

## Introduction

The film industry is an important part of New Zealand culture, and patriotic pride, particularly since the successes of the Lord of the Rings trilogy, and of Peter Jackson and the WETA Workshops in gaining international recognition for their work. Peter Jackson has been honoured with a Knighthood of the New Zealand Order of Merit on 31 December 2009<sup>1</sup>.

This is the story of how that pride was used to further the ends of global business at the expense of the rights of workers in New Zealand and of the Kiwi taxpayer. I will begin by giving you some background to industrial relations and employment law in New Zealand, with respect to rights to collective bargaining in particular.

## Collective Bargaining in NZ

Trade unions were first recognised as legitimate organisations in New Zealand (NZ) in 1878, by the *Trade Unions Act*. This Act declares that trade unions and trade union activity, in so far as they are in restraint of trade, are neither criminal conspiracy nor unlawful. The *Industrial Conciliation and Arbitration Act* of 1984 gave trade unions certain rights and privileges in return for their agreement to state regulation of their organisation and activities. These were the foundation of trade union regulation in NZ until the removal of those rights and privileges by the *Employment Contracts Act 1991* (henceforth, ECA). This was enacted under a National government, whose intention was that this would put the responsibility for negotiation where it belongs – with employers and employees.<sup>2</sup> The current situation is governed by the *Employment Relations Act 2001* (henceforth, ERA), which restored these rights and privileges to a certain extent, but they have become the subject of piecemeal attack by the current National government which took office in 2008.

NZ practice is not to ratify International Labour Organisation (ILO) conventions until the domestic legislation complies with all aspects of them; it has not, for example, ratified the International Labour Organisation Convention 87 on Freedom of Association; because the ERA (as did its predecessors) allows for the suspension of a union by administrative authority (s17). NZ, however, has ratified Convention 98 on the Right to Organise and Bargain Collectively, in 2003. The ERA specifies in s3(b) that the object of the Act includes “to promote the observance in New Zealand of the principles underlying International Labour

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<sup>1</sup> <http://www.dpmc.govt.nz/honours/lists/nzom2.html>

<sup>2</sup> New Zealand Employment Law Guide, Rudman R

Organisation Convention 87 on Freedom of Association, and Convention 98 on the Right to Organise and Bargain Collectively”.

## **Employment Relations**

Trade union membership was made compulsory in NZ in 1936 by law, then by agreement or ballot from 1961, and remained so until the ECA made any form of compulsion unlawful.<sup>3</sup> The ERA, introduced by the Labour Government to restore some of the rights and privileges of trade unions, does not reinstate any form of compulsory membership. It does, however, provide that collective bargaining is undertaken between unions and employers, with the aim of concluding a collective employment agreement which sets the terms and conditions of employment of union members who come within the coverage clause of that agreement, and which remains in force for no more than 36 months. In most cases clauses on wages are included in the agreements – between 2003 and 2011 the average percentage of collective agreements in NZ which had no wages clause at all was 5.4%.<sup>4</sup>

Non-union members can negotiate collectively with their employer; however this will not result in a collective agreement but a series of individual employment agreements.

In a change of emphasis from the ECA, the ERA introduces a central requirement for the parties in an employment relationship to deal with each other in good faith. This legislative requirement for good faith was further strengthened (in response to court interpretation as simply the common law mutual obligations of trust and confidence) by the Employment Relations Amendment Act (No 2) 2004. It has been noted by the Employment Court<sup>5</sup> that the parties to collective bargaining were now required to “at least modify or even abandon” those traditional, adversarial and combative strategies in favour of more “co-operative and facilitative methods of resolving bargaining disputes.

While this is the legislative climate in which what has been known as “The Hobbit Dispute” took place, the political climate towards unions and workers changed with the election of a National led Government in 2008.

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<sup>3</sup>Employment Relations: New Zealand and Abroad, Geare AJ, Edgar FJ

<sup>4</sup>Employment Agreements: Bargaining Trends and Employment Law Update 2010/2011 Blumenfeld S, Ryall S, Kiely P, p22-23 (the comparison starts at 2003 as 31 July 2003 was the latest date on which collective employment contracts negotiated under the ECA could expire, and these had no restriction on duration.

<sup>5</sup>Association of University Staff v The Vice-Chancellor of the University of Auckland [2005] 1 ERNZ 224 (EC)

## Who is an “employee” – discussion of Bryson case

A further aspect of New Zealand law which will become central to the conclusion of this dispute, is the difference between the definitions of “an employee”, who is engaged under a contract of service, and “an independent contractor”, who is engaged under a contract for services. While both types of contract are enforceable in the courts, only the former are employment agreements under the ERA, and so only those who are “employees” are entitled to the employment protection offered by various statutes, including the ERA.

Included in the clause defining “employee” for the purposes of the ERA is s2: “In deciding for the purposes of subsection (1)(a) whether a person is employed by another person under a contract of service, the court or the Authority (as the case may be) must determine the real nature of the relationship between them.” Further, in s3 it is stated that:

“For the purposes of subsection (2), the court or the Authority—

- (a) must consider all relevant matters, including any matters that indicate the intention of the persons; and
- (b) is not to treat as a determining matter any statement by the persons that describes the nature of their relationship.”

The leading case on this question of whether someone is an employee or a contractor was *Bryson v Three Foot Six Ltd*<sup>6</sup>. B worked for a company which filmed special effects for the *Lord of the Rings* movies. He was made redundant and lodged a personal grievance for unjustified dismissal.

At first instance the Employment Relations Authority had dismissed the case, concluding that, as Bryson was an independent contractor, he could not pursue a personal grievance case; this was appealed by Bryson to the Employment Court who determined that he had, in fact, been an employee. This decision was reversed by the Court of Appeal on the employer’s appeal, but then on appeal to the Supreme Court the judgment of the Employment Court was reinstated, and Bryson was found to have been an employee, and so entitled to lodge the personal grievance for unjustified dismissal.

The Employment Court summarised the principles for determining whether someone is an employee or an independent contractor that had previously been established as follows:

- The Court must determine the real nature of the relationship;
- The intention of the parties is relevant but no longer decisive;

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<sup>6</sup> [2005] 1 ERNZ 372 (SC)

- Statements by the parties, including contractual statements, are not decisive of the nature of the relationship;
- The real nature of the relationship can be ascertained by analysing the tests that have been historically applied, such as control, integration and the “fundamental” test;
- The fundamental test examines whether a person performing the service is doing so on his or her own account;
- Another matter which may assist in the determination of the issue is industry practice, though this is far from determinative of the primary question.

The Court found that although Bryson had a contract (an industry standard which was presented to him more than six months after he started his employment with Three Foot Six) the real nature of the relationship was one of a contract of service. There was no evidence that he was acting as a separate business entity; he could not have been said to be contracting his skills as he had had no experience for this new role; Three Foot Six closely controlled his work; he was expected to work regular hours and was paid for any downtime. These factors led the Supreme Court to conclude that the way in which the appellant's engagement worked out “smack[ed] very much of employment”;<sup>7</sup> While it may have been industry practice for the majority of workers to be independent contractors, the reality was that this relationship was one of employer/employee.

### **The actual dispute – “The Pink Book”**

Fundamentally the dispute was about New Zealand actors looking to negotiate some minimum standards for the setting of their terms and conditions for screen productions produced in New Zealand. The union in New Zealand, NZ Equity, is “an autonomous part of the Media, Entertainment and Arts Alliance” (MEAA). This is an Australian trade union, which was requested by NZ actors in 2006 to set up an office in NZ. According to Helen Kelly, President of New Zealand's Council of Trade Unions, the membership of NZ Equity at April 2011 was around 600<sup>8</sup>.

Since 2009, Equity has been campaigning for a standard contract to be agreed for the engagement of performers in the screen industry. It had previously co-operated with the Screen Production and Development Association (SPADA), a network of NZ based independent screen industry practitioners, to agree “The Code of Practice for the Engagement of Cast in the New Zealand Film Industry’, which is referred to as “The Pink

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<sup>7</sup>Bryson v Three Foot Six (No2) op cit 6 at p 375

<sup>8</sup> <http://www.scoop.co.nz/stories/HL1104/S00081/helen-kelly-the-hobbitt-dispute.htm#ftn>

Book”, dated 6 June 2005. There is a further agreement with NZ Film and Video Technicians Guild which is “The Code of Practice for the Engagement of Crew” (The Blue Book”, 2004). While these documents had been negotiated and agreed between SPADA and the relevant unions, they are simply “industry best practice guidelines”. While membership of SPADA requires compliance with the “Code of Best Practice”<sup>9</sup> this does not mention any compliance with minimum standards for employment, or requiring any compliance with the Pink or Blue Books. Indeed an audit of one contract offered to a performer by South Pacific Pictures (SPP) “did not meet the guidelines in The Pink Book in over 15 areas”, including “such basics as Right of Entry, postponement due to weather, cancellation, overtime, time off”<sup>10</sup>

The first attempt to try to establish industry minimum standards came during production of the locally made television show *Outrageous Fortune*. This incredibly popular programme was in its fifth and penultimate season when the actors asked Equity to approach the producers, SPP, to negotiate a standard contract for the production. SPP’s response was to threaten to cancel the final series of the show altogether, if the performers did not work on a standard SPP contract, and to insist that any negotiation for a standard agreement in the screen industry must be made through SPADA.

SPADA’s view, however, was that they were willing to re-negotiate The Pink Book as best practice guidelines only. As The Pink Book was part of the problem for Equity and the performers, this was not a solution they sought, and further attempts to bring about negotiations occurred during production of two further TV series – *This is Not My Life*, and *The Cult*. In both cases the producers simply said they would re-cast the shows in response to the action. Having little, if any leverage, these campaigns were seen to have failed, given how far the producers would go to avoid bargaining of any sort. An opportunity, however, for Equity to have some leverage over the film industry in NZ, and to garner international support, came when the notices for *The Hobbit* production began to be sent out to agents around the world, in May 2010.

## **The International Perspective**

The situation for actors in other jurisdictions from where the cast of *The Hobbit* was likely to be drawn, vis a vis collectively bargained contracts, is quite different. Equity UK has a list of the standard agreements available to its members on its website. The website states:

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<sup>9</sup> <http://www.spada.co.nz/join/codes.html>

<sup>10</sup> <http://www.scoop.co.nz/stories/HL1104/S00081/helen-kelly-the-hobbitt-dispute.htm#ftn>

“Equity Agreements are negotiated [sic] with employer and employer groups to cover all areas of live and recorded media. These collective Agreements cover the detail of working terms and conditions such as numbers of performances, hours, breaks, health and safety, dispute procedure,[sic] usage rights, royalties,[sic] touring and a host of other things providing a coherent framework for a fast-moving industry.” ..”<sup>11</sup>

Closer to home for the Kiwi actors, their Australian counterparts also benefit from union negotiated minimum contracts, <http://www.alliance.org.au/resources/equity/>.

Perhaps the most influential group of actors, in the context of a US production being filmed in the English language in New Zealand, are the American actors who were likely to be engaged on the production. Those actors will be members of the Screen Actors Guild (SAG). The constitution of that organisation states that ““No member shall work as a performer or make an agreement to work as a performer for any producer who has not executed a basic minimum agreement with the Guild which is in full force and effect.”<sup>12</sup> Until 1 May 2002, this rule was only enforced on productions shot in the United States, however since that date, what is referred to as Global Rule One extends to all members working outside the US for foreign producers as well. This means that any producer wishing to engage a member of SAG as a performer in their film/tv show/commercial or industrial production, no matter where in the world it is to be filmed, must “become signatory to a Screen Actors Guild Global Rule One agreement, providing for minimum wages, working conditions and protections for each such member.” So, in order to engage any US actors to work in NZ, the producers of *The Hobbit* would require to be signatories to an agreement with the US union, and as this has been the case since 2002, would be well used to such a situation.

In June 2010 the International Federation of Actors (FIA), the global federation for performers’ trade unions, discussed the NZ situation, and “Resolved, that the International Federation of Actors urges each of its affiliates to adopt instructions to their members that no member of any FIA affiliate will agree to act in the theatrical film *The Hobbit* until such time as the producer has entered into a collective bargaining agreement with the Media Entertainment and Arts Alliance for production in New Zealand providing for satisfactory terms and conditions for all performers employed on the productions.”<sup>13</sup>

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<sup>11</sup> <http://www.equity.org.uk/resource-centre/rates-and-agreements/>

<sup>12</sup> <http://www.sag.org/content/global-rule-one>

<sup>13</sup> <http://www.scoop.co.nz/stories/HL1104/S00081/helen-kelly-the-hobbitt-dispute.htm#ftn>

The FIA approached 3 Foot 7 Limited by letter dated 17 August 2010, advising them of this resolution and urging them to meet with representatives of the MEAA “in order to reach an agreement covering all performers engaged on this production.” (FIA’s own emphasis)<sup>14</sup> A response was received from the solicitors acting for the producers dated 13 September 2010,<sup>15</sup> refusing to bargain with MEAA, citing the competition laws in New Zealand which would impose heavy penalties on anyone negotiating with labour organisations on behalf of independent contractors (the possible implications of which are discussed below).. It was at this point that the FIA made its resolution public and at this point where the dispute became big news.

While the story and its repercussions are not yet at an end (there are various documents, including a legal opinion instructed by the Government which was made available to Warner Brothers but not to the people of NZ, which are under a contested request for release under NZ’s Official Information Act), the rest of the story of the dispute plays out over the period from 25 September when the FIA affiliates began making their resolution public and the end of October 2010 when John Key announced that “the dispute” was resolved.

### **The “Resolution”**

Peter Jackson, who was not the film’s producer, and not a party to the dispute (though he had received a copy of the FIA correspondence as a courtesy) released a statement on 27 September 2010,<sup>16</sup> in which he condemned the union as an “Australian bully” and put out notice of the possibility of the film being moved overseas (in this case to “Eastern Europe”). Public opinion was very much informed by Jackson’s statement and particularly its reporting in the media. An online poll of readers of stuff.co.nz on 27 September 2010 (the same day that Jackson’s statement was reported) is an example of this. The poll asks “What do you think is behind an Australian union’s push for actors to boycott The Hobbit?” The options for answers are “Legitimate concerns about contracts” 1324 votes, 13.8% OR “Muscling in on NZ’s film industry” 8304 votes, 86.2%.<sup>17</sup> In contrast the report on the same website in December, confirming that lies had been told, had no Reader’s Poll attached.<sup>18</sup> Indeed, given that filming in New Zealand had already been confirmed, my anecdotal experience was that this was no longer a story that commanded much in the way of public interest.

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<sup>14</sup> <http://www.alliance.org.au/documents/letter1.pdf>

<sup>15</sup> <http://union.org.nz/sites/union.org.nz/files/hobbit-deborahfox1.pdf>

<sup>16</sup> <http://www.scoop.co.nz/stories/CU1009/S00283/statement-regarding-the-hobbit-and-claims-by-meaa.htm>

<sup>17</sup> <http://www.stuff.co.nz/entertainment/film/4169335/Jackson-fights-to-save-Hobbit>

<sup>18</sup> <http://www.stuff.co.nz/national/politics/4482565/The-Hobbit-saga-Govt-sold-out-workers-rights>

This statement, later described as the “nuclear” reaction, led to the NZ Council of Trade Unions (CTU) becoming involved in the dispute for the first time, on 28 September,. As Helen Kelly says “...we had an absolute obligation to provide any support we could against this unfair attack...the union movement will take on anyone and we will not bow to the deference with which some parties think employers should be held in this country if that means workers will be denied their rights.”<sup>19</sup>

On 29 September, NZ Attorney General Chris Finlayson had approached Crown Law (the Government’s legal advisers) to prepare a legal opinion on the subject, we have to assume, of the legality of independent contractors bargaining collectively. This legal opinion was reported in the press as having been instructed by Finlayson because he wanted to reassure investors that what was being touted as a reason not to invest in NZ did not have a firm legal foundation<sup>20</sup>. This opinion was based on s 30 of the Commerce Act which would outlaw union-led collective bargaining of independent contractors – the CTU, and other union organisations, had also received legal opinions, offering the alternative view that the Commerce Act, under other sections, would allow actors as independent contractors to negotiate collectively despite s30. This interpretation was never explored by the Government or Warner Brothers (WB), who appeared to wish to solely rely on the notion that, if WB bargained collectively with the actors as independent contractors, this would be in breach of competition rules.

A meeting took place on 1 October 2010, between the CTU, Peter Jackson, Wingnut Films, and Philippa Boyens (Hobbit producer) to discuss the ongoing situation. It was agreed that a further meeting should be established and a media advisory was put out by the CTU<sup>21</sup> as agreed between the parties indicating that “we are hopeful that a meaningful dialogue between Equity, SPADA, and Three Foot Seven can be established” – as Kelly says “at this stage a meeting was possible, legal and the parties hoped it could be established”.<sup>22</sup>

Unfortunately, on the following Monday morning, an interview with Phillip Boyens on Radio New Zealand National contradicted this position, by insisting that any further discussions were to go through SPADA rather than involving Three Foot Seven.

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<sup>19</sup> <http://www.scoop.co.nz/stories/CU1009/S00283/statement-regarding-the-hobbit-and-claims-by-meaa.htm>

<sup>20</sup> [http://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=10677077](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10677077)

<sup>21</sup> <http://union.org.nz/news/2010/media-advisory-re-the-hobbit-31010>

<sup>22</sup> <http://www.scoop.co.nz/stories/CU1009/S00283/statement-regarding-the-hobbit-and-claims-by-meaa.htm>



On 13 October Gerry Brownlee (Minister for Economic Development) called a meeting involving SPADA, Equity, CTU and his staff. When the meeting took place the next day, however, it was said that, on the instructions of WB and Jackson, *The Hobbit* could not be discussed. Kelly reports, however, that by the conclusion of this meeting there was agreement that the parties would meet to discuss updating the conditions of employment for performers in the NZ screen production industry, and it was acknowledged that “any production that... honoured the current Pink Book would be acting in the spirit of the agreement and would not be subject to Equity campaigns for specific terms and conditions”<sup>23</sup> On the basis of these discussions and agreements, Equity’s board recommended to the FIA that the ‘do not work’ order be rescinded. A positive press release was issued by the Minister’s office on 14 October.<sup>24</sup>

On the evening of 17 October, a series of emails was exchanged between Equity, MEAA, and SAG, confirming the recommendation that the “Do not work” order be lifted – there is a further series of confidential emails between MEAA, SAG, Peter Jackson’s “camp” and WB on various practical matters surrounding this recommendation, ending on 19 October with a request from WB that the MEAA release be amended at the request of Peter Jackson. The changes were made and all parties had agreed to the wording of the media release. MEAA had already agreed not to announce the end of the “do not sign” order until WB were ready, but despite agreement on the wording of this release on Tuesday 19 October, WB continued to hold up publication without explanation.<sup>25</sup>

### **The Debacle!**

On 20 October, a national day of action had been arranged by the trade union movement and the CTU in particular “to express their wish to see fairer workplaces in New Zealand and their frustration with the National Government’s employment law changes.”<sup>26</sup> These changes included:

- the removal of any rights to personal grievances for unfair dismissal within the first 90 days of employment;
- changes to sick leave but particularly the right of the employer to require a medical certificate on the first day of sickness;
- restrictions on union access to workplaces; and

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<sup>23</sup> <http://www.scoop.co.nz/stories/CU1009/S00283/statement-regarding-the-hobbit-and-claims-by-meaa.htm>

<sup>24</sup> <http://www.beehive.govt.nz/release/statement-behalf-spada-actors039-equity-and-ctu>

<sup>25</sup> <http://www.scoop.co.nz/stories/CU1009/S00283/statement-regarding-the-hobbit-and-claims-by-meaa.htm>

<sup>26</sup> <http://union.org.nz/fairnessatwork/dayofaction>

- changes to the Holidays Act.

These demonstrations took place across the country at noon. On the same day, workers in the film production industry in Wellington were contacted and invited to a meeting at the WETA Workshops, at which those workers were told that the dispute was not settled, that the boycott was continuing and that production of *The Hobbit* was moving offshore. A leaflet which was handed out at that meeting specifically states that there continues to be a “boycott” of the film, that this is an “Australian union’s” boycott and that the film industry in NZ will not survive.<sup>27</sup> A rally was then held by around 1000 workers, who believed that the “boycott” was still in place.

Peter Jackson and Philippa Boyers, when interviewed the next day by 3 News<sup>28</sup> denied that the “boycott” had been lifted, and claimed that this was the reason that Warner Brothers executives were coming to NZ to discuss moving the film to “Eastern Europe”. Interestingly John Campbell, in this interview, mentions that at this point the NZ dollar was much higher against the US dollar, and asks them if WB would be seeking further tax subsidies from the Government – eliciting assurances from both Jackson and Boyers that this was not part of the agenda, and that the only concerns WB had were to do with the industrial action and the (putatively) unclear position of actors as independent contractors in NZ. A further interview with Boyers on Radio New Zealand National’s “Nine to Noon” programme saw them restate this position.<sup>29</sup>

This is despite an email exchange on 18 October between Peter Jackson and Tim Hurdle (Office of Gerry Brownlee) in which Peter Jackson states “There is no connection between the blacklist (and it’s [sic] eventual retraction), and the choice of production base for *The Hobbit*.”<sup>30</sup>

While the CTU, MEAA, Actors Equity and SAG all then issued statements confirming that the “Do not work” order had been rescinded, and that this had been known to everyone involved, the news now was about the Warner Brothers executives travelling to NZ to meet with the Government the following week, about the uncertainty surrounding filming in NZ, and the status of the actors as independent contractors. The *Bryson* case was now at the forefront of the discussions, along with the “ongoing” boycott.

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<sup>27</sup> <http://union.org.nz/sites/union.org.nz/files/Hobbit-Handout1.pdf>

<sup>28</sup> <http://www.3news.co.nz/The-Hobbit-Jackson-and-the-actors-speak-out/tabid/367/articleID/182467/Default.aspx>

<sup>29</sup> <http://www.radionz.co.nz/national/programmes/ninetoon/20101021>

<sup>30</sup> <http://union.org.nz/sites/union.org.nz/files/hobbit-Oct18ministeremail.pdf>

As discussed earlier, the *Bryson* case was decided in 2005. There have been many films made in NZ over the period 2005-2010, and none of the actors involved in the Actors Equity campaign had suggested that they would require to be employees rather than independent contractors. Indeed if they had wanted to be engaged as employees, they would not have had to bargain for many of the minimum terms that they were seeking – payment for delays to production, sick pay for example – as these would be included in their contract of employment under NZ employment law. The actors who were engaged in film production around the world through union-negotiated contracts, such as those of SAG, were independent contractors, not employees, and no-one had suggested at any point in the ongoing NZ dispute that this would be a possibility.

While it is not an academic resource, a quick look at Wikipedia reveals a list of films produced or filmed in NZ – there were nine in 2006, 13 in 2007, three in 2008 and five in 2009 – including the American-produced *Avatar* and *The Lovely Bones*. Indeed, *The Lovely Bones* was originally developed by Peter Jackson, was directed by Peter Jackson and was produced in NZ with no mention of the Bryson case's legacy of "uncertainty" being an issue.

Whether the actors, as independent contractors, were able to collectively bargain under prevailing NZ law is still open to interpretation and discussion. However, a way forward which would not affect production of *The Hobbit* had been agreed between all parties to the dispute, hence the lifting of the "Do not sign" order. What "uncertainty" was left for Warner Brothers now?

### **The Pay Off**

Warner Brothers executives came to NZ in the last week of October 2010, where they met with the Government over two days. The result of this meeting, announced on 28 October, was that the filming of *The Hobbit* and its sequel would take place, after all, in NZ. This reassurance, however, came at a price.

The Government's concessions were twofold. An amendment to the ERA was announced on 28 October, and was passed into law on 29 October 2010 under a process known as "urgency" (meant for emergencies), by which a piece of legislation can be passed through all the Parliamentary stages without any public consultation, Committee stages, or any regulatory impact statement).

The Employment Relations (Film Production Work) Amendment Act inserts into the definition

of “employee” within ERA s6(1) that this definition:

(d) excludes, in relation to a film production, any of the following persons:

- “(i) a person engaged in film production work as an actor, voice-over actor, stand-in, body double, stunt performer, extra, singer, musician, dancer, or entertainer:
- “(ii) a person engaged in film production work in any other capacity.”

This not only reversed the Supreme Court’s ruling in *Bryson* (which a legislature is, of course, free to do); it set film industry workers’ rights in New Zealand at odds with those in other common law jurisdictions, including the United Kingdom and Australia.

Throughout 2010, as noted by Campbell,<sup>31</sup> the exchange rate between the NZ\$ and the US\$ had brought the ‘Kiwi’ to a (then) high against the ‘Greenback’. The trend in value of the US\$ had been downwards throughout the year,<sup>32</sup> and this meant that producing *The Hobbit* in NZ was becoming more expensive for Warner Brothers. The other part of the deal to retain the production in NZ was that the Government would offset the films’ marketing costs by US\$10 million (\$13.4 million) and pay up to US\$7.5 million (NZ\$10 million) in extra tax breaks for each of the two movies, subject to their success.<sup>33</sup>

## Conclusion

What began as a dispute centred on Kiwi actors wishing to collectively bargain for minimum standard contracts for their industry, taking the opportunity to leverage international solidarity to try and attempt to bring about collective bargaining, ended with trade unionists receiving death threats<sup>34</sup>, a change in the law to ensure that film industry workers cannot benefit from employment rights, and a multi-billion dollar pay-out from Kiwi taxpayers to an international corporation.

Although the dispute itself was settled on 17 October, leaving the way open to future bargaining on an “enduring form and process for performers to have a say in their terms and conditions”,<sup>35</sup> those looking to further the interests of capital continued, for another ten days, to use the dispute as a basis for threats to remove investment from NZ, and ultimately, to leverage further benefits from the people of NZ.

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<sup>31</sup> <http://www.3news.co.nz/The-Hobbit-Jackson-and-the-actors-speak-out/tabid/367/articleID/182467/Default.aspx>

<sup>32</sup> <http://www.x-rates.com/d/NZD/USD/hist2010.html>

<sup>33</sup> [http://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=10683583](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10683583)

<sup>34</sup> [http://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=10683808](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10683808)

<sup>35</sup> <http://union.org.nz/news/2010/ctu-meets-equity>

Helen Kelly has suggested that this story is part of a larger tale in which “Work is a benefit, business is the benefactor and workers are merely the beneficiaries... a job is a privilege; employers should be lauded for the contribution they make to growing economic wealth.”<sup>36</sup>

Although it is to be hoped that *The Hobbit* will bring benefits for New Zealand’s economy, reputation and self-esteem, it is difficult to say that this tale ends well. Workers’ rights have been eroded; an anti-union, pro-business government appears to have emerged with its status enhanced, while the reputation of the trade union movement appears (however unfairly) to have been tarnished; and it may be that Warner Brothers will not be the last international corporation to pick up on the mood of economic desperation and intolerance towards unions that gripped New Zealand during this episode - and to use that to leverage all manner of concessions, including perhaps further erosion of workers’ rights.

The pivotal point appears to have been those days between agreement being reached and the public denials by Jackson and others that the “boycott” remained in effect on 20 October. It would, perhaps, be excessive to infer from this that unions should, in future, avoid agreements with business on the control of information. If a lesson can be learned from The Hobbit affair, however, it may be to remind us that our guard must always be up, even when agreement has been reached, as there may well be further action after the end credits begin to roll!

‘The return of Mr Bilbo Baggins created quite a disturbance, both under the Hill and over the Hill, and across the Water; it was a great deal more than a nine days’ wonder. The legal bother, indeed, lasted for years.’<sup>37</sup>

## **Post Script**

Filming was due to begin on *The Hobbit* in February 2011, however Peter Jackson was taken ill and filming had to be postponed, at the last minute, until 21 March 2011. One of the minimum standards included in the SAG collectively bargained contracts for American, Australian and UK actors is the subject of payment for the actors when production is halted, or postponed.

John Key, NZ Prime Minister, travelled to the USA in July 2011 for a week-long visit. He did eventually meet with Barak Obama, and other Cabinet Ministers but his first day’s work

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<sup>36</sup> <http://www.scoop.co.nz/stories/HL1104/S00081/helen-kelly-the-hobbitt-dispute.htm#ftn>

<sup>37</sup> J.R.R. Tolkien, *The Hobbit*, Unwin Paperbacks 1983, p.282

involved a small function at the NZ consulate and dinner with Warner Bros executives.

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Many thanks go to Helen Kelly for her article mentioned above, published on 11 April 2011. Many of the primary sources which inform the story of The Hobbit dispute were made widely known to the public through her painstaking account of the full timeline of events. Given that, while the story unfolded, the various workers' organisations kept to agreements for confidentiality and agreed release of information; this is the most comprehensive account of what happened publicly available.