the drone camera crew because it does not maintain drones?

WBTV asserts Paragraph 82 gives it the right to subcontract without reference to the wage rates and conditions in the Agreement when: a) specialized knowledge or techniques are required; or, b) the Producer does not normally maintain the required facilities or equipment. That assertion is broadly correct. Paragraph 82 does not, however, specify which bargaining unit jobs associated with the specialized knowledge, technique, or equipment can be subcontracted. Rather, in the 56 years before these grievances were filed the parties defined the scope of subcontracting under Paragraph 82 by their regular practices. These practices must be examined to determine whether Paragraph 82 permits the subcontracting WBTV claims occurred on March 30 and October 5.

WBTV spent days of hearing time adducing testimony by safety and risk managers, and Heads of Labor Relations, opining on their drone policies. These witnesses did not introduce any written policies. To the extent they testified about their insurance and safety policies related to drones, the testimony was irrelevant. The evidence shows neither safety, nor insurance issues required the drone vendor to employ the drone crew. WBTV introduced a 2018 list of drone vendors it approved

because “they will comply with WBTV’s LABOR and INSURANCE requirements.” (C-56) Other Producers’ documents reflect who they required to employ drone camera crews after these grievances were filed. (See, e.g. C-62) A Disney witness admitted they simply refused to hire vendors unless they agreed the drone crew would be on the vendors payroll. (Tr. 1192:11-19) Even if one were to consider this evidence of the Producers’ recent practices, it was a unilateral practice. Local 600 introduced a list of over 75 grievances it has filed over just such drone policies. When these grievances arose the parties did not have a mutually accepted past practice interpreting Paragraph 82, as it applies specifically to drone camera crews.

The parties do have longstanding practices that demonstrate their understanding of how Paragraph 82 works when the Producer needs either specialized knowledge or techniques, or equipment it does not normally maintain. These practices show which work the Producer’s employees do under the Local 600 Agreement and which labor the subcontractor supplies. Lachmund testified “The reality is that we do very little subcontracting ...” (Tr. 1752:19-20) He identified special visual effects and the work of the camera department. (Tr. 1727:4-9)⁶² Sam Wolfson, WBTV Senior Vice President Labor Relations, identified two others: electronic press kits and “insert and title sequences” done by Howard Anderson. These three types of subcontracting are regular practices that reflect the parties’ agreed interpretation of Paragraph 82. The Union offered four more examples of regular practices that reflect the parties’ interpretation of

⁶² WBTV closed its camera department and laid off the Local 600 employees who repaired and maintained the cameras. It now rents cameras from Panavision. Lachmund asserted Paragraph 82 permits WBTV to subcontract with Panavision for the cameras and the Camera Operators and Camera Assistant/Techs to operate them. (Tr. 1756:4-24)

how Paragraph 82 applies when the Producer needs specialized knowledge, techniques, facilities, or equipment.

WBTV subcontracts insert and title sequences, electronic press kits, and special visual effects to companies that do their work independently, mostly at their own facilities. The insert and title sequences, which were formerly subcontracted to Howard Anderson's company, are no longer done. When a production company had a deadline and needed work done that did not have to be on set, they would use Anderson to provide a crew to do the filming. The production's Director was not involved in the filming by the insert unit; it required no director. (Tr. 1417:15-1419:1; 1488:19-1489:4)⁶³

Electronic press kits ("EPK") are promotional materials Producers provide to media outlets to promote the production. (Tr. 953:21-24) Wolfson testified that:

usually a small unit comes in and does sometimes behind the scenes or interviews with actors, possibly crew as well, for release of footage. They later post it and put it together for release in social media or in traditional media, that promotes viewers to watch the program. (Tr. 1413:3-8)

Nothing the EPK company films is used in the motion picture. If the EPK use clips from the motion picture, Local 600 members have filmed those clips. The EPK camera crew is not under the direction of the motion picture's Director or DP. (Tr. 1480:24-1483:4)

Special visual effects may be Industrial Light and Magic's ("ILM") patented technology first used in "Star Wars" (Tr. 1414:17-1415:1) or augmented reality that removes from the motion picture stuntmen's harnesses, or actors' limbs. (Tr. 1385:16-1386:2) The visual effects supervisor employed by the subcontractor joins the production from the beginning to understand what the Director wants. He is present on

⁶³ There was no testimony about the title sequences.

the set to ensure the distances, angles, and aspect ratio are right so when they do the digitizing “it all blends together seamlessly.” (Tr. 1386:8-1390:7) The digitizing is done by the visual effects company off the set. The visual effects supervisor does not perform any work described in the Agreement. ILM might bring its own crew onto the set to do photography then take the footage back to its facility to create the visual effects. ILM’s camera crew is neither directed by the Director or DP, nor integrated with the production’s camera crew. The production would have someone on set “to turn on the lights ... show them around ... help them set up...” (Tr. 1415:23-25) In 1986-7 ILM sought to have its motion control camera operators film on the set of *Golden Child* in Los Angeles. Bruce Dearing, the Executive Director of Local 600’s predecessor (Local 659) objected. They resolved it by ILM agreeing to use Local 659 camera operators for its work on the set. (Tr. 514:1-15) Wolfson confirmed that when ILM’s camera operators filmed on the set they were covered under the Local 659 agreement. (Tr. 1454:6-20)

The examples Local 600 provided to illustrate the parties’ agreed interpretation of subcontracting under Paragraph 82 are: a) helicopters; b) Technocranes; c) 3D rigs; and d) Steadicams.⁶⁴

WBTB has long used helicopters for motion picture aerial photography. It has no policy requiring the helicopter vendor to provide the labor of the pilot, Camera Operator,

⁶⁴ WBTB introduced pictures of various dollies and a Lenny Arm, all of which are pushed or turned by grips. The dollies have a Camera Operator sitting on them to operate the camera. (C-3, 4) The Lenny Arm has a gimbal with a camera on it at the far end and grips slide it on a track, turn it, or move it up and down. (Tr. 198:7-25; C-5) There is neither evidence this equipment is rented, nor that it requires any special skills to operate. The same is true for the Grip Trix. (C-8) The Camera Car pictured in C-6 has a logo on it, so it is likely rented. The Russian Arm (attached to a Porsche), may or may not be rented. (C-7) The skills to drive the vehicles are possessed by Teamsters or SAG members. (Tr. 200:9-201:25) To the extent that WBTB rents any of these platforms, there is no evidence it requires the vendor to employ the Camera Operator working on the platform. Fitzmaurice testified that when he was a Camera Operator on these platforms he worked under the Local 600 Agreement. (Tr. 262:3-9)

or Camera Assistant/Tech. (Tr. 1121:17-22) To pilot a helicopter for movies the individual or company must have a Motion Picture Movie Manual that has safety requirements similar to those for piloting a drone. (Tr. 1993:5-19) Fitzmaurice testified he used to operate a camera on a helicopter while sitting in the open side door, strapped into the helicopter. (Tr. 164:11-14) Although Fitzmaurice did not testify to any safety rules the helicopter vendor required him to follow when operating the camera from that perilous position, they undoubtedly existed. On March 31 Nowell controlled the camera from inside a helicopter rented from Helinet, with a Shotover rented from Team 5. James O'Hara attached the Shotover to the helicopter and mounted the same camera that was used the day before on the drone shoot. WBTV paid Nowell (through his loan-out company) as "aerial DP" and O'Hara (through Cast & Crew) as Camera Assistant/Tech. (U-7, 12) The evidence shows this arrangement was typical. Nowell testified to his work for Paramount on "Bumblebee." He was the Camera Operator inside the helicopter, operating the camera remotely. The Production rented the Shotover system from Team 5. Graf worked as the Camera Assistant/Tech, attaching brackets to the helicopter, fitting the Shotover to the helicopter, running cabling into the helicopter, and mounting the camera in the Shotover. Both Nowell and Graf were paid by the production under the Local 600 Agreement. (Tr. 689:10-699:9) The helicopter was rented from one entity, the Shotover from another, but the people who did the camera work were paid under the Local 600 Agreement.

Technocranes are sophisticated pieces of equipment that WBTV does not maintain. The Technocrane is a counterweighted boom arm that can move up and down, side to side, retract, and extend. (Tr. 52:10-53:5; U-19) John Cambria testified

that he learned to operate the Technocrane by serving an unpaid apprenticeship with Panavision, the rental house for Technocranes.⁶⁵ When Panavision and the lead tech were satisfied with his ability to work with the equipment, he was put on a list of people who could work on the Technocrane. (Tr. 905:4-19) When Producers book a Technocrane rental from Panavision, the booking agent assigns a lead and second Camera Assistant/Tech to operate the equipment for the Producer. (Tr. 887:9-25) The Camera Assistant/Techs prepare and operate the Technocrane, working under the direction of the Camera Operator and DP. (Tr. 893:24-895:5) The Camera Assistant/Techs are never employed by Panavision; they are always on the production payroll under the Local 600 Agreement. (Tr. 886:22-887:8)

Shooting a 3D film requires specialized equipment the Producers do not normally maintain. It requires two different cameras, mounted on a 3D rig that may employ a beam splitter. (Tr. 2026:15-2027:11)⁶⁶ Working with these 3D cameras also requires specialized knowledge. Rafael Chait testified to training in a “very formal class setting” with 3ality (a 3D rig rental house) to learn how to operate the cameras. (Tr. 2080:4-11) After his training he worked as a “3D rig technician” and later as a “3D engineer.” 3ality requires Producers who rent its rigs to hire people it trains and authorizes to work on its equipment. (Tr. 2060:23-2061:9) When working on movies, he was paid as a Camera Assistant/Tech under the Local 600 Agreement. (Tr. 2036:21-2038:8) He described his Camera Assistant/Tech work on a 3ality rig for “Fiona’s Tale” (later called “Amazing Spiderman”) in 2011.

⁶⁵ ProCam bought out Panavision in 2011. The name “Panavision” is used for both Panavision and its successor, ProCam.

⁶⁶ This is only a portion of what is done for 3D. Other work occurs through technology and does not involve the work of Camera Operators or Camera Assistant/Techs

I would build the 3-D rig, mount the cameras to it, mount the lenses, change lenses, hook up cables to it, move the rig. (Tr. 2024:24-2025:1)

The work was similar to what he did with non-3D cameras earlier in his career. (Tr. 2025:11-21) The unit DP directed his work with the cameras in exactly the same way as when he was working with regular cameras. (Tr. 2029:25-2030:20) He was covered by the Local 600 Agreement.⁶⁷

Steadicams allow the camera to “go in a human like state to tell the visual story.” (Tr. 355:22-23) They require a special rig, fitted to the Camera Operator, on which to mount the camera. (Tr. 355:12-356:1) A rig currently costs about \$150,000. (Tr. 358:19-359:2) Production companies don’t maintain that equipment; they rent the rig for \$1,000 a day and insure it. (Tr. 359:4-23; 366:8-20) The Camera Operator wearing the Steadicam walks “backwards, sideways, upstairs, downstairs” to frame the shot. (Tr. 356:9) A Camera Assistant/Tech pulls focus because the Camera Operator cannot. (Tr. 357:18-358:2) Both the Camera Operator and the Camera Assistant/Tech are paid on the Producer’s payroll under the Local 600 Agreement. (Tr. 343:23-344:20; 358:3-9)

The parties have interpreted Paragraph 82 through their mutually accepted practices over many years. The evidence shows the following. Where the techniques and equipment are unique to an entity (e.g. ILM patented technology, visual effects technology), and where the work is done predominantly off set, or the subcontractor’s camera crew is not integrated with the Production camera crew, and the work is under the direct supervision of the subcontractor (e.g. “inserts”), the subcontractor employs

⁶⁷ Sony’s Head of Labor Relations testified that the 3D rig techs on “Amazing Spiderman” were not treated as covered by the Local 600 Agreement. (Tr. 1512:1-1513:15) Chait’s testimony and documentary evidence (U-32) establish that he and the other rig techs were covered by the Local 600 Agreement when they worked on “Amazing Spiderman.” (Tr. 2031:3-2032:2)

the labor.⁶⁸ If the work is not part of the work being filmed, but about the work being filmed (as with EPK), the subcontractor employs the labor. When a Producer needs equipment it does not maintain, it rents the equipment from a vendor who may authorize only specific personnel to work with that equipment. When the camera work is done predominantly on the Production's set, or the camera crew operating the specialized equipment is integrated with the Production camera crew, or the camera crew is under the direction of the Production (e.g. through a Director, AD, or DP) the Producer employs the labor under the Local 600 Agreement.⁶⁹ If the vendor does not require specific camera crew to operate its equipment, the Producer hires those camera crew positions under the Local 600 Agreement. WBTV's assertion Paragraph 82 permitted it to subcontract the work of JP, Nowell, Fitzmaurice, Gluckman, and Graf is inconsistent with the parties long established interpreted of Paragraph 82.

WBTV did not subcontract Grievants' work on March 30 or October 5

WBTV failed to prove it subcontracted with Team 5/Helinet, or Helinet, or David Nowell Enterprises, Inc. to use their employees on either shoot. WBTV claims that on March 30 it contracted with David Nowell Enterprises, Inc. for the services of its "worker", David Nowell and utilized the services of Helinet Aviation and its drone crew of KL and JP.⁷⁰ On October 5, WBTV claims it utilized the services of Helinet and its crew of Michael FitzMaurice, Robert Gluckman, and Peter Graf on October 5.

⁶⁸ The subcontractor may have an agreement with another IATSE camera local, as ILM did.

⁶⁹ Helicopter pilots are employed under the SAG-AFTRA agreement.

⁷⁰ Since Local 600 did not prove KL did Camera Operator work, it is unnecessary to determine who employed him.

WBTV's characterization of its arrangement with David Nowell Enterprises, Inc., as subcontracting under Paragraph 82, is contradicted by the Agreement. Paragraph 81 makes clear that a loan-out company is a conduit for payment, not a subcontractor. The "employee on a loan-out" is entitled to seniority rights under Paragraph 68, entitled to grieve any alleged denial of salary or terms and conditions of the Agreement, and entitled to have the Producer:

...make pension and health and CSATF contributions directly to the Motion Picture Industry Health Plan and the Motion Picture Industry Pension Plan on behalf of the employee ... (J-1, Section 81)

The "employee on a loan-out" is an employee of the Producer, part of whose compensation is paid through the employee's loan-out company. He is not a "worker" employed by a subcontractor.

WBTV's claim it subcontracted with Helinet for JP is based on two facts: Helinet invoiced WBTV for JP's pay and Helinet had the COA for operating Team 5's drones. The claim that invoicing for his services makes Helinet JP's employer is not plausible. There is no evidence JP ever had any employment or other relationship with Helinet. The evidence shows Helinet agreed to put his fee on its invoice because Team 5 could not have employees.⁷¹ That fact, standing alone, does not make JP an employee of Helinet. Whether he was employed by Helinet solely because it held the COA for the drone shoot is discussed below.

WBTV's claim it "utilized the services of Helinet and its crew" on October 5 is based solely on the assertion Helinet held the COA for operating Team 5's drones.

⁷¹ Nowell had a contract with WBTV and KL was employed by Helinet "as a helicopter pilot flying news, medical contracts, organs, hearts, livers, lungs, in medical helicopters. Had nothing really to do with film, my salary, at Helinet." (Tr. 2004:6-9)

WBTV rented the drones and associated equipment from Team 5 and paid Team 5 to file a POA. WBTV paid Fitzmaurice, Gluckman, and Graf on its payroll as non-unit employees. There is no evidence Helinet had any connection to the shoot, other than WBTV's claim Helinet held the COA. The evidence Helinet held the COA for the October 5 shoot is less than compelling.⁷² It is unnecessary, however, to determine if Helinet was the COA holder. The underlying claim is that because the drone was flown under Helinet's blanket COA, Helinet was the employer of the drone camera crew. When WBTV used the drone crew and paid them, it did not employ them but "utilized the services of Helinet and its crew." That claim cannot withstand scrutiny.

WBTV asserts Helinet employed the drone crews based on this underlying proposition:

Every time during 2015 that a vendor, the PIC, and the rest of the drone crew arrived on a motion picture or television production to conduct drone photography services, they were discharging these 35 obligations on behalf of the vendor and complying with additional obligations in the vendor's operating documents. (Respondent's Opening Brief,8:1-4)⁷³

⁷² The claim is based on a COA issued to Helinet on March 22, 2015 to fly both drones "... for the purpose of closed set motion picture filming" between March 23, 2015 and February 28, 2017. (C-108) The "stack of documents" comprising the exhibit is markedly different from the ones submitted for the March 30 shoot. The October 5 POA has the wrong pilots, is not stamped and signed by the FAA, and has a Google map instead of the FAA air control map showing the location of the shoot. The forms to operate on Universal's property have the correct pilots. Nowell testified, in response to cross-examination questions about a Team 5 post of April 10, 2015 saying it now had a "blanket approval in place, COA for drone use" that: "The little bit I know of this is that COA, being the blanket thing, was you didn't have to apply for each job and it took three weeks or something like that to get the approval and stuff." (Tr. 793:14-15; C-38, p.84) He was not sufficiently knowledgeable to say anything more about Team 5's blanket approval. It is unclear why Team 5 would use Helinet's COA if it had its own. Neither Exhibit C-108, nor KL's testimony about a document he had not seen before, is persuasive.

⁷³ The invoices reflect that Team 5 was the drone vendor on both dates. Helinet becomes the vendor only by WBTV creating the corporate chimera Team 5/Helinet. The argument is this: 1) When WBTV rented the drones from Team 5, it was effectively renting them from Team 5/Helinet. 2) Because WBTV rented the drones from Team 5/Helinet, it was renting them from the Helinet. 3) When Helinet became the COA holder, it was the vendor whose responsibilities the drone crew was discharging.

That is, a drone camera crew, shooting a scene with other camera crews on the production's set, directed by the Producer's Director is not employed by the Producer "in the production of motion pictures." Rather, the drone vendor employs the drone camera crew to fulfill its 333 Exemption obligations.

The 333 Exemption does not make the drone camera crew employees of the drone vendor or COA holder. The PIC is the only member of the drone camera crew with any responsibilities under the 333 Exemption. The PIC is the only one who could potentially be required to fulfill Helinet's 333 Exemption obligations. But his obligations under the exemption relate only to safely flying the drone. He must have a "private airman certificate" and is responsible for following safety rules about where, when, and how he flies the drone. These responsibilities are analogous to those of a pilot flying a helicopter for filming. He must have "been approved by the FAA through their motion picture flight manual, to fly for filming purposes." (Tr. 1108:15-17) The helicopter is rented from a vendor, who must approve the pilot. (Tr. 1111:4-9) The pilot takes initial directions from the AD or Director about how they want him to fly for the shot. He is connected to the DP and Director, who communicate directions to him during the shot. (Tr. 1116:20-1117:17) The helicopter pilot is employed by the production company under the SAG/AFTRA Agreement. (Tr. 1456:14-22) The Local 600 Agreement covers the Camera Operator. (Tr. 1478:17-1789:1) The fact the PIC must comply with FAA requirements for flying the drone safely provides no basis for asserting he is employed by the vendor or the 333 Exemption holder. The rest of the drone camera crew has no responsibilities under the 333 Exemption. There is no plausible basis for asserting they are employed by the 333 Exemption holder.

Local 600 proved that on March 30, 2015 WBTV “employed ... or hired ... to perform services ... in the production of motion pictures” Grievants David Nowell and JP de Lespinois. The services they performed are described in the “definitions and duties of the job classifications” of the Agreement. WBTV did not prove that on March 30, 2015 it subcontracted with Helinet to utilize the services of Helinet and its drone crew of Kevin LaRosa Jr. and JP de Lespinois, or contracted with David Nowell Enterprises, Inc. to use its worker David Nowell. Consequently WBTV violated Article 1 of the Local 600-Producer Agreement. Local 600 proved that on October 5, 2015, WBTV “employed ... or hired ... to perform services ... in the production of motion pictures” Michael FitzMaurice, Robert Gluckman, and Peter Graf. The services they performed are described in the “definitions and duties of the job classifications” of the Agreement. WBTV did not prove that on October 5, 2015, it subcontracted with Helinet, or “utilize[d] the services of Helinet and its crew of Michael FitzMaurice, Robert Gluckman, and Peter Graf.” Consequently WBTV violated Article 1 of the Local 600-Producer Agreement.

To summarize, this Award finds that a Camera Operator or aerial DP/Camera Operator⁷⁴ flying a camera drone with a locked off camera for POV shots, or for aerial photography when another Camera Operator is operating the camera attached to the drone, is employed by the Producer to do work covered by the Local 600 Agreement and entitled to the benefits of the Agreement. A Camera Operator controlling the camera attached to a drone doing aerial photography is employed by the Producer to do work covered by the Local 600 Agreement and entitled to the benefits of the Agreement.

⁷⁴ The Agreement establishes the classifications. This Award draws a distinction between a movie pilot and a Camera Operator flying a drone. A person who is listed as an aerial DP/Camera Operator, or Camera Operator on the Industry Experience Roster, and flies a drone for aerial photography, would presumptively be a Camera Operator under this Award. So, too, with the other classifications.

A Camera Assistant/Tech who prepares or maintains the drone camera for operating purposes, attaching lenses, filters, and setting the drone camera to the specifications required by the DP, attaching the drone camera to a gimbal, and pulling focus where necessary is employed by the Producer to do work covered by the Local 600 Agreement and entitled to the benefits of the Agreement. Provided, however, if a drone camera crew is employed by a third-party, in a separate and distinct production unit that is not subject to the immediate direction and control of the Producer's Director, DP, or other supervisory personnel, that work may be subcontracted.

The parties did not argue remedy at the hearing, relying on the Arbitrator's retained jurisdiction. This Award finds all Grievants, except for KL, are entitled to the pay and benefit contributions provided by the Agreement. To the extent their actual pay exceeded their entitlement under the Agreement, they are not required to reimburse WBTV. Grievant JP is entitled to the pay and benefit contributions for March 29 (his prep day) and March 30. Grievant Nowell is entitled to pay and benefit contributions for March 30. Grievant Fitzmaurice is entitled to pay and benefit contributions for October 5. Grievant Gluckman is entitled to pay and benefit contributions for October 5. Grievant Graf is entitled to pay and benefit contributions for October 5. All Grievants, except Kevin LaRosa, Jr. performed work under the Agreement on those dates.

WBTV introduced two exhibits with its calculations of what it would be required to pay for wages and benefit contributions for March 30 and October 5 if Grievants were entitled to the benefits of the Agreement. (C-128, 129) Local 600 presented similar calculations in its brief, based on the production reports. The calculations are discrepant in two ways. First, WBTV does not calculate what JP is owed in benefits for his prep

day. Second, the parties disagree on the number of hours Grievants worked on both March 30 and October 5. The Arbitrator does not have enough information to resolve these discrepancies. He directs the parties to meet and confer within 60 days of this Award to agree on the amount owed each of the Grievants. If they cannot agree, they will present the disagreement to the Arbitrator for resolution, in a manner to be determined.

Award

1. Warner Brothers Television violated Article 1 of the Local 600-Producer Agreement by failing to employ David Nowell, and JP de Lespinois pursuant to the terms and conditions of the Agreement when operating a drone on WBTV's television pilot "Rush Hour" on March 30, 2015.
2. Warner Brothers Television did not violate Article 1 of the Local 600-Producer Agreement by failing to employ Kevin La Rosa, Jr. pursuant to the terms and conditions of the Agreement when he operated a drone on WBTV's television pilot "Rush Hour" on March 30, 2015.
3. Warner Brothers Television violated Article 1 of the Local 600-Producer Agreement by failing to employ Michael FitzMaurice, Robert Gluckman and Peter Graf pursuant to the terms and conditions of the Agreement when operating a drone on WBTV's television series "Rush Hour" photographed on October 5, 2015.
4. WBTV is ordered to make Grievants Nowell, de Lespinois, FitzMaurice, Gluckman, and Graf whole by providing them the wages and benefits of the Agreement for their work on each of those days, as set forth more fully in the body of this Award. Additionally, WBTV is ordered to make Grievant JP de Lespinois whole by providing him the wages and benefits of the Agreement for his prep day on March 29.
5. In accordance with the stipulation of the parties, the Arbitrator retains jurisdiction for 120 days to resolve any dispute over the amounts required by the remedy.

San Francisco, California
April 21, 2020



Norman Brand