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Abstract

In late 2010, the New Zealand Parliament passed legislation that offers film industry employers an option to effectively immunize the New Zealand film industry against union activity and employment regulations, by simply insisting on engaging workers as independent contractors, regardless of their real status. The topical story behind this change in employment law reads like a multiscene play on how a powerful American entertainment-industry conglomerate was able to take advantage of a union's strategic missteps to pressure a small country into not only substantial tax breaks and subsidies, but also a fundamental change to its employment laws. The article tells the story and provides an analysis of how this can happen in a modern democracy.

Keywords

union, film industry, boycott, employment law change, collective rights

Introduction

On October 28, 2010, the New Zealand government introduced into the national Parliament legislation designed to strip workers in the film production industry of the rights and entitlements all employees in New Zealand have enjoyed under labor legislation, including the minimum wage, protections against unfair dismissal and discrimination for union activity, access to paid sick leave, bereavement leave, public holidays, paid vacations, and the right to bargain collectively.

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By the following day, the proposal had been passed into law, effectively “immunizing” the New Zealand film industry against union activity and legislated employment regulation.

The change was triggered by the insistence of the American conglomerate, Time Warner and their studio subsidiaries and partners in the making of *The Hobbit* movies, prequels to the *Lord of the Rings* (LOTR) trilogy. As with the earlier movies, the two prequels were scheduled to be made in New Zealand by Warner Bros. and New Line Cinema, with the support of millions of dollars of government financial incentives already secured.

Warner Bros. executives had jetted in earlier in the week for “crisis talks” with the New Zealand Prime Minister John Key and Economic Development Minister Gerry Brownlee, amid speculation that the production of the movies would be taken offshore because of “union troubles.” The Warner Bros. executives waited in-country while the law was changed for them, before announcing predictably that the making of the movies would remain in New Zealand. And off they went, with film industry workers’ fundamental rights and millions more dollars in financial incentives surrendered quickly and easily by the New Zealand government.

Workers had been stripped of fundamental rights, at the insistence of a foreign conglomerate, seemingly in less time than it takes to watch the *Lord of the Rings* trilogy. How could this happen in a modern democracy? This article sets out to examine that question.

First, with a review of relevant literature, the article backgrounds the Hollywood and New Zealand film industry and labor relations contexts within which these events took place. The events themselves are then recounted from news coverage of the time, subsequent analyses in the popular press, and government documents released under the Official Information Act. Finally, we venture some answers to the core question: how was this able to happen?

The Background

Hollywood, Still the One

Hollywood has been at the center of global movie production, distribution, and exhibition since the 1920s. In the “studio era” of the 1930s through 1950s, “the big five” (Paramount, Loew’s (MGM), Warner Bros, Fox, and RKO) and “little three” (Universal, Columbia, United Artists) (Gomery 1986, 8-9) movie-production houses controlled movie making worldwide through a vertically integrated control of movie production, targeted and packaged distribution of films, exclusive first-run exhibition in wholly owned or affiliated theatres, and tightly managed distribution for secondary exhibition. Warner Bros. was a major player (Pokorny and Sedgwick 2001; Gomery 1986, 101).

Two factors are generally credited with bringing down “the studio era” of the great movie-production houses: the arrival of television, and US federal government

antitrust action that forced the movie makers to divest themselves of their tight control of the distribution and exhibition of their products (Epstein 2006, 11). Television was followed later by video, cable, and satellite TV, DVDs, and the Internet, all “game changing” innovations that challenged the studio-era mode of control.

One theory of subsequent development—a “post-Fordist” analysis—is that there emerged diversification and specialization with a wider range of relatively independent players involved in movie production, distribution, and exhibition, and a corresponding reduction of central control by the studios that constitute “the old Hollywood” (Christopherson and Storper 1989). Even then, there is a recognition that a “virtual reintegration” began quite quickly on a more global stage (Christopherson 1996).

A complete perspective should include recognition that “Hollywood” is no longer just the traditional Hollywood studios standing alone. Instead, there remains an oligopoly of six studios that are each part of very much larger international entertainment conglomerates that retain massive power in the industry.

Warner Bros. is a part of that “Sexopoly,” as Epstein terms the group of controlling studios. Warner Bros. is now owned by Time Warner, a massive conglomerate that incorporates Time Inc., HBO, Turner Broadcasting System, the CW Television Network, WB.com, Kids’ WB, the Cartoon Network, CNN, Castle Rock Entertainment, and New Line Cinema, nominally the studio responsible for the *Hobbit* movies (Epstein 2006, 15).

Epstein (2006) argues that while the six studios—Paramount/Viacom, Fox/News Corp, Sony, Warner Bros./Time Warner, Disney, and NBC Universal—might compete with one another for stars and awards, a key to their profits is cooperating to control the industry, to the point that their collaboration is tighter now than it was in the height of the old studio era.

The nature and reach of control are necessarily different than they were in the studio era. First run exhibition of films in the United States remains an important source of revenue both in terms of ticket sales and as a launching pad for downstream earnings. But the modern conglomerates rely heavily on those downstream revenue sources: second-run exhibition, importantly including the international market for US films; satellite, cable, then free-to-air television, video, or DVD distribution; and Internet and mobile exhibition, as well as toys, games, apparel, and other products associated with the films (Gray 2001).

Because of the importance of these downstream revenue sources, the studios increasingly depend on outsized blockbusters based on marketable characters. Sequels and prequels are ideal for promoting, generating, and retaining consumer interest in the revenue-generating products associated with such movies. Producers and directors who can deliver such films, and particularly a series of films that keep the images and revenue streams going, are especially valued by the studios. However, even the most talented producers are not “independent” in any real sense. As Epstein says, “producers have little choice but to work with a major studio if they want to make Hollywood movies” (Epstein 2006, 133). Only the studios have the access to money, the power, and pull to make these major motion pictures.

Making bigger and bigger movies has meant escalating costs. One favored formula for making movies that generate downstream revenues is attracting star directors and actors, who command increasingly extravagant levels of remuneration. These and other “above-the-line” costs of production have added pressure on studios and producers to make savings “below the line,” including, importantly, costs associated with below-the-line labor. The alternative model basing blockbuster movies around ever-more elaborate special effects also escalates costs, putting pressure on producers to control below-the-line labor costs.

“Above the line” refers to the “talent” involved in the creative construction and direction of a film, principally including screenwriters, producers, the director, and leading actors. Compensation for these contributors plus associated creative expenses—from purchasing the story rights to paying assistants for these leading players—constitute the above-the-line costs for a film (Epstein 2006, 140). “Below the line” refers to the workers who do the physical and technical production of a film and the postproduction work. These include craftspeople such as carpenters, electricians, hair stylists, and makeup artists, as well as costumers, composers, film editors, and many others. Below-the-line expenses include physical production and postproduction costs, compensation and costs for below-the-line workers including nonstarring actors, rental on studios, sound stages, and film locations, and ongoing costs such as travel, accommodation, and catering expenses (Epstein 2006, 140). The terms are said to originate from the early studio days when the top sheet of a film budget would literally have a line separating the creative and production costs (see generally Dirks [2010]; Gray [2001]).

The increasing costs of making bigger movies also add incentive to explore alternative locations to Hollywood, and to find cost-offsetting incentives in the form of tax and regulatory breaks, and financial grants or subsidies from national, state, or local governments (Ulrich and Simmens 2000-2001).

Labor Relations in Hollywood

There is a colorful labor relations history to Hollywood (see, e.g., Nielsen and Mailes [1995]), including high union density that has largely defied the overall decline in US unionism; the oddity of a union membership that includes extraordinarily highly paid actors, writers, and directors; movie-star union leaders; celebrated strikes; union corruption; communist witch hunts; and the blacklisting of union activists. Unions and collective bargaining in Hollywood, while not without their difficulties over the years, have exercised effective job control in many respects, and also ensured that invisible below-the-line workers shared to some extent in the product of the industry (Gray and Seeber 1996).

In the studio era, Hollywood became very much a “union town,” as romanticized by Morton Thompson in 1938,

Hollywood is a union town. Its actors are union men. Its pickets are union pickets. Its scabs are mobbed with union thoroughness and dispatch. Its stars are as labor conscious as its carpenters. . . . The Screen Actors Guild rules the roost. (Thompson 1938, 381)

Movie production in Hollywood is generally a labor-intensive industry and still remains comparatively highly and effectively unionized (Fabrick 2000-2001, 353; Kleingartner 2001, 113), though not to the extent Thompson would have hoped. Unions and guilds—principally the American Federation of Musicians (AFM), the American Federation of Television and Radio Artists (AFTRA), the Directors Guild of America (DGA), the International Alliance of Theatrical Stage Employees (IATSE), the International Brotherhood of Teamsters (IBT), the Screen Actors Guild (SAG), and the Writers Guild of America (WGA)—negotiate agreements setting out basic minimum pay and conditions for the Hollywood production industry. In some occupations, particularly above-the-line occupations, individuals are able to negotiate second-tier “personal services contracts” (Wasko 2003, 41-42; Kleingartner 2001, 118). The industry is represented in industry-wide negotiations by the Alliance of Motion Picture & Television Producers (AMPTP).

Organization is largely occupational, somewhat limiting the sense of labor unity in Hollywood (see Gray [2001, 125]; Wasko [2003, 43]) and, while they come together on occasion, there is inevitably a divide between above-the-line workers’ organizations and those representing below-the-line workers. There are, in addition, some long-standing fractures between the above-the-line unions themselves that serve to further limit solidarity.

Hollywood unions have long sought, with some success, but not without some turmoil, to address the complex issues arising for both above- and below-the-line workers from the development of new technology in the production, distribution, and exhibition of movies and other entertainment products (Fabrick 2000-2001; Gray 2001; Brown 1996; Christopherson 1996). Whole below-the-line occupations, such as the once-powerful and well-paid movie-house projectionists, have all but disappeared (Gray 2001, 123). Below-the-line union density has fallen accordingly (Amman 1996).

Most spectacularly in the past few years, Hollywood writers struck in 2007 over fees for products released on new media outlets, such as the Internet and mobile phones. A protracted negotiation involving the SAG over the same issues saw the costly dispute extend over a period of two years before resolution. The WGA strike and the SAG stalemate are richly chronicled in Handel (2011) under the telling subtitle “an industry at war in the Internet age.” Subsequent to that bitter dispute, labor relations in Hollywood seem to be in a period of at least temporary respite as SAG and AFTRA, not for the first time, contemplate a merger during 2011-2012.

High union density and a sophisticated and resilient collective bargaining history notwithstanding, there has always been an element of serious Hollywood resistance to unions. Hollywood unions were all vigorously opposed in their infancy in the 1930s

by the major studios (Kleingartner 2001, 113). Today, the ever-growing and concentrating global power and spread of the entertainment conglomerates poses new challenges for Hollywood unions and entertainment-industry unions elsewhere to maintain coverage and influence (Gray 2001; Amman 1996).

Union avoidance has long involved the use of “runaway” production strategies—doing some or all production on a film at locations outside Southern California, whether within or outside the United States, where various advantages might be found: cheaper nonunion (or even union) labor, principally below-the-line labor; tax and other financial incentives, and an absence or waiving of regulatory restrictions to production. Nonunion labor has been a prime incentive factor in terms of both direct wage and benefit costs and the absence of “restrictive work practices” that inevitably carry a cost (Ulich and Simmens 2000-2001).

The New Zealand Film Industry

Like many countries, New Zealand has had a small, but sometimes vibrant film industry, with more than a few notable productions over the years. The industry has relied heavily on government funding, with continuing policy and investment tension between filmmaking that exhibits and celebrates aspects of New Zealand culture, on the one hand, and filmmaking that is more focused on contributing to the New Zealand economy, on the other. Government policy took a strong turn toward filmmaking as a potentially significant contributor to export earnings from the mid-1990s (Conor 2004, 36).

One part of this recent economic emphasis has been producing quality, but second-tier, small-budget films with a New Zealand setting or theme that have at least some prospects for profitable exhibition in mass overseas markets. *The Piano*, *An Angel at My Table*, *Once Were Warriors*, *Whale Rider*, and *Boy* would be recent examples.

The other and more financially significant part of the emphasis on filmmaking as export industry in New Zealand has been hosting productions of major Hollywood films for studios seeking the advantages of offshore production cited above. The *Lord of the Rings* trilogy, *Avatar*, and now the *Hobbit* films would be prime examples. These films are seen as contributing temporarily to the New Zealand economy during production, but also carrying longer term spinoff benefits in, for example, the tourism sector. These are not films that promote New Zealand culture. They are Hollywood films made in New Zealand for a variety of advantages that attract the Hollywood studios and their conglomerate and banking partners.

The choice of this policy direction positions New Zealand as a relatively minor but eager player in the Hollywood-controlled entertainment production industry, a destination for “runaway” productions, what Conor refers to as part of the production “periphery” with Hollywood at the core. Some lesser players—the Dutch, the British, more recently “Bollywood”—have filmed in New Zealand, but the Hollywood studios and their financial partners are the main targets of the policy.

In 2002, the Labour government appointed a “Screen Production Industry Taskforce,” which reported in 2003 as follows:

The Lord of the Rings—possibly the largest film production anywhere to date—was “made in New Zealand.” The vast majority of the revenues from the exploitation of intellectual property, present and future, from cinema, DVD, television, in-flight, soundtrack, CD Rom, interactive games, toys, books, posters and so on, belong to New Line Cinema in the US. Some New Zealand entities will receive a single-digit percentage of the net returns . . . but despite . . . the tax break provided by the New Zealand Government to ensure production stayed here, the majority of revenues from the intellectual property flow to the US. (Screen Production Industry Taskforce 2003, 28-29)

The Taskforce is not alone in questioning the wisdom of investing government funds to attract filmmakers. There is a growing body of research literature that documents the windfalls to the filmmakers, but questions the value of benefits to the host jurisdictions of publically funding the production of film projects (Christopherson and Rightor 2010; Malyshev 2010; Schonauer 2010). Nonetheless, it is accepted by the current National Party government that New Zealand gains from short-term direct production benefits and longer-term tourism benefits, and government invests on that basis. In the 2009-2010 budget year, the government budgeted and spent \$52.48 million through its “Large budget screen production fund” providing “assistance to film and television productions that spend over \$15 million in New Zealand” (Ministry of Economic Development 2010, 92).

The New Zealander Peter Jackson, knighted by the New Zealand government in April 2010 to become “Sir Peter Jackson,” has been the most significant single “star” of the ‘New Zealand as host to Hollywood productions’ policy through his involvement as director or producer of *King Kong*, *Lord of the Rings*, and now the *Hobbit* project. Jackson has become a multimillionaire enjoying private jet travel, the ultimate badge of a Hollywood “insider,” and other trappings of a profitable association with the Hollywood studios.

The above-the-line industry in New Zealand is quite small. In the 2006 population census, only 588 people identified themselves as professional actors, although estimates have ranged as high as two thousand. New Zealand Actors Equity (NZ Equity) is the labor union for actors, and it is affiliated with both the New Zealand union federation, the New Zealand Council of Trade Unions (NZCTU), and with the Media, Entertainment and Arts Alliance (MEAA), the Australian entertainment workers union. In 2010, NZ Equity had about six hundred members (Knight 2011). There are smaller, unaffiliated guilds of writers and directors. It is estimated that, at any given time, 95 percent of “professional actors” in New Zealand are not working in the profession (Knight 2011), a figure not dissimilar to estimates in Hollywood itself (Kleingartner 2001, 119). There are no reliable estimates of the total number of below-the-line workers who make their living, full or part time, in film production, although the “over

500 fully paid members” of the New Zealand Film and Video Technicians Guild (NZFVTG 2011) might be an indicator.

Under New Zealand law, film-industry workers—like other workers—can be engaged as either employees or independent contractors. Until the events described in this article, the true nature of the relationship, if questioned, could be established under law against known objective criteria. Many actors in New Zealand prefer to work as contractors because of tax advantages (Laugesen 2011, 12) but whether that is so for below-the-line workers is much less certain. While industry employers are fond of saying that the choice to accept or reject a role is the actor’s, and that few reject roles because of the money (Laugesen 2011, 14), the reality is that fierce competition for few jobs in a small industry can sharply limit one’s choices.

Minimum conditions in the industry are guided by the so-called *Pink Book* for actors and the *Blue Book* for below-the-line technical workers, codes of practice prepared by the Screen Production and Development Association (SPADA), the organization of New Zealand industry employers, in consultation with various other parties, including NZ Equity, agents’ organizations and the film technicians’ guild. The *Pink Book* was last updated in 2006; the *Blue Book* in 2004. Neither governs remuneration to workers. And, in any event, industry employers insist the codes are advisory only, and they feel free to ignore them (Laugesen 2011, 14).

Labor and Politics in Contemporary New Zealand

Like many other Western democracies, New Zealand has experienced a dramatic decline in union density over the past quarter of a century. Prior to the mid-1980s, pay and conditions for most of the nation’s workforce were underpinned by a network of union-negotiated documents with blanket coverage, supported by compulsory union membership and contingent compulsory interest arbitration.

With the removal of compulsory arbitration in 1984 and the deregulation of bargaining and the barring of compulsory union membership in 1990, union membership and collective-bargaining coverage fell rapidly from about 60 percent coverage and 40 percent union membership down to about 20 percent union membership and unionised collective-bargaining coverage. The union-density figure continued to decline, albeit more slowly, during the decade of the 1990s. For the first time in New Zealand, employers had the strategic option of seeking to be entirely free of union involvement, and many took up that option. Union membership picked up a little after 2000, and in 2010 sat at 20.9 percent of wage and salary earners, with heavy concentrations in the public sector, some areas of manufacturing, and agricultural processing. The ten largest unions represent over 75 percent of union members, and a substantial majority of union members are in unions affiliated with the peak body, the New Zealand Council of Trade Unions (NZCTU) (Department of Labour 2010).

New Zealand’s system of government is a unicameral parliamentary system, with no written constitution or other checks on parliamentary power. As a consequence, a simple parliamentary majority empowers governments to suspend the usual

conventions of democratic debate and citizen input to pass laws overnight if they choose to, with immediate or even retroactive effect. Parliament is elected on a proportional representation basis, with the center-left Labour Party and the center-right National Party the dominant players, usually supported by smaller parties to their left or right respectively.

Labor-market regulation has vacillated in recent decades with changes in government. A Labour government abolished compulsory arbitration in 1984 as a part of the beginnings of an overall deregulation of the economy. A National government effectively deregulated wage bargaining in 1991. A new Labour-led government reinstated collective bargaining into law with the passage of the Employment Relations Act 2000 and gave some rhetorical support to labor unions. A new National-led government was elected in 2008. This government had made some initial moves to limit workers' rights with the introduction of "employment at will" probationary periods for small businesses but, prior to events reported here, had signalled an intent to move only slowly in labor-market deregulation during its first three-year term in office (see generally Harbridge [1993]; Rasmussen [2010]).

The Story of *The Hobbit*

A Perfect Opportunity

Friedman (1994) applied a convincing dramaturgical analysis to the study of labor negotiations, illustrating the importance of front-stage performance and backstage plain talking. Who better to appreciate the theatre of negotiations than high-powered strategists of a major international entertainment conglomerate? In 2010 Warner Bros. launched a strategy to extract from the New Zealand government every ounce of support available, financial and instrumental alike, for its production of *The Hobbit*.

Fundamental to the success of the strategy was casting NZ Equity and a hapless Australian MEAA official as the villains who would rob New Zealand of the *Hobbit* productions and ultimately lead to the collapse of the country's prospering film-production industry. Suffice at this stage to say that missteps by NZ Equity and the MEAA invited the Warner Bros. strategy.

Scene 1: The Boycott of the Hobbit Production

The immediate story began in mid-2010. NZ Equity had unsuccessfully targeted a number of film and television productions in ongoing efforts to negotiate production-specific agreements before choosing *The Hobbit* as a high-profile international production and a target that might generate international support. In August 2010, acting at the initiative of NZ Equity, the International Federation of Actors (FIA) sought negotiations with Warner Bros. for minimum standards, and advised that a "do not sign" advice would be put out to members if no agreement was reached. The producers, through Warner-owned Three Foot Seven Limited, the company established to

administer production of the *Hobbit* project, refused to engage in bargaining via a letter from their New Zealand lawyer to the MEAA on September 13, taking the position that what the union sought was unlawful. A week or so later FIA-affiliated unions asked members to not sign contracts to work on *The Hobbit* (Kelly 2011, 4).

The debate centered on whether actors were engaged as employees or contractors, with industry sources claiming that it would be unlawfully anticompetitive to negotiate a collective agreement covering independent contractors. Government ministers immediately fell in behind that view. The union insisted to the contrary that negotiating minimum conditions was appropriate for what was to be a substantial project. Competing legal opinions were deployed (Kelly 2011, 8).

The distinction between employee and independent contractor is the “mischief” intended to be addressed by the overnight legislation. It had been highlighted by a 2005 case—“the Bryson case”—in which a below-the-line worker (a model maker) engaged as a contractor for Jackson’s Three Foot Six company on the *LOTR* project had successfully asserted through the courts that he was in fact an employee under law and therefore entitled, among other rights that accrue only to employees, to grieve his dismissal by Three Foot Six Limited as unjustified through the employment institutions (*James Bryson v Three Foot Six Limited* (SC CIV 24/2004) [2005 NZSC 34]). At the time, SPADA had expressed little concern with the decision, acknowledging that the engagement of workers for long projects such as *LOTR* might be different than the local industry norm of shorter projects (Borland 2005).

In hindsight, the call on union members to not sign *Hobbit* contracts—the “boycott”—was a naïve move taken from a weak position against an omnipotent opponent in Time Warner. It was a strategy that failed quickly in the face of an aggressive reaction, but one that played nicely into Warner’s hands. Peter Jackson led the filmmakers’ public response with a very aggressive media release on September 27, 2011.

As noted, industry and government sources put about that what the union was proposing would amount to an unlawful restraint of trade by independent contractors. The legal distinction between employees and contractors is not one “made for television”; the only thing the public saw was the union threatening the production by supposedly attempting to force something illegal on the producers.

Australia and New Zealand have long had a “love-hate” relationship. They are the best of friends and the greatest of rivals. The most assured way of upsetting a “Kiwi” is to suggest that New Zealand should become a state or two of Australia. Jackson and other industry sources came out swinging hard at the MEAA and the MEAA official who had been assisting NZ Equity, Simon Whipp, combining the always reliable anti-Australia prejudice with the stereotypical money-hungry union rhetoric. Said Jackson,

I can’t see beyond the ugly specter of an Australian bully-boy using what he perceives as his weak Kiwi cousins to gain a foothold in this country’s film industry. They want greater membership, since they get to increase their bank balance. (*New Zealand Herald*, September 27, 2010)

Scene 2: *The Threat of Producing The Hobbit Offshore*

Almost immediately, the suggestion surfaced that the production may be taken offshore because of the union call for a boycott. This gained traction despite the company's having many millions invested in infrastructure in New Zealand from the earlier *LOTR* production. The studios issued a statement on September 28, 2010 saying that their policy was to avoid production in locations where "there is potential for workforce uncertainty or other forms of instability" and that they were, accordingly, "exploring all alternative options in order to protect our business interests" (*New Zealand Herald* [NZPA]).

Jackson duly picked up the theme, suggesting that the studios were actively looking at Eastern Europe and that a host of countries were courting the studios with financial and other incentives. Loss of the production was a viable threat to broadcast because, in fact, Jackson had not yet finalized the deal with the studios involved with the project (Warner Bros, New Line, and MGM), which were themselves struggling to seal a deal to fund it. That the films would be made at all was apparently not yet a certainty.

Scene 3: *Enter the Prime Minister and the Government*

Meanwhile, moving into the first week of October, efforts were made with the involvement of the New Zealand union federation president, Helen Kelly, to broker some sort of resolution to the union dispute. Government ministers—despite openly supporting the studios—offered to be involved in mediation. Tensions cooled for a time, and hopes were raised.

At the same time, however, Prime Minister John Key, Economic Development Minister Gerry Brownlee, and Jackson's co-producers continued to promote the prospect of the production moving offshore and the long-term implications of such a move for the New Zealand film industry. Media commentators parroted the line, contributing to the momentum of hysteria (Rudman 2010). The emotions of hope and fear were kept alive for the union and its members, other workers whose livelihoods depended on major productions, and the general public beguiled by the glamor of the industry and concerned for its fate.

Jackson's coproducers came forward, playing on Jackson's iconic status in New Zealand to introduce a personal dimension to the dispute, defending Jackson's record as a caring employer providing fair wages and conditions, and characterizing the union's actions as a hurtful, personal attack on Jackson. NZ Equity spokeswomen had no choice but to deny this with genuflective gestures in Jackson's direction (see Wade and Tapaleao [2010]).

The dispute dragged on through the second week of October. The union federation's efforts to resolve the dispute gained no traction at all. Government ministers, in a Government predisposed to be antagonistic to unions, continued to disparage the unions and their leaders. By the middle of the month, there was some progress in discussions between NZ Equity and SPADA about industry conditions, or at least

progress toward scheduling some discussions. The key meeting was convened by Government minister Brownlee on October 13 and the results were sufficiently promising that NZ Equity agreed to recommend to the FIA unions that the “do not sign” order be rescinded (Kelly 2011, 13). The *Hobbit* production refused to be represented at the meeting and was not discussed, and there was no progress between the union and Jackson or Warner Bros. in regards to the *Hobbit* films. Jackson and his associates continued to say that the studios were exploring all location options for moving the production.

Scene 4: Funding of The Hobbit Secured

The ante was upped on October 16, 2010, when it was announced that the studios had finally reached a financial arrangement to go ahead with the project and that Jackson would direct and, with his associates, produce. New Line was to manage production, its parent Warner Bros. would handle US and some international distribution, and MGM would handle international television distribution. No announcement was made about the production location, which remained center stage.

Scene 5: End of the Boycott—Keeping Up the Tension

By October 17, the unions had taken all necessary steps to lift the boycott of the films but, according to NZ Equity, at the request of Warner Bros. it did not immediately announce the lifting of the boycott. The move was, however, reported in the Hollywood trade papers (Handel 2010a), and the union insists that Warner Bros., Jackson and his associates, and the key government ministers involved were all aware around the meeting of October 13, and certainly by October 17, that the boycott was being lifted. While some minor points of agreement were being reached with SPADA at industry level, the union had effectively retreated from its campaign against the Jackson films by the middle of October. It is not entirely clear why the lifting of the boycott was not immediately announced publicly; however email evidence released later supports the conclusion that all involved parties were aware by October 17, 2010 that it was no longer an issue for genuine concern (Kelly 2011, 13). Only the public remained in the dark.

With funding now approved for the films, but no publicly apparent progress with the union, the filmmakers’ public campaign was ratcheted up after October 20, 2010. The prospect that New Zealand production of the films was “in peril” was kept alive for the public. Jackson’s business associate, Richard Taylor, head of Weta Workshop, a special-effects and movie props company that contributed substantially to—and prospered grandly from—*King Kong* and the *Rings* trilogy and will work extensively on *The Hobbit*, convened a rally of industry technical workers that resulted in hundreds of workers organizing to march on an NZ Equity meeting to protest the union’s supposed stance. Taylor had himself been knighted by the government to “Sir

Richard” status just a month earlier. Taylor, a major employer of film industry technicians, told the media,

The mood is one of great concern . . . Wellington film technicians want to be heard. They want to be represented in these very bizarre and strange events that are going on right now . . . By the actions of a very limited few, a huge fraternity of filmmakers, technicians, and artists will be affected. (Wade 2010)

October 20 was also the date of significant union marches in major cities protesting broader and essentially unrelated government changes to employment laws.

Scene 6: Antiunion Protests

NZ Equity cancelled meetings in the main cities to avoid physical confrontation with the other industry workers. An estimated 1,500 workers marched from Taylor’s Wellington studios through the city anyway to protest what was still being portrayed to them as the union’s boycott action putting the production in jeopardy.

This only served to escalate the shrill rhetoric on behalf of Warner Bros., Jackson saying this,

The spectacle of [the union] suddenly cancelling their Wellington meeting because film workers wanted to express to them their concern at losing *The Hobbit* exemplifies the pure gutlessness of this small, self-centered group. They don’t appear to care about the repercussions of their actions on others, nor are they prepared to take responsibility for decisions made in their name. (Media release, Peter Jackson and Fran Walsh, Wingnut Productions, October 21, 2010)

Jackson and Walsh spat some particularly vitriolic personal invective at union federation president, Helen Kelly, the primary advocate publicly supporting NZ Equity (see, e.g., Wingnut and union statements on “The Hobbit.” Harper et al. 2010)

Scene 7: Nurturing the Fear of Moving Offshore

Jackson and Walsh announced that Warner Bros. executives were flying to New Zealand the following week “to make arrangements to move the production offshore.”

The rhetoric became ever more urgent and personal and persuasive. Specific facilities overseas were mentioned as being inspected—“a huge studio recently vacated by *Harry Potter*.” Jackson associates produced despairing quotes on behalf of Warner Bros.,

They are saying they need stability and certainty, neither of which are here. Our film industry used to have that. It used to be a place where people would look to New Zealand and say we can make a film there. Now they do not think that.

That's how much we've fallen in the eyes of the rest of the world. It's an absolute tragedy. (Fran Walsh, coproducer)

We can literally feel it slipping through our hands. We've had it. We've fought as hard as we can. We are in a situation where we are fighting to save it. Unfortunately, it feels to us like this conversation is already done. We don't know how far we have to go to retrieve the situation. Delays to shooting as a result of industrial action have already lost the studio millions of dollars. (Philippa Boyens, coproducer) (Harper et al. 2010)

This last statement is difficult to reconcile with the fact that the production had only gotten the go-ahead four days earlier.

Scene 8: Keeping Alive the Specter of Union Action

To the fact that the union had withdrawn the boycott and given an absolute assurance that there would be no disruption of the *Hobbit* movies, Jackson's eventual response was that it was too late; the studios had already lost confidence in New Zealand. The certainty that the dispute with the union continued to threaten the production, and indeed the New Zealand film industry, was reiterated time and again, despite the fact that there no longer was a dispute.

Government ministers, no doubt energized by the proximity to celebrity and by the opportunity to take free swings at unions, continued to sing with the choir. The Prime Minister—who once joked to David Letterman that he would personally greet American tourists at the airport—immediately announced that he was keen to meet the Warner Bros. executives in a bid to keep *The Hobbit* in New Zealand. He echoed the worry that the union action had irreparably undermined Warner Bros.' confidence in New Zealand.

Economic Development Minister Gerry Brownlee told breakfast television,

It's utterly appalling that they have been treated like this, and it's worse, I think, that we've got an Australian union purporting to represent the industry here in New Zealand.

The moment we had the “don't work” order on *The Hobbit* issued through the Australian union, we were cast into the uncertainty that a lot of the film world through other countries operates in. It's a dreadful situation and it's going to take a bit of work to even get future productions into good shape. (Harper et al. 2010)

In fact, as revealed in documents released in December 2010 under an Official Information Act request, Brownlee had been expressly advised by Jackson on October 18, 2010 (via an email to Brownlee's senior private secretary) that Warner Bros.

executives were unconcerned about the union action and were focused on the Bryson case, a case involving individual rights under law and having nothing to do with unions (Cheng 2011; Kelly 2011, 14). Brownlee nonetheless continued to misrepresent the situation, casting the union as the villain, including in a statement to Parliament on October 26, 2010 (*Hansard* 2010). Jackson and his associates also kept up the public pretense that the union action was the issue, well after having advised government ministers what Warner Bros. really wanted from them (Kelly 2011, 19).

The Prime Minister carried on the theme, now forewarning the public that the government was going to have to do something extraordinary to salvage the situation “created by the unions.”

I don't think we should write off our chances of retaining the movies . . . There's work to be done and the Government hasn't given up trying to do its best to secure the movies. This is a very successful growth area for New Zealand and to have the film industry destroyed on the back of the actions of the unions is, I think, reprehensible. (*New Zealand Herald* [NZPA] 2010a)

Scene 9: The Final Squeeze Play

The following day, the Finance Minister, Bill English, refused to rule out granting Warner Bros. additional financial incentives if that is what it took to keep the production in New Zealand. In a refreshing concession to reality, he allowed that it was possible that Warner Bros. was using the supposed dispute with the union to push an agenda for more tax breaks (Cheng 2010).

As Warner Bros. executives winged their way across the Pacific, public pressure mounted. On October 25, 2010, thousands of industry workers and members of the general public attended “Save our Hobbits” rallies around the country. Taylor was prominent in addressing the Wellington rally. Much of the rhetoric from rally organizers was personal, “showing support for Sir Peter in these his darkest days,” according to an actor who was credited with being the rally organizer. A statement from Jackson read at the rallies pushed the familiar buttons,

We don't open the doors to an Australian union . . . who destroy everything we have worked to build. Turning us into another state of Australia under the sway of a destructive organization carries the very real risk of destroying the great big heart that beats inside our films.

As an industry we are perfectly well-equipped through our various guilds to provide excellent terms and conditions for our film workers. If there are problems, it is up to us to use our guilds to resolve them. I have always seen the New Zealand film industry as a large, noisy, growing family. And I have always known the debt of gratitude that I owe to the people that make up that family. All of our people care deeply about this industry—they love their work. (Davison et al. 2010)

The following day, October 26, the Warner Bros. and New Line executives arrived in New Zealand and were motorcaded to closed meetings with the Prime Minister and other government ministers. Following those meetings, Key continued to blame the unions: “The commercial reality is that the actions of the unions have encouraged them to look at other countries, and other countries have better deals at the moment” (*New Zealand Herald* [NZPA] 2010b).

This was, again, despite his close colleague, Brownlee, having been advised by Jackson over a week earlier that the actions of the unions were not what was concerning Time Warner executives, and after both he and Brownlee had met with those same executives. Key did now acknowledge for the first time that the Warner Bros. executives wanted New Zealand law changed (Cheng 2010a). They had established that the government was prepared to capitulate; they were now demanding an unregulated industry labor market. For an antiunion, procorporate government, that would not be hard to swallow. Remarkably, Economic Development Minister Brownlee on the same day told Parliament that “Warner Bros. did not put any requirements on us to do anything.” He said that the government had simply come to the recognition that there were employment issues that needed to be sorted out (*Hansard* 2010a).

The End: More Subsidies and an “Immunized” Work Environment

Three days later the Warner executives left New Zealand, having changed New Zealand law to effectively strip movie-production workers—both the NZ Equity members and those who had marched so stridently to protest against the union—of basic employment rights, and leaving the work environment for movie production effectively union-free and unregulated. They left also having extracted some NZ\$34 million of additional taxpayer funds in subsidies and marketing support, beyond the estimated NZ\$65 million that had already been committed by the government.

Discussion

To summarize the story in a nutshell, Time Warner, a major global entertainment conglomerate, set out to improve the bottom line for its financing of the production of *The Hobbit* in New Zealand. It mounted a campaign that was successful to the tune of NZ\$34 million in extra government financial support for the project, and changes to employment law that immunize the industry against both union-negotiated and legislated protections for workers, both for the *Hobbit* production and for the future.

The objective of reducing production costs is routine and understandable; precisely what triggered this particular campaign is not entirely clear. Perhaps it was nothing more than opportunity. The *Hobbit* project was widely expected to be the most expensive movie project to be made to date, with an estimated cost of \$US500 million. The production had had a disrupted history, and reportedly had already accumulated legal fees exceeding \$US75 million as a consequence of disputes with rights holders (*New Zealand Herald* [NZPA] 2010c). In commissioning a prequel project to the

LOTR trilogy, Time Warner was clearly counting on the project for a substantial payday.

Even so, that a sovereign government of a first world country could be induced—or perhaps emboldened—to permanently strip an entire industry of workers of their employment rights, entitlements and protections, and codify a model that could be extended to other workers in other industries in the future, at the insistence of a foreign conglomerate is remarkable even in these days of global corporate capitalism. What explains how this happened?

A Failed Union Strategy

Having battled SAG, the Writers Guild, and other hardened, professional Hollywood unions over many decades, Warner Bros. strategists had little to fear from an organization of several hundred New Zealand actors. And in the end, the rather naïve strategy of a weak national union organization, even working together with a foreign parent union, challenging such a powerful conglomerate with an aggressive but ineffective boycott provided the opportunity for an all-out assault on the union. The union was no match for a global conglomerate, in either power or strategy. Among other strategic questions, it remains inexplicable why NZ Equity did not immediately and widely announce the end of its boycott when the decision was made to retreat.

The NZ Equity campaign was ill-advised and ineptly executed in virtually every respect. Confronting a powerhouse like Time Warner and a New Zealand icon like Peter Jackson with a threat and a boycott by perhaps six hundred underemployed actors was, at best, plucky. The union was not without other options. Haiven (2006) and Murphy (1997) have documented how film-industry unions and guilds elsewhere, confronted with contractor memberships and limited conventional bargaining power, have taken on new and entrepreneurial roles that actively assist members to obtain more regular work while allowing them to act collectively to some extent, and thereby retain membership in the organization while also making themselves valuable to film producers.

One secret to the success of Canadian unions in these respects is negotiating project agreements and facilitating the employment of project crews (Haiven 2006, 100-01). Arguably, NZ Equity, on advice of MEAA, was seeking to do just that for the *Hobbit* project, after failing to achieve project agreements on earlier film and television projects. However, just about everything went wrong, perhaps starting with the affiliation with MEAA.

While the need for strong support and the traditional international collaboration in a global industry centered elsewhere might have made affiliation with the MEAA seem an attractive prospect for NZ Equity, it was probably a strategic mistake. Any industry expertise that MEAA could bring to the campaign was offset by presenting a target for criticism and political and employer attack. In addition, MEAA was likely responsible for the campaign strategy. Australians are a brasher people than New Zealanders, and starting with an aggressive boycott is too aggressive a strategy for

New Zealanders to warm to. This is doubly so when the target of the boycott appeared to the public to be the iconic New Zealander Peter Jackson. And triply so when the union is ineffective in articulating the issues, circumstances, and need for the strategy to the media and public.

It may be that the affiliation with an Australian union also did not assist NZ Equity's relationship with the rest of the New Zealand union movement, which remained remarkably silent throughout the dispute. Only Helen Kelly, the president of the NZCTU, spoke prominently in support of NZ Equity. Strong unions with members sometimes engaged in below-the-line occupations in the industry might have been expected to speak out, but did not.

This failure to enlist the support of the union movement was another strategic failure. Likewise, the political wing of the labor movement, the opposition Labour Party, and its political ally, the Greens, were virtually invisible during the dispute, appearing only during the parliamentary debate on the overnight legislation, and even then appearing to be not entirely clear on the issues at stake (*Hansard* 2010a). It is apparent that NZ Equity and MEAA had not briefed either the union movement or those who might have been expected to be their political allies in preparing for the campaign.

Actors may have felt more kinship with others in the film-production industry, but there appears to have been no attempt to forge an action alliance there either. As noted earlier, industry workers were rallied against NZ Equity, and the protesters included both actors and technicians. The industry guilds—for technicians, writers, and directors—are active in efforts to support their members, in terms of both finding work and funds for it, and trying to influence minimum conditions. However, their impact in the latter respect is perhaps best indicated by the time that has passed—five or six years—since they were last consulted by SPADA over the *Pink Book* and *Blue Book* (and *White Book* for writers) voluntary codes. Nonetheless, it would seem again a strategic mistake on the part of NZ Equity to have not worked in close alliance with the guilds in their efforts to upgrade standards in the industry.

NZ Equity and MEAA appear to have not sought support elsewhere in the community either. There is a growing literature on the success, albeit isolated success, of unions in forging productive alliances with workers advocacy groups, professional groups, community organizations and service providers, political and charitable organizations, churches, and a myriad of others of like minds in a form of “social unionism” (Milkman, Bloom, and Navarro 2010; Tattersall 2010). Actors in films, television, and the theatre would seem likely to have natural allies with resources and positions to persuade in the arts and culture communities, but again no one was heard from during the dispute, and it has to be supposed that no efforts were made to build alliances with community organizations in a position to assist in either getting the message out or bringing a resolution home.

In short, NZ Equity launched a preemptive industrial strike against a far more powerful opponent, which was fronted by a revered New Zealand icon, without having taken even rudimentary steps to build a base of support for the campaign. The campaign quickly, and predictably, faltered and failed, but not before Time Warner saw and seized the opportunity to turn the union's action to its advantage.

Corporate Power

It is only speculation as to when Warner Bros. (or Time Warner) executives made the decision to negotiate further concessions beyond the funding already in place from the New Zealand government. It may have been as early as the point at which the FIA telegraphed that the “do not sign” notice would be put out to actors if the producers refused to negotiate with NZ Equity. Perhaps it was later when the notice actually went out. Or perhaps it was only after gauging initial public and political reaction to the boycott and the “threat” to New Zealand production of the project. At some relatively early point Warner Bros. set its sights on extracting major concessions.

Time Warner is estimated to be valued at about 90 percent of the total value of all domestic companies listed on the New Zealand stock exchange (Gaynor 2010). If the New Zealand government was seen as an easy mark, Warner Bros. was not without some resources for the campaign. It was a company, backed by a conglomerate with overwhelming power in money, resources, political and economic influence, strategic intelligence, media access and control, technology, and global reach. And behind it in the shadows were the rest of the “Sexopoly.”

Warner Bros. had substantial assets on the ground as well, assuring the backing of much of the national media and the public. A small country holds its heroes close. As the campaign unfolded, Sir Peter Jackson, now an established Hollywood insider, easily slipped into Kiwi costume and played the patriotic card in a variety of benefactor roles, including builder of the industry, provider of jobs, father figure to his workers, and defender against the Aussie invader who would turn New Zealand into a state of Australia only to plunder its film industry. As major employers of actors, technicians, and other industry workers on significant projects, Jackson and his business partner Sir Richard Taylor commanded significant influence over the workforce which they used extensively addressing the media, assembling crowds, and encouraging anti-union action.

The studios’ strategy had everything. It is a textbook example of an effective strategy to keep a workplace, an industry, or even a national labor market union-free and unregulated. The threat to pull the productions was introduced early, maintained throughout, and heightened as time went by, providing urgency to the negotiations, value to the concessions demanded, a basis for vilification of the union, and popular relief and gratitude when the deal was done.

The campaign employed what, in hindsight, was a predictable array of negotiation tactics: blaming the outside union agitators misleading the naïve Kiwis, promoting the notion of industry bosses and workers as “family” capable of sorting out their problems internally; portraying union actions as personal attacks and Jackson as “personally hurt” by the dispute; making personal attacks on union officials and actors fronting for the union, as well as employers actively involved in worker rallies, to turn workers frightened for their jobs against the union members; and preying on antiunion prejudices to stir up public pressure on the unions and the government—the time-honored strategies of fear and hatred.

Most mainstream New Zealand media editorials, columnists, bloggers, and television and radio news magazines were critical of the union most of the time, seldom digging below the surface laid by the studios' strategy (Rudman 2010). Only once the game was over, and particularly after the revealing papers were released under the Official Information Act in December 2010, did many New Zealand columnists and editorial writers start to wonder aloud whether the government and the country had been "had." Even then the most insightful popular analysis came not from New Zealand media, but from Hollywood itself (see, e.g., Handel [2010b]).

Ultimately Warner Bros. walked away with significant gains from the dispute. It is likely that none of it would have been possible without the strategic missteps by NZ Equity and the MEAA. But likewise, a bountiful outcome for Warner Bros. required the successful seduction of a sovereign government into sacrificing its citizens' rights for economic gain.

Political Pliability

With most New Zealand workers now out of unions and dependent on legislation for their rights and entitlements, the business-oriented government of Prime Minister Key that took office in 2008 had an agenda of reducing worker protections and entitlements to give employers a freer hand to run their businesses.

The beginnings of this program have been seen with the elimination of unfair dismissal protections for new employees, the "choice" for employees to surrender part of their statutory annual leave in exchange for cash, and other incremental reductions in worker protections and entitlements. These were the legislative changes protested by union marches in major cities on October 20, 2010, in the midst of the *Hobbit* dispute. Certainly, Time Warner and Warner Bros. strategists were entitled to see the National Party government as one that would not be offended by surrendering New Zealand workers' rights to placate the studios, provided there was no significant political fallout. Maintaining the pretense of a "union dispute" long after any threat from NZ Equity had passed was the insurance against political fallout.

As the dispute played out, government ministers were quick to join the chorus of union bashing begun by Jackson and industry—including SPADA—officials. It seems evident that, at this stage, they had no idea of the demands for legislative change that Warner Bros. intended putting on the table. They elected to stay with the program even as it turned blatantly dishonest after October 17, presumably because the pretense of a continuing union threat to the industry was the only available cover for the transaction that would gift the company the concessions it demanded. The government had been aware of the demands since October 18, and was now locked in to giving Warner Bros. what it wanted. Having stood with them so enthusiastically, rebuffing Jackson and Warner Bros. was not now an option politically available to the government.

While the realization that they had been so expertly "stage managed" must have stung, and the extraction of the additional millions might have hurt a little, government ministers would have ultimately enjoyed the excuse to deregulate a part of the

labor market in such an unconventional and radical way, and in a way that provides a model for application to other sectors in the future. Without the cover of the supposed “union dispute” such a dramatic and complete stripping of workers’ rights without the public scrutiny of parliamentary hearings would have been politically impossible.

Conclusions

Any labor-market regulatory regime represents a political balance between protecting working people and giving capital sufficient freedom of action to operate profitably. Business-oriented governments push in the direction of less protection for workers and more freedom for employers. At the extremes, market enthusiasts advocate little or no labor-market regulation. Worker-oriented governments push the reverse priorities. Unions argue that a core of worker protections and entitlements amount to fundamental human rights endorsed by the United Nations and the International Labour Organization (Wheeler 2000; Adams 2001), and should be enshrined in every labor-market regulatory regime.

In the case of the *Hobbit* project, the New Zealand government has chosen to accept what amounts to a complete deregulation of the labor market for a group of its citizens in order to accommodate the demands of a major international conglomerate offering investment and the promise of jobs in exchange.

This story could only take place in a political environment in which its leaders see workplace rights and protections not as basic, nonnegotiable human rights, but as something that can be exchanged for other goods like foreign investment or job creation, or simply to appease powerful foreign interests. The apparent absence of a political and social consensus supporting the fundamental rights of working people made it possible for Warner Bros. to successfully demand, and for the government to implement, these changes, and indeed to present them not as a necessary evil, but as an improvement in the position of New Zealand on the international market competing for major film productions. This is a step, albeit a narrow one, beyond what is conventionally envisioned to be the limits of deregulation in a modern industrial democracy.

It is ironic that actors coming to New Zealand to work on the *Hobbit* project work under the union-negotiated contracts of their home countries, supplemented by any individual “personal services” contracts. Neither Warner Bros., nor Jackson, nor the New Zealand government have suggested that they do otherwise. It is only New Zealand film-production workers who have been stripped of their rights. However the lower the floor is set in “peripheral” centers like New Zealand, the greater the creeping dangers for workers in the film industry everywhere, including at the core in Hollywood.

Postproduction

In July 2011, Prime Minister John Key made an official visit to the United States. He was entertained in Hollywood by the chief executives of Warner Bros. and New Line

Cinema, before travelling to Washington, D.C. There, in an understated but unequivocal indication of who had the power in the relationship, Warner Bros. had arranged for a replica Hobbit sword to be crafted by Taylor's Weta Workshop in New Zealand and presented to Mr. Key by the President of the United States as his official gift during Mr. Key's brief audience with the President (Watkins 2011).

Credits

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