IN THE MATTER OF AN ARBITRATION UNDER SECTION 48
OF THE LABOUR RELATIONS ACT, 1995 (as amended)

BETWEEN

The Canadian Opera Company/Four Seasons Center
for the Performing Arts ("the Employer" of the "COC")

AND

IATSE Local 58 ("the Union")

And in the matter of a grievance concerning the calculation of pay for certain work done by employees on Friday, May 23, 2008.

BEFORE:	R.O. MacDowell	(Sole Arbitrator)

APPEARANCES:

For the Union:	Bernard Fishbein Carolyn Janusz David Baer Andre Ouimet Paul Watkinson	(Counsel)
For the Employer:	Richard Charney David Feheley	(Counsel)

A hearing in this matter was held in Toronto, Ontario, on March 4, 2009

AWARD

I - What this case is about

This arbitration proceeding arises from a dispute between the Union and the Employer over the way in which certain employees were paid for some work that they did on Friday, May 23, 2008. There is no dispute about what happened that day. The only question is how the work that the employees did on the afternoon of May 23, should be characterized for the purposes of the Collective Agreement - and, in particular: whether their "work after lunch" (2 hours work), should be considered to be a separate or different work "call", which triggers a minimum four hour payment guarantee under the Collective Agreement.

As the Union sees it, the employees in question should get four hours pay for the four hours work that they did in the morning before lunch, *plus* a minimum guaranteed four hours pay for the additional two hours work that they did after lunch, on a different task (4 hrs + 4hrs = 8 hours pay, for the six hours actual work). In the Union's view, the afternoon work after the lunch break constitutes a separate and distinct "call", which triggers a minimum 4 hour payment guarantee, for doing that work.

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The Employer replies that the work that some of the employees did, after lunch, in the afternoon of May 23, is just an extension of what they were doing in the morning, and does not amount to a new or separate "call". Nor does it generate an

obligation to hand over four hours pay, for the two hours of additional work. The employees were there for 7 hours (4 hrs + lunch break + 4 hrs); they did 6 hours work, and that is what they were paid: 6 hours pay.

The Employer says that the subject employees should only be paid for the hours that they actually worked on May 23 - which is 6 hours pay for 6 hours work, not 8 hours pay, for 6 hours work. In the Employer's submission, it was not breaching the collective agreement when it paid the employees for those six hours work. On the contrary, it was paying them in accordance with the terms of the collective agreement.

II - Background

The Employer operates a multipurpose cultural and entertainment facility in the City of Toronto. The Union is the bargaining agent for a number of employees who work at that facility from time to time. The parties are bound by a collective agreement that runs from June 1, 2006 until June 30, 2009.

Like many IATSE collective agreements, the COC agreement provides for a defined "house crew" (props, electrical, carpentry and sound), which is then augmented, when required, by additional workers supplied from the Union's hiring hall. The agreement regulates the terms under which the employees will work, and it provides for certain "minimum guarantees" when employees do work assignments that are referred to

in the collective agreement as a "call". If employees are called in to work, they are paid certain minimum amounts, regardless of how many hours they actually work.

The "call" is notionally made to the Union hiring hall to supply workers, although no actual "call" of that kind is necessary in respect of the house crew, who have certain preferred access to work at the facility. "Calls" are mentioned in the agreement in various places. For example: Article 7.1 of the agreement provides that "*All regular work calls shall commence not earlier than 8 a.m.*"; Article 7.4 provides that "*No stage employees shall be required to work more than one (1) five hour continuous work call in a day*"; Article 7.5 provides that "*The only time a stage employee shall be required to work a continuous five (5) hour call in morning, is when the call ends after five hours*"; and so on.

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The agreement reflects and regulates (although not always clearly) the fluctuating needs of the facility, and thus the fluctuating work opportunities that are available for the members of the Union.

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On May 23, 2008, the Employer needed some stage hands to do two different bundles of work **(1)** a "**changeover**" from the opera production of *Eugen Onegin* to the *Barber of Seville*; and **(2)** a so-called "**pre-rig**", for a CTV "fall season launch", which was to be broadcast from the new Opera House on June 1, 2008. The changeover was to be done in the morning of May 23. The pre-rig (hanging banners and

preparing backdrops), was to be done in the afternoon of May 23. The CTV launch was a week away, but it was convenient to do the pre-rig, in advance, on May 23.

The opera changeover was scheduled to begin at 8 a.m. and finish at 12 p.m. (4 hours work). The pre-rig was scheduled to be done from 1 p.m. to 3 p.m. (2 hours work). The changeover required a large number of stage employees with a broad range of skills (19 carpenters, 8 electricians, 6 props and 2 sound crew). The CTV pre-rig required only 11 employees, most of whom were carpenters (7 carpenters, 1 electrician, 2 sound crew, and one prop hand).

Paul Watkinson is the Head Carpenter on the house crew. A few days before May 23, Mr. Watkinson was advised by Denis Feheley, the Technical Director of the COC, that the facility would need workers for the Opera changeover, and also for the CTV pre-rig that would follow the changeover on May 23. There was no discussion about who would crew the job or how they would be paid; however Mr. Feheley told Mr. Watkinson that a number of workers would be needed for the changeover, and that some of them could stay over for the pre-rig that was to be done after the changeover. In other words, it was identified at the outset, that some of the stage hands would be working longer than others.

There was no detailed discussion about how the Employer's needs would be met or who would show up. It was expected that Mr. Watkinson would arrange for the proper number of people in accordance with the Employer's needs and the terms of the

collective agreement. Mr. Watkinson knew that employees would be working on the changeover and that employees would be working on the pre-rig; and he believed that if he couldn't get enough workers to stay over into the afternoon, then he would have to go to the hiring hall to make up any deficiency - although, as it happened, that was not necessary.

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As I have already noted, more than 30 employees were engaged on the changeover, working from 8 a.m. until 12 noon. Most of those employees went home at noon (and got 5 hours pay - see below). However, a few stage employees (11 workers) went to lunch, then returned after lunch to do the CTV pre-rig, from 1 p.m. to 3 p.m. It is the wage entitlement of these employees that is the subject of this grievance.

It had been left to Mr. Watkinson to ensure that there were employees available for the morning and afternoon work, and he was able to do so from among the group of employees who were there in the morning. He did not have to resort to the hiring hall. Instead, he canvassed those who might be interested in staying on in the afternoon, and he made the selection based upon seniority and their willingness to stay. In response to Mr. Feheley's request, he arranged that some of the workers would be staying on at work, to do the CTV pre-rig, after the changeover work was finished.

Since neither party called evidence, I do not know when Mr. Watkinson sorted out who would be leaving at noon, and who would be working a little longer. However, looking at May 23 as a single work day, some stage hands had 4 hours work at

the COC facility that day, and some other stage hands had two additional hours work at the COC facility that day.

The employees who stayed on after lunch, worked an extra 2 hours, for a total of 6 hours work - for which they received 6 hours pay. The employees who went home at noon mostly got five hours pay - which is the *guarantee* that is payable for employees *who only work one call in a day*, per Article 7.3 of the agreement:

> 7.3 Subject to the foregoing, five (5) hours shall constitute the minimum call for a stage employee who is called by the Four Seasons Centre for the Performing Arts to work during a straight time period *and who is not otherwise required to work for the Four Seasons Centre for the Performing Arts during the day on which he is called to work.*

I say "mostly" because an employee who came back in the evening for a "performance call" got additional pay for that later block of time (whether he had worked the extra two hours in the afternoon or not), in accordance with the parties' practice that someone working two "calls" in a day, will get two FOUR HOUR minimum guarantees for the two blocks of work, rather than the FIVE HOURS that is mentioned in Article 7.3 (which, by its terms, does not cover that situation at all, because Article 7.3 applies only to people who are *not* otherwise required to work later on that day).

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Be that as it may, the parties agree that, despite the language of the Collective Agreement, if someone works two "calls" in a day then they are paid a minimum ***four*** hour guarantee for each call. If that person only works one call in the day, then there is a five hour guarantee per Article 7.3 (which is what employees got on May 23, if they worked on the changeover only, and did not do any other work that day).

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The question in this case is whether the circumstances described above constitute two "calls" or one for the employees who worked on the CTV pre-rig - which is to say: whether the CTV pre-rig involves a separate "call"; and as a related question" whether a second contiguous "call" (if that is what it is), right after the earlier "call", attracts a new guarantee of four hours pay (which is the parties' practice for someone who works two "calls" in a day).

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The Union says that the employees who came back after lunch to work on the CTV re-rig should have received four hours pay for the four hours that they worked in the morning, *plus* an additional four hours pay for the two hours work that they did in the afternoon: being the "minimum guarantee" for the "first call" to work on the changeover, plus another four hour minimum guarantee attached to what the Union characterizes as the "second call" in the afternoon to do the CTV pre-rig. Put differently: the Union says that there were two calls, so that, in accordance with the parties' practice (although not the agreement), these afternoon workers should have been paid two four hour guarantees = 8 hours pay.

III - Some Mechanics

The parties are agreed that I have been properly appointed under the terms of the collective agreement, and that I have jurisdiction to hear and determine the matters

in dispute between them. To make this decision easier to read, certain provisions of the collective agreement have been reproduced in Appendix A to this Award.

Since this is a "first collective agreement" between these parties, there is no past practice to illuminate what they may have intended by the words that they used. Nor do I have any information about what was said at the bargaining table. And while arbitration decisions about "call-in pay may bear some passing resemblance to the problem here, those cases typically arise in an industrial setting, they do not involve a "hiring hall, they presume a regular schedule from which there are unexpected departures (not an inherently irregular schedule which employees are "called" to fill), and the contract language is quite different. So I do not think that those cases help very much.

Accordingly, I am left to glean such enlightenment as I can find in the language of the collective agreement itself, and what, in my view, is the most probable meaning of that language in the circumstances under review. And quite frankly, I am also left to struggle with an agreed "practice" (2 x 4 hour "guarantees", for two "calls" in a day), that does not obviously flow from Article 7.3 of the agreement or anywhere else; and that may modify the normal rule that someone only gets paid for the hours of work that they actually do, unless the agreement *clearly* says otherwise. In other words, the parties' unwritten practice already deviates from or supplements written terms of the agreement, and I am being asked to give meaning to the undefined term "call" for the purpose of applying that unwritten practice.

IV- The position of the parties

The Union concedes that the collective agreement is not a model of clarity. However, in the Union's submission, the facts and the general structure of the collective agreement support its proposed interpretation: that the stage hands who worked 6 hours [8 am - 12 pm plus 1 pm - 3 pm = 6 hours] on May 23, should get 8 hours pay.

The Union submits that the agreement contemplates more than one call in the day, and there is no dispute that employees are occasionally paid for more than one call in a day. Article 8 distinguishes between "work calls" and "performance/dress rehearsal calls", and Article 7.4 says that an employee is not "required" to work more than *5 hour continuous call* in the day -- both of which (according to the Union) suggest that there can be more than one call in a day. Likewise, there is no doubt that on May 23 some employees, like Mr. Baker (who left at noon) were paid <u>two</u> four hour blocks: for the morning work, and for another "performance call" later that day. That is an example of the parties' practice to which I have already referred: Baker got <u>two</u> four hour guarantees, for the two blocks of work that he did: one in the morning and one in the evening, with a long period of downtime in between.

In the Union's submission, the crew engaged on the changeover was finished its assignment at noon. They all could have gone home. But instead, a subset of them opted to come back after lunch to do a different body of work, for a different end-user: CTV. This was not a lunch break in the middle of the "changeover", but rather the

commencement of a new work assignment, with a different grouping of employees, doing different work, for a different purpose.

The Union concedes that if the employees had worked 6 hours on the changeover alone, with a lunch break at noon, then there would be no cause for complaint. However, in the Union's submission, that is not what happened here. And what did happen, constitutes a new "call" for those employees who stayed on to do different work for a different end user.

According to the Union, the employees who worked on the CTV re-rig should have received the "four hour guarantee", that represents the parties' practice when there are two calls in a day. They worked two hours, but they should have been paid for four hours.

The Union asserts that if Mr. Watkinson had not been able to fulfill the Employer's needs from among the existing group of workers who were there in the morning, and if everyone had gone home at noon, then the new employees coming on the scene at 1 p.m. would had been treated as a new "call", and these newcomers would have been entitled to a minimum guarantee. In the Union's submission, the stagehands who stayed on should not be treated any differently - although, in accordance with the parties' practice, there is a four hour guarantee, rather than the five hour guarantee that would have been available to these hypothetical newcomers, (who would fit within Article 7.3). The Union also points out what it says is an oddity: some of the workers who went home

after four hours work got five hours pay; while on the Employer's view, the workers who stayed on for an additional two hours, only got six hours pay.

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The Employer replies that an arbitrator should not lightly imply some additional payment obligation where the collective agreement does not expressly provide for one - especially when it involves extra pay for work not done; and that under the terms of this collective agreement, the pre-lunch and post-lunch bodies of work, are not separated into two different "calls". Nor does the agreement provide that a body of work turns into two separate "calls" simply because the "beneficiary" - COC's customer - is different. Because in the COC's submission: it is the COC who is *the employer*; and it is the COC that originates the call; and it is the COC that stipulates the work requirements - which is what Mr. Fehcley did a few days before May 23, when he spoke to Mr. Watkinson and outlined what had to be done that day.

The work in question was scheduled and paid for by the COC - the Employer - not CTV; and the Employer submits that the fact that CTV was in the picture, is a complete red herring. What matters is whether the workers were doing stage hand work as defined in the agreement - not whether the work was notionally "for" the COC itself (i.e. for one of its own productions), or "for" some visitor who was using the COC's space for some purpose of its own. In both cases, the Employer is the COC and the work is governed by the agreement and is done under the supervision of the COC. All work done under the agreement is "for" the Employer who pays for it. In this sense, it is "the Employer's work".

Sometime before May 23, Mr. Feheley identified that there were two different bodies of work involved, and that the work would be done sequentially; but in the Employer's submission, that does not mean that there were two different "calls". Nor, does it matter that the number of employees was reduced, or that some employees worked a little longer than others. In the Employers submission, this was all part and parcel of the same single call indentified to the Union, *prior* to May 23: to have a group of Union members show up on May 23, and to do the work identified by Mr. Feheley, in the time frame stipulated by the Employer - the changeover first, then the CTV pre-rig next. As the Employer sees it, this was one call to the Union for all of the work that was to be done on May 23, whether employees were assigned to separate tasks or they moved fluidly between tasks. Their pay depends upon the amount of work that was done and by whom (carpenters, electricians etc.) - not whether it was "changeover work" or "pre-rig work". It was all "COC work" for payment purposes; that's all that matters.

In Counsel's submission, the Union is trying to build in an additional benefit (or as the Employer sees it, a "penalty"), that has not been negotiated, and does not flow either literally or logically from the words of the agreement. Nor, Counsel submits, is the situation like that of the "call-in pay cases" in an industrial setting, where employees have to make an extra trip in to work, or have to answer inquiries from home, or have their regularly scheduled working hours unexpectedly altered by having to come in early in the day. Those cases describe the purpose of "call in pay" as a disruption of the employee's scheduled private time by an unexpected variation in the schedule or an unexpected work need, that needs his attention during his off hours. There is a genuine

intrusion into the private sphere: a "call *IN*" literally or functionally. But here the nature of the single call was flagged at the very beginning, the hours are not fixed but variable, the employees voluntarily chose to work in those extra hours if they wanted to do so, and 4 or 6 hour blocks of work time are hardly disruptive - bearing in mind that many of the employees have no regularly scheduled work hours to begin with. They are called in to work blocks of hours, with a minimum pay guarantee, if they don't work a full five hours; but it is a *minimum* not a limit, and suggests that they might work more than that, even though they are paid at least that amount.

In Counsel's submission, the "call-in pay cases" are distinguishable both by context and given the language of the agreement -- which does not talk about "call-in pay" of all. On the contrary, the "calls" in question are to the Union to provide the employees for working hours of differing lengths, and with some minimum guarantees - but not, the Employer submits, the kind of extra, or additional guarantee, that the Union is asserting on these facts.

In the Employer's submission, Article 7 and Article 8 identify two kinds of "calls": work calls, and "performance/dress rehearsal calls"; and the present situation is an instance of the former: it is a "work call". However, while the agreement talks about "work calls", there is nothing that makes the "call" dependent on the kind of work to be performed, or which suggests that a different kind of work or work for a different COC "customer", transforms a demand for some workers to do some things, from one call into two calls. The only place where the "purpose" or kind of work is mentioned is in Article

4.5 ("... employees called for the purpose of working as loaders...") and in Article 6.14, which talks about the work of the "Lobby Technician"; and, interestingly, in both cases there is an express, negotiated guarantee. There is no need for implication. But apart from these instances, Counsel submits that the "work" that is involved in a "work call" can be whatever the Employer needs to have done; and so long as the Employer pays the five hour minimum per Article 7.3, employees can work longer than five hours on different work do different work for the COC or different work for a customer of the COC, without making it a different "call". Counsel further points out that where the parties have wanted to add particular bits of work to a particular kind of "call" they said so expressly as in Article 7.9 (adding cleaning the stage to the performance call). Other than that, the call encompasses whatever needs to be done.

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The Employer concedes that it is possible to have more than one call in the day. But that is not what happened here. The obligation to have a lunch break per Article 8.1 after three hours and before five hours of continuous work, did not transform the situation into two calls. It is just a lunch break in a single work call.

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The Union replies that the rationale in the "call-in cases" is present here, because the employees didn't get to go home at noon, as they might otherwise have done. The Union says that it is irrelevant that there are different kinds of calls (performance calls vs. work calls); because, as the Union sees it, what we have here are two regular work calls, back to back.

The Union repeats its submission that if all of the employees had left at noon, then the incoming employees from the hall could have claimed a guaranteed minimum. According to the Union, the newcomers called in would have a guaranteed minimum payment, even though they only did two hours work. So in the Union's view, the employees who stayed on from the morning, should not be deprived of the same kind of bonus payment (albeit in accordance with the parties' payment practice, when there are two calls in a day), because they, too, were responding to a "call" that is different from the changeover call.

V- Discussion and Disposition

I am grateful to Counsel for their thorough and thoughtful submissions, and a for taking me through the terms of the collective agreement (reproduced in Appendix A). However, I think that it is prudent to confine what I have to say to the limited facts that I have before me, and to try to answer only the question that I have been asked to decide: whether a carpenter (for example) working in the morning of May 23 on the changeover, who went to lunch, then returned to work a further two hours for the CTV pre-rig, (6 hours work) was working "two separate calls", back to back, justifying 8 hours pay, in accordance with the parties' *practice* where an employee works two calls in a day.

I identify these reservations for several reasons.

First of all, the collective agreement does not contain detailed definitions or complete prescriptions about how staffing will be done in all conceivable circumstances. Such matters are left largely to the parties, (acting in good faith), to work out on a case-by-case basis - which is why the Union's agreement to supply stagehands is accompanied by an obligation to "cooperate to the fullest extent" (Article 4.4), and there is a recognized need for frequent consultation (Article 4.8).

Secondly, as I have already noted: what the parties actually *do* may not be rooted in the collective agreement at all. Indeed, that is the case for the "two calls" practice, upon which the Union relies. For it is one of the curious features of this case that while the parties disagree on what an "call" *is* - or at least *was* on May 23 - the parties seem to be in agreement that "two calls" attract two "minimum guarantees" (of some kind) even though there is nothing in the collective agreement that specifically speaks to that situation (which, of course, results in a departure from the general notion that a worker need only be paid for the number of hours worked that he actually works).

Finally, this is the first collective agreement, and the parties will be back to the bargaining table in a matter of weeks. In the circumstances, it is probably best to say less, not more. Because, in the end, it is the parties who are best equipped to flesh out the bare bones of the IATSE agreement, so as to minimize the kinds of interpretation question that have arisen here.

With those reservations then, let me begin by observing that I agree with the Employer that the nature of the work being performed, or the fact that it was notionally "for CTV", does not define a "call". All of the work done by stagehands is done *"for" and under the supervision of the COC,* which is their employer and the entity that pays them, and the entity with which the Union has a bargaining relationship; and in this regard, I think that six hours working on a changeover with a lunch break after four hours, (something that the Union agrees would not trigger any extra payment), is no different from six hours working, sequentially, on the changeover, then the CTV pre-rig, with a lunch break in between - or, for that matter, on the CTV pre-rig first, then changeover following that, or both things at the same time, or anything else that the COC wants done for some number of hours. Whatever the length of the call, the work in question is done for the COC. [Note that where the "user matters" for some reason, the parties have said so explicitly - see Article 4.9 which deals with CBC Radio programs].

Article 4.4 requires the Union to supply employees "*...to perform such work as is required by the COC/FSC...*" and to "*...cooperate to the fullest extent in furnishing of the required number of workers at all times...*"; and in Article 4.8 the parties entrench the need for consultation "*regarding the number of workers required and their respective assignments*". Moreover, the Union "*recognizes the COC/FSC's right to make the final determination*" about these matters - which is to say, that the COC decides how many people there will be, and what they will do. The COC also decides when there will be "overtime" (Article 4.6 - although, interestingly, that term does not reappear elsewhere

in the agreement, and does not necessarily have the same connotation as it does in an industrial setting).

In other words, the formula in the collective agreement calls for *the Employer* to define its needs (numbers of employees and job functions - subject to certain guaranteed minimum crew requirements for various kinds of performances [Article 6]- then the Union agrees to supply competent workers for the times and the purposes, and in the numbers, that the Employer specifies.

So with that in mind, what actually happened on May 23rd?

Mr. Feheley told Mr. Watkins that he needed some stagehands to work for four hours and he needed some stagehands to work for six hours, and that is what the Union supplied. Those who worked for four hours got the minimum guarantee of five hours pay, per Article 7.3 of the agreement; and I think it is worth noting that the word used in Article 7.3 (and elsewhere in the agreement) is "*minimum*", - which suggests that a stage hand can work more than that. Which is what happened here, for some of those called upon to work in the morning. No one was *required* to work "*more than one five hour continuous work call in the day*" [Article 7.4]; and in fact, no one was required to work a five hour continuous work call at all, that morning [Article 7.5]. For those employees who were working a little longer that the initial four hour stint, the employer allowed for a lunch break, after 4 hours (as it was required to do per Article 8.1), then the

employees returned after lunch, and continued working in accordance with their skills (carpenter, electrician, sound or props).

I accept the Employer's characterization that this was a one hour lunch break, in a single six hour work assignment, [4 hours + lunch + 2 hours] not a new "call" to the Union to supply employees to come in to work in the afternoon - who just incidentally happened to be the very same ones who worked in the morning, before lunch. They were not called in. They were already there.

Suppose that the changeover work wasn't quite completed, so that a couple of carpenters came back after lunch for a couple of hours, to finish up. The Union agrees that those 2 carpenters would not be part of, or constitute, a "separate call". But if that is so, why would the situation change if they did some other work for the Employer instead of, or in addition to, what they were doing before? Because, as I have already noted, I do not think it matters what they were doing: since all of the work in question is being done for the COC: which is defining the work assignments and paying the employees to do them.

Moreover, in the present facts, there is none of the inconvenience or intrusion into personal time that underlines the rationale for the minimum guarantee - and no doubt underlines the parties practice to pay a premium/guarantee for two "calls" at different times of the day (typically a work call during the day and a performance call at night, with a long period of downtime in between). That cannot be said for a carpenter

who, instead of working 5 hours, actually works 6 hours - with the prescribed lunch break provided for in the agreement. These workers were not literally "called in". They were not called away from home or from whatever else they had planned to do that day. They just went back to work after lunch.

What if this employee had worked four hours on the changeover, and another one hour (= 5 hrs in total) on the pre-rig, would he still get 8 hours pay, because even though he worked and got paid for the identified minimum guarantee, it was a new call for that last hour, starting the clock running for a new guarantee? It seems to me that this is a curious construction and one that would require specific contract language..

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The Union hypothesizes: "what if" all of the employees who came in for the first few hours on May 23 went home at noon, so that the Union had to recruit an entirely different complement of employees to do the CTV pre-rig in the afternoon? Superficially, (the Union says) those 11 newcomers would all be entitled to a five hour minimum guarantee just like the first group of stagehands, who only worked in the morning. The Union says that the employees in the first group would get five hours pay for four hours work (per Article 7.3), and the 11 "newcomers" would also be entitled to get *five* hours pay for *two* hours work; so on this hypothesis, the Employer is getting off lightly, (getting a bargain, so to speak) by being able to use some of the same employees in the morning and in the afternoon too. The Employer gets the afternoon crew for the cost of four hours pay, not five hours pay, for two hours work.

However, it seems to me that there are some problems with this hypothesis, that serve to highlight the lack of clarity in the agreement, and also the extent to which the parties rely upon each other's good faith and sense of compromise in areas where the agreement is unclear (as with the "two call practice" mentioned above).

First of all, interesting as the Union's hypothesis is, that is not what happened here. Secondly, it is not at all clear to me that the employees could simply go home after 4 hours, when the Employer had indicated from the outset that it needed workers into the afternoon - at least without flagging that intention to leave in the beginning, so that the Employer could opt for workers willing to make a 6 hour commitment over those who were only prepared to work for four hours (for 5 hours pay).

The hypothesis may also suggest that the Union's response to the Employer's request can turn one call/request into two calls, by simply deciding to send 30 workers, for the first four hours, who will only work those first four hours, and then a different 11 employees for the next two hours come in the afternoon, thus significantly increasing the cost to the Employer. It is not all clear to me that the Union could do this under Article 4; and in any event that is not what happened on May 23.

This did not happen by accident, or because of the vagaries of the hiring hall and employee availability. It didn't happen at all.

If the Employer had said "I need one Carpenter for six hours", (which I think it did, here) could the Union respond "we'll send you two carpenters who will each work three hours, so you will have pay each of them five hours pay"? That certainly seems odd. And it will be recalled that it is the Employer who determines both the number and work assignments under Article 4.8; and it is the Employer who defines the parameters of the "call"; and it is the Union which has to look for someone who could competently perform the work required, as and when the Employer wants it done.

Perhaps the situation might be different yet again, if the Union had tried and been unable to find anyone willing to stay the extra couple of hours, requiring others to be called in, to fill the void. But to repeat, none of that happened on May 23. Rather, some employees who started work at 8 a.m., continued working until 3 p.m., with a lunch break after 4 hours, as prescribed in the agreement. No newcomers were added. And it seems to me that since the "assignment" (per Article 4.8) was identified by Mr. Feheley in advance, it is properly regarded as a single call for those employees: a call to work in the morning and, with a break prescribed by the agreement, for a couple of hours in the afternoon.

It is a call for some workers to work more hours than the minimum guarantee; and it is no different than if a few of the workers stayed on in the afternoon to finish up what was left over of the changeover work -- a scenario which, the Union says, would not have been considered to be a "separate call".

I was initially troubled by the shifting composition of the work group in the afternoon (different number of employees, different mix of skills, different duties, and the application of some seniority consideration - although the evidence does not determine when that happened). However, it seems to me for the purposes of the wage payment formula, those individuals who worked in the morning and early afternoon on May 23, with a lunch break in between, were responding to a single call from the Employer for them to do so: performing two bundles of work within the scope of their skills, for a period of time, which, all together was more than the four hour minimum guarantee. The fact that the work that they were doing happened to be for a different event is irrelevant. There were doing a 6 hour assignment for the COC, and as such they were properly paid for six hours work.

All things considered therefore, I am not persuaded that the language of the collective agreement provides a foundation for the Union's claim in this case: that the employees who stayed into the afternoon should get 8 hours pay for 6 hours work.

VI - Concluding Observations

For the foregoing reasons, I am satisfied that this grievance should be dismissed. I am not persuaded that there has been any breach of the collective agreement.

However, I think it is worth noting that the parties will soon be in bargaining for a new collective agreement. Accordingly, if the current language of the

collective agreement, as interpreted by this decision, does not capture the parties' shared intention, the parties are able to address that question at the bargaining table.

Likewise, if this decision flags issues or uncertainties or concerns with respect to staffing and "call ins" that have not been encountered or recognized before, or that are not captured in the current language of the agreement, then the parties can address that problem (for example: turning their practice into some language to support it). And if the matter is addressed in bargaining, then the employees' rights will not have to depend upon some arbitrator's reading of the agreement. The parties will have sorted out these matter between themselves, in accordance with their own powers of persuasion and their relative bargaining power.

Dated at Toronto, this 16th day of April, 2009.

"R.O. MacDowell"

Sole Arbitrator

APPENDIX A

ARTICLE 4 - UNION SECURITY

4.1 Except as hereinafter provided, the COC/FSC shall only employ members in good standing of the Union within the area and jurisdictions covered by this agreement.

4.2 No work function normally carried out within the terms of this Agreement under the Union's jurisdiction, shall be contracted out of its jurisdiction.

4.3 The COC/FSC may employ contractors to perform work that it determines requires the competence of special contractors, and is outside normal competence of the Union, including but not limited to all electrical, plumbing, and structural installations. The COC/FSC will consult with the Steward/Head of Department prior to beginning these installations.

4.4 The Union agrees to supply competent stage employees to perform such work as is required by the COC/FSC in the areas defined in Article 2 (Recognition) and will co-operate to the fullest extent in furnishing the required number of workers at all times.

4.5 The Union further agrees to use its best efforts to supply the same crew of workers throughout the rehearsal and/or performance of a production.

4.6 Overtime shall be worked when required and approved by the COC/FSC subject to the terms and conditions of this contract.

4.7 The Union agrees that the COC/FSC shall have the sole right to select the crew as defined in Article 6 (Staffing) from within the Union membership.

4.8 The COC/FSC recognizes the need for frequent consultation with the Steward/Head of Department and the Business Agent of the Union regarding the number of workers required and their respective assignments and the Union recognizes the COC/FSC's right to make the final determination.

4.9 When the Four Seasons Centre for the Performing Arts sublets, leases or loans its premises or parts thereof to third parties, it shall pay for all work performed by members of the Union. Except in the case of CBC Radio where members of the Union may be employed under the existing contract between CBC and the Union.

4.10 All construction, alteration, installation and maintenance, of stage

equipment including scenery, drapes, picture sheets and electrical apparatus and including as well the loading and unloading of trucks carrying any such stage equipment shall be performed by members of the Union and shall be governed by the rates of remuneration as set out herein. The maintenance of all Auditorium lighting and maintenance of the Auditorium seating shall also be performed by members of the Union.

4.11 It is agreed that for productions originating their run or tour at the Four Seasons Centre for the Performing Arts all scenery, properties and all other effects used shall be constructed by members of a stagehands' Local of the International Alliance of Theatrical Stage Employees and Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada and shall bear the I.A.T.S.E. crest or label. In the event that a set does not bear the IATSE crest or label the Four Seasons Centre will notify the Union and negotiations will commence to determine the terms under which the set can be used.

4.12 All work pertaining to setting of orchestra stands and chairs for rehearsals and performances in the Four Seasons Centre for the Performing Arts shall be performed exclusively by members of Local 58.

4.13 The Union is a member of the International Alliance of Theatrical Stage Employees and Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada and the Four Seasons Centre for the Performing Arts shall therefore not require the Union or its members to do any act or omit to do any act or accept any obligations which is inconsistent with the duties or obligations which are imposed upon the Union or its members by the Constitution and By-Laws of the International provided that the foregoing shall in no event be construed or applied so as to contravene any applicable Provincial or Federal Law.

4.14 The Business Agent of the Union, or Union Representative, is to be admitted into the premises of the Four Seasons Centre for the Performing Arts at all reasonable times in order to properly supervise and inspect the working conditions of Union members.

4.15 Stage Employees called for the purpose of working as Loaders shall be used only for that purpose and shall be called for in addition to any other work crew called.

4.16 The number of Loaders called shall be the subject of discussion between the Employer and the Union failing which the minimum number will be four.

4.17 The stage employees called as loaders shall be paid a minimum call of four (4) hours at the prevailing hourly rate.

ARTICLE 6 - GUARANTEED EMPLOYEES AND MINIMUM CREW

6.1 The Opera shall employ a Head of Carpentry, Head of Properties, Head of Electrics and Chief Sound Technician.

6.2 The Opera shall further employ two (2) Assistant Heads of Carpentry (one designated as the flyman), and two Assistant Heads of Electrics (one designated as Assistant Sound Technician).

6.3 The Opera shall further employ four (4) Core Crew.

6.4 There will be a guarantee of thirty-six (36) continuous weeks of employment of forty (40) hours per week for the employees in Article 6.1, 6.2 and 6.3. The thirty-six (36) weeks must fall between the first of September and the end of June of the following year.

6.5 For any non-guarantee week in which the employees in Article 6.1, 6.2 or 6.3 are called for twenty (20) hours or less worked from Monday through Wednesday inclusive or Thursday through Saturday inclusive, shall constitute one-half (1/2) week and work performed in excess of twenty (20) hours shall constitute one (1) week provided that employee is available Monday through Saturday inclusive.

6.6 For Canadian Opera Company and National Ballet of Canada events the Minimum call in the theatre during the guaranteed portion of the year shall be the employees in Articles 6.1, 6.2 and 6.3.

6.7 STAGE PERFORMANCES. The minimum crew for all stage performances outside of the Canadian Opera Company and National Ballet of Canada shall consist of the following:

a) Head Carpenter; Assistant Carpenter; Flyman
b) Head Electrician; Assistant Electrician
c) Head of Props
d) Head Sound Technician; Assistant Sound Technician

6.8 LECTURES, MEETINGS. When the stage is used for meetings, lectures or for purposes other than performances, the minimum crew shall consist of the following:

a) Head Carpenter
b) Head Electrician
c) Head of Props
d) Chief Sound Technician

Work on such events shall be paid for at hourly rates. Performance rates shall not apply.

6.9 MOTION PICTURES. For the presentation of motion pictures, the minimum crew shall consist of the following:

a) Head Carpenter
b) Head Electrician
c) Head of Props
d) Chief Sound Technician

Performance rates shall apply.

6.10 FORESTAGE PRESENTATIONS. For presentations on the forestage, being the pit and that part of the stage downstage of lineset 8, the minimum crew will be,

a) Head Carpenter
b) Head Electrician
c) Head of Props
d) Chief Sound Technician

6.11 SPACING REHEARSALS. For spacing rehearsals the Head Electrician or his or her designate may be the only Crew Member called if no other departments are required.

6.12 TOURS AND CLEANING. For activities where no theatrical equipment and only Tour/Cleaning lighting is used there will be no crew required for tours and cleaning only.

6.13 For Front of House events in the Aerial Amphitheatre, City Room or Hospitality Suites that require no more than 20 minutes or less set-up time, the set-up will be done by one of the stagehands from the house Core Crew. For example, this might include the set-up of a microphone and switch on of the PA system or the movement of the existing piano and setting of music stands.

6.14 For events that may require more than 20 minutes set-up time then a separate Lobby Technician will be called from the Union. The extent of the set-up will be agreed in advance with the Technical Director and the House Steward. The Lobby Technician will be called for a minimum workcall of five hours. This workcall may include the set-up, any event operation and clearing away. He/she will be expected to work across all stage departments.

6..15 If the Lobby Technician requires further assistance for the set-up of an event, he/she may request additional assistance for up to 20 minutes from the four stagehands in the house Core Crew. For example, this might be the safe manual handling of an additional riser or podium, the transfer and set up of a genie hoist or the carrying in place multiple music stands and chairs. For larger scale events or events using equipment within the jurisdiction of the Union, additional stagehands will be called from the Union.

6.16 The Union and the COC agree to discuss minimum crew numbers for any events that do not fall into the categories above and where less than minimum crew would be required.

6.17 When two departments are called in for any call the Head of the third department or his or her designate shall be called in as well.

6.18 Subject to the policies and procedures of the FSC/COC, and the governing laws in force, the employees in Article 6 will have right to be first called in the building.

6.19 The COC/FSC may post a Job Description for all the employees in 6.1, 6.2, and 6.3. All employees in 6.1, 6.2, and 6.3 will be subject to a three (3) month probationary period and must be members in good standing of I.A.T.S.E. Local 58.

6.20 The employees in 6.1 and the Assistant Head of Carpentry (designated as the flyman) and the Assistant head of Electrics in 6.2 shall be selected by the COC/FSC.

6.21 The Assistant Head of Carpentry and the Assistant Head of Electrics (designated as the Assistant Sound Technician) in Article 6.2 shall be supplied by the Union.

6.22 The employees in Article 6.3 shall be supplied by the Union.

6.23 The employees in 6.3 shall be scheduled by department on a daily basis with the exception of performance calls or rehearsal work calls where the show crews have been set. Schedules shall be on a weekly basis for the following week.

6.24 The employees in Article 6 shall be provided with access to a COC/FSC provided parking space that is within walking distance of the Stage Door.

ARTICLE 7 - HOURS OF WORK

7.1 All regular work calls shall commence not earlier than 8:00 a.m.

7.2 For purposes of this Agreement, a week shall be deemed to be a period of 40 hours and including not more than 8 performances and/or dress rehearsals between 8:00am Monday and 12:01am Sunday.

7.3 Subject to the foregoing, five (5) hours shall constitute the minimum call for a stage employee who is called by the Four Seasons Centre for the Performing Arts to work during a straight time period and who is not otherwise required to work for the Four Seasons Centre for the Performing Arts during the day on which he is called to work.

7.4 No stage employee shall be required to work more than one (1) five hour continuous work call in a day.

7.5 The only time a stage employee shall be required to work a continuous five (5) hour call in the morning, is when the call ends after five hours

7.6 A performance call shall be deemed to be a work period of three and one-half (3 1/2) hours for all stage employees other than the stage employees in Article 6.1and 6.2 . For the employees in Articles 6.1and 6.2 a performance call shall be deemed to be a working period of four (4) hours, time to be considered in both cases as from the time of call to the final curtain.

7.7 A dress rehearsal call shall be considered a performance if all elements necessary to the public presentation of a theatrical stage production are present and used, including but not limited to, costumes, makeup, sets, lights, properties, sound, artists and orchestra, and if the rehearsal is conducted as if it were a public theatrical stage production.

7.8 When the orchestra pit lift or the temporary sound mixing position are moved other than on a regular work call the minimum call shall apply.

7.9 Clearing the stage for the fire curtain will be considered part of the performance call if there are minimum adjustments to be made. For the National Ballet, clearing the set to the back wall will be considered part of the performance call. In either instance if the procedure takes more than ten (10) minutes after the curtain comes in (end of performance) or insufficient time remains in the performance call then one hour at the prevailing rate shall apply.

ARTICLE 8 - BREAKS

8.1 For work calls, a meal break of one (1) hour, without pay, shall be given to the stage employees after not fewer than three (3) hours of continuous work and not more than five (5) hours of continuous work. In the event that no such break is given then the Four Seasons Centre for the Performing Arts shall provide to all stage employees affected a paid meal break of one half (1/2) hour's duration and shall at its expense supply adequate hot and nutritious food to the stage employees. The employer shall also pay a penalty of one hour at the applicable straight time hourly rate.

8.2 For Dress Rehearsal/Performance calls, including additional hours related to the performance in excess of five (5) continuous hours, The Four Seasons Centre shall provide a paid meal break of one half (1/2) hour's duration to the affected stage employees after not fewer than three (3) hours of continuous work and not more than five (5) hours of continuous work and shall at its expense supply adequate hot and nutritious food to the stage employees.

8.3 Subject to the foregoing, no stage employee shall be required to work more than five (5) hours without a meal break of one (1) hour's duration.

8.4 When there is a paid or unpaid meal break between the hours of 12 midnight and 8AM, the Four Seasons Centre for the Performing Arts will supply, at their own expense, adequate, hot and nutritious food for the stage employees.