

APPENDIX A - THE KELLEHER DOCUMENT

IN THE MATTER OF A PROPOSED AGREEMENT

BETWEEN:

THE ACTRA PERFORMERS GUILD

("APG")

AND:

ACTRA B.C.

("ACTRA B.C.")

AND:

UNION OF B.C. PERFORMERS

("UBCP")

REPORT AND RECOMMENDATIONS OF

STEPHEN KELLEHER, Q.C.

January 26, 1996

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I

On July 27, 1995, some six months ago, I agreed to meet with representatives of APG, ACTRA B C and UBCP to facilitate an agreement to bring to an end the rivalry between two trade unions representing the acting profession in British Columbia

Since that time I have had many many meetings with representatives and legal counsel for the parties. A number of suggestions have been made. We have reviewed a large number of difficult issues. Although we reached consensus on a number of issues, I concluded some time ago that a negotiated agreement was not achievable. But in light of the significant investment of time and money, I thought it appropriate to make recommendations to the parties. They are attached, as Appendix "A" to this report.

I appreciate these Recommendations do not fully meet the expectations of any of the parties. They represent my view of what is reasonably achievable. They represent an opportunity to end the competition between the two organizations and to go forward as one united organization representing the acting profession in British Columbia.

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I have very much appreciated the assistance of the parties' representatives and their willingness to meet on short notice I have also benefited from their patience in explaining a very complex industry

II

I wish to explain some of the recommendations, particularly those which have changed since the previous draft

V STAFF

The provisions regarding staff reflect the fact that the employees in ACTRA B C 's office are technically employees of APG

VI INTERIM PERIOD

The provisions regarding the interim executive board arise from our discussions of January 11, 1996. While I appreciate UBCP's concerns, I conclude this is a sensible way to administer UBCP in the interim Jim Dorsey is a former Vice-Chair of the Canada Labour Relations Board and former Chair of the Workers' Compensation Board of B C Board of Governors He is experienced in internal trade-union matters

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VII ASSETS AND LIABILITIES

Ms Moore suggested that the UBCP would retain its assets in the unlikely event that an independent union were re-established. In the first place, this Agreement does not contemplate such an event. That is the whole purpose of the Agreement. There are, however, entirely unforeseeable events which could occur. One is the insolvency of APG. Another is an agreement between APG and UBCP to go their separate ways. I do not think there should be an automatic transfer of assets to APG. I have addressed this in Article XI, APG Constitution, Section 3.

IX COLLECTIVE BARGAINING

Mr DeFilippi referred to the vagueness of the phrase "in any significant way" in the section on collective bargaining. That phrase was used because it was agreeable to all three parties.

X INSURANCE AND RETIREMENT

Mr DeFilippi has expressed concern in his January 18, 1996, letter that these Insurance and Retirement proposals would result in insuperable administrative problems. There are also special considerations in light of the fact that these are trust funds. While I appreciate these concerns, I am by no means persuaded that this cannot be done. I have concluded, however, that we should accommodate the possibility that a

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change may be necessary by giving the Dispute Resolution procedure (l_e, me) the power to amend Article X to the extent necessary to accommodate legal impediments

GENERAL COMMENTS

Because of the difficult relationship between the parties over the past several years, it is natural to find areas of potential difficulty in these Recommendations. For that reason I have included comprehensive dispute resolution procedures. In my view, the good will and solidarity which should accompany the implementation of these recommendations will render these procedures largely unnecessary.

Mr DeFilippi's letter of January 18, 1996, refers to the need for a "formal, comprehensive, final and binding agreement between the parties. He suggests that the Recommendations do not permit "effective consideration" by the APG National Council.

I respectfully disagree. This process has been going on for a very long time at considerable expense to all. It is time to decide whether to have UBCP become a local union of APG. The recommendations that have been drafted are the result of considerable discussion and a large measure of consensus. In light of the history of these parties' relationship, the present process is the only possible way to achieve consensus.

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It would be useful for ACTRA BC and UBCP to exchange both membership lists and staff seniority lists before ratification. The most sensible approach would be to send them to me. I will release them to the other party only when I have received the same documents from it.

All of which is respectfully submitted this 26th day of January, 1996



STEPHEN KELLEHER, Q C

APPENDIX A
RECOMMENDATIONS

I RATIFICATION

- 1 These proposals will be placed before the APG National Council and before the membership of UBCP and ACTRA B C
- 2 If a majority of all three bodies vote in favour of the proposals, the result will be an agreement binding on all three parties
- 3 The Agreement will take effect on the date that the Recommendations have been ratified by all three organizations
This is the Effective Date

II LOCAL UNION

On the Effective Date,

- (a) UBCP will become a local union of APG within the meaning of Article 5 05 of the APG Constitution

- (b) The annual per capita payment by UBCP to APG shall be the amount determined by the APG National Council payable by all branches or local union members of the APG, presently \$155 00

- (c) ACTRA B C will be wound up in accordance with its constitution and bylaws The majority vote of the members of ACTRA B C in favour of this Agreement constitutes a petition by the members to wind up ACTRA B C

- (d) The jurisdiction held by ACTRA B C shall henceforth be held by UBCP

- (e) UBCP will apply to the Labour Relations Board of British Columbia for successor status in respect of any collective agreements to which ACTRA B C is a party and any certifications held by ACTRA B C The other parties to this Agreement will consent to such applications

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- (f) APG will not create another local within British Columbia with the same jurisdiction

- (g) Not later than ninety days after the election of a new executive pursuant to Article IV a mail referendum will be conducted to determine whether the members of UBCP wish to change the name of the Union. If the members favour a change, UBCP shall take steps to determine what name is favoured by the membership and implement that change

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III AFFILIATION

- 1 UBCP agrees to terminate its Affiliation Agreement with Teamsters Canada dated October 25, 1994 UBCP will, within 24 hours of the Effective Date of this Agreement, give written notice to Teamsters Canada to unilaterally cancel the Agreement A copy of this notice will be sent to Stephen Kelleher, Q C

- 2 UBCP will make every reasonable effort to reach agreement with Teamsters Canada to abridge the 90 day mediation period and 30 day notice period required by the Affiliation Agreement

- 3 UBCP agrees not to enter into any new merger or affiliation with a third party APG agrees that if it proposes to merge or affiliate with another organization, it will not be effective until it has been approved by UBCP

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IV ELECTIONS

- 1 All elected officers or executive members of UBCP will be deemed to have resigned on the Effective Date The three National Councillors of APG elected from the Province of British Columbia will be deemed to have resigned on the Effective Date
- 2 A new election will be conducted as soon thereafter as possible
- 3 The election will be conducted by mail ballot
- 4 Eligibility for voting in the election will be based on the membership criteria in Article VIII of this Agreement
- 5 The Executive of UBCP shall consist of the positions President, Vice-President, Secretary, Treasurer, four Members-at-Large and two Alternates Elections will be conducted for all Executive positions The President, Treasurer and one member at large shall serve as National Councillors
- 6 The President, Treasurer and two Members-at-Large will be elected to serve a two year term

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- 7 The Vice-President and Secretary, two Members-at-Large, and two Alternates will be elected for an initial term of one year. Subsequent elections will be for a two year term.

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V STAFF

- 1 The staff of ACTRA B C and of UBCP will be merged They will become employees of UBCP This process shall begin on the Effective Date

- 2 The parties to this Agreement agree to the principle of dovetailing of the two seniority lists, of employees of UBCP and employees of APG working for ACTRA BC so that the seniority of an employee will be based on length of continuous service in the ACTRA BC or UBCP bargaining unit, as the case may be

- 3 The parties agree to be bound by a representation vote between Teamsters Local 155 and Canadian Auto Workers Local 3000

- 4 Any issue of seniority and qualifications to perform the available work will be resolved between UBCP and the trade union representing the employees

- 5 The Executive of UBCP will, as soon as possible after the elections, select such persons to fill excluded positions as it deems appropriate

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VI INTERIM PERIOD

- 1 During the period between the Effective Date and the election of a new Executive, UBCP's affairs shall be conducted by an interim executive board

- 2 The interim executive board will consist of two persons appointed by UBCP and two persons appointed by ACTRA B C

- 3 Any dispute resulting in a deadlock among the interim executive board will be referred to James Dorsey, Barrister & Solicitor, who shall confer with the interim executive board and make a binding decision

4. The interim executive board will look into telephone and office equipment leased to ACTRA B C with a view to determining what equipment can be used by UBCP and what leases can be assumed by UBCP; what leases can be terminated early, and fair and equitable contribution, if any, could be made by UBCP

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VII ASSETS AND LIABILITIES

- 1 The UBCP, The UBCP Members' Benefits Trust and the UBCP General Welfare Trust retain their assets and do not, by this Agreement, assume any of the liabilities of APG

- 2 UBCP acquires no liabilities or duties of ACTRA B C except those acquired pursuant to Section 37 of the Labour Relations Code

- 3 APG and ACTRA Fraternal Benefits Society retain their assets and do not, by this Agreement, assume any of the liabilities of UBCP or the UBCP Member Benefits Trust or the UBCP General Welfare Trust

- 4 The assets of ACTRA B C will be disposed of in accordance with its constitution and bylaws

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VIII MEMBERSHIP

- 1 The membership of UBCP shall consist of
 - (a) All persons who are, on the Effective Date, members of both APG or ACTRA B C and UBCP,
 - (b) All persons who were, on March 1, 1995, and are, on the Effective Date, members of either ACTRA B C or UBCP, and
 - (c) All persons who are determined to be members pursuant to Section 2, below
- 2 The eligibility of any person who became a member of UBCP or ACTRA B C after March 1, 1995, will be decided by a committee of four persons, two appointed by ACTRA B C and two appointed by UBCP Any deadlock in this committee will be resolved pursuant to Article XIII
- 3 Notwithstanding Section 2, if the eligibility of fewer than 25 persons is in dispute, the persons shall be considered members of UBCP
- 4 Persons who are at the Effective Date in good standing with either ACTRA B C or UBCP but under suspension or on withdrawal from UBCP or ACTRA B C respectively will be deemed

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to be a member in good standing of UBCP. A person who is under suspension or on withdrawal from both ACTRA B C and UBCP shall maintain that status and be on suspension or on withdrawal from UBCP.

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IX. COLLECTIVE BARGAINING

1. UBCP will fully participate in national collective bargaining and in the formulation of national bargaining strategies.
2. Collective bargaining in the Province will be conducted by UBCP. In conducting collective bargaining UBCP agrees that it will not undermine the terms of the Independent Production Agreement in any significant way.
3. Any dispute as to whether the Independent Production Agreement has been undermined in any significant way within the meaning of Section 2 will be resolved in accordance with Article X, Dispute Resolution.
4. Commercial Agreements - UBCP will apply the National Commercial Agreement to all national signatories who produce commercials in the province of British Columbia. Notwithstanding the above, UBCP may negotiate a local B.C. collective agreement for "made in-played in" commercials produced in B.C., for airing in B.C., the terms of which will be no less than those contained in Addendum No. 1 to the Commercial Agreement. With respect to non-signatories to the National Commercial Agreement, UBCP may develop a "BC Commercial Agreement" the terms of which will be substantially similar to the National Agreement but which may include a less

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complicated format, including more streamlined procedures and administrative procedures which are different from those in the National Agreement UBCP will receive the revenue generated by Commercial Agreements

- 5 When an employer is covered by the Canada Labour Code and is subject to a collective agreement bargaining by APG covering a national bargaining unit, the collective agreement shall continue to be in force in the Province of British Columbia The Agreement will be administered by UBCP Revenue from the Agreement will go to UBCP
- 6 The newly elected Executive will decide what position to take in proceedings at the Labour Relations Board of B C pursuant to Section 41 of the Labour Relations Code of B C

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X INSURANCE AND RETIREMENT

- 1 All members of UBCP will have the one-time right to direct that contributions made pursuant to collective agreements on behalf of members for insurance and retirement will be forwarded either to ACTRA Fraternal Benefit Society or to UBCP UBCP shall ensure that this election is made within 90 days of the Effective Date

- 2 If an Employer is required by a collective agreement to forward the remittances to ACTRA Fraternal Benefit Society or UBCP, the ACTRA Fraternal Benefit Society or the UBCP will honour the election made by the member pursuant to paragraph 1

- 3 Non-member remittances (also sometimes referred to as Equalization Payments) will be forwarded to ACTRA Fraternal Benefit Society or to the UBCP based on the proportion of UBCP members who have elected to have contributions forwarded to ACTRA Fraternal Benefit Society and the UBCP For example, if 51 per cent of UBCP members elect to have contributions forwarded to UBCP Members Benefit Trust, 51 per cent of future non-member remittances will be forwarded to UBCP

- 4 If there is a dispute regarding the implementation of this provision and Mr Kelleher is satisfied that there are legal

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impediments to its implementation, he shall have the power to amend the provision to the extent necessary to permit implementation

XI APG CONSTITUTION

- 1 Except as provided in this Agreement, on the Effective Date, UBCP will be bound by the Constitution and Bylaws of APG as a Local Union of APG. In the case of any conflict between this Agreement and the APG Constitution, this Agreement shall govern.

- 2 UBCP will make the necessary changes to its Constitution and Bylaws to reflect the terms of this Agreement.

- 3 Notwithstanding Article VII of the APG Constitution, if UBCP ceases to exist as a local of APG the disposition of its properties and assets shall be determined pursuant to Article XII, Dispute Resolution.

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XII DISPUTE RESOLUTION

- 1 Any dispute between UBCP and APG, including a dispute over whether a by-law of UBCP is inconsistent with the APG Constitution, will be resolved in the following way either party may refer a dispute or disagreement to Vincent L Ready who will investigate the matter on an expedited basis and make a final and binding decision Mr Ready has the power to determine his own procedure It is agreed that the decision will constitute a decision or award within the meaning of the Commercial Arbitration Act and may be enforced as such Mr Ready will have the option of seeking a mediated settlement Pursuant to Section 22 of the Commercial Arbitration Act, the parties agree that the Rules of the Commercial Arbitration Centre do not apply to proceedings pursuant to this provision

- 2 No disciplinary proceedings under the by-laws of the APG or of UBCP may be launched against a member of UBCP unless Vincent L Ready has first agreed that the initiation of such proceedings is appropriate Disciplinary proceedings include the removal or suspension from office of an elected officer, the laying of charges against a person or any action pursuant to Articles 405, 406, 1003 and 11 of APG Constitution and APG Bylaws No 1(iv), 7, 8 and 9

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- 3 APG shall not place UBCP in trusteeship unless it establishes to the satisfaction of Vincent L Ready that there is reasonable cause for taking such action

- 4 Mr Ready will have the power to direct a party to do any thing for the purpose of complying with this Agreement and to direct a party to refrain from doing any thing that is contrary to this Agreement

- 5 The fees and expenses of Mr Ready in a dispute pursuant to Section 1 will be shared equally by the UBCP and APG Mr Ready's fees and expenses in respect of a reference under Section 2 will be payable by the person seeking to launch the disciplinary proceedings Mr Ready's fees and expenses in respect of an application under Section 3 shall be payable by APG

XIII IMPLEMENTATION DISPUTES RESOLUTION PROCEDURE

- 1 Any dispute concerning the implementation, interpretation, application or an alleged breach of this Agreement may be referred by UBCP or APG to Stephen Kelleher, Q C for a final and binding determination

- 2 Mr Kelleher has the power to determine his own procedure including the power to engage in a process of mediation Any resolution or determination by Kelleher will be final and binding It will constitute a decision or award within the meaning of the Commercial Arbitration Act Pursuant to Section 22 of the Commercial Arbitration Act, the parties agree that the Rules of the Commercial Arbitration Centre do not apply to proceedings pursuant to this provision

- 3 Mr Kelleher will have the power to direct a party to do any thing for the purpose of complying with this Agreement and to direct a party to refrain from doing any thing that is contrary to this Agreement.

- 4 Mr Kelleher's fees and expenses shall be borne equally by UBCP and APG

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XIV TERMINATION

- 1 This Agreement will be terminated if,
 - (a) the parties so agree , or
 - (b) Vincent L Ready determines that termination is appropriate