

*Cited as:*

**Famous Players Inc. v. International Alliance of Theatrical  
Stage Employees, Moving Picture Technicians, Artists and  
Allied Crafts of the U.S. and Canada, Local 302 (Alberta  
Projectionists and Video Technicians) (Pay Rate Grievance)**

**IN THE MATTER OF an Arbitration**

**Between**

**Famous Players Inc. ("the employer"), and  
The Alberta Projectionists and Video Technicians Local 302 of  
the International Alliance of Theatrical Stage Employees,  
Moving Picture Technicians, Artists and Allied Crafts of the  
United States and Canada ("the union")**

[1999] A.G.A.A. No. 95

File No. Alta. G.A.A. 99-108

Alberta  
Grievance Arbitration

**F. Price, Arbitrator**

November 5, 1999

(127 paras.)

Jurisdiction - Applicability of projectionists' Collective Agreement to IMAX technicians - Based on the nature of the equipment, the functions performed by the IMAX technicians and the requirement that the technician remains in the projection booth at all times, the prime function of the IMAX technicians is as projectionists - They are covered by the Collective Agreement - The IMAX Projection Manager is little different and is also covered by the Collective Agreement.

Compensation - role of the Arbitrator to replicate what the parties might have arrived at - evidence on comparables very limited - fair treatment is to award a rate of pay, similar hours and working conditions as conventional theatre projectionists for 10 more screens.

Held: Grievance allowed.

**Appearances:**

Yvon Seveny, for the union.

Philip G. Ponting, Q.C., for the employer.

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## AWARD

### 1. INTRODUCTION

**1** The hearing of this grievance was held in Calgary on October 5 & 6, 1999. The parties agreed that I had jurisdiction to hear this matter. The Employer submitted that I did not have jurisdiction to decide the merits of the grievance, because the IMAX Technicians involved are not covered by the Collective Agreement. Both parties, however, at least agreed that I did have jurisdiction to make the preliminary determination whether or not the Collective Agreement covers or should cover the IMAX Technicians.

**2** The parties agreed in writing to extend the deadline for me to issue the Award to 5 November, 1999.

### 2. ISSUES

**3** The parties had not been able to agree on (a) the applicability of the Collective Agreement, (b) the rate of pay, (c) the regularly scheduled hours, or (d) the working conditions, for the employees the Union called "the IMAX Projectionists" and whom the Employer called "the IMAX Technicians".

**4** The Union, by letter of August 5, 1999 (exhibit 1), referred the matter to arbitration pursuant to Article 12.04 of the Collective Agreement.

5 Articles 12.03 and 12.04 of the Collective Agreement are as follows:

12.03

Constructing New Theatres

It is mutually agreed that when the EMPLOYER is constructing a new theatre(s) the rate, Regularly Scheduled Hours and working conditions shall be equivalent to a comparable theatre under the Collective Agreement. In the event no such theatre exists, under the Collective Agreement, it is mutually agreed that such theatre(s) shall be subject to negotiations at least ninety (90) days prior to the opening of the theatre for operations.

12.04

Arbitration

Failing agreement under either Article 12.01, 12.02 or 12.03 hereof, the Projectionist shall commence work and be paid at the rate for the Regularly Scheduled Hours proposed by the EMPLOYER which shall not be less than the established rate for a complex with one (1) screen less than the disputed theatre. That matter shall, however, be submitted to an Arbitrator by the UNION as a Grievance in accordance with the procedure set out in Article five (5).

6 The grievance before me raised the question of the scope of the Union Recognition and Security article, Article 2, which sets out as follows:

ARTICLE 2 - UNION RECOGNITION AND SECURITY

2.01

The EMPLOYER recognizes the UNION as the exclusive bargaining agent for all Moving Picture Machine Operators, I.A.T.S.E. Local #302, (hereinafter referred to as "Projectionists") employed by the EMPLOYER within the jurisdiction of the UNION as designated in Article 2.02.

2.02

For the purposes of the above Article 2.01, territorial jurisdiction shall mean all territories within the boundaries of the Province of Alberta.

2.03

It is mutually agreed as a condition of employment that all Projectionists in the employ of the EMPLOYER shall be good standing members of the UNION. It is the responsibility of

the UNION to advise the EMPLOYER if the member is not in good standing and is not to be employed.

2.04 The EMPLOYER will notify the UNION of its requirements for Projectionists and the UNION, without undue delay on its part, shall furnish such Projectionists. The UNION agrees to furnish competent and efficient Projectionists to perform work as required by the EMPLOYER under the provisions of this Collective Agreement.

2.05 The EMPLOYER in respect to each employed Projectionist, shall deduct from each pay of such Projectionist(s) and remit to the UNION, sums for dues and contributions to the UNION as the UNION may, from time to time, direct the EMPLOYER in writing. The EMPLOYER shall be given thirty (30) days' prior notice by the UNION of any variation in the dues assessment. The UNION will save the EMPLOYER harmless from any and all claims which may be made against the EMPLOYER for amounts deducted and herein provided.

### 3. POSITIONS OF THE PARTIES

#### (a) Employer's Position

7 The Employer agreed that the Union is indeed agent for all "Projectionists", but submitted that the work of an IMAX Technician is not the work of a Projectionist.

(i) Article 3.08 sets out a number of other jobs that Projectionists may be called upon to do:

3.08

The UNION agrees that when the Projectionist is not required to be in the booth performing projectionist duties, the Projectionist will assist management in other theatre operational duties other than projection when called upon to do so during the Regularly Scheduled Hours such as minor repairs, poster changes, closing usher, doorman, floor usher operations, concession operations (other than handling cash) and routine building maintenance, however, it is agreed and understood that the projection duties take priority. The assignment of duties other than Projectionist duties shall be made in good faith and not for punitive or discriminatory purposes.

8 The prime function of the IMAX Technicians is not that of a Projectionist. The amount of time the IMAX Technicians spend actually performing the work of Projectionists is very limited.

(ii) Although Article 2.04 sets up a form of "hiring hall" system under which the Union agrees to furnish competent and efficient Projectionists, the Union in this case is unable to supply individuals competent to perform as IMAX Technicians.

(iii) The Union has abandoned any jurisdiction it might have had over the IMAX Theatre. Appendix "A" to the Collective Agreement expressly or impliedly excludes the theatres with less than 4 screens. Counsel for the Employer acknowledged that Appendix "A" does not mention the

Silver City 12-Cinema Complex or the IMAX Theatre. The Silver City Complex and IMAX Theatre began operating in May 1999, after the Collective Agreement was already in force. The Employer agreed that the 12-Cinema Complex is covered by the Collective Agreement as a "new theatre" and that the provisions of Appendix "A" apply to the projectionists employed in those 12 theatres.

9 Appendix "A" contains (in part) the following clauses:

A.01 The hourly rates for the projectionists working at the theatres are set out below:

	Hourly Rate
4 to 6 screens	\$14.00
7 to 9 screens	\$15.00
10 or more screens	\$16.00

A.02 Listed below are all of the theatres which are subject to this Collective Agreement along with the applicable wage rates and Regularly Scheduled Hours.

Theatre	# of Screens	Rate	Weekly Hours
Westmount	4	\$14.00	40
Bankers Hall	5	\$14.00	40
Westmall	5	\$14.00	40
Sunridge	5	\$14.00	40

Park Plaza, Red Deer	7	\$15.00	40
South Centre	7	\$15.00	40
Market Mall	8	\$15.00	40
Gateway	8	\$15.00	80
Westhills	10	\$16.00	80
South Calgary	10	\$16.00	80

**10** This Collective Agreement does not apply to and the Union no longer asserts jurisdiction over the following theatres, as long as A.01 above is not relevant:

Paramount (1), Edmonton  
 Paramount (2), Lethbridge  
 Lethbridge Centre (2), Lethbridge

- (iv) The Employer has no obligation to train the Projectionists. Article 8.01 of the Collective Agreement provides as follows:

#### 8.01 Projectionist Trainees

The UNION has the right to place Projectionist trainee(s) in any theatre(s) covered under this Collective Agreement for the purpose of being trained as a Projectionist by the UNION. The names of all Projectionist trainees shall be submitted to the EMPLOYER in writing who for reasonable cause (conveyed to the UNION in writing) shall have the right to refuse any Projectionist trainee access to the EMPLOYER'S premises, subject to

Article Five (5) herein.

(v) The Collective Agreement as a whole is designed solely for the Employer's conventional Movie Theatres. It is not intended to and does not cover an IMAX Theatre which is unique and requires operators with completely different skills and training.

(b) Union's Position

(i) The importance of Union security is made clear from Article 2 of the Collective Agreement. The agreement between the Employer and the Union is a "closed shop" arrangement under which the Employer will only use, as Projectionists, Union members supplied by the Union under Article 2.04. The Employer also agrees that all Projectionists must be Union members as a condition of employment (Article 2.03).

(ii) The term used by the Employer, "IMAX Technician", is not an industry term. In fact employers usually call them "IMAX Projectionists". In any event, the term is artificial. In all cases what the person does is to project film onto a screen. While it may be a different technology, there will always continue to be technological changes. The prime functions are not much different to regular Movie Theatre Projectionists.

(iii) Silver City includes the IMAX Theatre and is a 13-screen theatre complex. There are not 2 separate complexes (the IMAX on the one hand and the 12 conventional theatres on the other), nor are there 13 individual theatres. In any event, the Union has not abandoned the theatres under 4 screens. Appendix "A" shows that it has only given up its jurisdiction over 3 specific theatres.

(iv) My jurisdiction stems from Articles 12.03 and 12.04. In the present case there is a new Theatre (Silver City/IMAX) and no Agreement (Article 12.03).

(v) The Union conceded that it currently cannot supply competent Projectionists for the IMAX Theatre. However, any IMAX Projectionists hired by the Employer must be members of the Union (Article 2.03). The fact that the Union cannot now supply the Projectionists does not affect coverage under the Collective Agreement, nor my jurisdiction to determine the merits of the grievance.

(vi) The Union will be able to send trainee(s) to the IMAX Theatre. They will be trained by the Projectionists, who themselves must be Union members under Article 2.03.

4. EXHIBITS AND WITNESSES

**11** A number of documents were marked as exhibits 1-24, inclusive. Schedule "A" is a list of the exhibits. The evidence was given by all the witnesses under oath.

EMPLOYER



**12** Testimony was given by the following witnesses on behalf of the Employer:

(a) Laura Brillinger

Ms. Brillinger is the Vice-President of Operations and Marketing for Famous Players IMAX. She has been there since Famous Players IMAX started 17 months ago. She oversees the operations and marketing for the IMAX Theatres run by Famous Players. Famous Players IMAX is a separate division within the Employer.

(b) Pierre-André Charron

M. Charron is the Technical Director of Famous Players IMAX and has been in that position for over a year. He reports to Ms. Brillinger.

M. Charron has a communications degree from the University of Ottawa. He has been in the IMAX business for 10 years and in that time has opened 10 IMAX Theatres. He is responsible for design, installation, operations and maintenance for all Famous Players' IMAX Theatres and is responsible for hiring the Technicians to run those Theatres. He wrote the job descriptions for the IMAX Project Manager and the IMAX Technician (exhibit 10). He has designed and written a number of the IMAX manuals used by the Employer, including the Technical Training Manual (exhibit 5).

(c) Doug Smith

Mr. Smith is the Vice-President, Human Resources, Benefits and Industrial Relations, a position he has now held for some 3 years. Prior to that he was responsible for operations and industrial relations. He has been involved in negotiating the last 3 or 4 rounds of collective bargaining with the Union. He is the chief negotiator for the Employer in each of the jurisdictions in Canada where the Employer operates.

The Employer and the Union have Collective Agreements for Projectionists in New Brunswick, Nova Scotia, Ontario, Manitoba, Saskatchewan, Alberta, British Columbia, and also in Quebec City. There are

also some front of house Collective Agreements between the parties, but not in Alberta.

## UNION

13 Testimony was given by the following witnesses on behalf of the Union:

(d) Bill Tepner

Mr. Tepner gave evidence of his experience as a Projectionist, both at conventional movie theatres and at the IMAX Theatre at the Eau Claire Market IMAX Theatre in Calgary. No objection was taken to Mr. Tepner's qualifications to give such evidence.

Mr. Tepner was hired in 1995 at the Uptown Theatre, a private repertory movie theatre in Calgary. He was trained there by the manager over the course of 1-1/2 months, and then for the next 2-1/2 years ran the movie programs on his own. He ran both 35mm and 16mm film. By the end of the 2-1/2 years, he was an Assistant Manager as well as a Projectionist.

He started with the Eau Claire IMAX Theatre in March 1997. He was hired by the head Projectionist and completed some 300 hours of training on the job. He works part-time (11-12 hours a week) as a result of his concurrent university studies, and 30-35 hours a week in the summer months. In May 1999 he spent 1 month working for Cineplex Odeon at the 3-screen (conventional) Marlborough Theatre in Calgary.

(e) Douglas Cooper

Mr. Cooper is President of Local 302. He has been a member of the Union since 1976 and the President since 1986. He is a Projectionist by trade and still works as a Projectionist in Calgary with Cineplex Odeon.

His post-secondary education includes a Radio/T.V. Arts Programming, work as an Audio/Visual Technician at the Calgary Convention Centre. In 1976, he commenced an apprenticeship as a Projectionist under the licensing program pursuant to the Amusements Act. At the end of 6 months on the job training, he

wrote and passed his exam for a third class licence. He then worked in single theatres in Coronation and Waterton Park, for a year, following which he obtained his second class licence. He worked for another year and then took and passed his first class Projectionist licence at the end of 1979.

## 5. EVIDENCE

14 There was little dispute over much of the evidence. What the parties disagreed over was the interpretation to be given to that evidence and the inferences to be drawn from it.

### (a) Silver City - IMAX Theatre Site

15 There was no disagreement between the witnesses over the physical layout of the Famous Players Silver City - IMAX Theatre site at West Edmonton Mall. Exhibit 6, a copy of the blueprint for the main level of the theatre complex, was described by Ms. Brillinger. The 8 parts of exhibit 6 fit together as follows:

TOP	One	Two	Three	Four
BOTTOM	One	Two	Three	Four

Photographs of the area were filed as exhibit 8.

16 The theatre area can be accessed by escalators up from the West Edmonton Mall upper shopping level (exhibit 6, Top Two), or by outdoor stairs from the car park (exhibit 6, Bottom Two). There is no restriction on such access, and there are many visitors who come, but who do not buy movie tickets. Upon arrival in the theatre lobby area, one encounters the ticket sales booths (either side of the word "ROTUNDA", on exhibit 6, Top Two) and the 9 automatic ticket dispensers (either side of the word "LOBBY"). At all the booths and dispensers, tickets may be purchased for either conventional theatre movies or the IMAX movies, or indeed a combination including both a conventional movie and an IMAX movie (see exhibit 9).

17 Next to the ticket area is the Silver City main concession stand. As well, a number of commercial franchises (Baskin Robbins, Taco Bell, Pizza Hut, etc.) have sales locations (see exhibit 6, Top Two). All these food concession areas are available to the public, regardless of which theatre they propose to visit. Indeed, there is no requirement that patrons of these concessions even hold tickets to a movie of any kind.

18 On the same level is found Techtown, an amusement arcade (video games, etc.) open to any members of the public, whether they hold a movie ticket or not.

**19** On the other side of the lobby area are a number of display posters advertising current movies and a board showing the movies playing that day and the respective starting times. Both conventional and IMAX movies are included in the posters and on the boards (see photographs, exhibit 8). Washrooms located around the lobby are also available to the general public.

**20** The IMAX Theatre itself (see exhibit 6, Top One) is accessed by stairs or an escalator going up from the Lobby area, partly over Techtown, to the IMAX entry level (not shown on exhibit 6). On this upper level, a further concession stand is found, and a balcony area which provides a view over the Lobby area and a closer view of a number of attractions (flying and stationary), including a giant fire-breathing dragon.

**21** Access to this IMAX entry level is unrestricted, so that the public may go up to that level without first purchasing an IMAX or any movie ticket. They may stay up there to observe the dragon or other attractions and may leave the area without having seen the IMAX movie.

**22** Only when a patron decides to watch the IMAX movie is a ticket needed to permit access to the IMAX Theatre. Similarly, when a conventional movie theatre goer wishes to access one of the 12 theatres, he or she will need to purchase a ticket before being allowed into theatres 1 or 2 (exhibit 6, Bottom One), or theatres 3 to 12 via Theatre Street (Bottom Two).

**23** Each theatre has a Projectionist's Booth housing the projector and other equipment needed to show the current movie. In every case, this booth is a level above the public entry to the theatre. The conventional theatre projection booths allow the projectionist to go from one theatre to another to ensure timely start up of each movie. The IMAX Theatre projection booth, on the other hand, is separate. The IMAX technician/projectionist is required to stay in that booth throughout the show.

**24** In entering the respective theatres, the major difference for the customers will be the 3D glasses used for the 3D IMAX shows. These expensive glasses are carefully monitored. At the end of each show they are collected back from the audience and machine washed and dried.

**25** Two of the conventional theatres (cinemas 1 and 4 - exhibit 6) are THX theatres, which, according to Mr. Smith, have a different sound format and specific licensing requirements for the facilities.

#### (b) The IMAX Experience and Equipment

**26** M. Charron described the IMAX show as an "experience", consisting of a number of integrated stages: an introduction to IMAX, followed by an Intelligent Lighting and Laser show designed to introduce the patrons to the IMAX sound and visual equipment and to demonstrate the Laser light system. This Laser show is followed by a trailer advertising an upcoming movie. The trailer is then followed by the main show. Because of the size and weight of the film itself, the IMAX main feature is only about 40 to 50 minutes long. At Silver City IMAX, a new show starts about every 1 hour and 10 minutes.

**27** Exhibit 5, the IMAX Technician Training Manual, describes the IMAX system, the equipment it uses, and what the operator of the IMAX equipment must do in the booth.

**28** M. Charron wrote the Manual for all the IMAX technicians across Canada and he went through it in his testimony. The Manual had in fact been written before the Silver City IMAX opened, but M. Charron said that any revisions that might be needed would only be small.

**29** The objective of the IMAX system is to fill completely the eyes and ears of each viewer in the audience in order to amplify the emotional impact of the screen image.

The IMAX(R) film projection system ... now represents the ultimate achievement in the art and science of superscreen showmanship ... The spectacular improvement in the sharpness and the fidelity of the very large IMAX (R) images is accomplished by five major innovations in design:

1. Increased information per frame ...
2. The rolling loop film transport system ...
3. Quality optics and state of the art lamp illumination ...
4. Research and development in the 3D application ...
5. The six track active sound system ...

**30** The Manual introduces its layout of equipment at p. 6:

Famous Players IMAX (R) will equip their projection booth with the state of the art IMAX (R) 3D projection system, Sonics new DTAC sound system, intelligent lighting and LASER projection system. Famous Players IMAX (R) projection booth will be the most sophisticated one in the giant film format network.

**31** None of the equipment used to run the Silver City IMAX system is found in any conventional movie theatre. Mr. Tepner conceded that he had not used any of the technical equipment used by the Silver City IMAX theatre. Counsel for the Employer went through each of the pieces of equipment listed in exhibit 5 at p. 6. Mr. Tepner confirmed that none of that equipment was used at the Eau Claire Market IMAX where he worked, nor had he operated any of that equipment.

(c) Functions of the IMAX Technician

**32** Page 3 of the Manual (exhibit 5) sets out the role of the IMAX technician:

The role of the Famous Players IMAX (R) Technician

An introduction manual serves, at best, only as an introduction to various pieces of equipment, their operation, programming and maintenance. The IMAX (R)

reputation for consistent high quality performance, in terms of technical standards and showmanship, at each and every presentation, depends on the dedicated skills of those who operate the equipment.

Enormous sums of venture capital are spent in developing motion picture processes, spectacular theatres, state of the art pre-show using intelligent lighting and LASER projection system, and imaginative programs to serve the entertainment market. The technician is the final and vital link in this chain which begins with the innovative concepts and ends, hopefully, with satisfied audiences.

These are the essential elements of good picture presentation from the patron's point of view:

1. Clear vision of the entire film without obstruction.
2. Uninterrupted continuity of each performance.
3. Adequate and consistent screen illumination.
4. Minimal transient movement of the projected picture (steadiness).
5. Unobtrusive operation of the equipment.
6. Sharp and consistent focus.
7. Sound calibration and level.

The Famous Players IMAX (R) technician is an important part of the theatre team. Paradoxically, the technical crew contributes most effectively to a show's success when its efforts are entirely invisible to the viewer.

The competence of the Famous Players IMAX (R) technician must be reflected in the crisp professional manner displayed in handling performance details; house lights and overture buttons hit on a cue; pre-show presentation; sound set to the audience capacity; picture quality; close monitoring of all variables throughout the show with subtle adjustments as required; and ending with a smooth fade-out and cut-over to house lights, exit announcement and cross-fade to exit music. Effortless timing distinguishes the work of the truly skilled operator.

**33** Pages 9 to 13 of the Manual list the Start & Maintenance Procedures for the Technician. M. Charron agreed with Counsel for the Union that pp. 9 to 11 all related to projection.

34 M. Charron divided the work of the IMAX technician into 5 tasks relating to:

- (i) Intelligent Lighting; (ii) Laser Show; (iii) 3D (sometimes 2D) Projection;
- (iv) Sound System; (v) Stage Lighting/Automation System.

35 It was M. Charron's opinion, based on his experience, that each of these tasks takes about 20% of the technician's total working time. It was common ground that the IMAX technician has to be in the projection booth at all times while the IMAX show is running.

36 Exhibit 11 consisted of the Log Book and the Projection Manager's Weekly Report. M. Charron said there are also Laser Log Books and Intelligent Lighting Log Books. He said that every second week he receives (from every IMAX theatre) a statement of the time spent by personnel on operations, special activities, maintenance, etc., which he reviews for Human Resources control purposes.

37 There was argument by both Counsel over whether all these reports since May 1999, when Silver City IMAX opened, should be produced to the Union, if they formed the basis for M. Charron's estimate of 20% for each of the 5 tasks (above). M. Charron explained that there was no report on which his estimate was based. The figure of 20% for each of the 5 areas was an estimate he had come up with in November 1998 before the IMAX theatre started operating. He had not done any follow-up comparisons or calculations since then.

38 Ms. Brillinger also testified about 5 functions, on each of which she said the IMAX technician spends about 20% of the time. It turned out that this evidence was based on the estimates of M. Charron, which he had discussed with her before the hearing started. M. Charron noted that she had included, as one of the 20% tasks, the care and cleaning of the 3D glasses. In fact, M. Charron said, there is a separate team of employees who take care of the glasses and their cleaning. The IMAX operator is not involved with the 3D glasses at all.

39 As seen already (above, p. 3), Article 3.08 sets out a number of other jobs that projectionists may be called upon to do. Mr. Smith explained the reason for the presence of Article 3.08, which had been in the last couple of Collective Agreements. Once a conventional movie has started, projectionists are not needed to monitor the film or stay in the projection booth. If working in a multi-cinema complex, they will proceed to the next projection booth to start that film. When their work in the projection booths is done, they may be available for other duties, examples of which are given in Article 3.08. These other duties are not projectionist work, but ancillary. As these other duties are not bargaining unit work, they have to be included by way of an article like 3.08.

## 6. DECISION ON JURISDICTION

### (a) Scope of the Collective Agreement

40 Arbitrators must interpret and apply all the terms of the collective agreement before them. In certain circumstances this duty may involve deriving the intention of the parties by implication from the language used in the agreement, but an arbitrator cannot imply a term that would have the effect of altering the collective agreement.

41 In the present case, the parties addressed this question in Article 5.05 of the Collective Agreement:

5.05

The Arbitrator appointed pursuant to this Article has no jurisdiction to alter, add to, delete from, modify or amend, or to make any decision that is inconsistent with the provisions of this Collective Agreement.

42 As well, Counsel for the Employer directed me to Article 1.02 of the Agreement:

1.02

Except for the express provisions of the Alberta Labour Relations Code of the Employment Standards Code, this Collective Agreement represents all the terms and conditions which govern the relations between the UNION, the EMPLOYER and those employees of the EMPLOYER to whom this Collective Agreement applies. No other or further terms and conditions, express or implied, are applicable or enforceable, except where, and to the extent of, further mutual agreements which are committed to in writing by the parties and expressly appended to this Collective Agreement.

43 The Employer's position was that, for me to have jurisdiction, I must conclude that the IMAX work falls within the existing terms of the Collective Agreement, but I cannot add or imply new terms.

44 Some matters, however, may be covered where they are anticipated by the existing terms of the Collective Agreement. Such is the case in the event of new theatres. Article 12.03 (above, p. 2) expressly deals with the addition of new theatres(s) to be covered by the Collective Agreement. The rate, Regularly Scheduled Hours and working conditions shall be comparable or negotiated. If no negotiated agreement is reached, then the rate, hours and working conditions can be submitted to arbitration under Article 12.04.

45 In the present case, there was agreement that the 12-theatre Silver City complex was a "new theatre" under the Collective Agreement. The Employer argued however, that, while the IMAX theatre may have been a "new theatre", its employees, the IMAX technicians, were not "projectionists" and so were not covered by the Collective Agreement.

46 The Parties both acknowledged the importance in the Collective Agreement of the Union security, "closed-shop" provisions in Article 2.03 and 2.04. The Employer said that those provisions were not relevant because the IMAX technicians were not covered by the Collective Agreement.



47 I acknowledge that I cannot add or imply terms that are not already found in the Collective Agreement. If any "gaps" exist in the Agreement, I cannot fill them by importing solutions from outside the Agreement, no matter how logical those solutions may appear. I can only interpret the existing terms and conditions of the Collective Agreement and ensure that my decision is consistent with the provisions of the Agreement.

(b) Projectionists

48 The Alberta Labour Relations Board's Certificate 218-96 (exhibit 3) certifies the Union as the bargaining agent for a unit of employees of the Employer described as "All projectionists in the theatres ... in Edmonton and surrounding area". There was no dispute that the IMAX theatre is one owned by the Employer in Edmonton, and so covered, geographically at least, by the L.R.B. Certificate and by Article 2.02 of the Agreement prescribing the Union's territorial jurisdiction (see above, p. 2).

49 The difference of opinion between the Employer and the Union boiled down to their respective positions over Article 2.01:

2.01

The EMPLOYER recognizes the UNION as the exclusive bargaining agent for all Moving Picture Machine Operators, I.A.T.S.E. Local #302, (hereinafter referred to as "Projectionists") employed by the EMPLOYER within the jurisdiction of the UNION as designated in Article 2.02.

50 The Employer submitted that the IMAX technicians were not "projectionists". Only a minor portion of what they have to do (20% at most, according to M. Charron) is projection work. If they are only spending 20% of their time on projection work, this cannot qualify as their prime function. Unless their prime function is to do work covered by the Collective Agreement, they cannot be held to be in the bargaining unit. The Employer referred to decisions like Braun's Construction Ltd. v. Construction & General Workers, 31 January 1992, Alta. L.R.B. #GE-00893, and IATSE Local 302 v. Cosmopolitan Cinemas Ltd., 10 July 1996, Alta. L.R.B. #CR-01815.

51 While these decisions are of assistance, there is no doubt that the facts of each case will vary, giving different results based on those facts.

(i) Terminology

52 The difference in terminology between the parties is not significant. Whether the employees are labelled "projectionists" (Union label) or "technicians" (Employer label) is not determinative. The test is not what the employee is called, but what the employee does: United Brotherhood of Carpenters v. Can. Patent Scaffolding Co., [1991] Alta. L.R.B.R. 1, 5.

(ii) Equipment Covered

**53** The Employer submitted that, at the time of negotiation of the Collective Agreement (exhibit 2), the parties were only contemplating conventional cinema theatres with conventional 35 mm film. There was, however, no evidence to support this contention, and even if there had been, it would have had to overcome Articles 1.02 (above) and 1.03 (below) to be admissible.

**54** Article 1.03 provides:

1.03

It is hereby agreed that all commitments which could, in any way, affect this Collective Agreement, but which were verbally promised, inferred or implied and which are not written into this Collective Agreement shall be null and void and shall not be binding on either the EMPLOYER or the UNION.

**55** There was no evidence that showed the Parties intended to restrict the Collective Agreement to 35 mm film theatres.

**56** The evidence did show that since LATSE's birth in 1913, there have been countless changes and advances in the film industry and equipment. The Employer's Training Manual (exhibit 5) refers to developments since the 1950s culminating in the current state of the art IMAX experience.

**57** It would make no labour relations sense in the film industry to imply a limitation based on the state of the equipment at any particular point in time. The Collective Agreement is designed to cover all projectionists, all moving picture machine operators, during the whole life of the Agreement. Absent a specification of the type(s) of equipment covered by the Agreement, it only makes labour relations sense for the Agreement to apply to employees who operate moving picture machines or act as projectionists, regardless of how old or modern those moving picture machines or projectors are.

(iii) Union's Inability to Supply

**58** The Employer said it was critical that the Union could not supply "competent and efficient" projectionists under Article 2.04 to perform the required work in the IMAX theatre projection booth.

**59** The Union conceded that it could not currently supply competent and efficient Projectionists to operate the IMAX system. It would be able to, if the Employer observed Article 2.03 of the Collective Agreement, because, under that Article, all Projectionists in the employ of the Employer are meant to be Union members in good standing. So the Projectionists currently working in the IMAX projection booth are meant to be Union members and would then be supplied by the Union under Article 2.04.

**60** The Union continued that, once the Projectionists became members of the Union, training would be available from these members under Article 8.01. Before long, additional "competent and

efficient" projectionists will be available for the IMAX theatre.

61 While I appreciate the arguments of both sides on this issue, the current inability of the Union to supply "competent and efficient" projectionists does not have any bearing on the question of my jurisdiction to determine this grievance.

(iv) Functions Performed by IMAX Technician

62 The functions performed by the IMAX technician were divided by M. Charron into 5 areas, on each of which, he said, the technician spends 20% of his time:

- (a) Intelligent Lighting;
- (b) Laser Show;
- (c) 3D (sometimes 2D) Projection;
- (d) Sound System;
- (e) Stage Lighting/Automation System.

63 First of all, I have difficulty in accepting the arbitrary 20% assigned by M. Charron to each of these areas. This assignment is not borne out by the Training Manual (exhibit 5) and the procedures set out in it, the bulk of which, as M. Charon acknowledged on cross-examination, deal with the projector and projection of the film.

64 Secondly, M. Charron conceded that he has not checked to see if his figures apply to the Silver City IMAX procedures and projectionists.

65 Thirdly, the sound system is an integral part of the film projection. The evidence of all the witnesses confirmed this fact. The Employer's Training Manual itself says (exhibit 5, at p. 3):

- 5. The six track active sound system The sound quality in any film experience is highly important. Sound was enhanced throughout the years with the stereo sound effect and surround sound effect. Sonics & Associated developed the first multi track active sound system that is interlock[ed] to a film projector. This innovation greatly improved the overall film experience.

66 At page 4, the Manual lists "sound calibration and level" as one of the 7 essential elements of good picture presentation.

67 Fourthly, I am satisfied from the evidence that the Laser show involves "projection" in the context in which that word is used in the film industry. To "project" in this context means: to cast, throw, impel, cause light/shadow to fall on a surface. M. Charron explained how the laser light system works. It involves the "projection" of a laser beam to provide a light show which includes laser beams that ricochet over and around the audience. The laser show is controlled by computer

software and the technician must ensure that it is synchronized with the sound source. M. Charron continued that the projection of the laser beams above and around the audience is potentially dangerous enough that every day the technician must check to ensure that the laser will not go into the crowd, where it could cause severe burns. With the climatic and seasonal changes, there may be "play" in the mirrors off which the beams ricochet, so that they need to be corrected from time to time.

**68** While terminology, as already discussed, may not be determinative, the Employer's Training Manual consistently describes the Laser equipment as a "LASER projection system".

**69** Fifthly, the whole IMAX experience was described by the Employer's witnesses as a spectacular experience made up of the various integral parts all of which have to be skilfully blended in their presentation by the technician. Attempts by the Employer to "compartmentalize" the various parts of the IMAX presentation are inconsistent with the integrated experience that is in fact required of the projectionist and presented to the audience.

(v) IMAX Operator must remain in the Booth

**70** Finally, there is the acknowledged requirement that the IMAX operator must remain in the projection booth at all times. Indeed, M. Charron explained that there was only one person in the booth at any one time, so they were responsible for everything done in the booth.

**71** M. Charron stated at one point that, once the film and sound were coordinated, the show "runs itself". He did not explain, however, why the technician needs to stay in the booth if the show "runs itself". At the very least, the technician needs to stay there to make sure that the show "runs itself". In fact, from M. Charron's testimony and the details in the Employer's Training Manual, it is clear that the technician is fully occupied in the booth.

**72** This requirement is not found in the conventional theatres system like Silver City, where a projectionist will go from theatre to theatre, starting the film in each projection booth before moving on to the next theatre. With 12 screens to operate, the projectionists at Silver City may be in booths all the time, but will be constantly moving between them. In theatres with fewer screens, Article 3.08 may have practical application:

3.08

The UNION agrees that when the Projectionist is not required to be in the booth performing projectionist duties, the Projectionist will assist management in other theatre operational duties other than projection when called upon to do so during the Regularly Scheduled Hours such as minor repairs, poster changes, closing usher, doorman, floor usher operations, concession operations (other than handling cash) and routine building maintenance, however, it is agreed and understood that the projection duties take priority. The assignment of duties other than Projectionist duties shall be made in good faith and not for punitive or discriminatory purposes.

73 This Article sets out certain functions that do not come within the bargaining unit job description of a projectionist, but are tasks which the projectionist may be available to do, because he or she is not needed in the booth.

74 It is immediately obvious that Article 3.08 will never apply to an IMAX theatre, because the IMAX operator is always "required to be in the booth". Even in conventional theatres like the Silver City 12-plex, Article 3.08 will rarely apply. While the projectionists may not need to spend very long in any one projection booth, they do need to move on to the next booth to start the movie in that theatre. They do not have time to work as ushers or concession attendants.

(c) Abandonment of Jurisdiction over Theatres with less than 4 screens

75 The Employer argued that Appendix "A" to the Collective Agreement was evidence of the Union's abandonment of any theatres in Alberta with less than 4 screens. The IMAX theatre at Silver City was a single screen theatre, and hence one over which the Union had abandoned any jurisdiction.

76 This argument cannot succeed. First of all, the listing in A.02 of "all of the theatres which are subject to the Collective Agreement" yields to the provisions of Article 12.03 (New Theatre), as the Parties agree it does in the case of the Silver City 12-screen complex. Apart from the number of screen(s), the IMAX theatre is covered for the same reason.

77 Secondly, there is no express abandonment of anything other than the specific theatres and screens listed as ones over which the Union no longer asserts jurisdiction. In view of the importance placed in the Collective Agreement on Union security (Article 2), if the Employer had wanted the Union to give up its jurisdiction over all theatres of less than 4 screens, it could and should have agreed exactly that.

78 Thirdly, there cannot be any implied abandonment in view of Article 1.02. Furthermore, the concept of abandonment at law requires an intention to abandon on the part of the person allegedly abandoning a contract. There is no evidence of such an intention by the Union in this case.

79 I find that the Union has not abandoned its claim to jurisdiction over the Silver City - IMAX theatre complex, nor any part of it.

(d) Conclusion  
(i) IMAX Technicians

80 In light of all these facts and findings, I am satisfied that the IMAX Technicians are indeed Projectionists and carry out projection duties as their prime function. As Projectionists, they are covered by the Collective Agreement bargained by the Union.

81 The advanced technology, the different equipment, its expense and the attendant level of

responsibility have no effect on whether the duties of the IMAX projectionists are covered by the Collective Agreement. They are covered.

82 The argument that the Union should go to the Labour Relations Board to seek an extension or amendment to the Certificate (exhibit 3) does not apply in a case like the present, where the Collective Agreement already covers the employees in question.

(ii) IMAX Projection Manager

83 The IMAX Technicians currently working in the IMAX theatre carry out the job description contained in exhibit 10. This job description is completely consistent with the finding that the Technician's prime function is that of projectionist.

84 The other IMAX position is that of IMAX Projection Manager. A comparison of the two job descriptions in exhibit 10 shows a few differences between the Technician and the Projection Manager. In light of the evidence given by M. Charron, there is in fact little difference between the two positions, and none that detract from the Projection Manager's being a Projectionist covered by the Collective Agreement.

85 The addition of management tasks in the job description is not by itself determinative. We heard no evidence of what management (i.e. outside the bargaining unit) role the Manager plays. As far as the Manager's tasks in exhibit 10, under "2. Personnel" are concerned, M. Charron told us that he himself hired, fired, and evaluated all the IMAX staff, not the Projection Manager (although the Projection Manager may make recommendations or give advice). "Training" was something already envisaged by the Collective Agreement, Article 8.01. "Supervising" and "Scheduling" are consistent with holding a bargaining unit position, akin to a "working foreman". Unfortunately, neither the Projection Manager nor the IMAX Technicians attended the hearing to give evidence, so that I must determine the issue based on the evidence of M. Charron and the Job Descriptions in exhibit 10.

86 On the evidence before me, I find that IMAX Projection Manager and IMAX Technician(s) are all Projectionists, covered by the Collective Agreement.

(e) No Changes Needed to the Collective Agreement

87 In his evidence, Mr. Smith went through the Collective Agreement describing the significant changes that he believed would have to be made, if the IMAX technicians were included under the Agreement as "Projectionists".

88 Mr. Cooper, on the other hand, testified that, if IMAX technicians were included as "Projectionists", every provision in the Agreement would be as germane to them as to all the other projectionists covered by the Agreement.

89 There is no current need for a separate definition of IMAX technician. Right now they are

"Projectionists". If the parties want to change that, they can negotiate something different. If the IMAX Projection Manager is to be given job functions that make him or her a "Manager", the Employer can negotiate, or take steps as it may be advised, to have this position excluded from the bargaining unit.

90 The "hiring hall" arrangements under Article 2 are not inappropriate, even though there are currently no Union members who are "competent and efficient" at IMAX projection. Only the current incumbents of the IMAX positions will be "competent and efficient" until other Union members are trained.

91 There is no problem over reports under Article 3.04. The Article is broad and covers a number of different reports and "other relevant reports when requested by the EMPLOYER for the proper operation and administration of the projection suite".

92 Article 3.08 (see above, p. 3) will not apply, but only because of its existing wording. The IMAX projectionist is always "required to be in the booth performing projectionist duties".

93 Although the IMAX film handling and carrying are different because of the size, weight and cost of the IMAX film, there is nothing that renders inapplicable the provisions of Articles like 9.08 and 13.01 to the IMAX projectionists. Similarly, provision of cleaning supplies under Article 13.02 is equally appropriate for the IMAX projectionists.

94 Film Damage is covered by Article 13.04:

13.04

#### Film Damage

The Projectionists will not be responsible for film damage during projection, rewind, or handling unless as the result of willful misconduct or negligence.

95 While the costs of equipment and film for IMAX theatres is considerably higher than those costs in conventional theatres, there was no evidence or argument as to what the Employer wanted beyond the liability for willful misconduct and negligence already covered.

96 On reviewing the Collective Agreement in detail, I agree with Mr. Cooper. I am satisfied that the Collective Agreement as it now stands, together with this Award dealing with the projectionists of the new theatre under Article 12, covers the IMAX projectionists as effectively as it covers the conventional theatre projectionists.

97 If the parties decide they want to add to or change the Agreement, or to describe certain areas

in greater detail, they are encouraged to make those changes. However, without those changes, the Agreement still makes sense, when including the IMAX projectionists.

## 7. DECISION ON COMPENSATION, HOURS AND CONDITIONS

### (a) Role of the Arbitrator

**98** The only guidelines given to the Arbitrator by Articles 12.03 and 12.04 are the following:

- (i) the rate, Regularly Scheduled Hours and working conditions shall be equivalent to a comparable theatre under the Collective Agreement;
- (ii) if there is no comparable theatre, the matter shall be subject to negotiation;
- (iii) if no agreement is reached under 12.03, the matter shall be submitted to an Arbitrator.

**99** It was agreed that there is no comparable IMAX theatre under the Collective Agreement, and that negotiations did not produce any agreement. The Collective Agreement gives no other guidelines.

**100** Given this lack of guidelines, both Counsel provided me with authorities on the role of the Arbitrator in determining this issue. They both agreed that an arbitrator under Articles 12.03 and 12.04 must perform a function similar to that of an Arbitration Board in an interest arbitration. Counsel for the Employer referred to the decision in *Re Halifax Regional Municipality & Halifax Regional Professional Firefighters* (1998), 71 L.A.C. (4th) 129, 141 (Kuttner), and the following quote from an earlier Award in *Re Regina & Regina Professional Firefighters*, unreported, 11 July 1991 (Laing):

"It appears to be well accepted that the role of an Arbitration Board in an interest arbitration in the public sector, ... is to attempt to replicate what the parties might have arrived at, had both parties been left to free market forces, which include the right to strike and the right to lockout. An interest arbitration board's impression of what the parties might have eventually settled for, must of necessity depend in large part on the evidence presented in the hearing. With respect to that evidence, the Board must take into account not only the "power" position of the parties and attempt to determine who might prevail if a unrestricted economic warfare was permitted, but must be guided in large part by the "reasonableness" of the respective positions of the parties. Reasonableness is to be determined in the overall context and economic climate that prevails at the time the dispute is determined. Because a request is reasonable does not mean that an interest Arbitration Board must grant the same. Reasonableness as to any one demand is not to be looked at in isolation, but rather in the context of the aggregate of demands being advanced. Successful collective bargaining depends



on compromise, and the role of the interest arbitration board is to attempt on the basis of the evidence heard to arrive at something close to the type of compromise that would have been achieved by the parties if left to their own devices."

(b) Use of Comparables

**101** While interest arbitrators across Canada have developed a catalogue of relevant criteria to provide rational bases for their awards, the most influential criterion is traditionally the use of comparables, from both within and outside the industry or profession in question. Careful examination of the comparables must be undertaken to assess how much (or little) weight should be given to any comparable. The amount of weight to be given to any comparable depends on "how precise the comparison is and how germane to the problem it might be": see *Re AUPE and Board of Governors of Olds College*, unreported, 11 June 1985 (Milvain).

**102** In the case before me, the Union provided a number of contracts which it submitted are comparable to guide me in setting compensation for the IMAX Projectionists, although some contracts were provided in argument over other relevant terms of the Collective Agreement.

**103** The evidence on comparables was very limited. There is no truly comparable theatre under the Collective Agreement for the purpose of Article 12.03. The truly "comparable" theatre for these purposes would be a Famous Players IMAX theatre with unionized projectionists. It was agreed that there is not one in Edmonton, nor in Alberta, nor it appears in Canada. The Employer argued that I should take into account the agreement between the parties in Ontario to exclude the IMAX theatre from the Union's jurisdiction. In cross-examination, Mr. Smith conceded that the IMAX theatre jurisdiction had been given up in bargaining in exchange for agreed Union jurisdiction over 8-screen theatres.

**104** Exhibits 14 (Manitoba), 15 (Nova Scotia), and 16 (Saskatchewan) are indeed Collective Agreements between the Employer and other IATSE Locals. None of them, however, relate to IMAX theatres. In fact, Counsel for the Union only referred to them as aids to interpretation of the Collective Agreement with respect to my jurisdiction, and not for comparison purposes in setting compensation, regularly scheduled hours and working conditions.

**105** Exhibits 19 and 20 filed by the Union are Collective Agreements between Tower 41 Corporation and Local 110 of IATSE over all moving picture machine operators at the Addison Marcus Cinemas in Chicago, U.S.A. Exhibit 19 is for the conventional cinema employees, and exhibit 20 covers the IMAX theatre employees. No additional evidence was heard about how either of these collective agreements might be used as comparables for the compensation and other conditions I have to determine for exhibit 2. All I am left with is the two collective agreements themselves and their respective articles on wages.

**106** For the conventional theatres (exhibit 19), the 20-screen complex hourly basic wage rate for each projectionist is U.S. \$27.00 per hour. There are 2 projectionists on each shift. For the IMAX Theatre (exhibit 20), the hourly basic wage rate for each is (currently) U.S. \$22.50 per hour. There is only one projectionist per shift.

**107** No evidence was given on factors that may have gone into making up these wage rates, such as cost of living or even U.S.-Canadian currency exchange rates.

**108** The only guidance I could take from these exhibits would be a rough comparison between a conventional theatre in the U.S.A., where 2 projectionists are responsible for 20 screens, and an IMAX theatre, where only one projectionist is employed per shift. It would appear that the conventional theatre projectionists are paid at a higher hourly rate, but the description of "Prep Time" in Article VIII B of exhibit 20 (IMAX) prescribes considerably less work than M. Charron said is expected of the Silver City IMAX technicians. I do not find this evidence to be sufficiently reliable to use as a comparable for the Silver City/IMAX theatre projectionists.

**109** Exhibit 21 is the Saskatchewan Science Centre Collective Agreement with Local 295 of IATSE. It covers the IMAX theatre at the Science Centre. The wage scale is set out in Appendix "A":

#### CHIEF PROJECTIONIST:

January 1, 1999	\$17.95 per hour
January 1, 2000	\$18.31 per hour

#### RELIEF PROJECTIONIST:

January 1, 1999	\$12.65 per hour
January 1, 2000	\$12.90 per hour

**110** There is some material to be found in that Collective Agreement on hours and conditions of work, but there is little that helps to show the projectionists' responsibilities or job descriptions. The worksite is in Western Canada, certainly a good deal closer to Edmonton than Chicago, and deals in Canadian currency. As noted below, however, I can only deal with one category of projectionist in the Collective Agreement before me.

**111** Exhibit 22 is a part of a Collective Agreement between the Edmonton Space & Science Foundation and Civic Service Union 52. The Union argued that this Agreement was the closest comparable. Unfortunately, exhibit 22 only consists of pages 3 and 39 to 44 inclusive of the Collective Agreement. There are references on pages 40 and 43 to a Senior IMAX Projectionist and

on pages 41 and 44 to an IMAX Projectionist. There are ranges of wages given for each position, but no evidence to show what responsibilities each position has. There was no other evidence about exhibit 22. It is not possible to use the exhibit as a reliable comparable.

(c) Union's Proposal

**112** Exhibit 23 was filed by the Union showing its position at the hearing. Mr. Cooper explained the proposals contained in exhibit 23. He noted that the IMAX theatre requires a full-time projectionist and said that the added responsibility for the sophisticated and expensive equipment was reflected in the Union's proposal. The Union was not suggesting that this proposal was evidence of compensation and scheduled hours, but, like any offer, it is some indication of an upper limit of what the Union expects. The Union submitted that the rates in exhibit 23 were reasonable. The Union did not suggest payment at the rates shown, for instance, in the Chicago collective agreements (exhibits 19 and 20).

**113** The Union's proposal seems to suggest new job classifications of IMAX Chief Projectionist and IMAX Projectionist. Adding new job classifications would amount to amending the Collective Agreement, and I cannot do that. My declaration that the IMAX technicians are Projectionists under the Collective Agreement means that they must be paid hourly rates, not based on a new job classification, but based on what is fair for the employees of the new theatre under Article 12.

**114** During the evidence of the Union President, Douglas Cooper, he assured me and the Employer that the Union does not intend to displace the current holders of the IMAX Projectionist positions, and that the Union does not practise "bumping".

**115** The limited amount of helpful evidence and cogent comparables does not mean that I can avoid making a decision. I must do my best to arrive at a fair decision based on all the evidence I have heard and read.

(d) Is IMAX a single screen theatre or one of a 13-screen complex?

**116** From the point of view of the patrons, Silver City/IMAX is undoubtedly a 13-screen complex. The blueprint plans of Silver City/IMAX (exhibit 6) and the photographs of the facilities (exhibit 8), together with the evidence and descriptions of the witnesses, show that the Employer operates and markets the complex as a joint facility, housing a total of 13 cinemas. Ticket purchasing, entertainment areas, concessions, access and washrooms are all common for both the 12 conventional theatres and the IMAX theatre. The Employer cross-markets both the conventional and IMAX theatres (see, for example, the advertising Rack Cards, exhibit 9).

**117** From the point of view of the Projectionists, however, the IMAX theatre is a single screen theatre. It requires one Projectionist, who must remain in the one projection booth throughout. It does not use the same Projectionists as the other 12 theatres, nor is there any form of moving from booth to booth as the conventional theatre Projectionist does.

**118** Counsel for the Employer argued that the IMAX theatre is indeed a single-screen theatre, and that such a designation is an example of a "gap" in the Collective Agreement, one that I cannot fill by adding a single-screen theatre designation to Appendix "A".

**119** Counsel for the Employer is right in noting the problems in terminology. A single-screen theatre that is an IMAX theatre is, as the parties agree, a totally different creature to a conventional single-screen theatre. The parties may wish to review this definition problem in the new round of collective bargaining.

**120** However, this arbitration and my jurisdiction come under Articles 12.03 and 12.04 of the Collective Agreement. I do not have to find a specific box under Appendix "A" into which I must fit the Projectionists at the New Theatre. I have to determine fair and reasonable compensation, scheduled hours and working conditions under Articles 12.03 and 12.04.

(e) Comparison with the Silver City Conventional Theatre Projectionists

**121** The evidence described above provided little help in assessing what will be fair compensation, hours and conditions of work for the Silver City IMAX projectionists. The only evidence that provided any real comparables and assistance was the Collective Agreement itself and all the evidence given comparing the work and responsibilities of the conventional and IMAX projectionists. This comparison provided me with a number of factors to be included in an assessment of fair compensation, hours and working conditions.

- (i) Location - Obviously an exact comparable at the same location in the same City. There are no concerns about differences in currency, economic conditions, cost of living, etc.
- (ii) Work in the Booth(s) - Both groups of projectionists perform effectively all their functions in the projections booth(s). The conventional theatre projectionist will travel from booth to booth to perform similar functions in each one. The IMAX technician must stay in the one projection booth.
- (iii) Equipment - At Silver City, the conventional theatre projectionist will need to operate each of the 12 projectors. The IMAX projectionist operates only the 2 projectors in the IMAX booth. However, the IMAX equipment is acknowledged to be much more complex, varied (the Laser and Intelligent Lighting), heavy (the reels of film themselves cannot be lifted by hand), expensive (\$2-1/2 million worth of equipment per IMAX theatre - an IMAX film alone costs \$75,000, compared to \$1,000 - \$2,000 for a conventional reel).
- (iv) Training - It was agreed that the IMAX projectionist needs to have a very different skills and knowledge base. Both M. Charron and Mr. Depner explained how much more training was required to operate IMAX equipment. Mr. Charron showed, through the Training Manual (exhibit 5),

the extent of training and the time it was expected to take for IMAX projectionists.

**122** M. Charron testified that the current annual salary at IMAX for the Projection Manager is \$38,000. The full-time IMAX technician's annual salary is \$30,000. There are 2 part-time junior, trained technicians working for a combined total of 25 hours per week at 11.00 per hour. All these positions are currently non-Union.

**123** Mr. Depner testified that, at his IMAX theatre in Calgary, his wage rate is \$11.75 per hour, with no benefits or pension plan. He works part-time (11-12 hours a week during the University year, 30-25 hours in the summer months).

(f) Conclusion

**124** Balancing all of the evidence, and making necessary allowances for the comparability and differences, I find that a fair treatment of the IMAX projectionists is to award a rate of pay comparable to and with similar hours and working conditions as the Conventional Theatre Projectionists for 10 or more screens. This compensation is not based on a "one screen rate" as advocated by the Employer, even if such a rate existed. It is based on the comparisons described above, as the only way to assess fair and reasonable compensation, hours and working conditions under the process permitted by Articles 12.03 and 12.04.

**125** Accordingly, the hourly rate will be \$16.00 and the weekly hours 80. The other provisions of Appendix "A" and the rest of the Collective Agreement will apply to the IMAX operators, currently called technicians and projection manager.

**126** The shortage of Union members will obviously be keenly felt for a while, until additional members are trained to the level the Employer reasonably requires. As the Employer pointed out, the training is a responsibility of the Union under Article 8.01. It will be up to the Union and its members to make the necessary arrangements.

**127** I hope the parties recognize my difficulties in reaching my decision based on the little evidence with which I was presented on the question of compensation, hours and conditions of work. The parties are in a much better position to negotiate the rates and conditions, as Article 12 encourages them to do. I also encourage them to negotiate once again the rates and conditions for IMAX projectionists, in light of my decision that these projectionists should be and are covered by the Collective Agreement. The parties are in the best position to determine what changes, if any, need to be made to the Collective Agreement to give effect to whatever results they mutually agree to. Until the parties reach such an agreement, however, this Award will apply.

\* \* \* \* \*

Schedule "A" to the Award

EXHIBITS

8. Letter of 5 August, 1999, Douglas Cooper to Doug Smith;
9. Collective Agreement, 27 February 1998 to 26 February 2000;
10. Alberta Labour Relations Board Certificate, 21 November 1998;
11. Organizational Chart of IMAX operations;
12. IMAX Technical Training Manual;
13. Blueprint for Silver City/IMAX Theatre at West Edmonton Mall;
14. Internet job position advertisement;
15. Photos (15) of Silver City Complex and IMAX Theatre;
16. 2 advertising Rack Cards;
17. Job descriptions: Projection Manager and IMAX Technician;
18. Log Book and Projection Manager Weekly Report;
19. Article 4.01, claimed to have been deleted from the 1994 Collective Agreement;
20. Company position on Article 2;
21. Manitoba Collective Agreement;
22. Nova Scotia Collective Agreement;
23. Saskatchewan Collective Agreement;
24. Famous Players web site materials;
25. IMAX Corporation Web Site;
26. Chicago Collective Agreement;
27. Chicago Collective Agreement - IMAX;
28. Saskatchewan Science Centre Collective Agreement - IMAX;
29. Edmonton Space Science Centre & Civic Service Union 52 Collective Agreement;
30. Union proposal;
31. Letter of 19 July, 1999, Douglas Cooper to Murray Silk, and grievance of 5 August, 1999.

qp/e/nc/qlcsw