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CATCH ME UP ON WHAT THIS DISPUTE IS ABOUT?

The WGA terminated a 42 year old agreement last April that allowed ATA member agencies to represent writers. This triggered a one year good faith negotiation to get a new deal in place. The WGA posted 27 proposals 8 months ago, but offered little explanation or data to the ATA. Just a month ago, the two organizations began to meet. In the meantime, the WGA has very effectively rallied the union to support its claims and proposals.

WHAT IS THE BASIC PREMISE OF THE WGA'S PROPOSALS?

The WGA claims that agents are conflicted and that the conflicts primarily come from agent participation in packaging and production.

The issue with packaging seems primarily focused on television, but the proposals would have drastic impact on the Indie Film Business where agents are paid sales fees and retainers the WGA seeks to eliminate.

The WGA also seeks to bar agencies from being affiliated with any company that produces or finances content. They claim that this would also create conflicts with the writers they represent.

AND THE ATA RESPONSE TO THESE ISSUES?

The agencies believe that the claimed conflicts are theoretical, not real, and that packaging and content production affiliation create more opportunities and better economics for their writer clients. Moreover, if there ever were any actual conflict, this could be regulated in a way that does not completely kill the packaging and content businesses that keep writers from paying commissions, create jobs and benefit the entire industry.

WHERE DO THINGS STAND BETWEEN THE ATA AND WGA?

With just a few weeks to go, the WGA and ATA are meeting. Most of the WGA energy seems to be in galvanizing writers towards the vote, and keeping their very robust and effective public relations effort in motion. They are urging their members to sign petitions to show unanimity. A vote will be taken at the end of March. And if no deal is closed on April 6, the WGA negotiating committee may move to enact their Code of Conduct. The WGA will then likely institute Working Rule 23 that says that WGA members cannot be represented by any agents that don't sign the Code.

The Code of Conduct eliminates packaging, bars agents from production and finance, removes agencies from the independent film business, and allows the WGA to continue to impose and change rules on short notice. The WGA has stated that on the main issues of packaging and affiliate production, the Code is non-negotiable. WME is not signing the Code.



WHY WON'T SOME OF THE SMALLER AGENCIES THAT DON'T PACKAGE OR HAVE AFFILIATED PRODUCTION SIGN THE CODE?

Each agency will make its own decision and have to speak for itself. But the Code has many additional provisions that would be unacceptable to any agent (or at least any agent that WGA members would want to represent them). For example, the WGA wants the right to change the Code at any time unilaterally. As your agents, if you enter into a 2-year overall deal, we would never allow your studio employer to unilaterally revise your agreement on 60 days-notice. Why would the WGA expect agents to agree to that? Also, the WGA's arbitration provision is egregious. If there is a grievance against an agent, the WGA wants to use their arbitrators, not an impartial one. Again, imagine if your agreement with a studio had a clause that if the studio breaches your contract, they can name the arbitrator that is going to decide your claim against them. We'd never let you agree to that.

WHAT IS GOING ON IN THE NEGOTIATING ROOM?

Sadly, not much.

The WGA and the ATA have now had 5 face-to-face meetings. These are very formal sessions, featuring prepared statements with minimal dialogue, despite repeated requests by the ATA for smaller working groups to dive into the main issues at hand. We have given them full counterproposals to their 27 points, along with the agencies' proposed Statement of Choice.

The ATA believes that its members deserve choice and transparency. Individuals deserve to control how they proceed with packaging, with indie film sales, with production entities that may be affiliated with agencies.

The WGA presented counterproposals last Thursday that had almost no difference to their originally proposed Code of Conduct. David Goodman made it clear that "this is not an individual negotiation," and said in the meeting that writers are powerless against their agencies. The Guild does not believe that individuals should be able to choose to have their series packaged, to have their film sales handled by their agents, or to work with these new affiliated companies. He stated that the union alone should make those decisions.

On Monday, ATA provided comprehensive answers to the WGA's questions on film financing, sales and distribution. We let them know that we are putting our counterproposals in "contract language," per their request and will deliver them this week. ATA also brought questions that our writer clients wanted us to pose to the WGA. The WGA objected and didn't want us to read them out loud, but ultimately we did. We requested small group meetings to break out into issue specific discussions but they wouldn't accept that offer. There was no discussion – they left within 20 minutes and no commitment to come back – these aren't real negotiations. There is no commitment from WGA to meeting later this week.

WHY?

The WGA typically does not engage in meaningful dialogue with its opponents until the final days of a contract. This has resulted in 4 threatened strikes in the past 12 years, and one actual walkout. They are using their labor negotiation tactics on this contract dispute.



WHAT IS THE “STATEMENT OF CHOICE” THAT THE AGENCIES PROPOSED TO THE WGA?

The primary frustration that we have heard from some of our writer clients is that they didn't know their agency was receiving a package on their show, or if they knew they didn't understand fully what that meant. They have told us they aren't necessarily opposed to packaging, or the agencies having production affiliates, as long as they understand it going in and have the choice whether or not to be part of it.

So we presented the WGA leadership with what those clients were asking for. Disclosure, transparency, and a choice. The client has a choice whether the agency should ask for a package for their project. Or, if a project exists with a package already in place, whether to be submitted to that project. But, along with choice, there must be transparency and disclosure. So the Statement of Choice includes protection for the client. The agencies must walk the client through the economics of packaging, and what it means for the client (e.g., no commission) and the agency (what the packaging agreement with the studio says).

The same with affiliated production. The agency must let the client know its affiliation and how the affiliation works, prior to submitting the client to that company. And it's the client's choice whether to be submitted, and even if submitted, whether to agree to a deal with an affiliated entity.

WHAT ELSE WAS IN THE COUNTERPROPOSALS?

We agreed in theory with the majority of the WGA's 27 proposals. This includes subjects such as promoting diversity, preventing hostile work environments, ensuring writers get paid on time, and making sure that writers don't work for free.

The Guild is very frustrated that we did not simply agree to a few issues regarding writer confidentiality. The WGA would like the agencies to send every contract to the Guild. The WGA would like us to make financial data available to the Guild. Again, we are fine doing so as long as clients choose to do that. We work for writers, not for the Guild. And your privacy is incredibly important to us as well as your other representatives.

ARE YOU SAYING THE GUILD WANTS YOU TO SEND MY AGREEMENTS TO THEM WITHOUT MY PERMISSION?

Yes. We told the Guild negotiating committee that we would of course send our WGA member writers agreements to the WGA, as long as our clients approved. But, they are telling us they want us to agree as part of this agreement to send them our clients' agreements without client approval. This is wrong, and frankly would be a breach of our fiduciary duty to our clients. What if a client has a special provision in their agreement and doesn't want anyone to know? What if a client doesn't want the Guild leadership (other writers) to know how much they are making? This provision is in the Code they want to impose on agents.



DID THE AGENCIES TRY TO MEET WITH THE WGA LAST YEAR?

The termination of the 42-year old agreement between the agencies and the WGA came out of the blue last April. This was odd given that agencies have never considered the WGA an adversary. In fact, agencies have asked to serve as allies to the Guild throughout many of its negotiations with the studios.

ATA members tried to meet with the WGA executives. ATA members approached WGA members. The ATA formally asked for informal meetings. All of this was in an effort to learn *why* – why the termination, why these proposals, and why now.

The WGA refused these talks, and to date, have not provided agents directly with any evidence to show why they feel package fees are at the root of declining wages. They have not shared the survey results. They have not told us their horror stories in person. The ATA has gotten most of its information from clients who have repeated commentary from meetings, from the trade papers, and from the podcasts and emails featuring negotiating committee members.

WHY DID THE COUNTERPROPOSALS TAKE SO LONG?

The agencies received 27 proposals, and no backstory. And, as above, the WGA did not seem to want to have dialogue until now. We were hoping in the first meeting to get, as promised, a real understanding of the issues that led to the proposals. We still have not gotten that directly.

Additionally, the Guild had put into question whether or not it was willing to negotiate in good faith.

David Goodman's speech was released in text and on video just a day after the second WGA-ATA meeting. His words were clear: there would be no compromise on the key issues. Further, he threatened the agencies specifically with a call to "divide and conquer" them in order to get them to sign their Code.

As the WGA leadership was not willing to speak with us, we sat down with our clients instead. In the week that followed Goodman's threat, the agencies sat with hundreds and hundreds of clients in town halls and other meetings. We have talked to just as many on the phone about this. We heard the issues of our writers. And we formulated the ATA response to suit their needs. Clients asked for, and we are providing, optionality and control.

BUT ISN'T THIS JUST PART OF THE TYPICAL NEGOTIATION PROCESS?

The agencies are not the enemy of the WGA. This is not a zero-sum game.

And, while the WGA can release horror stories and hold massive meetings of members, the agencies still represent writers. We are still working. We are still advocating. We will never ask our clients to leave their guild. And we cannot and will not engage in name calling or any effort to destabilize the union.



HOW SHOULD THIS HAVE PLAYED OUT?

A year ago, the WGA could have called the leaders of the ATA in for a meeting to discuss the results of their survey, to talk about the state of the business, and to share their concerns about agencies' shifting focus. They could have started it with a conversation.

Rather, this went right to an effective work-stoppage with zero data or research to justify such a drastic move. The whole process is demoralizing and dangerous.

WHAT IS THE UPCOMING VOTE?

The WGA is holding a vote to ask its members if they will authorize the WGA leadership to unilaterally impose its Code of Conduct on the agencies upon the expiration of the 42 year agreement on April 6th.

MY GUILD IS ASKING ME TO VOTE YES ON THE UPCOMING VOTE. I FEEL THAT I CAN'T VOTE NO BECAUSE I SUPPORT MY GUILD. IF I VOTE NO AREN'T I GOING AGAINST MY GUILD?

Let's start with this: you need to make whatever decision is best for you and your career. But this isn't a vote for or against your Guild. It's your Guild that is putting a vote out to you – asking you to decide whether or not you believe they should impose a unilateral code of conduct on the agencies if an agreement can't be reached. And the agencies have individually stated that they will not sign that Code as written.

We want to be clear. If you decide to vote no, you are not voting for the agencies or against your Guild. You are simply voting for your Guild to continue negotiating with the agencies to come to a solution that works for everyone, rather than proceeding with their proposed solution which will leave you without an agent.

WHAT'S GOING TO HAPPEN ON APRIL 7?

As your representatives, we hate saying this: *we just don't know.*

The WGA seems intent on getting their vote, driving their message, and winning the emotional argument. They have been vague on plans moving forward; most of what you hear is conjecture regarding managers and lawyers filling the void, agents leaving the "Big 4" to start new firms, and a job board service that will cover staffing season.

We are very concerned that there is no real plan to get to a deal. The ATA and your agency have ideas on how to adjust our practices. The guild continually puts into question whether they are open to it. In the last negotiation session, we provided the guild with a list of the questions our writer clients have been asking about. We are waiting for answers.



WHAT ARE THE LIKELY OUTCOMES?

We think the Guild will get its vote, and come to the negotiating committee in earnest shortly thereafter. We hope a deal can be made. But given that both sides have strong support for their causes, a compromise will need to be struck.

If that doesn't happen, there are two likely outcomes: massive and endless litigation, or chaos.

The Guild has threatened legal action against the agencies. Conversely, the agencies feel very strongly that they have not breached their fiduciary duties. Also, the agencies will fight very hard to protect their entire set of clients, and their business practices. Mainly, the agencies do not believe any single third party should dictate how they operate given the various types of clients agencies represent. It appears the real winners here may be the litigators.

WHAT DO YOU MEAN, CHAOS?

This is the scary one. While many anonymous comments online and Facebook chat groups think that the town will function well with 10,000 writers with no agents, we disagree.

Clients hire agents for a reason: to create markets, to advocate for artists, and to share our expertise. If you read some of the WGA's communications, they seem to think that all agents do is collect incoming calls.

They think managers and lawyers can fill in for us. But the lawyer and manager meetings with the WGA were unsettling, with many leaving concerned that this plan was not well-thought. And under the Talent Agencies Act, only talent agents are allowed to procure and negotiate employment on behalf of writers and other individuals. Our ecosystem is fragile, and your other reps know that this could be devastating for many.

GIVEN THAT, SHOULD I RUSH TO CLOSE UP ANY PENDING DEALS I HAVE FROM NOW UNTIL APRIL 7, AS THE WGA HAS ADVISED?

No, we cannot advise you to do that. We would never rush to close any of your deals.

We will continue to represent you through all of your deals until you instruct us not to, but we cannot tell you it's a good idea to cave on issues because of this ATA-WGA negotiation.