Struggling for Justice Outside the Wagner Model: Cultural Workers Organize and Strike

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Two recent industrial actions

• ACTRA – CFTPA (Independent Production Agreement) strike 2007
• Dispute between Canadian Actors Equity (& several other unions) and Blue Man Group 2006
• Enhance union representation & improve conditions of work
• Operate outside of “Wagner Model”
Unravelling of vertical firm into networks
Network Model in the Arts

• Hub is engager
  – subcontracting
  – personal service contracts

• Union provides continuity
  – framework agreement
  – contract only union labour
  – establish minimum or “scale”
  – “hiring hall”

• Union provides benefits
  engager unwilling or unable to provide
  – gig-based benefits (pension, insurance)
  – member-paid benefits (insurance, discount)
  – cross-border issues
  – professional development & assistance
  – fight for status of artist leg
  – public policy advocacy
  – intellectual property capture agency

• Union acts as marshalling agency for intellectual & human capital
Intellectual Capital in Networked Arts

- intellectual capital aggregate of
  - human (people’s potential,)
  - structural (knowledge assets: existing skills, intellectual property,)
  - relational capital (relations w. market e.g. clients & customers)

- in corporate model, intellectual capital owned (developed, deployed and exploited) by firm; risk & reward borne by firm

- in network relations, intellectual capital development, deployment and exploitation shared by producers & artists
  - e.g. artists own their own “brand” & proceeds thereof
Wagner Model

• certification of union as sole rep for employees
• duty to bargain in good faith
• right to strike
• right to submit disputes to arbitration
• violations decided by labour board; enforced by courts
Self-employed workers (SEWs)

• many in arts & culture
• boss is “producer,” “engager,” “deployer”
• most SEWs not covered by c/b legislation
  – legal certification
  – no compulsion on deployer
  – no protection of strike
• “Status of the Artist” law (Que & federal)
• voluntary recognition agreement possible
ACTRA
Alliance of Canadian Cinema, Television and Radio Artists

• Why focus?
  – Union/guild unabashedly pursues self-employment model
  – Strongest of artists unions/guilds
  – National, voluntary recognition collective agreement(s)
  – Runs major copyright collective (ACTRA PRS)
  – Recent national strike
Whom ACTRA Represents

• 21,000 actors, comedians, dancers, background performers, voice over specialists, singers, puppeteers and stunt performers
• working in English-language recorded media e.g. feature films, television, radio, corporate videos and commercials, and increasingly, digital media such as the world-wide web, cellphones, video games etc
• Closed shop – apprentice members [X] full members
• Reciprocal relations with other unions
  – Equity, Union des artistes (Quebec), SAG and AFTRA (US counterparts)
• List of “unfair engagers” boycotted by members
ACTRA demands action from CRTC!

Performers speak out at opening day of television hearings

— See page 4
Elements of IPA

• Part A deals with the first performance; Part B deals with subsequent performances and is where the ACTRA Performers Rights Society enters into the picture
• Minimum fees for performances
  — Nobody contracted by the engager shall make less than minimum rates
• Residual payments
• Use fees on participation in distributor’s gross revenue
• Right to negotiate above minimums
  — Performers can and are encouraged to negotiate above the minimum fee
• Conditions of engagement
• Complete records on performers kept by engager
• Engagers must post security of no less than two weeks’ performer payrolls plus insurance and retirement pay or a cash bond to indemnify union members against default
• Preferential engagement of ACTRA members
• Limitations on and non-Canadian productions and engagement of non-Canadian performers
• Right of union to declare producers not meeting payroll obligations as “unfair” (tantamount to a boycott)
• Grievance and arbitration procedure for disputes over the administration, interpretation, application, operation or alleged violation of the agreement
• Length of workday, work week and overtime, rest periods, meal periods,

• Preparation time (for makeup, hairdressing, costume fitting); travel time
• Call-in, cancellations, schedule changes
• Working environment provisions (amenities, health and safety)
• Doubling (where performers does more than one role)
• Limitations on nude, semi-nude and love scenes
  — Guarantees of privacy e.g. closed set
  — Limitations on recording and dissemination
  — Requirement of rider on contract specifying the details of the scene(s)
• Limitations on risk and stunt performance
• Limitations on engagement of and protections for minors (10% of the Maritime branch’s members are under 18)
  — Obligations to parents
  — Special restrictions on hours
  — Obligations of parents
  — Presence of parents and chaperones
  — Protection in case of disturbing material
  — Tutoring
  — Trust accounts
• Credits
• Deductions and remissions for the union
  — Union dues
  — Other payments for administration
  — Insurance and retirement plans
• Background performers (extras)
• Performance in animation
• Negotiation protocol
Other services

• Professional Training
• National Face to Face Online
  — talent directory for producers and casting agents
• Office or studio facilities for making of recordings, audition tapes etc.
• Participation in local film festivals
• Career advice e.g. dealing with agents, list of agents
• Annual ACTRA Awards
• Insurance and retirement benefits
  — ACTRA Fraternal Benefit Society (AFBS) is a kind of independent insurance company owned and run by the union, which provides medical and dental expenses, life insurance
  — Group Life & Accident, Extended Health; Dental; Drug; Lost earnings compensation; Members Assistance Program (similar to EAP); Long Term Disability
  — Members contribute to these funds on a percentage based on fees received under ACTRA collective agreements
  — Also offers a Registered Retirement Savings Plan to which engagers send money for members whenever they are working as performers and earning
  — Interesting to note that the Insurance Plan includes cosmetic procedures as this is a benefit of importance to members
  — There are several levels of benefits, depending on a member’s contributions
• Retirement home
  — Union has established long term care homes for indigent older members
• Members Advantage Program
  — Several Canadian film and video unions have formed a group to offer discounts on products and services to their members
  — E.g. production and post-production facilities, transportation and hotels, insurance outside of ACTRA Fraternal, cultural venues and organizations, stores, cellular telephone service, health and beauty
• Political and cultural lobbying
• Fraternal relations with unions in other countries facilitate members working in those countries
2007 IPA Strike

- Issue of use payment for digital media
- Involvement of US studios and unions
- 96.5% strike vote
- Issue of legality of strike
  - ACTRA applied to provincial labour boards
    - Rolling strike starts
  - “Continuity Agreements”
  - CFTPA & APFTQ went to courts
- Negotiation protocol
  - Provides for strikes and lockouts
  - Settlement of disputes on protocol at labour boards
  - Arbitrator appointed
- 6-week strike ended Feb. 14
- Settlement
  - 10% compensation raise over 3 years
  - Digital media issue in Canada, fudged for US
Blue Man Group Dispute 2006

• Toronto live theatre scene
  – stable unionization
    • (CAE) Canadian Actors Equity
    • (AFM) American Federation of Musicians
    • (IATSE) International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada

• Union card considered mark of professionalism
  – “An Equity show” informal designation of quality
Canadian Actors Equity Association

• represents 5,500 active professional artists
  – performers (actors, dancers, singers)
  – others e.g. directors, stage managers
  – engaged in live theatre, opera & dance in English Canada

• membership
  – probationary, full, associate, reciprocal

• self-employed
Enter the new entertainment factories

Blue Man Group

Cirque du soleil

Stomp
Blue Man Group

• began 1991 as small off-Broadway show w. three performers
• now 500-employees, worldwide, US $100 million annual revenues
• 3 mute, blue-faced characters, playing plastic tubing, throwing paint, spitting balls
• combination of clown, mime, performance art
• has gone non-union in US — union jurisdictional disputes help
• subject to unfair labour practice charges in several US states

"We're artist-owner-operated. We're the artists who started it, created it and still perform in it, direct it," "Nothing in the law requires us to be a union house, just tradition. So we're a different tradition, a new tradition.. We spent our entire careers building an organization where people are evaluated on mutual respect, collaboration, safety, contributing to the vibe." (Matt Goldman, Blue Man Group)
Elements of work organization in the new entertainment factories

- begin as anti-establishment ‘street performers’
- anonymous performers (no stars)
  - the organization, not the artists forms the “brand”
- grow quickly into mega-organisations
- management still acts small
  - ‘It's the old David-became-Goliath-without-noticing-it routine. Good intentions, bad effects.’ (Kevin Temple, NOW Magazine)
- high organisational integrity and loyalty
- charismatic leadership
- in-house production
- in-house human resources management
- either anti-union (BMG) or union avoiders (Cirque)
The Blue Man Group comes to Toronto 2005

- arranges for open-ended run in Panasonic Theatre (5 years mentioned)
- theatre owned by Clear Channel Entertainment
- cast and crew of about 70
- refuses to negotiate with 4 Toronto theatrical unions (2 IATSE locals)
  - "We are clearly not going to be a signatory to any union. That's just not what we do," Igrejas said via phone from New York. "We have built our own business model and offer competitive salaries and full benefits."
  - "any disruption and/or delay in the construction and/or renovation work" by the picket could result in "legal remedies . . . including a claim for damages."
The unions organise BMG boycott

- show launches June 19, 2005
- street demonstrations, picketing, posters, leafletting
- boycott promulgated through Ontario trade union movement
- special request to teachers’ unions
Progress of the campaign

• teachers’ unions respond & class outings low
• downtown hotels remove promotional material
• BMG launches publicity, legal campaign
• media generally sympathetic to unions
• larger theatrical impresarios sympathetic to unions
  – some entrepreneurs wait to see if unions will fail
Kate Taylor article, Globe & Mail

‘Blue Man Group just doesn't get it. Perhaps there's no reason it should, not being from these parts and all, but it's going to have to wise up soon because its show is set to open in Toronto next month and its little public relations problem is becoming a public relations fiasco.’

‘Toronto's commercial theatre scene has been built by the members of these associations [unions] and if Blue Man Group doesn't work with them it's freeloading off that history. However you may weigh the advantages and disadvantages of unions, the fact is workers aren't going to make steel or cars for free, but people will act and play music for free.’

‘By establishing a permanent, professional work force, they [unions] have helped build both the commercial theatre scene in Toronto, and a non-profit scene locally and nationally.’
Postscript

• BMG pulls out of Toronto 16 months after opening
• denounces Toronto theatre audiences
• difficult to estimate impact of boycott
  — was BMG’s hour past?
• determination of union campaign a cautionary tale for other non-union operations
Conclusions

• lack of traditional Wagnerist mechanism not fatal to collective bargaining
  – if union is strong & useful, deployers weak, and “the deal” is not disturbed
• but Wagnerist law very powerful
• as with Wagner, aggressive deployer leads to warfare
• unions must be prepared for occasional wars
  – innovation necessary