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## 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 insert themselves into discussions between New Zealand Actor's representatives and Three Foot Seven acting on behalf of *The Hobbit*.

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 trans-Tasman 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* rumors began circulating that the MEAA had made the decision to 'target' *The Hobbit* in order to leverage more support for their union and strengthen their position within the Australasian film industry. It was speculated that MEAA management recognized that it was in their best interests to lock down NZ actors so that they could not form a competing pool of talent which could make themselves available to Australian producers and large budget overseas productions. The MEAA, of course, have every right to pursue this strategy - it's smart, if somewhat ruthless - but in doing so and in placing their own best interests first, they don't seem to care that 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 MEAA) has openly stated that the MEAA intends to use *The Hobbit* to assume control of all NZ actors' contract negotiations. 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. The problem with this course of action is - it is illegal.

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. 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 advantages the three most notable being (i) you pay less tax; (ii) you have the ability to claim back your Agent's 10% fee (iii) you can charge your services out at a higher rate.

The MEAA's proposed answer to getting around this legal restriction is to change the tax status of Kiwi actors from independent contractors to 'employees' a suggestion which is both absurd and untenable, as supported by legal opinions from the NZ Government's own Crown Law Office. Most NZ actors are employed on films for very limited periods of time, on short term contracts. The idea of hiring actors on the basis of being 'permanent employees' is ridiculous because films don't offer permanent work. But this is the only way MEAA can legally operate in New Zealand so it is what they are advocating.

The MEAA's legal advice is that the entire NZ cast of *The Hobbit* would have to form a legal joint venture with the film makers and studio in order to have their collective bargaining status recognized. It also offers a complex argument that all NZ actors would have to be employed under the same terms and conditions including salary, for the MEAA negotiation to be legally admissible. How this can possibly work?

A legal opinion from Peter Churchman, one of New Zealand's top senior employment lawyer, states that the Simpson Grierson opinion is "artificial and unworkable." This is one of many legal opinions, including one from the Attorney General as referenced above, all of which arrive at the same conclusion: the Simpson Grierson opinion is disingenuous and does not reflect the spirit of New Zealand employment law.

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.

If it is a true number, NZ Equity represents roughly one quarter of all performers who are available to work in NZ and yet they claim to represent a majority of all NZ actors. (68% was the number cited in a recent article)

The producers of *The Hobbit* are demonstrably not anti union. Peter Jackson is a very proud and loyal member of six Unions - the Directors Guild of America, the Producers Guild of America, the Screen Actors Guild of America and the Writers Guild of America, the New Zealand Writers Guild and the Screen Directors Guild of New Zealand and has acknowledged that these organisations do terrific work on behalf of their members.

To call *The Hobbit* 'non union' as Simon Whipp has done, is misrepresenting the truth. Warners is a signatory company to SAG as well as other worldwide unions and as such their respective agreements are all being recognized and fulfilled by the production.

It is true, however, that some of the actors who will work on *The Hobbit* will not be members of SAG, especially younger actors and many Australian and New Zealand performers. Residuals can be worth tens of thousands of dollars to an individual, if the film is successful however the normal situation is that if an actor is not a member of SAG, they do not share in the residual pot. To this end, Warner Brothers have agreed to create a separate pot of money for Australian and New Zealand actors working on *The Hobbit*. This money will be divided up amongst all non SAG actors who are cast in the film under a 'participation rider' which will be part of all cast deals. This was not done because of any pressure from Guilds or Unions, it was an attempt by Warners/New Line to treat actors working on *The Hobbit* equally and with respect.

#### TO SUMMARISE:

The NZ Equity/MEAA has instigated a worldwide boycott of *The Hobbit* through members affiliated to FIA (the International Federation of Actors). They are falsely claiming this has happened because *The Hobbit* is a non-union picture. This is patently untrue. All crew and all cast working on *The Hobbit* belong to Guilds and Unions. This includes NZ actors. What NZ actors are not allowed to do as independent contractors, is invoke their union to do collective bargaining on their behalf and thereby enter into wage fixing.

The Hobbit has been branded 'non-union' because under NZ employment law, actors are defined as 'independent contractors' rather than as 'employees' and therefore cannot enter into collective bargaining. This is a function of NZ employment law, it is not a political position adopted by the producers. Simon Whipp has accused WingNut Films of being anti-union and it is on this basis the MEAA has invoked a worldwide ban on actors appearing in The Hobbit. This accusation is not only untrue, it is unfair and unjust and the blacklisting of the film is in fact illegal.

Essentially The Hobbit has been blacklisted by the MEAA because the producers of the film have refused to break the law.

Punishing the production for a perceived wrong that is in actual fact a function of NZ employment law, is grotesque. The 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. One must wonder why MEAA/NZ Equity has chosen to behave in this extraordinarily high handed way and what is the extent to which SAG and UK and Canadian Equity have had this situation explained to them?

The MEAA has been provided with legal opinions, including one from the NZ Attorney General which confirms the illegality of their actions. In spite of this, the MEAA is continuing its campaign to be involved in negotiating cast deals for all NZ actors, whether or not they belong to NZ Equity. They have not explained to the producers of The Hobbit how any realistic employment arrangement could possibly work within the confines of the law. The MEAA is not a recognized trade union in New Zealand and has no right to enter into collective bargaining with independent contractors, under any circumstances.

Nevertheless, it is clear, that if they are successful in steam rolling the law, the MEAA will attempt to redefine independent contractors as 'employees' (In NZ employees are collectively represented by trade unions) and if this should happen it will sound the death knell of the NZ film industry.

If the MEAA are successful, they will forever change the independent contractor status of NZ actors and crew, and this would have a catastrophic impact the overall employment structure of the NZ film industry. All film and television work will quickly evaporate.

Recently Simon Whipp denied making the threat of a boycott against The Hobbit, although that threat is clearly in play. Similarly, Whipp has denied branding The Hobbit 'non-union', even though he has issued and authored many releases which say just the opposite. Whipp has implied that NZ actors are treated unfairly by us when we have always paid our cast well above SAG minimum rates and complied with SAG contract conditions. He seems to be so hell-bent on attacking the production, he has publically damned Hobbit contracts before they were even written! For example, we have never given cast or crew notice without severance and yet Whipp implies this is our standard practice on our films. We have always treated our actors with fairness and respect; our Hobbit residuals are in fact better than those offered by Canada and elsewhere.

We have done nothing to deserve the unfettered condemnation of the NZ Equity/MEAA, who in the form of Simon Whipp, have attempted to demonize us in the media.

WingNut Films' situation is all the more puzzling when another US funded production, Spartacus; Blood and Sand, has shot unimpeded in NZ all through 2009 and has just begun shooting a new series as recently as August 2010. Unlike The Hobbit, Spartacus is non-union production and it's cast contracts terms and conditions are inferior to The Hobbit. Spartacus can fire actors without warning, offering no additional compensation. They have the right to re-voice without actor consultation. They offer no residuals.

The Hobbit cast contracts do not reflect any of these conditions and yet the film has been targeted by Equity and Spartacus has not. Why?

Why didn't NZ Equity/MEAA attempt to collectively bargain better wages and conditions for the NZ actors working on Spartacus?

Could it possibly be because the husband of NZ Equity President, Jennifer Ward Lealand - Michael Hurst - was hired to direct several episodes of the Spartacus series?

Given that NZ Equity chose to target The Hobbit and given they chose not to target Spartacus, which is shooting for a longer period of time and which is using a far larger cast, working under an inferior contract) it is hard to see why The Hobbit was deemed by NZ Equity to be a more worthy target.

Would it not have been proper for Jennifer Ward Lealand as President of NZ Equity, to declare to the NZ film community a professional conflict of interest?

Has NZ Equity used its power as a union (albeit a union that is based in Australia) to unfairly target one production over another one?

It appears to be so.

Does Jennifer Ward Lealand, as president of NZ Equity and dedicated union leader, have a problem with her husband shooting a non-union, US television series in NZ?

It would appear she does not. NZ Equity were more than happy to provide the NZ standard cast contracts to the producers of Spartacus, and yet these are the same cast contracts they have publically damned.

The MEAA too, have been curiously silent about Spartacus.

Perhaps they have bigger fish to fry?

Perhaps, in the end, this is not about Actor's Equity, nor is it about The Hobbit.

Perhaps 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, where Australians would prefer it to be.