

**EMPLOYMENT STANDARDS TRIBUNAL**  
In the matter of an appeal pursuant to Section 112 of the  
*Employment Standards Act* R.S.B.C. 1996, C. 113  
of a Determination issued on April 3, 1997.

**PANEL:** Geoffrey Crampton  
Richard Longpre  
John M. Orr

**FILE NO.:** 97/284

**DATE OF DECISION:** December 15, 1997

**DECISION**

**OVERVIEW**

This is an appeal under Section 112 of the *Employment Standards Act* (the “*Act*”) against a Determination issued on April 3, 1997 by the Director of Employment Standards (the “Director”).

The Determination found that I.A.T.S.E. LOCAL 891 (“IATSE”) had not contravened Section 10 of the *Act* by charging a \$20.00 fee for consideration of an application to become a “permittee”. The Determination found, *inter alia*, that this fee was properly attached to union membership, was in compliance with the union constitution and was consistent with the practice of many unions.

**ISSUE TO BE DECIDED**

The issue to be decided in this case is whether the \$20.00 fee which is levied by IATSE is properly classified as a union membership fee or whether it is a direct or indirect payment for obtaining employment or providing information about employers seeking employees, contrary to Section 10 of the *Act*.

**FACTS**

The Appellant was seeking employment in the motion picture production industry and made application to IATSE to become a “permittee”. IATSE required the payment of a non-refundable fee of twenty dollars for each department within IATSE in which the Appellant wished to be registered. IATSE did not accept the Appellant’s application indicating that it was unable to process the Appellant’s “permittee application” because no \$20.00 processing fee was included. It is this fee that the Appellant says contravenes Section 10 of the *Act*. On October 8, 1997 Counsel for IATSE notified the Tribunal in writing that:

The Executive Committee has resolved to apply the \$20.00 fee currently charged to permittees to that permittee’s initiation fee upon membership.  
(sic)

The Tribunal provided the Appellant with this information and requested a reply to indicate whether IATSE’s revised procedures would resolve the matter. It did not.

In the event the applicant is successful in obtaining membership in the Union, the cost of the administrative fee is deducted from the applicant’s initiation fee.

There are the following 21 departments within IATSE's jurisdiction:

Accounting	Grip	Publicity
Art	Hair	Script
Construction	Lighting	Security
Costume	Make-Up	Set Decorating
Editing	Painting	Sound
First Aid/Craft Svc.	Production Office	Special Effects
Greens	Props	Video

IATSE administers a form of "hiring hall" for movie producers. It offers to movie producers a pool of skilled and trained technicians to fill numerous categories of jobs required for a successful production. The Union is composed of 21 departments which are made up of members qualified to work in the numerous job categories in movie productions. It received approximately 1,000 applications for permittee status during 1996 and approximately 700 applications between January and September, 1997.

IATSE provided a written submission to the Director dated May 29, 1996 and a further written submission to the Tribunal dated June 6, 1997.

According to IATSE, each application must be processed by its staff and is referred to the various departments for careful review and consideration. The fee does not off-set the cost to the members of the Union who volunteer their time to review the applications so as to ensure that applicants meet the minimum requirements of the different departments of the Union.

In addition to a list of active members, IATSE maintains a list of "permittees". Through the permittee process, a person gains the experience required to become a member of the Union.

The Appellant provided a copy of a three page "Application Information" package which refers to the \$20.00 fee as a "processing fee" and refers to the application as a "Permittee" application. The document states on page two:

Please note that this is not an application for membership. It is an application for "Permittee" status.

Permittees are dispatched when a position cannot be filled by a Union member.

Permittees should be advised that all calls for work must be through the Union Office or cleared through the Union Office.

The document goes on to explain how to seek membership in IATSE and indicates that a permittee must accumulate 90 days of work experience accrued over three productions with a minimum of 20 days under each of three different department heads.

The document entitled “Important Application Information for I.A.T.S.E. Local 891” describes the process for becoming a member of the Local and stipulates in bold lettering that the application to individual departments is **NOT** an application for membership into IATSE. It states the applicant may be referred to work on the production of a movie as a “Permittee” in the event there are no Union members available.

It also states:

We represent professional Film Technicians; ***applications lacking in professional qualifications will not be considered.***

The Determination (at page 2) is based on the following considerations:

- 1) **That the fee that is charged is appropriate and passed by the membership of the union involved;**
- 2) That this fee is in accordance with the constitution and By-laws of the Union;
- 3) That this fee is a benefit for the members of the union which operates as a “closed shop”;
- 4) That this practice is consistent with the practices of many unions operating under similar Constitutions and is consistent with the practice of obtaining benefits on behalf of the whole membership;
- 5) That this fee is properly attached to union membership;
- 6) That this fee is a one-time fee for each department but there may be further fees should applications be made to different departments and that once membership is granted to a specific department, no further fees apply; and
- 7) That this fee is in regard to the obligation of the union under Section 12 of the Labour Relations Code to fairly represent its members.

**ANALYSIS**

The Appellant submits that IATSE's constitution and rules cannot exempt it from the provisions of the *Act* and that the Director is wrong in considering the Union's practices, rules, or constitution in classifying the fee. The Appellant points out that IATSE's constitution applies only to its members and that it is made very clear throughout the process that the application for "permittee" status is not an application for Union membership.

The Appellant submits that the only way someone can apply for work in the motion picture industry is to apply through the Union. The Union accepts the application and dispatches the permittee (if no union member is available) to an employer seeking a worker. The Appellant says there is no other way to get such employment in the industry. Likewise a production company seeking employees deals through the Union and the Union allocates its members in accordance with the Union rules and procedures. If IATSE cannot provide a Union member then it will provide a permittee who will be allocated the work.

We do not accept the Appellant's submission on these points. We also note that the Determination is factually inaccurate in describing the movie production industry as a "closed shop." The evidence does not support a finding that IATSE operates a "closed shop". That is, being a member of IATSE or a "permittee" is not the only means by which a person can gain employment in the movie production industry. Producers can, and do, produce movies in B.C. without entering into a collective agreement with IATSE or they may enter into a collective agreement with another union. Other unions in the movie production industry are certified bargaining agents for the same kind of work that IATSE members perform. IATSE may enter into a collective agreement with a movie producer which binds the producer to the "hiring hall" provision in the collective agreement. A "hiring hall" provision does not create a "closed shop."

We also do not accept IATSE's argument that the \$20.00 processing fee can be justified on the ground that it is a reasonable and justifiable means for recovering legitimate expenses associated with screening applications.

In our view, the test which we should adopt to determine whether to cancel or confirm the Determination is to ask whether the \$20.00 fee was charged for "...employing or obtaining employment for" the Appellant.

Section 10 of the Act states, in part, as follows:

**No charge for hiring or providing information**

10. (1) a person must not request, charge or receive, directly or indirectly, from a person seeking employment a payment for
  - (a) employing or obtaining employment for the person seeking employment, or

(b) **providing information about employers seeking employees.**

In its May 29 submission, IATSE refers to the fee as a processing fee for “applying for membership in the Union” and submits:

As we explained it is our view that the Union is entitled to charge such a fee as it is not a payment for the Union obtaining employment for a potential member or providing information about employers who may be seeking employees, but is rather a charge related directly to an individual’s request to become a member of the Union.

The Union also collects dues from its members on a regular basis and, as we have described, collects this processing fee in order to commence its consideration of the individual’s application for membership.

In its June 6th submission, IATSE reiterates that the application in question was not an application for membership. It was an application for permittee status. To become a member of the Union, it is first necessary to become a permittee as stated in the document entitled “I.A.T.S.E. Local 891 - Application Information”:

The permittees use their “permit time” in order to gain the requisite number of hours to eventually entitle them to membership in the Union.

In other words, becoming a permittee is the first step in becoming a member of the Union.

According to IATSE, the Appellant is wrong when he submits that:

“I have to remind you that my dispute is over the fact that I.A.T.S.E. is charging money, twenty dollars for each position applied for.”

Also, according to IATSE:

It is apparent from these comments that the Appellant believes that by filling out the application form in question he was applying for a position and that to request \$20.00 for each position applied for is to receive a payment for “employing or obtaining employment for the person seeking employment” contrary to Section 10 of the *Act*. This mischaracterization of the processing fee is at the heart of this matter. First, I.A.T.S.E. Local 891 is not an employer, it is a union. Secondly, the application in question is not an application for a position. It is an application for permittee status, which is the first step in obtaining membership in the union. The fact that this application was to obtain permittee status and not a “position” is made clear in a document entitled “IATSE Local 891 - Application Information,” which accompanies the application:

Please note that this is not an application for membership. It is an application for “Permittee” status. Should you be approved, you will be granted “Permittee” status. You are classified as “Permittee” until approved for membership.

The key finding of fact in our decision is that we accept that the fee in question is not a fee which the Union collects for “employing or obtaining employment for the person seeking the employment”. It is a fee which the Union collects for the processing of permittee status applications. Payment of the \$20.00 processing fee does not mean that the applicant will obtain employment. All it means is that his/her application for permittee status will be processed. We find that the \$20.00 fee is a reasonable amount in all the circumstances.

IATSE submits that this is a common and proper practice and that if unions operating hiring halls were to be prohibited from collecting union dues as a result of Section 10 of the *Act* then unions would be unable to maintain sufficient finances in order to function. It is important to note, in our opinion, that the requirements of Section 10 deal with hiring or providing information and these requirements focus on employers or their agents rather than trade unions.

Section 8 of the *Interpretation Act* provides as follows:

**Enactment remedial**

8. Every enactment shall be construed as being remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

The purposes of the *Employment Standards Act* are set out in section 2 and include as one purpose “...to promote the fair treatment of employees and to encourage open communication between employers and employees.” Section 10 must be interpreted in such a way as to give it a fair large and liberal interpretation to attain the object of encouraging open communication between employer and employee and the fair treatment of the employee.

We find that the distinction between IATSE’s processing fee and a fee for employing or obtaining employment is made clear when one considers the case of a person applying for permittee status who is found to be unqualified. Such a person pays \$20.00 to have his application processed. That is the service that he gets for \$20.00. He does not pay the \$20.00 on the understanding that he will obtain employment. He knows that all he will get for his \$20.00 is a consideration of his application for permittee status. He knows that if he is found to be unqualified, then he will not be granted permittee status. The Union levies the \$20.00 not for “employing or obtaining employment for the person seeking employment” but for considering that person’s application for permittee status. Indeed, even if a person’s application for permittee status is accepted, IATSE does not guarantee that the applicant will obtain employment. As the document “I.A.T.S.E. Local 891 - Application Information” states:

Permittees are dispatched when a position cannot be filled by a Union member. We have over four thousand Permittees on our rosters. Therefore it can take considerable time before you may receive a call for work.

Nowhere in the document entitled "I.A.T.S.E. Local 891 - Application Information" does the Union state or imply that in exchange for the \$20.00 fee the Union will employ or obtain employment for the person seeking employment. Indeed, the Appellant recognizes this in his/her submission dated May 29:

"There is no promise by the union that the fee will guarantee me a place on the dispatch list."

In summary, we have concluded that the \$20.00 fee is not a payment to the Union for obtaining employment for a potential member or providing information about employers who may be seeking employees. We have also concluded that the process of becoming a "permittee" or a member of IATSE is separate and distinct from the process of "employing or obtaining employment."



**ORDER**

We order, under Section 115 of the *Act*, that the Determination be confirmed.

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**Geoffrey Crampton**  
**Chair**  
**Employment Standards Tribunal**



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**Richard Longpre**  
**Adjudicator**  
**Employment Standards Tribunal**



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**John Orr**  
**Adjudicator**  
**Employment Standards Tribunal**