

**BRITISH COLUMBIA LABOUR RELATIONS BOARD**

PAUL JASPER

("Jasper")

-and-

CONNIE RUSGEN

("Rusgen")

-and-

DOUGLAS LEAF

("Leaf")

-and-

TEAMSTERS, LOCAL 155

(the "Union")

-and-

M.G.M. PRODUCTIONS

(Good Boy! Production c/o Cub Seven Productions Inc.)

(the "Employer")

PANEL: Ken Saunders, Vice-Chair

APPEARANCES: Thomas F. Beasley, for the Complainants  
Sam Black, for the Union  
Barry Dong, for the Employer

CASE NOS.: 53133, 53304, 53305

DATE OF DECISION: September 9, 2005

## DECISION OF THE BOARD

### I. INTRODUCTION

1 Jasper, Leaf and Rusgen (collectively the "Complainants") allege that the Union  
violated its duty of fair referral and duty of fair representation contrary to Section 12 of  
the *Labour Relations Code* (the "Code"). In particular, the Complainants contend that  
the Union failed to take appropriate steps when non-members worked as Animal  
Handler/Trainers on the Good Boy! Production ("*Good Boy*" or the "*Production*"). The  
Complainants also quarrel with the Union's general approach to the hiring of non-  
members to work as Animal Handlers and Trainers ("*AHTs*").

2 The three complaints raise the same issues and are otherwise virtually identical.  
Accordingly, the complaints have been consolidated for adjudication: Rule 13.

3 This decision is based on the parties' written submissions. Where the material  
facts are in dispute, I have assumed the facts asserted by the Complainants are true for  
the purposes of this decision.

### II. BACKGROUND

4 Bonnie Judd was the Animal Coordinator on the Production. Among other  
things, Judd was responsible for hiring AHTs for the Employer.

5 Jasper complained to Union representatives Brad Swannie and Thomas Milne  
that non-members worked on Good Boy in contravention of the collective agreement  
and Union dispatch rules. Jasper told Milne and Swannie that Judd hired family and  
friends. Jasper said he should have been dispatched to the job. Milne told Jasper that  
the complaint would be handled as a verbal grievance and would be rectified.

6 Milne spoke to Judd and asked her to hire union members to work as AHTs on  
Good Boy. Milne ended that discussion believing Judd would do so. Subsequently,  
Union Dispatchers called the Complainants and other members on the dispatch list to  
see if they were available and interested in the work.

7 The Complainants are AHTs and are members of the Union.

8 A number of AHTs working on the Production were not members of the Union or  
permittees. Lynne LaChance was one of the persons. Two of the AHTs that worked on  
the production are directly related to Judd but are members of the Union.

9 In August 2002 a Dispatcher told Jasper to contact Judd if he wanted to obtain  
work on the Production. Dispatchers also contacted Leaf and Rusgen to ask if they  
were available and interested to work as AHTs on the Production. Leaf and Rusgen

said they were available and interested to work. Leaf and Rusgen expected to hear back from a dispatcher.

10 The Complainants know Judd from work on previous productions. There is a history of conflict between the Complainants and Judd.

11 Jasper phoned Judd. Judd told Jasper that AHT work was not available to Union members on Good Boy. Judd added that if Jasper accepted work it would be a special arrangement. Jasper responded that he would not work on that basis.

12 Judd immediately contacted the Dispatcher to ask if the job was open to other Union members. The Dispatcher informed Jasper that the job was available to other Union members. Jasper asked the Dispatcher to tell Judd that he would take the job.

13 The Complainants did not receive a call to work on Good Boy. Jasper raised this with Milne. Milne said he would rectify the matter but the Complainants were never called to work on the Production.

14 On November 17, 2002 Jasper objected to Lynne LaChance's application for membership because she worked as an AHT on Good Boy without a work permit. In a letter dated January 16, 2003 Milne advised LaChance, "...that the days accumulated by permittee Animal Handler/Trainers working on "Good Boy", following the Local's July 6, 2002 directive to Bonita Judd to remove same, do not count toward membership in Local 155."

15 Milne pursued the matter with Judd as a Union member in the following letter dated January 16, 2003:

Re: Good Boy Animal Handlers

First I would like to thank you for your time and input regarding the Show Cause hearing pertaining to Lynne LaChance.

You clearly identified a number of issues regarding your requirements for your division and needs to achieve the look required for the production.

I would have appreciated correspondence from the Production Company requesting those individuals who you viewed had those necessary qualifications for the production's needs and not have you arbitrarily make that decision.

I informed you on the Saturday of the July 1, 2002 long week-end by telephone conversation to place the orders to our Dispatch and, if no members wished the employment, then the Local Union would permittee those individuals. That would have resolved the matter.

Now we have members who missed the employment opportunity considering grieving the Production Company.

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16 The letter continues to identify non-members employed on Good Boy and concludes as follows:

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The Executive Board Members agree serious violations have occurred due to your lack of following my directive to place the order originally.

This letter shall serve as a reprimand Bonita that any such occurrences of dispatch violation will result in possible suspension from dispatch or charges laid by the Local Union to avoid any such events re-occurring.

The days employed on the "Good Boy" production for the individuals mentioned earlier... will not be credited as eligible days for membership in this Local Union. This is because they were not properly registered with Teamsters Local No. 155 Dispatch.

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17 The Complainants also allege that the Union did not enforce the collective agreement and Union dispatch rules on many productions (other than Good Boy). Consequently, non-members are used as AHTs when members available for dispatch are not contacted for work. No one disputes the Union's submission that Animal Coordinators have hired non-union AHTs as a matter of industry practice going as far back as the early 1980's. Therefore, I accept that factual assertion for the purposes of this decision. The Complainants say this is additional evidence of an historical abuse of the dispatch system and the Union's contravention of Section 12.

18 Judd continues to use her son and daughter to work as AHTs on other productions.

### The Grievances

19 In January 2003, the Complainants grieved that the Employer hired non-members to work on Good Boy.

20 In a letter dated January 30, 2003, Milne told Jasper that the Union filed the grievance. The Union did not invite Jasper to attend grievance meetings despite Jasper's requests to attend. In a letter dated February 14, 2003, Milne advised Jasper that the Union met with the Employer where it identified the alleged violations and lost earnings. Milne also said that the Union was waiting for the Employer's reply and would keep him advised as matters progressed.

21 The Complainants asked the Union to adhere to collective agreement deadlines when processing the grievance to arbitration. The Union did not strictly adhere to those

timelines. The Employer did not say it relied on grievance procedure time limits to defend its position. The Union did not withdraw the grievances because they were untimely.

### The Decision to Withdraw the Grievances

22 The Complainants met with Linda Dennis (counsel for the Union) to discuss the grievances in the last week of February 2003. Dennis also spoke to a number of other individuals, including Milne and a dispatcher (there is a dispute about whether Dennis spoke to one individual and Leaf quarrels with the absence of Dennis' notes, but nothing turns on those differences for the purposes of this determination).

23 The Complainants believed the grievance would proceed to arbitration the following April after meeting Dennis.

24 Dennis completed her investigation and forwarded a recommendation to the Union Executive. Dennis' recommendation is described in the Union's reply submission to the Jasper complaint. While the Complainants vigorously dispute the merits of Dennis' assessment, the Unions' submission describing Dennis' conclusions remains undisputed. The Union describes Dennis' conclusions as follows:

...As a result of Dennis' interviews and analysis, Dennis recommended that the Union withdraw the grievance on the grounds that it was unlikely to succeed. Dennis concluded that the collective agreement did not require employers to hire Union members in the Animal Division ahead of non-members given that Article B1.11(c)(vii) permits name requests for Animal Wranglers and Trainers, Article B1.01 states that the agreement does not apply to Independent Contractors of Dog or Dog Acts, Dog Owners, or Dog Trainers and/or Dog Handlers, and that Article 1.19 permits the subcontracting of bargaining unit work which has historically been subcontracted. The Cast Driver decision required the parties to present evidence on historical practice and even though the Union felt that the historical practice supported their position they lost that grievance. It was Dennis' opinion that if the union was required to present evidence of historical practice on the use of non-members in the positions of Animal Handler, Trainer and Wrangler, the union would not succeed on the grievance. The historical practice in the film industry in BC is that non-members have worked with animals. Thus the Employer would stand a good chance to mounting a successful estoppel argument given that the Union was aware of this practice. (para. 69 of Union's reply to Jasper Complaint)

25 The Union sent Jasper two letters explaining its decision to withdraw the grievance. Before turning to that correspondence, Article 1.19 of the collective agreement is reproduced to provide additional background:

1.19 Subcontracting: The Employer will not subcontract bargaining unit work which customarily and historically has been performed by Employees covered by this Master Agreement unless the affected Council-member Union consents thereto; or the Employer lacks the requisite equipment, technology, facilities or personnel to perform the work; or the work of the type being subcontracted has heretofore been subcontracted by a producer engaged in the motion picture and television industry in British Columbia. When practicable, the Employer shall deliver a minimum of one week's advance notice to the Council of its intention to subcontract.

26 In March 2004, Jasper learned that the Union decided to withdraw the grievance. Milne explained that decision in identical letters to the Complainants dated April 2, 2004, as follows:

Re: Good Boy Grievance

I am writing to advise that the hearing in connection with your grievance will not be proceeding. You will recall that the Union's legal counsel, Linda Dennis, interviewed yourself on this file. She also interviewed the other grievors, as well as other Union members in connection with this particular production and in connection with the animal division's use of non-members historically and currently.

In light of those interviews and the provisions of the collective agreement, she has made recommendations to the Executive Board about the likely outcome of these grievances if they were to proceed to arbitration. The Executive Board has considered those recommendations and determined that the grievances should be withdrawn. The union has achieved a withdrawal "without prejudice". This would protect the membership so that if this issue were to arise in the future and the practice of use of non-union personnel had altered such that a different outcome might be achieved, then the withdrawal of these grievances would not prevent proceeding with a future grievance.

The Union thanks you for your time in assisting legal counsel with her investigation of the grievances and vigilance as a Union member. ...

27 Jasper asked the Union Executive Board to reconsider its decision and asked how he might exhaust his internal remedies. Milne told Jasper to look to the Constitution and Bylaws and in March 2005, told Jasper to look to the charge section of the Constitution and Bylaws. There is no dispute that the Union's constitution and bylaws do not provide an avenue to appeal a decision to withdraw a grievance.

28 In a letter dated December 9, 2004, the Union's Executive Board responded to Jasper's request for reconsideration as follows:

We are in receipt of your letter dated December 2, 2004. The Union Executive Board determined that it was inappropriate to proceed with the grievance against this production. It became apparent that there was little or no likelihood of success after the investigation of the grievance by counsel in preparation for a possible hearing.

The Animal Trainer and Animal Handler Division is not dispatched in the traditional sense. Employers do not obtain employees by any form of seniority. This is a 100% name request division of the Local Union. At no time were you or any of the other grievors '*name requested*' by or on behalf of the production. The Union canvassed the members to see who was not working at the time in order to determine that members would be available to do the work that was being performed by non-members. Further to that exercise, you were contacted by the Animal Coordinator, but were not specifically offered the work. Therefore, it cannot be said that you were '*dispatched*' to the production.

This division has an extensive history of a historical practice by which non-members are employed by members on productions as part of their crew. While this practice is not favoured by the Union, it is a reality that many current members have obtained their membership through this very practice, and continue to engage in this practice regularly.

As you know, from attendance at the General Membership Meetings, shortly before this matter was scheduled for hearing, the Union was engaged in a grievance striving to protect bargaining unit work of cast drivers. The historical practice in the cast driver case was very consistent in the Union's favour, approximately 90% of the time done by bargaining unit members. Yet, the arbitrator seized on those few occasions when the practice was not followed, as justification for free employer discretion.

It is clear that in the instance of the Animal Handler/Trainer Division, the historical practice evidence is the opposite, in that it strongly favours the employer's position of contracting out. In light of the outcome, in the cast driver case where the evidence was strongly in the Union's favour; and still the employer was found to have the discretion, the outcome in this case would be the same.

The Union's experience after the cast driver decision was released by the arbitrator was that the employer's engaged in a new flurry of contracting out of this work; just to show that they could do so, and that detrimentally affected the work opportunities of all of the cast drivers in the Local for some time. The Executive Board determined that to engage in arbitration would clearly result in a loss, and would have the same effect on future work opportunities for members in your division.

For all of these reasons, the Executive Board determined that the grievance should not proceed further.

I trust this answers your inquiries.

29 This was the first time Jasper learned that the Union considered the Cast Drivers arbitration award when it decided to withdraw the grievances: *Negotiating Producers v. International Brotherhood of Teamsters, Local Union 155* [2003], Ministry No. X005/03, ("*Cast Drivers Award*").

#### Jasper's Request for Documents

30 In a letter dated February 22, 2005, Jasper asked the Union to give him access to the Union's minutes for meetings of the Animal Handler/Trainer Division from 2002 to 2004, the Lynn LaChance Show Cause hearing, General Meetings between June 2002 and December 2004 and Executive Board meetings from June 2002 to December 2004. The Union met with Jasper to discuss the request, and referred him to two arbitration awards. At that meeting, Jasper noted that Animal Handler/Trainers who were dispatched to productions were not acknowledged on the Union's bulletin board. The Union refuses to provide Jasper with access to the un-redacted copies of the requested minutes. The Union routinely gives other members access to its records (subject to redactions to address privacy concerns).

### III. POSITIONS OF THE PARTIES

31 The Complainants argue that the Union breached Sections 12(1)(a) and (b) by dispatching non-member AHTs to work on productions in general, by allowing this to continue (the "*systemic complaint*") and specifically on Good Boy where the Union withdrew its grievance regarding the conduct of Judd. The Complainants argue that Judd acted both as the Employer's representative and the Union's dispatcher on Good Boy, that Judd practiced nepotism, and discriminated against Jasper and other members (the "*Judd*" complaint). The Complainants submit that while the collective agreement permits the Employer to name request Animal Wranglers/Trainers, persons hired by name request must be members of the Union or non-members with valid permits ("*permittees*").

32 The Complainants submit that the Union acted in an arbitrary, discriminatory and bad faith manner because the Union breached the duty of natural justice and administrative fairness when processing the grievances. There are three principal grounds advanced in support of this submission: 1) Jasper was not told that the Case Drivers arbitration and other arbitration decisions would be part of the case he would have to meet when he met Dennis to prepare for arbitration and prepared his appeal of the Union's decision; 2) the Union refused to provide records that show how it dealt with the use of non-members in the animal handler/trainer division; and, 3) the Union did not disclose the historical practice it relied on to support the Employer's right to contract out the work at issue.

