

ENTERTAINMENT, MEDIA & SPORTS

>>ALERT

WILL WGA/DGA “PATTERN” HEAD OFF POTENTIAL HOLLYWOOD STRIKE AS SAG-AFTRA APPROACHES DEADLINE FOR NEW CBA?

After much hand wringing, a strike that would have significantly impacted the entertainment industry was narrowly avoided last month when the Writers Guild of America (WGA) and the Alliance of Motion Picture and Television Producers (AMPTP) agreed to terms of a new collectively bargained agreement for writers’ services.

Late last month, the Screen Actors Guild-American Federation of Television and Radio Artists (SAG-AFTRA) began negotiations on its new collective bargaining agreement, set to take effect once the current agreement expires on July 1. With the SAG-AFTRA negotiations proceeding under a thick veil of secrecy, the pertinent question is: will the sides be able to identify (or even want to use) a “pattern” established in the WGA and the less-contentious Directors Guild of America (DGA) negotiations to guide the SAG-AFTRA talks, or could a potential deadlock on actor-specific issues bring the industry back to the brink of a work stoppage?

THE TENUOUS WGA/DGA “PATTERN”

Collective bargaining agreements in the entertainment industry are renegotiated every three years, and references to “pattern bargaining” – essentially, the notion that the terms of whichever guild(s) most recently concluded negotiations should

apply to the remaining deals – can sometimes be prevalent. Either side may use the pattern argument to justify holding firm on a lucrative bargaining position.

Notably, there has not been much industry chatter about pattern bargaining this cycle. While the DGA and WGA shared some of the same basic concerns addressing changes to the industry’s business model brought on by the recent explosion of digital, internet and on-demand services, the two guilds fought hard for separate concrete concessions to deal with these changes.

AGREEMENT SPECIFICS

For example, in response to the rise of subscription video on demand (SVOD) platforms, the DGA advocated for increased residuals for high-budget SVOD productions, claiming a significant victory in more than tripling those residuals. But on the WGA side, writers were more concerned about

THE BOTTOM LINE

Although early signs indicate that SAG-AFTRA and the AMPTP should be able to reach a new collective bargaining agreement relatively smoothly, if the union determines that the new media environment requires substantial changes specific to actors’ needs, Hollywood could be in for the second major nail-biter of 2017.

the move toward shorter seasons, fueled in large part by SVOD “binging” culture, and fought hardest for protections for writers working on 6-13 episode seasons, as opposed to traditional 22-24 episode broadcast seasons.

Similarly, the DGA agreed to a 2.5% wage increase in the first year, and 3% wage increases in each of the second and third year of the contract,

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with just a 0.5% increase in employer contributions to the pension plan. The WGA, with more concern about the long-term financial viability of its pensions, opted for smaller wage increases (2%, 2.5% and 2.5% in each year) in exchange for a stronger infusion of cash into the pension plan, totaling a full 2% increase over the deal's lifetime. Further, the unions each agreed to various carve-outs to the wage increases (for example, a mere 1.5% annual increase in primetime television for the DGA and 1% for the WGA) in order to extract their residuals concessions, a practice that is new for this generation of collectively bargained agreements.

WILL SAG-AFTRA STICK TO THE "PATTERN?"

It is arguable that 2017 has a less clear "pattern" to the union bargaining than years past, as each union identifies niche concerns in today's evolving environment.

At the very least, there is sufficient wiggle room between the DGA and WGA precedents that it would be difficult for SAG-AFTRA and the AMPTP to adopt the previous agreements in full. While SAG-AFTRA is sure to address industry-wide issues

like SVOD and residuals payments (particularly for new media), it remains to be seen how much of a premium actors will place on individual issues as compared to the other unions.

For example, a major concern unique to actors is establishing stronger guiderails around "recurring role" arrangements in which the actor does not sign a series deal; the union will aim to increase compensation and job flexibility for these working actors. And because the SAG-AFTRA agreement does not have separate wage tiers for different types of scripted programming, the union may reject the carve-out based deals that the WGA and DGA both signed.

RISKS OF POTENTIAL DEADLOCK

The latest media reports show that bilateral prep meetings held in May, and the first two weeks of true negotiations, were bumpy, but there has yet to be indication of any impassable obstacles.

SAG-AFTRA also does not have the same recent history of striking as the WGA does; the last general SAG strike was in 1980. However, SAG-AFTRA is currently on strike against the video

game industry to protest treatment of voice actors and stunt performers.

Recalling SAG-AFTRA's potential strike in 2008, the actor's union pushed back strongly against the notion that any pattern of precedent set by the other unions should be binding on actors if it did not suit their needs. The same could hold this year if the union does not believe that its members' interests are served by the varying precedents recently set by the DGA and WGA.

FOR MORE INFORMATION

James L. Johnston
Partner
212.468.4867
jjohnston@dglaw.com

Josh J. Gordon
Associate
212.468.4834
jgordon@dglaw.com

or the D&G attorney with whom you have regular contact.

Davis & Gilbert LLP
212.468.4800
1740 Broadway, New York, NY 10019
www.dglaw.com

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