Loyola of Los Angeles Entertainment Law Review

Volume 21
Number 3 *Symposium: Selected Issues in Labor Relations in the Motion Picture and Television Industries*

Article 1

3-1-2001

Foreword

Howard Fabrick

SYMPOSIUM

SELECTED ISSUES IN LABOR RELATIONS IN THE MOTION PICTURE AND TELEVISION INDUSTRIES

FOREWORD

Howard Fabrick[*]

Labor relations in the motion picture and television industry have survived critical junctures over the past sixty years of mature collective bargaining. The year 2001 is a seminal year for both the future of those relationships and the industry.

Over the years, the changes in the industry's collective bargaining environment have been as dramatic as the predicted consequences of global warming, yet the bargaining process has addressed and resolved changes in the industry that would be considered cataclysmic in other contexts. The historic stability of labor relations in the film industry is attributable to a number of unique factors, which considered collectively distinguish it from other industries.

Production of motion pictures, regardless of their type or intended form of distribution, is as highly labor intensive today as in the past. The industry's work force remains highly unionized at virtually every domestic location where films are shot. One is hard-pressed to conceive of another American industry comparable in these respects.

---

[*] A.B., Stanford University, 1960; J.D., Stanford Law School, 1962. Howard Fabrick is a Partner in the Labor and Employment Department of Akin, Gump, Strauss, Hauer & Feld, L.L.P.

The demise of the major studio film factories of the 1930's and 1940's, which provided many with continuity of employment, has resulted in a freelance work force in virtually every job category. Moreover, it has enabled the industry's labor unions and guilds to serve as the lynch pin keeping that work force intact in the absence of long-term employment relationships.

Technological changes and foreign competition have not adversely impacted film production as they have our historical "smoke-stack" industries and their unionized work forces. The advent of sound, the development of color, and the introduction of electronics using tape and now digital technologies coupled with computers and sophisticated programs, have expanded employment opportunities. The work force of today is, by necessity, better educated than in the past. Accordingly, this has enabled it to adapt to the almost daily changes in technology that affect the film production process.

Notwithstanding the growth of film production in other countries and the current high level of production by our neighbor to the north, the industry's work force and volume of film footage produced has increased over the past decade. However, there are deep concerns in the labor community that this trend has passed and foreign competition will ultimately erode our domestic work force.

Though foreign competition may become a challenge to a work force that supports domestic production, expanding foreign markets have served the marketing and distribution side of the film industry well. Films are one of the few products of American industry whose export has a positive effect on our balance of trade.

Television was the first technological change that opened a new avenue for the distribution of motion pictures as well as a market for new product designed directly for that medium. During the late 1950's and early 1960's, the industry's collective bargaining process fashioned employment rules for television, formulas for the domestic and foreign re-use of television product and percentage participations in revenues derived from the licensing of theatrical films to television.

The early 1970's found the collective bargaining process establishing formulas for sharing revenue streams from film and television product licensed to pay television or distributed on videocassette well before either of those markets existed. The residual formulas developed for television and video, though frequently decried by producers and distributors as onerous and unduly burdensome, did not stifle the expansion of those markets.

2001 is the year where the flexibility and tolerance of the industry's collective bargaining process will be sorely tested by the profound changes impacting both the domestic and foreign markets for American film and television product. In this year's negotiations with the Writers Guild of America and the Screen Actors Guild, the major studios, broadcast networks, and independent producers will be compelled to review the residual formulas adopted in the past to determine whether they remain viable for the current and anticipated domestic and foreign marketplaces.

For forty years, the thirty-five percent buy-out for unlimited foreign free television exploitation of television programming has remained essentially unchanged, while world consumption of old and new American television product has continued to expand. A multiplicity of domestic cable television systems have eroded the viewer base of the traditional broadcast networks and dramatically altered their demographics. While cable programming has impacted original production for the traditional networks, no single cable system has a subscriber base generating the volume of advertising revenues that supports the residual formulas adopted in the 1960's for free television programs. World-wide video revenue derived from the distribution of theatrical films exceeds theatrical box office receipts, and what started as a "supplemental market" is now in many instances the primary market for theatrical product. However, such revenue is subject in many instances to a guild and union residual burden of 18.1 percent of the producer's video receipts on films that have never recouped their production or theatrical distribution costs.

In the past, the industry's collective bargaining process has succeeded in addressing and resolving the types of economic challenges facing the major labor negotiations of 2001. While on occasion those prior resolutions followed a protracted labor dispute, these challenges have also been solved at the bargaining table without a side trip to the street. Ultimately, all labor contracts are settled at the bargaining table, and the entire film community is holding its collective breath in the hope the negotiations of 2001 can be settled without any disruptive detours.