

Canadian Artists and Producers
Professional Relations Tribunal



Tribunal canadien des relations
professionnelles artistes-producteurs

CANADA

Ottawa, June 25, 1996

File No. 95-0015-A

DECISION No. 015

**IN THE MATTER OF AN APPLICATION FOR CERTIFICATION FILED
BY THE ACTRA PERFORMERS GUILD, A MEMBER OF THE
ALLIANCE OF CANADIAN CINEMA, TELEVISION & RADIO ARTISTS**

Decision of the Canadian Artists and Producers Professional Relations Tribunal

The application for certification is granted.

Place of hearing: Toronto, Ontario
Date of hearing: May 22 and 23, 1996

Quorum: Mr. David P. Silcox, Presiding Member
Mr. J. Armand Lavoie, Member
Ms. Meeka Walsh, Member

Appearances: Arnold, Falzone and Fyshe, Paul Falzone; and Stephen Waddell, National Executive Director, for the applicant.
Marco Dufour for the Union des Artistes.
Susan Wallace for Canadian Actors' Equity Association.
John Nelles and Simon Fon for Fight Directors, Canada.
Len Lytwyn for the American Federation of Musicians of the United States and Canada.
Sylvie Forest for the National Film Board of Canada.
Robert Thistle for the Canadian Broadcasting Corporation.

REASONS FOR DECISION

95-0015-A: In the matter of an application for certification filed by the ACTRA Performers Guild, a Member of the Alliance of Canadian Cinema, Television & Radio Artists

STATEMENT OF FACTS

[1] This decision relates to an application for certification submitted under section 25 of the *Status of the Artist Act* (S.C. 1992, c.33, hereinafter “the *Act*”) by the applicant, the ACTRA Performers Guild (hereinafter “APG”), a Member of the Alliance of Canadian Cinema, Television & Radio Artists on 1 December 1995. The hearing was held in Toronto on 22 and 23 May 1996.

[2] APG applied for certification to represent a sector composed of all artists engaged as performers in television and radio productions, live or recorded by any means whatsoever, for broadcast or other use by a producer, by means of direct off-air transmission, or by transmission or distribution by wire, satellite or by any means whatsoever, save and except:

- a) musicians who are within the jurisdiction of the American Federation of Musicians of the United States and Canada;
- b) performers within the jurisdiction of the Union des Artistes;
- c) performers engaged in live theatrical and like productions within the jurisdiction of the Canadian Actors’ Equity Association.

For clarity, the applicant indicated that the term “performer” included principal actors, actors, background performers, dancers, stunt performers and coordinators, announcers, commentators, disc-jockeys, hosts, narrators, panelists, singers, variety principals, sportscasters and puppeteers.

[3] Public notice of this application was given in the *Canada Gazette* on Saturday, 3 February 1996, in *La Presse* on 13 February 1996 and in the *Globe and Mail* on 14 February 1996. This notice also appeared in the Canadian Conference of the Arts *INFO-FAX* on 1 February 1996 and in the 26 February 1996 edition of *Playback*. The public notice set a closing date of 18 March 1996 for the filing of expressions of interest by artists, artists’ associations and producers.

[4] Expressions of interest were filed by the Union des Artistes (UdA), Canadian Actors’ Equity Association (CAEA), and Fight Directors, Canada (FDC). As artists’ associations, the UdA, CAEA and FDC are automatically entitled to intervenor status as of right pursuant to the provisions of subsections 26(2) and 27(2) of the *Act*.

[5] An expression of interest was also received from the Canadian Association of Professional Dance Organizations (CAPDO). This organization does not qualify as a producer within the meaning of the *Act*, as neither it nor any of its members is a government institution or broadcasting undertaking. Accordingly, CAPDO required the Tribunal's permission under subsection 19(3) of the *Act* in order to intervene. In a letter decision issued on 17 April 1996 the Tribunal granted intervenor status to CAPDO. Immediately prior to the hearing, CAPDO informed the Tribunal that it wished to withdraw its intervention.

[6] The APG application for certification raises two issues:
(1) whether the sector proposed by APG for the purpose of bargaining is suitable; and
(2) whether the APG is representative of artists in the sector.

THE ISSUES

Issue 1: Is the sector proposed by APG a sector that is suitable for bargaining?

[7] When considering an application for certification, the Tribunal is required by subsection 26(1) of the *Act* to take into account the common interests of the artists in respect of whom the application was made; the history of professional relations among those artists, their associations and producers concerning bargaining, scale agreements and any other agreements respecting the terms of engagement of artists; and any geographic and linguistic criteria the Tribunal considers relevant. In this case, it is appropriate to deal first with the history of professional relations.

History of Professional Relations

[8] APG is the successor to a series of organizations, beginning with the Association of Canadian Radio Artists (ACRA) which was formed in Toronto in 1942. Similar associations were formed in Winnipeg, Vancouver and Montreal and in 1952 these associations joined with ACRA and the Union des Artistes to form the Canadian Council of Authors and Artists (CCAA). In 1963, when the French-language unions in Quebec withdrew, a new constitution was adopted and the organization became the Association of Canadian Television and Radio Artists (ACTRA). As an association, ACTRA represented freelance performers, writers and broadcast journalists working in the independent production sector of the film and television industries and at the Canadian Broadcasting Corporation (CBC) and other broadcasters.

[9] Freelance members of ACTRA working as broadcast journalists at the CBC were affected by a 1982 decision of the Canada Labour Relations Board. In *Re Société Radio-Canada/Canadian Broadcasting Corp.*, (44 di 19, 1 CLRBR (NS) 129), the CLRBR held that those individuals who were in a position of economic subordination to the employer, and who were not contractors, were ‘employees’ within the meaning of the *Canada Labour Code* (Part V – Industrial Relations) as it then existed. As a result of a subsequent global review of the bargaining units at the CBC conducted by the CLRBR, broadcast journalists formerly represented by ACTRA were included in a bargaining unit represented by the Canadian Media Guild. Freelance performers were not affected by the CLRBR decisions, and ACTRA has continued to represent performers at the CBC.

[10] In 1988, the Association of Canadian Television and Radio Artists was reorganized into the Alliance of Canadian Cinema, Television and Radio Artists, an alliance composed of the Guild of Broadcast Journalists, the Performers Guild and the Writers Guild. Under the 1989 ACTRA constitution, the ACTRA Performers Guild was an administrative department of ACTRA and responsible for the negotiation and administration of agreements negotiated in ACTRA’s name. By virtue of a new constitution that came into force in November 1992, the three constituent guilds became autonomous organizations. In the applicant’s words, the APG is “a successor to ACTRA as it relates to the representation of performers” in respect of scale agreements with producers and reciprocal agreements with other artists’ organizations signed in ACTRA’s name.

[11] APG and its earlier incarnations and associations have a fifty-year history of working on behalf of its members. Over the years agreements have been reached with major producers like the CBC, CTV, Global Communications Ltd., the National Film Board, and other radio and television networks, as well as with the independent film production sector. The fact that APG have had no serious competitors over this period of time and that no competing application were made is evidence of its pre-eminence and central role in the sector.

[12] The Tribunal is therefore satisfied that there is a significant history of professional relations among the artists affected by this application for certification, the applicant and producers.

Community of Interest

[13] The lengthy history of professional relations between performers and producers is itself evidence of the common interest shared by performing artists. The applicant’s success in organizing the majority of performers in Canada is a clear indication of their desire to promote their economic and legislative interests collectively.

[14] A question was posed, however, about the applicant's ability to represent the special safety interests of fight directors. The intervention of Fight Directors, Canada raised issues of safety which the members of FDC said were not being addressed by APG. The FDC argued that its members performed a different function from that of stunt performers and stunt coordinators, and that the specific needs of its members were yet to be addressed satisfactorily. The FDC pointed out that APG's current scale agreements do not address the concerns of actor/combatants or fight directors specifically, and that their profession is not separately defined in the agreements.

[15] APG indicated that they had recently had extensive negotiations with various provincial authorities on matters of health and safety, especially on film sets, and had greatly increased protective safety measures for its members.

[16] The evidence presented to the Tribunal indicated that unlike stunt performers, fight performers are invariably actors. As actors they are trained in a variety of combat techniques and styles, including swordplay. All FDC members are currently members of APG but there is no separate recognition of fight directors as an occupation or profession.

[17] In the Tribunal's view, actors who engage in combat scenes in the course of their performance have common interests with other actors and it is therefore appropriate to include them in the same sector. Likewise, to the extent that the functions of a stunt co-ordinator subsume those of persons who co-ordinate fight scenes, it is appropriate to include the latter in the sector. Although the interests of these professionals may not have been well represented in the past, now that APG has been informed of their concerns it expressed a willingness to address them. However, the FDC describes the function of "fight director" as that of a fight choreographer. The applicant has not sought to include directors or choreographers in its sector and the Tribunal does not have enough evidence before it at this time to come to a conclusion as to the appropriateness of including "fight directors" *per se* in the sector.

[18] Given the nature of the performing arts industries, it is common to find that many performers are members simultaneously of APG, Canadian Actors' Equity Association and the Writers Guild of Canada. These associations have worked together on common issues through a joint standing committee, through special committees, and through joint international representation. APG and Equity have had a reciprocal agreement in force since 1970 and at the hearing Equity expressed its support for the applicant.

[19] Together with Equity, APG represents its members at the international level by sending delegates to the international federation of actors (Fédération

internationale des acteurs – FIA) and has long done so. This cooperative representation is a further evidence of a community of interest.

[20] Relations with other associations representing performing arts disciplines are also amicable as is shown by the agreements between APG and the American Federation of Musicians of the United States and Canada and APG and the Union des Artistes, both of which support the applicant's request.

[21] The Tribunal is satisfied that a community of interest exists and has existed for a long time among the applicant's members.

Relevant Geographic and Linguistic Criteria

[22] APG is governed by representatives from chapters of the association operating in provinces and regions across Canada. No part of Canada is without representation, and the national scope of APG's presence has been well-established for a long while. In its submissions APG indicated that from the point of view of production for film and television, provincial and national boundaries are rapidly becoming less important. One of APG's main bargaining objectives has been to create national standards that apply to performers and producers across the country.

[23] A relationship between APG and the Union des Artistes, which represents French-speaking performing artists, can be traced historically to the beginnings of APG's formation, and although an understanding has been in effect for many years, the applicant provided a copy of a new agreement of 17 May 1996 that formalizes the historic understanding. With the exception of certain 'vested rights' involving the CBC, this agreement generally provides that the Uda has jurisdiction over French-language recorded productions and APG has jurisdiction over English-language recorded productions. The Tribunal took official notice of this agreement, as requested by both signatories.

[24] The Tribunal is of the view that, aside from the French-language sector represented by the Union des Artistes, the pan-Canadian aspect of the sector definition requested by the applicant is appropriate.

Conclusion regarding the sector

[25] The applicant sought a sector definition that included reference to the means by which radio and television productions are broadcast. APG wished to include in the sector definition the phrase “by means of direct off-air transmission, or by transmission or distribution by wire, satellite or by any means whatsoever”. Although the Tribunal acknowledges that the means of transmitting a performance distinguishes the respective jurisdictions of APG and Equity, it is not persuaded that defining the means of transmission is a necessary part of the sector definition. Indeed, to qualify the means of transmission further than as being “live or recorded television and radio productions intended for broadcast or other use”, may limit rather than encompass productions distributed by future technologies and thus have the opposite effect from the one desired by the applicant.

[26] In view of all the evidence, written and oral, presented by the applicant and the intervenors, the Tribunal is of the opinion that the appropriate sector for bargaining is one composed of independent contractors engaged by any producer subject to the *Status of the Artist Act* to perform the function of principal actor, actor, background performer, dancer, stunt performer, stunt co-ordinator, announcer, commentator, disc-jockey, host, narrator, panelist, singer, variety principal, sportscaster or puppeteer, in a live or recorded television or radio production intended for broadcast or other use, with the exception of:

- a) independent contractors engaged as performers in live theatre, opera, ballet, dance, industrial show, cabaret show or concert performance within the scope of the certification issued to Canadian Actors' Equity Association on April 25, 1996 and subject to any reciprocal agreements between ACTRA Performers Guild and Equity;
- b) musicians within the jurisdiction of the American Federation of Musicians of the United States and Canada (AFM), as described in the agreement between ACTRA Performers Guild and the AFM dated May 14, 1996;
- c) performers within the jurisdiction of the Union des Artistes, as described in the agreement between ACTRA Performers Guild and the Union des Artistes dated May 17, 1996.

Issue 2: Is the ACTRA Performers Guild representative of artists in the sector?

[27] APG informed the Tribunal that it has a membership of over 8500, and approximately 2500 apprentice members. Of the 8500 full members in good standing, evidence was provided that approximately 4800 worked within the sector proposed by the applicant during the period May 1993 to May 1996. APG's submission was that since it has agreements with most of the major television and radio producers in Canada, it represents the overwhelming majority of performing artists working in Canada.

[28] No other artists' association contested the representativeness of APG for the proposed sector and the Tribunal is satisfied that APG is the association most representative of the artists in the sector.

DECISION

[29] For all these reasons, and in view of the fact that the applicant is in compliance with the requirements of subsection 23(1) of the *Status of the Artist Act*, the Tribunal:

Declares that the sector suitable for bargaining is a sector composed of independent contractors engaged by any producer subject to the *Status of the Artist Act* to perform the function of principal actor, actor, background performer, dancer, stunt performer, stunt coordinator, announcer, commentator, disc-jockey, host, narrator, panelist, singer, variety principal, sportscaster, or puppeteer, in a live or recorded television or radio production intended for broadcast or other use, with the exception of:

- a) independent contractors engaged as performers in live theatre, opera, ballet, dance, industrial show, cabaret show or concert performance within the scope of the certification issued to Canadian Actors' Equity Association on April 25, 1996 and subject to any reciprocal agreements between ACTRA Performers Guild and Equity;
- b) musicians within the jurisdiction of the American Federation of Musicians of the United States and Canada (AFM), as described in the agreement between ACTRA Performers Guild and the AFM dated May 14, 1996;
- c) performers within the jurisdiction of the Union des Artistes, as described in the agreement between the ACTRA Performers Guild and the Union des Artistes dated May 17, 1996.

Declares that ACTRA Performers Guild is the organization most representative of professional independent contractors in the sector described above.

An order will be issued to confirm the certification of ACTRA Performers Guild to represent the said sector for the purposes of professional relations with producers in the federal jurisdiction.

Ottawa, June 25, 1996

David P. Silcox, Presiding Member

J. Armand Lavoie, Member

Meeka Walsh, Member