

**METROPOLITAN EXPOSITION-RECREATION COMMISSION**

**Resolution 97-33**

For the Purpose of Ratifying an Impact Agreement with IATSE Local 28.

Whereas, in Resolution No. 97-15 the Commission made a business decision to discontinue providing stage labor services to users of its facilities; and

Whereas, the Commission's designated representatives for labor relations thereupon entered into impact negotiations with the stagehands' Union, IATSE Local 28; and

Whereas, the Commission's designated representatives for labor relations and the union's designated bargaining representatives have reached a signed tentative agreement regarding the impact and implementation of the Commission's previously reached business decision; and

Whereas, the tentative agreement is subject to ratification by a vote of the Union membership on behalf of the Union, and by a vote of the Commission on behalf of MERC; and,

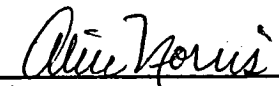
Whereas, the Union membership has duly ratified the tentative agreement; and,

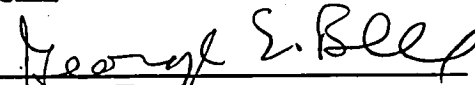
Whereas, MERC believes that the tentative agreement is fair, reasonable, and in the public interest,

**THEREFORE BE IT RESOLVED:**

1. The Commission hereby ratifies the tentative agreement attached to this resolution as Exhibit A.
2. The Commission's designated representatives for labor relations are authorized and directed to sign a collective bargaining agreement reflecting the terms of the tentative agreement on the Commission's behalf, and forward that signed agreement to the Union for formal signing.

Passed by the Commission on June 11, 1997.

  
\_\_\_\_\_  
Chair

  
\_\_\_\_\_  
Secretary-Treasurer

APPROVED AS TO FORM:  
Daniel B. Cooper, General Counsel

By:   
\_\_\_\_\_  
Kathleen Pool  
Senior Assistant Counsel

## MERC Staff Report

**Agenda Item/Issue:** Ratifying the Impact Agreement with IATSE Local 28

**Resolution No.:** 97-33

**Date:** June 11, 1997

**Presented by:** Harriet Sherburne  
Phil Knudsen  
Kathleen Pool

**Background Analysis:** On April 9, 1997, the Commission passed MERC resolution 97-15, ending the Commission's role in providing stage labor services to users of its facilities.

PCPA stagehands have been members of IATSE local 28; terms and conditions of employment have been negotiated through a contract between PCPA and the union. As a result, the decision to cease providing stage labor to users necessitated impact bargaining with the union and the negotiation of an impact agreement. A tentative agreement has been reached between MERC and the Union that now requires ratification by the Commission.

### **Provisions of the Tentative Agreement:**

1. A House Crew of Department Heads for each venue will be selected by PCPA to handle supervision/oversight, maintenance and repair, and serve as Department Heads during performances. The House Crew Department Heads will be members of IATSE local 28; a contract with terms and conditions of employment will be negotiated between MERC and the union. The House Heads will ensure continuity of service and labor for sequential events, enforce PCPA rules, procedures, and safety standards, and ensure accurate configuration of the Halls for the subsequent User. A full background analysis is attached in Exhibit 1.
2. Following transfer of a government function to another government entity or to a nonprofit corporation, Oregon law provides the affected employees with certain protections, including the right to be paid at the prior pay rate for one year and the right to remain in the previous employers retirement system for one year. MERC and the Union agree that these statutory protections should apply to stage labor which will be provided by nonprofit companies in the future. All costs associated with the employee benefits retained under this statute will be borne by the new employers.
3. This provision assures that user-supplied stage labor will be adequately trained and qualified, and will not present a hazard to either the MERC facilities or the House Heads working in those facilities.

4. One possible adverse impact of the change to user-supplied labor is a recurrence of an historic problem—presenters who leave town without paying the stage labor. For users who do not have ongoing contracts with IATSE Local 28, MERC agrees to withhold the cost of stage labor, as certified by IATSE, from the receipts paid to the User. IATSE agrees to indemnify MERC if the presenter claims the wrong amount was withheld. The withholding provision will be incorporated into MERC's user contracts.
5. This provision continues the historic practice of allowing IATSE Local 28 to train stagehands on MERC equipment and in MERC facilities, and of allowing them to inspect the equipment for safety problems.
6. Both the employer and the employee contribute to the PERS retirement system. But five years of employment are required for the employer contributions to vest for the benefit of the employee. Ten IATSE members will lose the employer contributions as a result of the change to user-supplied labor. Under this provision of the agreement, MERC agrees to make an equivalent payment into a qualified retirement plan for nine of those persons. One additional employee may or may not vest in the coming year, because of the statute discussed in paragraph 2 above. MERC will make an equivalent payment on behalf of that employee if his employer contributions do not vest in the coming year.
7. The impact bargaining agreement covers primarily issues related to the transfer to user-supplied stage labor. Except as covered in this agreement, issues relating to the hiring of House Heads at MERC facilities will be addressed in a future contract. Additionally, MERC has agreed to bargain the issue of just cause for discharge in the future negotiations.

**Fiscal Impact:**

**Fiscal impact of the House Crew:** Most of the cost for the House Crew will be recovered through a 'House Labor' charge to the User. The total estimated personal service cost of the House Crew Department Heads, including benefits and overtime, is \$336,817. It is expected that approximately \$227,464 of the total House Crew cost will be recovered by passing the House Labor charge through to the User, with the balance to be covered in full by the \$109,353 budgeted in the 1997/98 budget for maintenance, repair, and supervision. (The estimated budget for the House Crew is in Attachment B of Exhibit 1).

**Staff report**  
**MERC resolution 97-33**  
**Page 3**

Note: This is a year of transition to a new operational structure. The estimated budget for House Crew Department Heads is the very minimum deemed necessary under the new arrangements to handle the tasks outlined above. It will be possible after a period of six months to assess whether the time and rates are adequate to cover the shifts and workload in the Halls, which are in very active use (with the Civic and ASCH operating at capacity).

PERS provision fiscal impact: The impact of the PERS provision is in two increments:  
1) The amount due to a 401K or designated IRA in July 1997 is approximately \$22,000.  
2) The amount potentially due in July 1998 is expected to be approximately \$11,000; however this cannot be determined until the end of fiscal year 1997-98.

Review by PCPA Advisory Committee: The tentative Impact Agreement has been reviewed by the PCPA Advisory Committee.

Recommendation: Staff recommends that the Commission ratify the tentative Impact Agreement with IATSE Local 28.

**PORTLAND CENTER FOR THE PERFORMING ARTS**  
**May 22, 1997**

**Proposed operational structure and procedures for implementation of MERC Resolution 97-15, ending the commission's role in providing stage labor.**

**I. BACKGROUND**

Pursuant to MERC resolution 97-15, passed by the Commission on April 9, 1997, as of July 1, 1997, the Commission shall no longer provide stage labor services to users of its facilities.

Since 1990, PCPA has acted as a governmental 'middleman' between its customers (users) and the employees who perform stage hand labor for events taking place at its facilities, by employing the stagehands directly and "passing through" this cost to the customers. The Commission determined that this service detracted from PCPA's primary role to operate, manage, and maintain its facilities - to serve as landlord of the Halls.

**Stage hand labor situation prior to 1990**

Prior to 1990 the presenters of shows at PCPA had the option to employ stagehands directly. In practice, stagehands were either employees of the City of Portland (for the smaller shows) or of the larger presenters. IATSE local 28 has in practice been the exclusive provider of stage labor to Civic Auditorium and Arlene Schnitzer Concert Hall (ASCH) from the time these facilities opened to the present. Tygres Heart Theatre and Tears of Joy use their own staff for show set-up with one union supervisor provided and paid for by PCPA in the Winningstad. Other users of the Winningstad use union reimbursed labor. Users of the Intermediate Theatre use a combination of their own experienced staff and four union department heads through reimbursed labor.

**Implications of the change**

**Key implications of ending the current system that must be taken into account in formulating a new operational structure are:**

- **Whereas stagehands have been previously accountable to MERC as their employer, they will now be accountable to their new employer, the User.**
- **As employees of MERC, stagehands did 'double duty,' performing supervision and maintenance and repair of equipment and stage facilities while on call for show production.**
- **MERC as the employer guaranteed continuity of service and labor: facilitating coordination among consecutive users regarding stage configurations; handling repair and maintenance tasks that transcend more than one show; and ensuring that crews were familiar with the Halls and proper operation of the equipment. There is no longer a guarantee that the same stage crews will be serving different sequential Users, or that these crews will be familiar with the Halls and equipment.**

### Differences today from period prior to 1990

There are significant differences today in conditions that affect stage labor compared to the situation that prevailed before 1990, including:

- Bookings of complex shows have increased dramatically: stage crews are in the large Halls virtually every day of the year and operate under tighter deadlines.
- Given these tighter deadlines, more detailed coordination is needed between crews of consecutive shows regarding stage configurations and turnarounds. An example is conversion of the concert shell to other uses at ASCH.
- Sound and light and other equipment have become extremely sophisticated – some is state of the art – requiring highly skilled and specialized labor for operation. An example is the 'obsession' light board used by Portland Center Stage in the Intermediate Theatre – there is only one person in Portland, a PCPA employee, who has the skills and training to operate this light board.
- The cost of equipment has risen commensurately with its increasing sophistication, and replacement costs have soared. PCPA has much more invested in equipment than ever before, and consequently a greater stake in ensuring proper care, operation and maintenance of this investment.
- The greater number of complex shows requires a larger and more skilled work force for multiple performances of dance, opera, musical theatre and concerts.
- PCPA has recently undertaken a host of capital improvements, and many more significant improvements are planned over the next few years. These investments have increased maintenance needs.
- The number of Halls doubled with opening of New Theatre building in 1987. The stage configurations, equipment, and characteristics are unique in each hall.

### MERC/PCPA role in future

With the elimination of its 'middleman' role, PCPA will now serve as landlord, leasing the Halls (including equipment) to the User. As landlord, PCPA remains responsible for maintenance and repair of its Halls and equipment, and for supervision to enforce house rules, procedures, and safety standards.

## **II. PROPOSED OPERATIONAL STRUCTURE AND PROCEDURES**

To fulfill PCPA's responsibilities as landlord of the Halls, a new operational structure is proposed that is designed to ensure the following:

- Clear delineation of PCPA (lessor) and User (lessee) responsibilities and accountability.
- Adequate supervision of stage crews with respect to matters including: proper operation and care of equipment, enforcement of house rules and procedures, and leaving Halls in standard configuration or agreed upon configuration for the next User.
- User accountability to PCPA for returning the Halls and equipment in the same condition that they were in when leased.
- Maintenance and repair of PCPA facilities and equipment.
- An adequate level of continuity of service and stage labor.

### **1. Establish House Crew Department Heads:**

- A House Crew of Department Heads for each venue would be established by PCPA to handle supervision/oversight, maintenance and repair, and serve as Department Heads during performances. The crew would provide continuity of service and labor for sequential events, enforce PCPA rules and procedures, and ensure accurate configuration of the Halls for the subsequent User. The House Crew model is standard for stage labor (see attachment A).
- Most of the cost for the House Crew would be recovered through a 'House Labor' charge to the User. The net stage labor expense to the User would not be greater than the sum previously paid as 'reimbursed labor.' Now, that labor would be split between the House Crew and the union crew that will be under the User's employ. Pay rates and benefit packages would be set in line with prevailing rates to make this cost-effective for the User.
- The listed House Crew Department Heads would be members of IATSE local 28; a contract with terms and conditions of employment would be negotiated between MERC and the union. In order to meet peak demand and prolonged schedules, the list could contain 15-20 names.
- The budget for House Crew Department Heads is the very minimum deemed necessary under the new arrangements to handle the tasks outlined above: This initial transition year will provide the opportunity to assess whether the time and rates are adequate to cover the shifts and workload in the Halls, which are in very active use (with the Civic and ASCH operating at capacity).

2. **Revise User contracts:**

- To strengthen User responsibility provisions, including:
  - User responsibility, as sole employer of record for stagehands on supplemental crews, for worker safety and compliance with law including workers compensation, unemployment insurance, state and local taxes overtime pay, etc. (with the exception of House Labor).
  - User assumption of risk of all claims relating to damage to the equipment, excluding ordinary wear and tear.
  - User assumption of risk and responsibility for any and all damages to the buildings or equipment caused by acts of User or User's agents, employees, patrons, guests or artists, whether accidental or otherwise.
  - User responsibility for leaving the building and equipment in the same condition as existed on the date the User took possession, excluding normal wear and tear
- To incorporate provisions specifying the Department Heads to be provided by PCPA, at the expense of the User, through a 'House Labor' charge; supplemental labor required to be provided by the User, and standards for qualified labor.

3. **Create specification of standards for qualified labor:**

- To ensure adequate technical skills, experience, training, and knowledge of Halls and equipment in stage labor employed by users.
- To be included as an integral part of the User contract.

4. **Formulate House Rules and Procedures:**

- Specify standard configuration for each hall.
- Spell out policies and procedures for safety, backstage, technical, house, etc.
- To be included as an integral part of the User contract.

5. **Require user to post appropriate security for Halls and equipment, at discretion of PCPA**

6. **Proposed Budget for House Crew Department Heads:**

The total estimated personal service cost of the House Crew Department Heads, including benefits and overtime, is \$336,817. It is expected that approximately \$227,464 of the total House Crew cost will be recovered by passing the House Labor charge through to the User, with the balance to be covered in full by the \$109,353 budgeted in the 1997/98 budget for maintenance, repair, and supervision. New revenue and expenditure lines will be created in the PCPA budget for 'House Labor.' As noted above, this is a year of transition to a new operational structure. The estimates of hours and rates are as accurate as possible given this context. It will be possible to undertake an initial assessment of the adequacy of hours and staff budgeted after a period of six months. The estimated budget is in attachment B.



**House Crews at Selected Comparable Performing Arts Centers**

**Note: All centers listed are reimbursed by the User for show-related labor performed by House Crews**

**Seattle Center (Seattle, Washington)**

Key Arena: 16,000 seats  
Mercer Arena: 6000 seats  
Opera House: 3099 seats  
Exhibit Hall: 2200 seats  
House Crew: 8 full time represented employees

**Wortham Theatre Center (Houston, Texas)**

Brown Theatre: 2174 seats  
Cullen Theatre: 1065 seats  
House Crew: 4 full time represented employees in Brown Theatre  
4 part time represented employees in Cullen Theatre

**Raymond F. Kravis Center (West Palm Beach, Florida)**

Dreyfoos Hall: 2189 seats  
Gosman Amphitheatre: 1700 seats  
Rinker Playhouse: 300 seats  
House Crew: 5 full time represented employees in Dreyfoos Hall  
2 full time represented employees in Gosman  
2 full time represented employees in Rinker

**Playhouse Square Center (Cleveland, Ohio)**

State Theatre: 3198 seats  
Palace Theatre: 2716 seats  
Ohio Theatre: 1035 seats  
House Crew: 3 full time represented employees in State Theatre  
2 full time represented employees in Palace and Ohio Theatres

**5<sup>th</sup> Avenue Theatre (Seattle, Washington)**

2115 seats  
House Crew: 13 part time represented employees: 5 department heads, 5 assistant department heads, 3 keys (electricians). These employees are scheduled several months out and guaranteed these positions.

**Cerritos Center for the Performing Arts (Cerritos, California)**

1800 seats  
House Crew: 5 full-time represented employees (AFSME represented department heads)

Proposed House Crew Budget  
Fiscal Year 1997-98

House Crew	12,528 hrs @ \$17.00 hr.	\$212,976	Total Wages
		\$49,139	Overtime -- 1927hrs. x \$25.5
		<u>74,703</u>	Benefits @ 28.5%
		<u>336,817</u>	Total Personal Services
		34,910	Budgeted P.S. /Stagehands
		17,220	Budgeted Overtime for Stagehands
		32,970	Set-up Supervisor FY 9798
		<u>24,253</u>	Benefits for all of the above
		109,353	Budgeted Resources FY 97-98
		<u>227,464</u>	Projected Reimbursement
Total Resources		<u>336,817</u>	( 10127.5 hrs @ \$22.46)
			(\$22.46 is exclusive of all Administrative Costs)

Operations Labor Billed in FY 96-97	Hrs to bill FY 97-98
Civic 48%	4,861.2
ASCH 29%	2,937.0
Intermd 16%	1,620.4
Winy 7%	708.9
	<u>10127.5</u>

**IATSE Local 28/MERC  
Tentative Agreement  
IMPACT BARGAINING AGREEMENT**

1. The parties recognize and acknowledge that, as a lessor of facilities, MERC has an interest in maintaining its property and equipment. In order to achieve the necessary continuity in the operation and oversight of equipment and facilities, MERC will enter into a labor contract with IATSE Local 28 to employ stage labor to serve as house heads for PCPA venues (Civic Auditorium, Arlene Schnitzer Hall, Intermediate Theatre and the Winningstad Theatre. MERC may assign department heads to work at the Civic Stadium). House heads will be at-will employees, and will be selected by MERC. Procedures for termination or discipline will be bargained.
2. MERC and IATSE agree that ORS 236.605 et seq. should apply to the transfer of stage labor from MERC to Oregon non-profit organizations. The parties recognize that MERC cannot guarantee the application of the statutes by future employers or by courts or agencies. However, MERC will support IATSE argument for the application of these statutes before any relevant agency, tribunal or other entity.
3. The parties acknowledge and agree that the stagehands who are currently employed by MERC are well-trained and well-qualified. With respect to stage labor supplied directly by users, MERC will require that the user establish to the satisfaction of MERC that the local stage labor (i.e., excluding full-time supervisory employees of the user) being employed is also trained and qualified, as demonstrated by prior service as a stagehand with MERC, enrollment in or completion of an apprenticeship program registered with the Oregon Bureau of Labor, or its equivalent.
4. MERC acknowledges that the potential for non-payment of wages by users is a significant impact of its decision not to employ stagehands directly from IATSE Local 28. For any user that employs stage labor but is not signatory to a contract with IATSE, MERC agrees it will withhold from available gate receipts within its possession an amount requested by the Union to cover wage obligations to stagehands. IATSE Local 28 will defend and hold MERC harmless from any claims of overwithholding or improper withholding.
5. MERC agrees to continue the following rights of IATSE Local 28 and its members:
  - (a) use of equipment/facilities for training (Article 1.3(d)); and
  - (b) inspection privileges (Article 8.1).
6. The parties recognize that the impact of this change includes the loss of employer-paid PERS contributions for employees who are not vested in PERS. On behalf of the employees listed in the attached Appendix A, MERC will contribute to a designated IRA account or 401K plan an amount equal to the PERS contributions lost by each employee as of June 30, 1997. The funds will be held in reserve for any employee with four or more years of PERS service.

and the obligation will lapse if the employer-paid contributions of PERS vest prior to June 30, 1998.

7. The existing labor agreement between the parties shall terminate effective June 30, 1997. Effective immediately upon the ratification by both parties of this Impact Agreement, the parties shall begin bargaining in good faith as required by Oregon law with respect to the terms and conditions of employment for those Department Heads who will remain employed by MERC pursuant to paragraph 1 of this Impact Agreement, provided that those terms and conditions of employment for such individuals which have been addressed herein shall be conclusive, final and binding on the parties and shall not be reopened by either party in the subsequent bargaining called for by this Impact Agreement.

kaj  
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6/6/97

MERC LOCAL 28														
PERS Members Not Vested As of 4/30/97														
Employer paid PERS														
Name	SSN	Elig Date	1993	1994	1995	1996	1997	TOTAL						
1. Andreason, Karen	543-66-3807	12/01/85						\$1,248.52						
2. Jon A. Edwards	543-74-1672	09/01/85						\$1,439.09						
3. Fagnani, Gina	324-60-4764	10/04/84						\$6,381.90						
4. Ferguson, Dana C.	267-48-6838	09/01/85						\$1,903.38						
5. Hofmeister, Robin	143-52-3845	12/01/85						\$1,419.65						
6. Irwin, Andrew W.	589-80-2552	12/01/85						\$1,385.10						
7. Lykins, James W.	411-82-6038	06/01/86						\$2,643.68						
8. Mazuras, Glenn C.	347-50-1108	04/01/84						\$10,795.30						
9. Schreiner, Richard L.	305-62-5897	03/01/85						\$4,323.03						
10. Stimpson, Elen	542-02-7844	08/01/88						\$1,052.96						
<b>TOTAL</b>				\$0.00	\$0.00	\$0.00	\$0.00	\$32,802.61						
1997 earnings only														
Name	SSN	Elig Date												
Barker, Clinton	453-81-1828	2/18/87												
Duarte, Steve	542-84-3047	1/16/87												
Miyahira, Linda	571-53-5343	2/18/87										\$0.00		
<b>TOTAL</b>														

**S M I T H**  
**G A M S O N**  
**D I A M O N D**  
**& O L N E Y**  
ATTORNEYS AT LAW

Arthur J. Diamond  
Paul B. Chutkan  
Margaret S. Olney  
Marilyn A. Smith

\* Member Oregon and  
Washington Bars

June 6, 1997

VIA FACSIMILE (503) 797-1798  
AND REGULAR MAIL

Phil Knudsen  
Labor Relations Manager  
METRO  
600 N.E. Grand Avenue  
Portland, Oregon 97232

RE: IATSE Local 28/MERC Impact Bargaining Agreement  
Our File No. 1380

Dear Phil:

This will confirm our telephone conversation of June 6. Local 28 accepts the agreement contained in John DiScullo's May 22 letter, with the addition of the sentence at the end of paragraph one that you added at our meeting on June 5. This acceptance is with the express understanding that the intent of the new language is to obligate the employer to bargain to completion (but not necessarily to agree) on employee proposals concerning termination and discipline, including but not limited to proposals regarding "just cause" for discipline or termination. I believe this statement accurately represents our discussions over the phone today and at the bargaining table yesterday. If this accurately reflects MERC's understanding, then

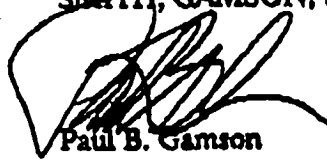
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Phone (503) 229-0400 • Fax (503) 229-0614

Phil Knudsen  
June 6, 1997  
Page 2

my client has authorized me to inform you that we have an agreement. Please let me know at your earliest convenience.

Sincerely,

SMITH, GAMSON, DIAMOND & OLNEY



Paul B. Gamson

PBG/tcc

Enclosure

cc: John DiScullo  
Tom Bugas  
Susan Traynor  
Jim Burbach

File: 887knudsen.12