

BACKGROUND INFORMATION

You are no doubt aware of the recent public eruptions between the producers of The Hobbit and the MEAA, which is attempting to intercede on behalf of all NZ actors who will potentially be engaged to work on the films.

In 2006 Actor's Equity (NZ), whose membership at that time had dwindled to around 80 actors, decided to take up an offer by the Media and Entertainment Arts Alliance (MEAA) to become a branch of the larger and more powerful Australian trade union. The MEAA represents Australian sports people, journalists, performers and actors. In doing this, NZ Actor's Equity essentially forfeited their independence to the MEAA, a transTasman trade union which has no legal standing in NZ. (MEAA/Actor's Equity is not registered as an NZ trade union, nor are they on the register of incorporated societies.)

With the announcement of casting beginning on The Hobbit we heard rumors that the MEAA had made the decision that it was going to 'target' The Hobbit in order to leverage more support for their union and strengthen their position within the Australasian film industry. We have been told privately that MEAA management recognizes it is in their best interests to lock down NZ actors so that they cannot form a competing pool of talent which makes itself available to big budget productions. Whilst we recognise that the MEAA have every right to pursue this strategy it's smart, if somewhat ruthless in doing so and in placing their own best interests first, they are putting the entire NZ Film Industry at serious risk of collapse. They are jeopardizing the livelihood, not only of NZ actors, but also of crew, post production workers, and industry support personnel, hundreds, if not thousands of jobs will be lost.

For the last several months, Simon Whipp (director of NZ Equity and secretary of the Australian trade union the MEAA) has openly stated that the MEAA intends to use The Hobbit to assume control of all NZ actor's contract negotiations.

In order to do this he has been deliberately misrepresenting NZ actor's terms and conditions on The Hobbit. This has resulted in Peter Jackson being castigated and condemned as a 'union buster' worldwide. Simon Whipp has branded The Hobbit 'non-union', and has repeatedly implied that the producers of The Hobbit treat NZ actors unfairly when we have always treated our cast very well and paid them well above SAG minimum rates. Whipp is so hell-bent on attacking the production, he publically damned Hobbit contracts before they were even written! It was on this basis the blacklisting was taken out.

By leveraging the support of more powerful unions like SAG, the MEAA has stated as its intended aim of 'forcing the Producers of The Hobbit, to the bargaining table in order to enter into a union negotiated agreement.

We would have no qualm with this course of action - if it were legal.

However, the MEAA is insisting on collectively bargaining wages and conditions for all NZ actors who will be engaged to work on The Hobbit, irrespective of their status as independent contractors under the law and irrespective of whether they are members of the union.

In a nutshell, it is illegal for independent contractors to collectively wage bargain in New Zealand. Under New Zealand law (refer the Commerce Act of 1986, section 30) New

Zealand actors are independent contractors and are therefore not permitted to engage in 'price fixing'.

Most kiwi actors, almost without exception, choose to be independent contractors because it carries enormous tax advantages. In spite of this, the MEAA is pushing ahead with it's agenda to change the employment relationship of cast and crew working on NZ films.

This is consistent with the Simon Whipp's long term goal which is to completely unionize the NZ film industry.

Simon Whipp told The Hollywood Reporter that "success with The Hobbit might pave the way for unionizing other productions in the country." Whipp also expressed hope that Jackson would be "the key to unlocking a solution."

It is clear to us that changing the independent contractor status of NZ cast and crew to that of employees –will give the MEAA absolute power in all film negotiations.

One aspect of MEAA's demands is that they are insisting on negotiating the contracts for all NZ actors, regardless of whether these actors are members of NZ Equity or not.

To put this in context, NZ agents have over 2,000 actors on their books (this number increases to 17,000 if second rung performers are included) NZ Equity claims membership numbers of 598, although this number has never been independently substantiated.

At best NZ Equity represents one quarter of all performers who are available to work in NZ.

Why would NZ Equity/MEAA want to control the downstream income of all actors engaged to work on The Hobbit? The answer is very simple: money.

We are offering our NZ cast residuals in The Hobbit. If NZ Equity/MEAA becomes part of any terms and conditions negotiation on The Hobbit, they will insist on taking ownership of this pool of money. They will then take 15% off the top of all non-member's residuals and between 5 and 10% of union member's residuals, before distributing downstream income to NZ cast. In comparison SAG takes 1.8% maximum. We know of no other actor's union that takes this much money off the top of actor's residuals.

Clearly there is big money for the MEAA in The Hobbit, if they can take control of NZ actor's residuals. And this wouldn't just apply to The Hobbit. If this precedent is set, the MEAA will apply it across the board on all NZ films, in one form or another.

This is why the MEAA is continuing it's campaign to be involved in The Hobbit. If they can lay claim to having any kind of input into 'cast contract negotiations' they will then push for control of all cast contracts. This has always been the MEAA's long term goal and they are using NZ Equity to get a foot in the door. This has been disingenuously characterized as "We just want a meeting with Peter ...we just want to have a chat." It is also why they have avoided (until very recently) meeting with SPADA.

To be clear: we are not anti union and The Hobbit is not a non-union film. Whenever we hire an actor who belongs to SAG, or British Equity or the MEAA for that matter, we always honour their working conditions, their minimum salary agreements and their residuals.

To call The Hobbit 'non union' as Simon Whipp has done, is completely misrepresenting the truth.

Our situation is all the more puzzling when another US funded production Spartacus Blood and Sand shot unimpeded in NZ all through 2009 and has just begun shooting a new series in August 2010. Why didn't NZ Equity attempt to collectively bargain better wages and conditions for the NZ actors working on that series?

Could it possibly be because the husband of NZ Equity President, Jennifer Ward Lealand, Michael Hurst was hired to direct several episodes? Given that Equity chose to target The Hobbit and given they chose not to target Spartacus Blood and Sand, (which is shooting for a longer period of time and which is using a far larger cast than The Hobbit,) it is hard to imagine how Jennifer Ward Lealand could not have declared this a conflict of interest.

TO SUMMARISE:

The NZ Equity/MEAA has invoked a world wide actor's's boycott of The Hobbit. They are falsely claiming this has happened because The Hobbit is a non-union picture.

Branding The Hobbit 'non-union' because under NZ employment law, actors are defined as independent contractors (which is their preference) rather than employees, is intrinsically unfair and unjustified.

Punishing the production for a perceived wrong that is in actual fact a function of NZ employment law, is grotesque.

The NZ Equity/MEAA is aware that it has authored this injustice and in spite of NZ Equity now acknowledging that collective bargaining for independent contractors is impossible under New Zealand law, there has been no retraction of the world wide actor ban and no apology or explanation for the union's behaviour.

The start date of The Hobbit has now been delayed by a month, due to the actions of NZ Equity.

The blacklisting of The Hobbit has cost Warners millions of dollars.

NZ Equity has allowed an off shore union to take illegal and unjustified industrial action in their name, against an NZ film. This fact, alone, is deeply troubling because NZ Equity is clearly not prepared to take responsibility for their actions. The president of NZ Equity, Jennifer Ward Lealand recently declared to the media "there is no boycott", as if this hollow denial somehow changes the truth and excuses NZ Equity from the damage they have inflicted on the whole of the NZ film industry.

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The feedback we are getting from overseas indicates that NZ is now seen as an unsafe place to base production.

In the end, this is not about Actor's Equity, nor is it about The Hobbit it is about an Australian trade union making a blatant play to take a controlling hand in the NZ film industry in order to steer lucrative work back across The Tasman, or better still, back to the US.

The only losers will be the people who work in the NZ film industry, because in this scenario it is doubtful the industry itself, will survive.