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Union/Guild Membership for the Creative Entertainment Industry Member—Sometimes, Getting What You Wish For...

By Diane Krausz

Most creative artists dream of recognition and success, which includes being part of esteemed groups of their peers. If they are also practical, they want access to a much higher level of employment, both in income and stature. Therefore, an actor wanting to work in taped entertainment seeks to gain admission to SAG-AFTRA.[1] An aspiring television writer or screenwriter (the former eventually moving up the television ranks to producer and executive producer) seeks admission to the Writers Guild of America (WGA). For live stage, the actors' union is Actors Equity (AEA), and the organization for the playwright is the Dramatists Guild. Film and television directors join the Directors Guild of America (DGA), and for live stage, The Stage Directors and Choreographers Society (SDC). Most of these entities are also labor unions that are permitted pursuant to Section 7 of the Federal National Labor Relations Act (NLRA) to organize members and negotiate collectively on their behalf with employers.

By becoming a member of a union, the creative actor or talent becomes eligible to work for producers who have negotiated with the union and reached an agreement as to the terms and conditions of the employment of the actors in connection with that specific project, or, in some cases, with a particular corporation or non-profit. Union or guild membership also provides an individual talent access to be part of the union's government and administration, to compete for awards produced internally (such as the SAG-AFTRA or WGA awards), educational and other career opportunities, and serves as objective evidence of their professional stature and skill. Unfortunately, gaining a threshold to entry is often the beginning of a new concern in an artist's life, one where the artist's loyalty to the union is tested against the need to work in one's profession. An entertainment attorney might consider the following issues when advising a client regarding union or guild membership.

1. What Are the Criteria to Join?

As an example, to join SAG-AFTRA, (other than for broadcasters, for which special rules apply):

a. The actor must be hired as a "principal" under a SAG-AFTRA contract, which is not specifically defined as more than at least a speaking role. When a non-union actor accepts a "principal" role, he or she automatically becomes "SAG-AFTRA eligible" and must join the union within 30 days. *If one does not join the union within 30 days, the actor can no longer accept any further SAG-AFTRA employment.* The union enforces this rule by "Station 12," which requires a producer who has signed with the union to verify an actor's status in each instance.

b. The actor can work for three (3) days as a "background performer" or non-speaking role under a SAG-AFTRA contract. In any SAG-AFTRA covered film or television program, there are always a few extra positions allocated and subject to union coverage and minimums and the rest are not. A non-union actor who gets a union covered "extra" position gets a "voucher." When this actor gets three vouchers from three separate days of employment, the actor can and must join the union.

c. The actor can be a member of "sister" union for at least a year and has worked as a principal performer within the sister union's jurisdiction. A sister union includes AEA , the Alliance of Canadian Cinema, Television and Radio Artist (ACTRA), The American Guild of Variety Artists (AGVA) and The American Guild of Musical Artists (AGMA), which is for Opera, Dance and Concert Musicians, respectively. Note that since AFTRA merged with SAG in late 2012, AFTRA is no longer a "sister union." Since AFTRA's prior threshold of entry for joining was not as stringent as SAG's, the AFTRA "open door" membership option is no longer available.[2]

Similar to SAG-AFTRA, membership in the other creative entertainment guilds or unions is often a hard one and long awaited achievement and each of these individual unions and guilds have their own requirements and thresholds to entry.[3]

2. Eligibility

Upon reaching eligibility to becoming a member, the questions then should be:

(a) Does the potential member live in a Right to Work state? *If so, the union cannot force anyone in a "right to work state" to become a member of the union simply to get work from an employer.*[4] California and New York are *not* Right to Work states; however, Nevada and Florida are.

(b) If the member *does not live* in a Right to Work state, like New York or California, of what issues should the potential union or guild member be aware prior to joining the union? Unless the member lives in a Right to Work state, by accepting full membership in a guild or union, an artist is unable to accept employment that is not approved or sanctioned by the guild or union. To do so would risk violation of his or her membership, as well as sanctions, dismissal and penalties, depending on the specific facts and circumstances. It is clear from the union rules that almost all full union members are not permitted to work for non-union employers.

3. Concept of Financial Core

In the real world, the majority of the 165,000 SAG-AFTRA members are not self-supporting from their union generated income alone. The same is the case of the membership of most other creative unions discussed in this article. Furthermore, the changing entertainment and media world and accompanying economic eruptions have continued to encourage both new companies and media, as well as existing large companies or their "subsidiaries" or affiliates, to elect not to sign collective bargaining agreements with unions. The unions continue to try diligently to organize members for collective bargaining. Yet even regularly employed actors, writers and directors, whether or not members of a guild or union, continue to require new projects and employment as part of the nature of their professions and the industry. As always, in the case of certain projects (especially independent films, prestigious cable or alternative (e.g., UTUBE, Netflix) financed programming, reality or historical television programming, or other budget-conscious but professional projects), there is an over-abundance of talented and willing professionals to work for less than union-approved wage and conditions.

One highly unpopular, controversial but Supreme Court-sanctioned option for a union member is for the individual to declare "Financial Core." Industry writers have commented that "FiCore" is obviously the one option about which unions do not want their members to find out. The concept was defined and conceived in the original case as when union "'membership' as a condition of employment is whittled down to its financial core."[5] In essence, the Supreme Court has, in multiple cases, held that the only thing a union can require of any worker is that he or she pays the union dues and initiation fees, and these fees are limited to the basic costs of running the union, not the politics, lobbying and union organizing activities The legal concept of financial core is that a member of a union may change his or her membership status from "full" to "financial core" and maintain a mere dues-paying association with a union. This change in membership, which the unions often refer to as a "resignation" or the member being a "scab," protects the member from discharge from the union under Section 8(a)(3) of the NLRA,[6] without subjecting him or her to the responsibilities and regulations of full membership.[7] The Supreme Court also found that Section 8(a)(3) does not obligate employees "to support union activities beyond those germane to collective bargaining, contract administration, and grievance adjustment,"[8] thereby limiting the amount of dues to less than paid by a full member.

Although it is fairly clear from a legal interpretation of the case law, the reality of going "FiCore" is not as straightforward. The unions most assuredly do not advertise the practice as readily available or as an appropriate solution for a union member who is struggling to make ends meet and unable to work on non-union projects. In fact, on the SAG-AFTRA website, the statements regarding FiCore can be interpreted as actively discouraging, if not frightening to those contemplating the process. The actual process is made to sound like a resignation, although it is clear that dues and fees must continue to be paid. The reinstatement process is also not delineated, and at least one attorney's recent inquiry about the process was rebuffed. She was specifically told that "FiCore" was a "strictly" member-union issue that "attorneys never get involved with." It is only through other non-union websites, the study of labor law, or through the experience of other members or agents[9] that someone wanting to learn or instruct a client to file for FiCore would be able to gain more balanced information. While understandable from a union's perspective, since FiCore can be viewed as eroding union collective bargaining power and organizational ability, an attorney must weigh his or her client's personal day-to-day needs against personal and political beliefs.

Endnotes

1. SAG-AFTRA, www.sagaftra.org (The Screen Actors Guild of America (SAG) and The Actors Federation of Television and Radio Artists (AFTRA) merged officially on March 30, 2012).
2. SAG-AFTRA, www.Sagaftra.org/content/paying-dues (Current SAG-AFTRA Dues: Initiation Fee: $3,000 (financing available), Annual Dues: $198 minimum plus 1.575% up to first $500,000 of gross salary).
3. For other union membership requirements, *see*, e.g.,WRITERS GUILD OF AMERICA EAST, www.wgaeast.org/index.php?id=5; ACTORS' EQUITY ASSOCIATION, http://www.actorsequity.org/membership/howtojoin.asp ; STAGE DIRECTORS AND CHOREOGRAPHERS SOCIETY, http://www.sdcweb.org/member-services/apply-for-membership/; DIRECTORS GUILD OF AMERICA, http://www.dga.org/The-Guild/Departments/Membership/Joining-the-DGA.aspx; DRAMATISTS GUILD OF AMERICA, https://www.dramatistsguild.com/join/index.aspx.
4. NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION, INC.,www.nrtw.org/rtws.htm (The current list of Right to Work States can be found at www.nrtw.org/rtws.htm).
5. Nat'l Labor Relations Bd. v. General Motors Corp., 373 U.S. 734, 742 (1963).
6. National Labor Relations Act, 29 U.S.C. §158 (a)(3) (2013).
7. Nat'l Labor Relations Bd. v. Local 54, Hotel Emps. & Rest. Emps. Int'l Union, AFL-CIO, 887 F.2d 28 (3d Cir. 1989).
8. Commc'ns Workers of Am. v. Beck, 487 U.S. 735, 745 (1988).
9. See, e.g., www.Ficore.com; www.nrtw.org; www.bizparentz.org/thebizness/unionfinancialcore.html; www.actorsequity.org/docs/news/en_09_2011.pdf ; http://www.huffingtonpost.com/michael-seitzman/what-ficore-really-means_b_79819.html.

For over 25 years, Diane Krausz, Esq., has represented individuals and entities in the entertainment industry, with an emphasis in theater, film, television, talent representation/negotiation, and intellectual property. Ms. Krausz has extensive experience protecting art through copyright; licensing, merchandising, and spokesperson deals; drafting and negotiating contracts and resolving disputes; purchase and sales of entertainment companies; and helping artists reach financial success. For further information, please see www.DianeKrausz.com.