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PART ONE.

Notice of Appeal.

(Filed Aug. 27, 1935)

IN CHANCERY OF NEW JERSEY.

96/548

Between

WILLIAM CAMERON, *et al.*,
Complainants,

and

THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, LOCAL UNION NO. 384 OF HUDSON COUNTY, NEW JERSEY, *et al.*,
Defendants.

On Bill, &c.

The defendants, International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Local Union No. 384 of Hudson County; Frank Mandrake, president, individually and as agent of the senior members of Local Union No. 384, and Fred Hoppke, vice president; Charles May, secretary and treasurer; Frank L. Brown, recording secretary; Anthony Boscorelli, business agent, and Albert DeTitta and Frank X. Maurus, officers and members of the executive board, hereby appeal from the final DECREE OF REVERSAL made in the above entitled cause on the 20th day of August, 1935, made by the Chancellor on the advice of Vice-Chan-

cellor John O. Bigelow, and from the whole and every part thereof, to the COURT OF ERRORS AND APPEALS in the LAST RESORT IN ALL CAUSES.

Dated: August 21st 1935.

SAUL NEMSER,
Solicitor and of counsel with defenddants, International Alliance of Theatrical Stage Employees and Motion Picture Machine Operators of the United States and Canada, Local Union No. 384 of Hudson County; Frank Mandrake, president, individually and as agent of the senior members of Local Union No. 384, and Fred Hoppke vice president; Charles May, secretary and treasurer; Frank L. Brown, recording secretary; Anthony Boscorelli, business agent, and Albert DeTitta and Frank X. Maurus, officers and members of the executive board.

I conceive there is good cause for appeal in the above entitled cause.

SAUL NEMSER,
Of Counsel with the Defendants.

Notice of Appeal.

Service of a copy of the within notice of Appeal from Final Decree of Reversal, is hereby acknowledged this 21st day of August, 1935.

WALLACE P. BERKOWITZ,
Solicitor of Complainants.

NORBURY C. MURRAY,
Solicitor of Complainants.

SAMUEL S. STERN,
Solicitor of Intervening Defendants,
Neal Fargo, Walter F. Hentshell,
George Siberry and Joseph Udiljak.

Petition of Appeal.

(Filed Sept. 16th, 1935)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

WILLIAM CAMERON, *et als.*,
Complainants-Respondents,

and

THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, LOCAL UNION NO. 384 OF HUDSON COUNTY, NEW JERSEY, *et als.*,
Defendants-Appellants.

On Appeal from the Court of Chancery.

TO THE HONORABLE THE COURT OF ERRORS AND APPEALS IN THE LAST RESORT IN ALL CAUSES.

The petition of International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Local Union No. 384 of Hudson County; Frank Mandrake, president, individually and as agent of the senior members of Local Union No. 384, and Fred Hoppke, Vice President; Charles May, Secretary and Treasurer; Frank L. Brown, Recording Secretary; Anthony Boscarelli, Business Agent, and Albert DeTitta and Frank X. Maurus, officers and members of the Executive Board, the appellants in the above-entitled cause, respectfully show that:

Petitioners find themselves aggrieved by a final DECREE OF REVERSAL made in the Court of Chan-

cery, by his Honor, Luther A. Campbell, Chancellor of the State of New Jersey, bearing date the 20th day of August 1935, in a certain cause in the Court of Chancery of New Jersey, wherein the said William Cameron, Frank Giardina, Frank Berkowski, Joseph Steiner, Jr., George Muller, Thomas J. McCarthy and Vincent Sapanor, were complainants, and the said International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Local Union No. 384 of Hudson County; Frank Mandrake, President, individually and as Agent of the senior members of Local Union No. 384, and Fred Hoppke, Vice President; Charles Hay, Secretay and Treasurer; Frank L. Brown, Recording Secretary; Anthony Boscarelli, Business Agent, and Albert DeTitta and Frank X. Maurus, Officers and members of the Executive Board, et als, were defendants, in this respect, to wit, that the said Decree adjudges that

"1. That a certain document and contract entitled:

'RULES GOVERNING
MEMBERSHIP, APPLICATION AND AGREEMENT
FOR
JUNIOR DEPARTMENT
Local 384 I. A. T. S. E. & M. P. M. O.
of United States and Canada.
MEMBERSHIP
February 11, 1930'

be and the same hereby is annulled, made void, unenforcible and of no effect.

2. That such portions and provisions of any constitution, by-laws, resolutions, rules, motions, regulations, and other actions adopted by said Local, as effect or provide for any division or classification of members of said Local, into 'Seniors' and 'Juniors' (or 'apprentices') or otherwise, or for any differentiation between any such members of said Local, be and the same hereby are annulled, made void, unenforcible and of no effect.

3. That complainant and those other members of said local hereofore known or designated as 'Juniors' (or 'apprentices') are members of said Local on a parity with those members thereof heretofore known and designated as 'Seniors', and are entitled to, and that they be accorded, without distinction or discrimination, all rights, benefits, and privileges accorded to those members of said Local heretofore known or designated as 'Seniors', and that hereafter all of said 'Juniors' and 'Seniors' be referred to and designated by the same designation, without any distinction.

4. That the defendants, and each of them, and the present and future officers, agents and servants of said Local, be and they are hereby permanently enjoined and restrained from:

a. Effecting or attempting to effect any distinction or discrimination between those members of said Local heretofore known or designated as 'Juniors' (Or 'Apprentices') or any of them, and any other members of said Local, according to those members of said Local heretofore known or designated as 'Seniors', any

right, benefit, or privilege not accorded or enjoyed on the same terms, and in the same manner, to and by complainants and every other member of said Local to the end that all members shall in all respects be on an equality and parity with each other.

b. In any manner or form penalizing or discriminating against any of complainants or any of those who aided or supported them in the institution or prosecution of this cause, by reason of having instituted or prosecuted this cause or aided or supported the complainants therein.

5. That nothing herein contained shall operate to prevent the defendant Local, its officers, agents, or servants from hereafter as to any members of said Local lawfully adopting and enforcing proper and lawful constitutional or by-law provisions or proper and lawful resolutions, rules, regulations, motions, or other lawful actions, provided same shall not be in conflict with other portions hereof.

AND IT IS FURTHER ORDERED, ADJUDGED, and DECREED that the defendant Local pay the Solicitors of Complainants the costs of this suit to be taxed, including a counsel fee of $2,500.00, which is hereby allowed to said complainants, together with the costs taxed in said Court of Errors and Appeals on said appeal, upon service upon it of true, but uncertified copies of this decree and of said taxed costs, and that in default of such payment, execution issue therefor according to the practice of this Court,

AND IT IS FURTHER ORDERED that defendant local pay to Samuel S. Stern, Esq., Solicitor for the intervening defendants their taxed costs including a counsel fee of Two Hundred and Fifty ($250.00) Dollars."

And petitioners appeal from the said FINAL DECREE OF REVERSAL of the Chancellor, which decrees as aforesaid, upon the ground that the same is erroneous, in that:

1. The Court of Chancery was without jurisdiction to grant the Decree because an Order of Reference had not been entered to the Vice Chancellor advising such Decree.

2. The Chancellor should have dismissed complainants' bill, because jurisdiction had not been obtained over the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, a voluntary, unincorporated association, and a necessary and indispensable party to the suit.

3. The Court of Chancery was without power and authority to disregard the mandate of the Court of Errors and Appeals, as shown by the remittitur, and was without power and authority to take any further proceedings in the cause or enter a Decree therein, except in strict compliance therewith.

4. Said Decree does not conform to the Mandate of the Court of Errors and Appeals, as manifested by the Remittitur.

5. The relief granted by said Decree is greater than the relief to which complainants-respondents are entitled, under the opinion and mandate of the Court of Errors and Appeals, and the remittitur entered in said Court.

6. The complainants-respondents are not entitled to have adjudged and decreed that "such portions and provisions of any constitution, by-laws, resolutions, rules, motions, regulations and other actions adopted by said local as effect or provide for any division or classification of members of said local into 'Seniors' and 'Juniors' (or 'Apprentices') or otherwise, or for any differentiation between any such members of said local", be annulled, made void, unenforceable and of no effect, and insofar as the final DECREE OF REVERSAL grants such relief to complainants, it fails to comply with and goes beyond the scope and the directions of the mandate of the Court of Errors and Appeals, and the remittitur, and is inequitable and oppressive to these appellants.

7. Complainants-respondents are not entitled to have adjudged and decreed that "complainants and those other members of said local heretofore known or designated as 'Juniors' (or 'Apprentices') are members of said local on a parity with those members thereof heretofore known and designated as 'Seniors', and are entitled to, and that they be accorded, without distinction or discrimination, all rights, benefits and privileges accorded to those members of said Local heretofore known or designated as 'Seniors', and that hereafter all of said 'Juniors' and 'Seniors' be referred to and designated by the same designation, without any distinction",

and insofar as the final DECREE OF REVERSAL grants such relief to complainants, it fails to comply with and goes beyond the scope and the directions of the mandate of the Court of Errors and Appeals, and the remittitur, and is inequitable and oppressive to these appellants.

8. Complainants-respondents are not entitled to have adjudged and decreed, that appellants be permanently enjoined and restrained from "effecting or attempting to effect any distinction or discrimination between those members of said Local heretofore known or designated as 'Juniors' (or 'Apprentices') or any of them, and any other members of said Local, according to those members of said Local heretofore known or designated as 'Seniors', any right, benefit or privilege not accorded or enjoyed on the same terms, and in the same manner, to and by complainants and every other member of said Local to the end that all members shall in all respects be on an equality and parity with each other", and insofar as the final DECREE OF REVERSAL grants such relief to complainants, it fails to comply with and goes beyond the scope and the directions of the mandate of the Court of Errors and Appeals, and the remittitur, and is inequitable and oppressive to these appellants.

9. The sole relief to which the complainants-respondents are entitled, and the full measure thereof, in accordance with the directions of the remittitur, is the annulment and cancellation of the Junior Membership Contract, entered into on March 4, 1930.

10. The Decree orders the appellant, Local Union 384, to pay to complainants, the costs of suit

to be taxed including a counsel fee of $2500.00, whereas the Court should have denied such counsel fee and costs.

11. The Decree orders the appellant, Local Union 384, to pay to Samuel S. Stern, Esq., Solicitor for the intervening defendants-respondents, their taxed costs including a counsel fee of $250.00, whereas the court should have denied such counsel fee and costs.

12. The Court of Chancery should have adjudged and decreed that upon the annulment and cancellation of the Junior Membership Agreement, the status quo ante should be restored, i. e. the complainants-respondents, as well as all other Juniors of said local, revert to their original position or status of "PERMIT-MEN", awaiting action of the local union on their applications for membership, and in equity, the local should be ordered to take a vote on the admission of the said "PERMIT-MEN" to regular membership in the local, and if, upon such vote, any of the "PERMIT-MEN" are rejected, the local to refund to such "PERMIT-MEN" the fee paid the local on making the application for membership.

13. The Court of Chancery should have adjudged and decreed that the complainants-respondents had not at anytime acquired the status or right of membership in the union, and that complainants could acquire full membership in the union only by the voluntary action of the local union itself.

14. The Court of Chancery considered that the Remittitur from the Court of Errors and Appeals

directed a re-hearing of the cause, and although the Court of Chancery ordered such re-hearing, it did not in fact, grant such re-hearing.

15. The Court of Chancery by said Decree declared and established a new Membership Contract between complainants and the local union, not theretofore in existence, for the benefit of the complainants-respondents, over the objections of these appellants.

16. The Decree and the relief therein granted to complainants-respondents, is violative of and repugnant to, the Fourteenth Amendment to the Constitution of the United States and deprives these appellants of their liberty and property, without due process of law, and denies to said appellants, the equal protection of the laws.

17. The Decree and the relief therein afforded, coerces, forces and compels these appellants against their will, to admit the complainants-respondents to membership within their ranks, granting them the full right of membership in the local union on a parity with all other members, thus making a new contract for the benefit of the complainants-respondents, in violation of the constitutional rights of these appellants under the Fourteenth Amendment to the Constitution of the United States.

18. The Decree and the relief therein granted to the complainants-respondents, coerces, forces and compels these appellants by judicial fiat to enter into a new contractual relationship with complainants against the appellants' will, and is thus de-

structive of the appellants' unalienable right of liberty of contract, to select and choose its own membership, and is repugnant to the due process clause and the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

Petitioners, therefore, pray that the said final DECREE OF REVERSAL by the Chancellor may be wholly reversed, set aside and for nothing holden, and that petitioners may have such other relief in the premises as to this court, shall seem proper.

SAUL NEMSER,
Solicitor for and of Counsel with Appellants.

Service of a copy of the Petition of Appeal is hereby acknowledged this 16th day of September, 1935.

WALLACE P. BERKOWITZ,
Solicitor for Complainants-Respondents.

NORBURY C. MURRAY,
Solicitor for Complainants-Respondents.

SAMUEL S. STERN,
Solicitor for Intervening DefendantsRespondents.

Decree of Reversal.
(Filed August 20, 1935)

IN CHANCERY OF NEW JERSEY.
96/548.

Between

WILLIAM CAMERON, *et al.*,
Complainants,

and

THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, LOCAL UNION NO. 384 OF HUDSON COUNTY, NEW JERSEY, *et al.*,
Defendants.

On Bill, etc.

This matter being opened to the Court by Wallace P. Berkowitz, and Norbury C. Murray, Solicitors for and of Counsel with Complainants, William Cameron, Frank Giardina, Frank Barkowski, Joseph Steiner, Jr., George Muller, Thomas J. McCarthy and Vincent Sapanor, and on due notice to and in the presence of Saul Nemser, Solicitor for and Of Counsel with Defendants International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Local Union No. 384 of Hudson County; Frank Mandrake, president, individually and as agent of the senior members of Local Union No. 384, and Fred Hoppke, vice president; Charles May, Secretary and treasurer; Frank L. Brown, recording secretary; Anthony Boscarelli, business agent, and Albert DeTitta and Frank X. Maurus, officers and members of the executive board, and of Samuel

S. Stern, of counsel with Neal Fargo, Walter F. Hentshell, George Siberry, and Joseph Udiljak.

And it appearing that the bill of complaint in said cause was dismissed by decree of this Court bearing date the 13th day of January, 1934, and that taxed costs and a counsel fee to Solicitors of Defendants, were awarded against the complainants, and that from said decree, in its entirety, complainants appealed to the Court of Errors and Appeals of this State, and that that Court, in an opinion filed, and by an order of Remittitur ordered, Adjudged, and Decreed that the said decree of this Court be in all things reversed, set aside, and for nothing holden, and that said cause be remanded to this Court for further proceedings in accordance with the said opinion of that Court and in accordance with the rules and practices of this Court, and

It is thereupon, on this 20th day of August, 1935, on Motion of said Solicitors for and of Counsel with Complainants, ORDERED, ADJUDGED and DECREED:

1. That a certain document and contract entitled:

"RULES GOVERNING
MEMBERSHIP, APPLICATION *and* AGREEMENT
FOR
JUNIOR DEPARTMENT
Local 384, I. A. T. S. E. & M. P. M. O.
of United States and Canada.
MEMBERSHIP
February 11, 1930"

be and the same hereby is annulled, made void, unenforcibale and of no effect.

2. That such portions and provisions of any constitution, by-laws, resolutions, rules, motions, regulations, and other actions adopted by said Local, as effect or provide for any division or classification of members of said Local, into "Seniors" and "Juniors" (or "apprentices") or otherwise, or for any differentiation between any such members of said Local, be and the same hereby are annulled, made void, unenforcible and of no effect.

3. That complainant and those other members of said Local heretofore known or designated as "Juniors" (or "apprentices") are members of said Local on a parity with those members thereof heretofore known and designated as "Seniors", and are entitled to, and that they be accorded, without distinction or discrimination, all rights, benefits, and privileges accorded to those members of said Local heretofore known or designated as "Seniors", and that hereafter all of said "Juniors" and "Seniors" be referred to and designated by the same designation, without any distinction.

4. That the defendants, and each of them, and the present and future officers, agents and servants of said Local, be and they are hereby permanently enjoined and restrained from:

a. Effecting or attempting to effect any distinction or discrimination between those members of said Local heretofore known or designated as "Juniors" (or "Apprentices") or any of them, and any other members of said Local, according to those

members of said Local heretofore known or designated as "Seniors", any right, benefit, or privilege not accorded or enjoyed on the same terms, and in the same manner, to and by complainants and every other member of said Local to the end that all members shall in all respects be on an equality and parity with each other.

b. In any manner or form penalizing or discriminating against any of complainants or any of those who aided or supported them in the institution or prosecution of this cause, by reason of having instituted or prosecuted this cause or aided or supported the complainants therein.

5. That nothing herein contained shall operate to prevent the defendant Local, its officers, agents, or servants from hereafter as to any members of said Local lawfully adopting and enforcing proper and lawful constitutional or by-law provisions or proper and lawful resolutions, rules, regulations, motions, or other lawful actions, provided same shall not be in conflict with other portions hereof.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant Local pay the Solicitors of Complainants the costs of this suit to be taxed, including a counsel fee of $2,500.00, which is hereby allowed to said complainants, together with the costs taxed in said Court of Errors and Appeals on said appeal, upon service upon it of true, but uncertified copies of this decree and of said taxed costs, and that in default of such payment, execution issue therefor according to the practice of this Court,

Decree of Reversal.

AND IT IS FURTHER ORDERED that defendant local pay to Samuel S. Stern, Esq., Solicitor for the intervening defendants their taxed costs including a counsel fee of Two Hundred and Fifty ($250.00) Dollars.

LUTHER A. CAMPBELL,
C.

Respectfully advised,
JOHN O. BIGELOW, V. C.

Opinion.
(Filed Jan. 24, 1935)

NEW JERSEY COURT OF ERRORS AND APPEALS.

No. 9 October Term, 1934.

Between
WILLIAM CAMERON, *et als.*,
Complainants-Appellants,
and
THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, LOCAL UNION NO. 384 OF HUDSON COUNTY, NEW JERSEY, *et als.*,
Defendants-Respondents.

Argued October 16, 1934; decided January 24, 1935.

On appeal from a decree of the Court of Chancery.

For the Appellants: WALLACE P. BERKOWITZ and NORBURY C. MURRAY.

For the Respondents: SAUL NEMSER, JOHN MILTON and SAMUEL S. STERN.

The opinion of the Court was delivered by

HEHER, J.

The primary object of the dismissed bill of complaint was the annulment of the provision of the

constitution and by-laws of the defendant trade union, a voluntary association, and a so-called contract classifying the members thereof as "seniors" and "juniors". Auxiliary injunctive relief was prayed.

The complainants, seven in number, each hold a junior membership. Their insistence is that, in the special circumstances here presented, the contract in question constitutes an "abuse of power", and therefore contravenes sound public policy, and is void. These are the asserted special circumstances: (1) the local union has "substantially an 80% monopoly of employment of that trade in its territorial jurisdiction (the County of Hudson), and are seeking a "complete monopoly;" (2) the senior members *alone* fixed the scale of wages and conditions of employment binding upon *all* its members; (3) the seniors control the allotment of employment among its members; (4) the seniors select representatives for all its members, empowered to bargain collectively with employers under the National Industrial Recovery Act; (5) the juniors are excluded from voice and vote and participation in the local's management, yet their per capita assessment is substantially greater; the juniors are required to pay $454. per annum, as compared to $80. for the seniors; and (6) while classified as "juniors" they are no less competent than the seniors, and in fact, are not learners, but skilled operators, who receive the same rate of compensation as the seniors. Specifically, complainants maintain that, in the main, these provisions of the constitution, laws and the claimed contract, particularly that granting a preference in jobs to the seniors, bargain away the juniors' "constitutional and inalienable right to earn a living."

Opinion.

These are the circumstances asserted in justification or excuse: The local came into being on March 15, 1915, under a charter granted by the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada. It is composed of men pursuing the trade of motion picture machine operators. It is governed by the constitution and by-laws of the International body, so far as applicable, and by a constitution and by-laws of its own adoption. Complainants and thirty-five others were granted a "junior" membership on March 4, 1930. It is said that the following are the considerations justifying this classification: In 1928, the synchronization of pictorial action and voice and sound became a reality, and this wrought radical changes in that industry. At least two operators were required for the operation of the sound or "talking" picture projector—one sufficed for the silent picture machine. These men were required to master a new operating technique. The advent of the sound pictures, so it is claimed, produced a shortage of skilled projector machine operators. The local could not supply the demand for adequately trained operators, made by the exhibitors with whom it had "closed-shop" contracts. It then had eighty members skilled only in the operation of the silent picture projector. It became necessary to impart the requisite technical knowledge to them, and to instruct a like number who were wholly unfamiliar with the mechanics of the trade. These latter were given a "permit" to work in the theatres with which the union had a contract, until such a time, so the union insists, "as the examining board of the local was convinced that these men were qualified and sufficiently experienced in their trade." These per-

mit-holders acquired practical experience under the tutelage and guidance of the union operators, and, in consideration thereof, paid to the local union 10% of their earnings. On March 4, 1930, they numbered thirty-five. They worked under the supervision of the union, who was responsible, under its contracts with the exhibitors, for damage done to the latter's equipment and machinery. The permit-holders were in no sense members of the union, and consequently had no standing with the parent International body. The result was that when itinerant members of the latter body entered the local's territory, they had a status that entitled them to the jobs held by the permit holders. This resulted in considerable loss to the latter, and was likewise a source of irritation and annoyance to the exhibitors. So it was concluded that, for the mutual benefit and advantage of all concerned, the permit-holders would be given a union status; hence, the contract in question. The union terms the relationship thus acquired a "limited standing as apprentice," and insists that the primary purpose was to confer upon the permit-holders a status recognized by the international body, which would secure their jobs against the demands of outside members of the latter body. It is vigorously maintained that, in the circumstances, it was only fair and equitable that the union members should reserve a preference in employment, and to effect this purpose, mainly, the challenged contract came into being. It is said, and with an apparent basis in fact, that the sound pictures were inaugurated with deep misgivings, and that, at the time, it was freely prophesied by men of long experience in the industry that the principle would eventually prove impractical and unfeasible as a commercial propo-

sition. It is urged that the sole design of the scheme in question was to safeguard their established position against the consequence of failure of the sound pictures, especially the radical reduction of the number of available placed in the event of an enforced return to the silent picture.

To effectuate this design, it was formally resolved by the local union, on January 14, 1930, "that a Junior Local 384 be created within the jurisdiction of Local 384, I. A. T. S. E. & M. P. M. O.; said Local to be governed (six) by the Senior Local, at all times." On March 4, 1930, the permitholders subscribed to the membership contract presented by the Union. The membership fee was fixed at $500. A prerequisite to membership was a demonstration of the applicant's capacity. The "senior members," some eighty in number, were listed, and they were expressly "given seniority rights over all other members with reference to employment." There was a specific provision (section 9) that "junior members will at all times be subject to removal from jobs when such jobs are desired by senior members." These were made the prerequisites to admission to senior membership; (1) junior membership; (2) the application must be made "with the consent of the executive board and be vouched for by five senior members," and be accompanied by the "balance on (sic) application fee that is in force at the time of his making application into (sic) senior body;" (3) the applicant shall be "voted on, by secret ballot, at a regular meeting and receive a two-thirds vote of all senior members present at such meeting;" and (4) compliance with all constitutional requirements;" Prior to December 10, 1929, the union membership fee was increased from $200. to $1,000. On that

day it was increased to $3,000. Complainants insist that this was not made known to the junior members prior to their admission to the "junior local." As to some of the junior members, there is evidence to the contrary. Provision was also made therein for stated monthly meetings of the "junior members" to be conducted by the executive board of the senior body. Junior members were thereby required to pay a "per capita tax, insurance and all assessments", and dues to the local union of "10% of salaries earned". Section 11 obligated all members to "abide by the rules of this union, without resort to a court of law, and in the event of expulsion agree to forfeit all property rights in the union."

The contract, as thus outlined, was not induced by fraud, material misrepresentation, mistake duress or undue influence. There was indisputably such a manifestation of mutual assent by the parties to the terms embodied in the memorandum referred to as to give rise to a contract. The reality of consent of the parties, as it has been termed by a distinguished text-writer (Anson on Contracts, 14th Eng. Ed. sections 10, 176) is not at issue.

But defendants maintain that the provision of a subsequent revision of the constitution and laws of the local union, adopted in May 1931, are equally binding upon the junior members. Complainants concede that the revision incorporated into the constitution and by-laws of the local union "the substance of the 'contract', but maintain that it "changed and added to it in important particulars." The general insistence is that the revision is void because the "juniors" were not afforded an opportunity to vote on this revision, or "to be heard thereon," as provided by the 1923 constitution and

by-laws. And the following specific provisions are further challenged as an unwarranted insertion of new terms and conditions into the contract evidenced by the constitution and laws in effect when they were admitted to membership and the membership agreement subscribed by them, viz.: (1) "Junior members shall, at no time, be permitted to attend the meetings of the Senior Body, unless called upon for certain reasons; they shall have no vote on anything pertaining to the business of this Local, but may speak in their own behalf when assembled in their own meeting;—(Revised By-Laws, Art. 1 Sec. 30); (2) the senior members are obligated not to disclose to the members of the junior body "anything transpired (sic) in regular or in any other meetings of this Union;—(Revised By-Laws Art. 1 Sec. 21) (3) although section 8 of the membership contract expressly provided for monthly meetings of the junior body, the revision provides—"Meetings of the Junior Body shall be held whenever called for by the President, at the decision of the Executive Board;—(Revised By-Laws, Art. 1, Sec. 1); (4) although the membership contract provides that the dues payable by the juniors shall be 10% of their earnings, plus per capita tax and insurance, the revision provides—"The amount of dues to be paid by all members and officers shall be of such amount as this Union may decide upon from time to time; such decision shall be decided upon by a two-thirds ballot box vote of all members voting, and at a regular meeting;—(Revised By-Laws, Art. II, Sec. 2) (5) "No member of this Union shall be permitted to give positions to Junior Members, * * * unless sanctioned by this Union;"—(Revised By-Laws, Art. 1 Sec. 16); and (6) "No members, Senior or Junior, shall

make or cause to be made any agreements, verbal, or in writing, with owners or managers of theatres in which they are employed," relating to "work or salaries coming under the jurisdiction of this organization;" (Revised By-Laws, Art. 1 Sec. 10). The revised constitution (Art. II Sec. 6) prescribes the qualifications for admission to senior membership, and they are not substantially different from those contained in the membership contract, except that subdivision (b) of the constitution requires service as an "apprentice" while the membership contract provides for service as a "junior member."

Is a contract embodying the terms here outlined contrary to sound public policy? If this query is answered in the negative, it will not be necessary to pass upon complainants' contention that they are not bound by the subsequent revision of the constitution and laws of the Union.

Defendants maintain, *in limine,* that complainants have not exhausted their remedies within the organization. It is said that they stipulated to submit their "grievances", in the first instance, to a tribunal created by the constitution of the international body, and that they "cannot maintain a civil action against it until the condition precedent of submission has been in legal contemplation complied with." Reliance is placed upon Section II of the junior membership contract. They point to the provisions of the constitution of the international body (Article Ten, Section 5, which requires that appeals and proceedings by a member for the redress of grievances shall be in the following order, viz: (1) To the local union from its own or its officers' decision; (2) From the decision of the local union to the International President of the Alliance; (3) From the decision of the International

President to the General Executive Board to the Alliance in convention assembled, the latter body being the tribunal of "ultimate judgment". Article Nine, Section 1, provides that "all accusations or charges directed against any affiliated local union or member of this Alliance for violation of this Constitution and By-Laws shall be addressed to the International President."

It is the settled rule that where the question is a social one, involving discipline or the conduct or standing of a member of such an association, he must exhaust his remedy in the tribunal of the organization before he can invoke the aid of the civil courts; and even if property rights are involved, and the rules of the association provide a remedy within that body, and the members have agreed to exhaust that remedy before application to the law courts, the latter will not interfere until that remedy has been exhausted. *Zeliff* v. *Knights of Pythias,* 53 N. J. L. 536; *Roxbury Lodge* v. *Hocking,* 60 N. J. L. 439; *Ocean Castle* v. *Smith,* 58 N. J. L. 545, affirmed *sum nom. Smith* v. *Ocean Castle,* 59 N. J. L. 198; *Byrne* v. *Supreme Circle,* 74 N. J. L. 258; *Grant* v. *Ancient Order of Foresters,* 75 N. J. L. 109; *Emma* v. *Loggia Fasci Italici No. 16, Sons of Italy,* 7 N. J. Mis. R. 387.

Notwithstanding the contrary insistence of defendants, it is clear that the subject of controversy is a property right. Complainants challenge the asserted contract upon the ground, *inter alia,* that it "bargains away the constitutional and inalienable right to earn a living." This is a property right guaranteed by the Fifth Amendment of the Federal Constitution. Passing the question of whether the property right in controversy is cognizable by the tribunals established within the union, we are clear

that resort to such tribunals is not required where, as here, the ground of attack is that it is contrary to public policy and therefore void. In such case, the public has an interest which transcends the rights and interests of the union membership, collectively or individually. These organization tribunals were designed to adjust controversies between the unions and its members *inter se* strictly. Here the public is virutally a party, and the provision in question therefore has no application. If this were merely a controversy between private parties, the complainants would not, even on a clear showing that the object of the contract was illegal, be entitled to relief. It is the established rule that the law will not assist either party to an illegal contract. The parties being in *pari delicto,* it will leave them where it finds them. If the contract is still executory, it will not enforce it, and if already executed, it will not restore the status quo ante. *Elliott* v. *Chamberlain,* 38 N. J. Eq. 604; *Cone* v. *Russell & Mason,* 48 N. J. Eq. 208, 217; *Attorney-General* v. *Firemen's Insurance Co.,* 74 N. J. Eq. 372; *Williston on Contracts,* Sec. 1630. But where the contract tends to public injury, different considerations apply. The transaction is then affected with a public interest, and is not *juris privati;* it affects the community at large. Judge Story stated the applicable rule thus: "In cases where the agreements or other transactions are repudiated on account of their being against public policy, the circumstances that the relief is asked by a party who is *particeps criminis,* is not in equity material. The reason is, that the *public interest* requires that relief should be given; and it is given to the *public* through the party." *1 Story Eq. Sec. 298.* Compare *Cone* v. *Russell & Mason, supra.*

Mr. Justice Garrison, *in Attorney-General* v. *Firemen's Insurance Co. Supra,* held that relief is granted to a party in *pari delicto* through "the fiction of acting for the public." He said "The fundamental principle recognized by this line of cases is that one who has entered into a contract that contravenes public policy owes to the public the continuous duty or withdrawing from such contract." A duty, thus owing to the public is, upon familiar principles, presumed by courts to be performed, and such presumption should be indulged in by the Courts whenever necessary to give to the public, acting through its official representatives the same standing that the actual performance of such duty gives to one in *pari-delicto* to act for the public."

Is the contract in question valid and enforceable? Trade union membership, like other contractual relationships, is purely voluntary on both sides. Such organizations come into being for purposes mutually agreed upon. The cohesive force is the common interest. Their right is prescribe qualifications for membership, and to make rules and regulations for the transaction of their lawful business, is not open to question. They may impose such requirements for admission and such formalities of election as may be deemed fit and proper; they may restrict membership to the original promoters, or limit the number to be thereafter admitted; the power of such a body to make its membership exclusive is incident to its character. The underlying theory of such combinations is association mutually acceptable, or in accordance with regulations agreed upon. Enforced admission to membership is manifestly contrary to the scheme of such a society. No person has an abstract right to such membership. *Mayer* v. *Journeymen Stone Cutters' Assn.,* 47 N. J. Eq. 519.

But the contract must not be repugnant to public policy. Is this contract in that category? What considerations require the rejection of a contract as violative of sound governmental policy? The personal liberty and right of property guaranteed by the fifth amendment of the federal constitution embrace the right to make contracts for the purchase of the labor of others, and equally the right to make contracts for the sale of one's own labor. *Adair* v. *United States*, 208 U. S. 161, 28 S. Ct. 277, 52 L. Ed. 436; *Coopage* v. *Kansas*, 236 U. S. 1, 14, 35 S. Ct. 240, 59 L. Ed. 441; *Hitchman Coal and Coke Co.* v. *Mitchell*, 245 U. S. 229, 38 S. Ct. 65, 62 L. Ed. 260. The question remains, can the union, as a *sine qua non* of membership, require a surrender or substantial modification of impairment of this individual constitutional right of freedom in respect of the disposal of one's labor? Is that an unalienable right? It has been so termed. Article 1, Paragraph 1, of the State Constitution declares that "all men by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness." This Court, in an opinion written by Mr. Justice Pitney, said of this: "The common law has long recognized as a part of the boasted liberty of the citizen the right of every man to freely engage in such lawful business or occupation as he himself may choose, free from hindrance or obstruction by his fellow-men, saving such as may result from the exercise of equal or superior rights on their part—such, for instance, as the right of fair competition in the like field of human effort—and saving, of course, such other hindrance or obstruction

as may be legally excused or justified. This right is declared by our constitution to be unalienable.—(Article 1, paragraph 1). As a part of the right of acquiring property there resides in every man the right of making contracts for the purchase and sale of property, and contracts for personal services, which amount to the purchase and sale of labor. It makes very little difference whether the right that underlies contracts of the latter sort is called a personal right or a property right. It seems to us impossible to draw a distinction between a right of property and a right of acquiring property that will make a disturbance of the latter right any less actionable than a disturbance of the former. *Brennan* v. *United Hatters of North America & C.*, 73 N. J. L. 729, 742. "There is no more sacred right of citizenship than the right to pursue unmolested a lawful employment in a lawful manner. It is nothing more or less than the sacred right of labor." *Conners* v. *Connolly*, 86 Conn. 641; *Lehigh Structural Steel Co.* v. *Atlantic Smelting & Refining Works*, 92 N. J. Eq. 131. The right of a workman to the "free use of his hands" has been described as one "of which the legislature cannot deprive him, one which the law of no trades union can take from him, and one which it is the bounden duty of the courts to protect." *Erdman* v. *Mitchell*, 207 Pa. 79, 56 Atl. 327. "A man may not barter away his life, or his freedom or his substantial rights. *Home Insurance Co.* v. *Morse*, 20 Wall 445, 22 L. E. 385.

But however this may be, it is clear that such a contract is void, if repugnant to sound public policy. The enjoyment of these constitutional rights is subject always to the fundamental condition that no contract, whatever its subject matter, can be sustained, which the law upon reasonable grounds,

forbids as inconsistent with the public interest, or as hurtful to the public order, or as detrimental to the common good. *Adair* v. *United States, supra; Cooperage* v. *Kansas, supra*; *Hitchman Coal & Coke Co.* v. *Mitchell, supra.* They are at all times subject to the exercise of the police power. As declared by Mr. Justice Harlan in an earlier case, the individual liberty secured by the federal constitution "does not import an absolute right in each person to be, at all times and in all circumstances wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good. On any other basis organized society could not exist with safety to its members. Society based on the rule that each one is a law unto himself would soon be confronted with disorder and anarchy. Real liberty for all could not exist under the operation of a principle which recognizes the right of each individual person to use his own, whether in respect of his person or his property, regardless of the injury that may be done to others. This court has more than once recognized it as a fundamental principle that 'persons and property are subjected to all kinds of restraints and burdens in order to secure the general comfort, health and prosperity of the state * * * "*Jacobson* v. *Massachusetts*, 197 U. S. 11, 25 S. Ct. 358, 49 L. Ed. 643 *E. Converso.*" If a contractual surrender or modification of such a fundamental right is contrary to the public interest, it is ineffective. The same public policy which imposes restraint, upon individual liberty and freedom of contract, when required by the common good and general welfare, denominated the police power, ordains that such individual rights shall not be surrendered or impaired, if thereby the public interest will be injuriously affected.

The contract at issue does not meet this test of validity. The public policy that sanctions trade unions is now well defined. Whatever may have been the early view in this state, the law now recognizes the right of workingmen to unite and to invite others to join their ranks, thereby making available, for the pursuit of their common interests, the strength, influence and power that come from such association. The enactment of Chapter 28 of the Laws of 1883. (*P. L. 1883, p. 36; Comp. Stat. 3051*) inaugurated a definite change of state policy in respect of such combinations. This measure provides that it shall not be unlawful for two or more persons to unite, combine or bind themselves "to persuade, advise or encourage, by peaceable means, any person or persons to enter into any combination for or against leaving or entering into the employment of any persons or corporation." And in 1926 the legislature provided that no injunction shall issue "in any case involving or growing out of a dispute concerning terms or conditions of employment" against peaceable picketing, or the employment of means and methods, in the promotion of a strike, that do not constitute intimidation or obstruction. *P. L. 1926, p. 348.* These statutes were designed to sanction combinations of workingmen moved by a purpose to secure a higher wage rate for their services, or a betterment of working conditions, or the legitimate advancement of the general welfare of the members of the combine. In the furtherance of the common objective, the use of peaceable and lawful means only is permissible. The legislative purposes was indisputably to impart legality to organizations set up for the benefit of the members as a class—to secure a fair measure of equality between the employer and the employee

in the lawful economic struggle between them as to the division of the joint product of labor and capital. It thereby accorded recognition to the now generally accepted view that such combinations are conducive to the well-being of society, and a necessary part of the social structure. The amelioration of the condition of labor is now regarded by enlightened government as a duty of paramount importance. The economic independence and security and contentment of labor are essential for the public order and welfare. *Bayonne Textile Corp.* v. *American Federation of Silk Workers,* 116 N. J. Eq. 146; *Mayer* v. *Journeymen Stonecutters' Assn., supra*; *New Jersey Painting Co.* v. *Local No. 26 Brotherhood of Painters, &c.,* 96 N. J. Eq. 632; *Bayer* v. *Brotherhood of Painters &c.,* 108 N. J. Eq. 257; *Gompers* v. *Buck's Stove & Range Co.,* 221 U. S. 418, 31 S. Ct. 492, 55 L. Ed. 797; *American Steel Foundry* v. *Tri-City C. T. Council,* 257 U. S. 184, 42 S. Ct. 72, 66 L. Ed. 189; *Thomas* v. *Cincinnati,* 62 Fed. 803; *Meier* v. *Speer,* 96 Ark. 618, 132 S. W. 988; *Kemp* v. *Division No. 241, &c., 255, 111, 213,* 99 N. E. 389; *Auburn Draying Co.* v. *Wardell,* 227 N. Y. 1, 124 N. E. 97.

But it is a corollary of the foregoing that the power thereby conferred shall not be misused. It shall not be employed to the detriment of society; it shall not be used as a means of oppression and injustice in respect of its members, or to deprive any of them, in the form of a contractual surrender, or otherwise, of their fundamental rights when the public interest will not be thereby served. There can be no arbitrary or capricious discrimination between the members of the union in respect of equality of opportunity to work. The arbitrary

use of the power derived from such combination to advance the interests of some of the members, at the expense of the remainder, would thwart the fundamental purpose of such union and defeat public policy. Public policy is the public interest. It transcends individual rights. It is patent that the senior members are striving to obtain a monopoly of the labor market in this particular trade, and to deprive the junior members of an equal opportunity to obtain employment and earn a livelihood for himself and family. In fact, monoply has been practically accomplished; absolute and complete dominion of the labor market is within reach. The public evils flowing from this policy are apparent. It tends to economic servitude—the impoverishment of one class for the benefit of the other—and is manifestly opposed to the public interest. The inevitable results are the loss of the services of useful members of society, and unrest, discontent and disaffection among the workers so restrained—a condition that is unquestionably inimical to the public welfare. This is an unfair exercise of the power springing from the combination. It is an arbitrary and unreasonable restraint of trade, and therefore obnoxious to the law. A classification so based is clearly contrary to the public interest.

The constitutional rights of liberty and property may be limited only to the extent necessary to subserve the public interest. The union cannot, in the service of its interest, deprive a non-member of his constitutional right of liberty and property. The statutes giving sanction to such unions were designed "to secure most favorable conditions for labor of their members," and are "not a warrant for making war upon the non-union man, or for illegal

interference with his rights and privileges, * * * There are in such a combination against an employee the suggestion of coercion, attempted monopoly, deprivation of livelihood, and remoteness of the legal purpose of the union to better its members' condition." *American Steel Foundry* v. *Tri-City C. T. Council, supra.*

And this limitation is likewise imposed upon the combination in dealing with its members. It is restricted to the advancement of the common interest through peaceable and lawful means, provided the public interest is not thereby injuriously affected. The function of a trade union is to increase the individual bargaining power by collective action, and thus to promote the common interest of its members. If, in the pursuit of this objective, through peaceable means and methods, that are otherwise deemed to be lawful, injury incidentally results to another, it is *damnum absque injuria.* But the power conferred upon such an organization must be directed to the advancement of the common interest and general welfare of its members. Such is its extent and limit.

The classification in question is an unreasonable restraint of the junior member's constitutional rights. It is an arbitrary interference with the liberty of contract, and therefore, a palpable abuse of power. There is a lack of reasonableness to accomplish a lawful end; it is merely an arbitrary and capricious interference with the individual liberty of contract to benefit those who imposed the restraint. Certain rights, as of life and personal liberty in the restricted sense, are clearly so absolute as to be inalienable; they cannot be bargained away. But it is clear that, in any event, the sur-

render of a fundamental right is not within the power of an individual, if the public interest would thereby be prejudiced. The liberty of contract may unquestionably be restrained, if public policy demands it. In such circumstances, the constitution does not forbid the imposition of the restraint. The test is whether the parties have stipulated for something inhibited by the law, or held to be inimical to or inconsistent with the public welfare. The safeguarding and protection of the individual right to labor, and the securing of an adequate return for the laborer's service, are the primary purposes of the combination. "The conservation of the chief asset of the laboring man, namely, his labor, through combination with his fellows and by their organized efforts is to be commended rather than condemned. For in that way his well-being may be best promoted and the interest of society thereby advanced. As observed by Judge Taft, in *Thomas* v. *Cincinnati,* 62 Fed. 803, 817: 'It is of benefit to them and the public, that laborers should unite. They have their labor to sell. If they stand together they are often able, all of them, to command better prices for their labor, than when dealing singly with each employer, because the necessities of the single employee may compel him to accept any terms offered.' *"Meier* v. *Speer, supra."* The underlying policy of the Clayton Act is that labor unions serve the public interest when instituted for mutual help and cooperation. *American Steel Foundry* v. *Tri-City C. T. Council, supra.*

There is obviously no merit in the claim that the classification of the juniors as "apprentices" is reasonable under the circumstances. They are not learners in any sense of the term. They are now

skilled mechanics. Moreover no test of capacity is laid down, either in the form of a given period of satisfactory service or a specific demonstration by examination or otherwise, of the requisite skill, as a condition to admission in the senior body. And the increase of the admission fee from $200. to $3,000. bears no reasonable relation to the technical skill of the applicant. It is manifest that the sole purpose of the classification is to create a monopoly in favor of the seniors. While it is suggested that the original purpose was to protect the seniors in the event that the sound pictures should prove impracticable, the commercial practicability of synchronized sound and picture records has long since been established. In the face of this, the effort to continue this system makes plain the motive.

Assuming, without deciding, that such combinations may, under given conditions, create seniority privileges that are reasonable, and therefore lawful, such is clearly not the case here. The juniors, although assessed at a rate greatly in excess of that imposed upon the seniors, are denied the right of participation in the formulation of the policies of the union, and in the management of its business. The power to determine the wage scale and acceptable working conditions is vested exclusively in the seniors. An exclusive control in the apportionment of work is likewise committed to the seniors. The bargaining power is lodged in the latter group The juniors are enjoined from making agreements with their employers relating to "work or salaries." And, as pointed out, the seniors may arbitrarily bar the juniors from membership in the union proper, and from all participation therein. It is a perversion, an embezzlement of power.

In short, the contract constitutes an irrevocable transfer to the seniors of the juniors' bargaining power and fundamental right of contract, while they remain members of the union. Their status is not even that of nominal members of the association. They are under the absolute control of this body, but are in no sense part of it. Thus the liberty of contract is unreasonably restrained; the design is not to advance the public welfare but the individual interest of the senior members solely.

It is true that the juniors were not obliged to accept the status thus accorded them by the union, but it is equally true that membership in such a body, whatever its form, cannot be conditioned upon the surrender of the member's individual constitutional rights when that would not subserve the public interest. And there is, unquestionably, the suggestion of coercion here. Non-membership would impose a penalty, however lawful, that the juniors were seeking to avoid.

Under these circumstances, equitable interposition is not only justified but demanded by the public interest. As was said by Mr. Justice Lamar, in *Gompers* v. *Buck's Stove & Range Co., supra;* "But the very fact that it is lawful to form these bodies, with multitudes of members, means that they have thereby acquired a vast power, in the presence of which the individual may be helpless. This power, when unlawfully used against one, cannot be met, except by his purchasing peace at the cost of submitting to terms which involve the sacrifice of rights protected by the Constitution; or by standing on such rights, and appealing to the preventive powers of a court of equity. When such appeal is made, it is the duty of government to protect the one against the many, as well as the many against the one."

And it does not matter that, at the moment, the junior members have not, in fact, suffered an impairment of earning power by reason of the enforcement of this contract. If it tends to the public injury, it should be annulled without regard to whether public injury had in fact resulted. *Attorney-General* v. *Firemen's Insurance Co., supra.* Such is clearly its tendency.

Decree reversed, and cause remanded for further proceedings in conformity with this opinion.

Endorsed

"Filed Jan. 24, 1935

THOMAS A. MATHIS,
Clerk."

Remittitur.
(Filed April 4, 1935)

NEW JERSEY COURT OF ERRORS AND APPEALS,

OCTOBER TERM, 1934.

Between WILLIAM CAMERON, *et als.*, Complainants, and THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES, AND MOVING PITURE MACHINE OPERATORS, etc., LOCAL UNION No. 384 OF HUDSON COUNTY, N. J., *et als.*, Defendants.	On Appeal from Chancery. Decree of Reversal.

This cause coming on to be heard at the October Term, one thousand nine hundred and thirty-four, in the presence of the respective parties, and the case having been read, and the argument of counsel, as well as the record and proceedings duly considered upon the appeal set forth and specified in the petition of appeal, &c.—

It is thereupon on this twenty-fourth day of January in the year of our Lord one thousand nine hundred and thirty-five, ordered, adjudged and decreed that the decree of the Chancellor be reversed

and cause remanded for further proceedings in conformity with the opinion heretofore filed, and that the record and proceedings be remitted to the Court of Chancery, to be therein proceeded on according to law and the practice of said Court.

On motion of

WALLACE P. BERKOWITZ,
Solicitor and of Counsel with Appellant.

A true copy.

THOMAS A. MATHIS,
Clerk.

Memorandum, dated May 13, 1935.
(Filed May 13, 1935)

IN CHANCERY OF NEW JERSEY.

Between WILLIAM CAMERON, and others, Complainants, and THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, LOCAL UNION NO. 384 OF HUDSON COUNTY, NEW JERSEY, and others, Defendants.	On Bill, &c. 96/548

May 13, 1935.

MESSRS. NORBURY C. MURRAY and WALLACE P. BERKOWITZ, for the Complainants.

Mr. SAUL NEMSER, for the Defendants.

Mr. SAMUEL S. STERN, for the Junior Defendants.

BIGELOW, V. C.:

By the remittitur, the decree which had dismissed the bill was reversed and the cause was remanded for further proceedings in conformity with the opinion of Justice Heher. This remittitur requires a rehearing in Chancery. On the rehearing, the questions determined on appeal are the law of the

case and any express findings of fact of the Appellate Court are binding on this Court. The rehearing will be held on the proofs already taken, unless, on due application and for good cause shown, the taking of further evidence is allowed. While the findings of fact made by Vice Chancellor Fallon are not binding, they will be given great weight just as are the findings of a master.

I can hear argument, if agreeable to counsel, on the 31st instant, at 10 A. M., and will allow each side one hour. Briefs should be served on opposite parties five days before the argument and reply briefs at the opening of the argument. Meanwhile, I will read the briefs submitted to the Court of Errors and Appeals.

Transcript, dated June 5, 1935.

IN CHANCERY OF NEW JERSEY.

Between WILLIAM CAMERON, and others, Complainants, and THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, LOCAL UNION NO. 384 OF HUDSON COUNTY, NEW JERSEY, and others, Defendants.	On Bill, &c. 96/548

Transcript of shorthand notes taken in the above entitled cause at Chancery Chambers, Jersey City, N. J., on June 5th, 1935.

APPEARANCES:

Mr. WALLACE P. BERKOWITZ, for the Complaints.

Mr. SAUL NEMSER, for the Defendants.

Mr. SAMUEL S. STERN, for certain Defendants.

Mr. Berkowitz: Mr. Murray will not be able to come over this morning. Your Honor has a copy of the brief.

Mr. Nemser: We are today engaged in the summation of the final hearing after a trial on this record. I desire to urge again the objection that there never has been an order of reference that I know of. I was never served with a notice to apply to fix the date of the final hearing. I never received

the fifteen day notice, notice of argument, notice of trial and also that the International Alliance has never been brought within the jurisdiction of this Court. They are indispensible parties. Now, in this particular case, the International Alliance was made a party defendant and the bill prays relief against them. No effort was made to bring in the International Alliance.

The Court: They didn't answer?

Mr. Nemser: No process was issued against them as I know. If I am wrong I would like to be corrected.

Mr. Berkowitz: I would say that the International Alliance resides out of this state and service cannot be served on them.

The Court: What is the International Alliance, a corporation?

Mr. Nemser: No, it is the parent body.

The Court: Here you have a common name for a thousand parties, do you want these thousand parties brought in as members of this suit?

Mr. Nemser: No, I want the International Alliance, the parent body in New York City.

The Court: I don't understand that there is any such body in the eyes of the law as the International Alliance. Was this objection of the lack of parties taken before?

Mr. Nemser: No. This is objection to proceed any further with this suit until this Court obtains jurisdiction.

Further, to grant complainants the full measure of relief prayed for, would be repugnant to the Fourteenth Amendment to the Constitution of the United States. It would be judicial coercion by a Court forcing the local to make a new contract with persons with whom they did not want to contract.

Objections.

(Filed July 23, 1935.)

IN CHANCERY OF NEW JERSEY.

96/548

Between
WILLIAM CAMERON, *et als.*,
Complainants,
and
THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, LOCAL UNION NO. 384 OF HUDSON COUNTY, NEW JERSEY, *et als.*,
Defendants.

On Bill &c.

On Remittitur from the Court of Errors and Appeals. Objections under the Constitution of the United States, to Granting Complainants the Relief Prayed For.

The defendants write down their objections, under the Constitution of the United States, to granting complainants the relief prayed for, on the following grounds, viz.:

1. To declare the complainants as having any status other than that of "PERMIT-MEN" in the organization, or to grant complainants any relief other than the annulment of the contract, and an injunction against the enforcement of the provisions thereof, or declaring a new contract for the benefit of complainants, would be violative of the rights of these defendants under the Fourteenth Amendment to the Constitution of the United States, and would in effect, deprive these defendants of their liberty and property, without due

process of law, and deny to these defendants, the equal protection of the Laws.

2. Forcing or compelling these defendants by judicial declaration or otherwise, to enter into a new contract or relationship with the complainants, or any of the other juniors, would be destructive of the complainants' unalienable right of liberty to contract, and thus repugnant to the due process clause and the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

SAUL NEMSER,
Solicitor of Defendants.

Memorandum, dated August 14, 1935.
(Filed August 16, 1935.)

(Not to Be Printed in Any Report)

IN CHANCERY OF NEW JERSEY.

Between WILLIAM CAMERON, and others, Complainants, and THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, LOCAL UNION NO. 384 OF HUDSON COUNTY, NEW JERSEY, and others, Defendants.	On Bill, &c. 96/548

August 14, 1935.

MESSRS. NORBURY C. MURRAY and WALLACE P. BERKOWITZ, for the Complainants.

Mr. SAUL NEMSER, for the Defendants.

Mr. SAMUEL S. STERN, for the Junior Defendants.

BIGELOW, V. C.

A final decree in this cause dismissed the bill. On appeal, the decree was reversed and the cause remitted for further proceedings in conformity with the opinion of Justice Heher which is reported in 118 N. J. Eq. 11. Counsel, however, disagree

radically as to the decree which should be made in order to conform with the opinion.

The principal defendant is an unincorporated local union, a branch of the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators. Complainants are quasi members of the local union. Defendants contend that the appellate court determined that complainants contract with the union is contrary to public policy and void, and that the decree should so adjudge and should relieve complainants of their obligation to the union. Complainants, on the other hand, argue that the appellate court decided that only certain parts of the contract are void and that this court should decree that complainants are members of the union, with all the rights of any other members and not subject to the discriminations which are contained in their contracts.

The union has agreements or tacit understandings with most of the moving picture theatres of Hudson County and by force thereof the members of the union have a substantial monopoly of employment as moving picture machine operators in the country. The monopoly is the central fact in this litigation. To secure for complainants a full share of its benefits, is the real purpose of the suit.

In 1928 and 1929, complainants, who were not then in any wise connected with the union, applied for membership. The union, instead of acting on their applications, gave to them permission to work at their trade in Hudson County and in return exacted a tribute of 10 per cent of their earnings. The complainants were called "permit men."

On January 14, 1930, it was formally resolved by the union, "that a Junior Local 384 be created within the jurisdiction of Local 384, I. A. T. S. E.

and M. P. M. O.; said local to be governed by the Senior Local at all times. To carry the resolution into effect, the officers of the union drafted a contract between Local 384 and the permit men,—the contract now in question. March 4, 1930, the contract was executed and complainants were thereby given the title of "junior members."

The bill alleges that the contract is void because it contravenes public policy and the appellate court upheld the contention. The gist of the decision is that the classification of membership into seniors and juniors, and the limitation placed on the latter, are illegal. The whole contract is limited to a statement of the rights and duties of the juniors. With the membership classification unlawful nothing of the contract remains. The contract is not severable; it is all void.

Actually the complainants desire the court to write into the contract new terms. Especially do they wish inserted a provision giving them a right to participate in the management of union affairs. They want, in lieu of their promise to pay 10 per cent. of their wages to the union, a provision that they pay the same dues as the senior members. The court cannot make these changes. The power of the court, when confronted with a contract against public policy, is limited to annulling it and, perhaps, to decreeing restitution.

Complainants say, however, that they have a "status" as "members" of the local and thus have rights independent of the contract which this court should protect.

The by-laws of neither the International Alliance nor of the Local Union made provision for junior members, although they did mention apprentices. Only one class of membership was recognized. The

by-laws required that before a candidate could become a member, his application should be passed upon by an examining committee, and approved by the secretary-treasurer of the International Alliance; he should be elected by a majority vote of the local. He should pay a certain initiation fee and take an oath to support the union or, in union phraseology, he should be "obligated." Complainants' applications for membership were never considered by an examining committee. They were not approved as members but only as apprentices by the International Secretary-Treasurer. They did not pay the specified initiation fee. What happened was that they signed the contract and took oath that they, as "junior members," would support the union. Thereafter, they attended no meetings of the local, and took no part in its management; they did not pay the dues prescribed for members but did make the payments specified in their contract.

The only lawful class of membership of the union is the class that has been called the senior members. The evidence indicates that complainants were never admitted to membership of that class and that they have never exercised as members any control over union affairs. There was no intention on their part to become members and no intention on the union's part to admit them. Their position seems analogous to that of one who purchases special stock, illegally. issued by a corporation. He does not thereby become a common stockholder; his remedy is rescission. *American Tube Works* v. *Boston Machine Co.*, 139 Mass. 6, 29 N. E. 63.

If the question were open, I would find that complainants are not members of the defendant union

and have no status apart from the contract. But a careful study of Justice Heher's opinion convinces me that the court of errors and appeals upheld complainants on this point, and decided that they are members of the union, with all the rights of seniors. My only function is to obey what I conceived to be the decree of that court.

There is one other theory on which complainants might be given the relief they need. The defendant union, as I have already stated, has created a situation in Hudson County whereby its members have a substantial monopoly of employment as motion picture machine operators. A monopoly raises duties which may be enforced against the possessors of the monopoly. This has been recognized from the earliest times. The rule that one who pursued a common calling was obliged to serve all comers on reasonable terms, seems to have been based on the fact that innkeepers, carriers, ferriers, and the like, were few, and each had a virtual monopoly in his neighborhood. 17 Harv. Law R. 156. A monopoly is under a common law duty to charge only reasonable rates. *Allnutt* v. *Inglis,* 12 East 527. In *Tyson* v. *Benton,* 273 U. S. 418, 541, 47 S. C. 426, Justice Stone said: "An examination of the decisions of this court in which price regulation has been upheld will disclose that the element common to all is the existence of a situation or a combination of circumstances materially restricting the regulative force of competition so that buyers or sellers are placed at such a disadvantage in the bargaining struggle that serious economic consequences result to a very large number of members of the community. Whether the situation arises from the monopoly conferred upon public service

companies or from the circumstance that the strategical position of a group is such as to enable it to impose its will in matters of price upon those who sell, buy or consume * * * the result is the same."

The question presented in the instant case is not one of prices or of serving the public but one of employment,—the right of a man to sell his own labor. However, the principle is the same; the holders of the monopoly must not exercise their power in an arbitrary, unreasonable manner so as to bring injury to others. The nature of the monopoly determines the nature of the duty.

A monopolization of the labor market has generally been held to be unlawful, *Lehigh etc. Co.* v. *Atlantic S. & R. Works,* 92 N. J. Eq. 131, although in *Harris* v. *Geier,* 112 N. J. Eq. 99, I stated a doubt that this is still the law. But whether the law in this respect has changed or not, the underlying public policy remains valid; that every resident of the state should be free to pursue his lawful calling. Since the defendant union has secured, and enforces, a substantial monopoly for its members, it seems to me necessarily to follow that public policy requires the union to admit to membership on reasonable terms all qualified persons of good character who may desire to carry on the trade of motion picture operator. Otherwise such persons are, by the act of the union, deprived of the right to earn a livelihood. To state the theme in slightly different fashion, the union, by making closed shop contracts with most of the theatres in its county, impliedly holds itself out as ready to admit to its fold, qualified operators. Such a rule would not interfere with the prime function of the

union,—to secure better conditions for employees, by united action. It should prevent the union from using its monopoly to injure fellow workmen. And it would not affect non-monopolistic unions at all.

A union which has an agreement with an employer providing (inter alia) that all the work shall be given to members of the union or that a preference shall be given to members of the union in employing workmen, would open itself to a serious criticism if it refused to admit to membership men qualified to perform the work done by members of the union in question. *Shinsky* v. *O'Neil,* (Mass.) 121 N. E. 790.

The Court of Errors and Appeals, however, has reiterated in the present case the rule laid down in *Meyer* v. *Journeymen Stone Cutters Assn.,* 47 N. J. Eq. 519, that trade union membership is purely voluntary on both sides and that the power of a union to make its membership exclusive is incident to its character. The duty which the union owes to complainants and other so-called junior members is no greater than its duty toward persons now entirely outside its ranks and who may desire to be admitted to membership.

It has been determined on the appeal that the contract is void, and that the juniors are members of the local with all the rights of other members. It will be so decreed. The objection to lack of proper parties comes too late.

Transcript, dated August 20, 1935.

IN CHANCERY OF NEW JERSEY.

Between WILLIAM CAMERON, and others, Complainants, and THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, LOCAL UNION NO. 384 OF HUDSON COUNTY, NEW JERSEY, and others, Defendants.	On Bill, &c. 96/548

Transcript of shorthand notes taken in the above entitled cause at Chancery Chambers, Jersey City, N. J., on August 20, 1935.

APPEARANCES:

Messrs. NORBURY C. MURRAY and WALLACE P. BERKOWITZ, for the Complainants.

Mr. SAUL NEMSER, for the Defendants.

Mr. SAMUEL S. STERN, for the junior Defendants.

Mr. Nemser: It is stipulated between Counsel that on the 13th day of May, 1935, the remittitur of the Court of Errors and Appeals was presented

to this Court and a formal decree of reversal was submitted by Counsel of Complainants on the remittitur. At that time Counsel for the defendants objected to entry of said decree for reasons, among which are to grant the complainants the full measure of relief prayed for would be repugnant to the 14th Amendment to the Constitution of the United States.

The Court: May I interrupt. Was that subject argued in your brief?

Mr. Nemser: Yes. I want to write in the decree that on coming down with the remittitur your Honor proceeded to rehear the case in accordance with your letter of May 13.

The Court: That is my understanding.

Mr. Nemser: May I ask permission to print the letter in the state of the case.

The Court: You may. I usually tell counsel to eliminate the top of the letter and insert the title and put it in as my memorandum.

Stipulation.
(Filed October 16, 1934)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between WILLIAM CAMERON, *et als.*, Complainants-Appellants, and THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, LOCAL UNION NO. 384 OF HUDSON COUNTY, NEW JERSEY, *et als.*, Defendants-Appellees.	On Appeal from the Court of Chancery.

It is hereby stipulated and agreed by and between WALLACE P. BERKOWITZ, Solicitor of complainants-appellants, and SAUL NEMSER, Solicitor of defendants-appellees, that the document printed on pages 467 and 468 of the State of Case, designated as "STIPULATION AS TO STATE OF CASE" be and the same is hereby excised and expunged from the State of Case, and in lieu thereof, the following stipulations and agreements are made, viz:

1. That the complainants, Joseph Steiner, Jr., Thomas McCarthy, George Muller and Vincent Sapenor were admitted as parties complainant by order of the Court in addition to those who are mentioned in the bill of complaint.

2. That Exhibits D-8 and D-9, being excerpts taken from the CONSTITUTION AND BY-LAWS OF THE

Stipulation.

INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, printed on pages 455 to 459 inclusive of the State of Case, are contained in both the International Constitution and By-Laws adopted July 1st, 1930 and August 1st, 1932; that the following additional provisions of the International Constitution and by-laws be added to said Exhibits D-8 and D-9 and considered part thereof, viz:

"CONSTITUTION.

"ARTICLE FOURTEEN.

General Executive Board.

Section 1. Members.

The General Executive Board shall consist of the President, seven Vice-Presidents, and the General Secretary-Treasurer.

Sec. 2. Executive Powers.

They shall have entire supervision and authority over the Alliance except during such time as the Alliance is assembled in convention."

BY-LAWS.

ARTICLE TWO.

Sec. 17. Road Cards.

No local union that is indebted to the Alliance for an amount equal to one quarter's per capita tax shall be permitted to issue travelling cards to its members, under penalty of being adjudged guilty

of granting illegal permission to travel and being dealt with as provided for in Section 18 of this Article.

Sec. 18. Illegal Permission to Travel.

Any local union issuing official road card or permit to travel in any capacity covered by the jurisdiction of this Alliance to a non-member, apprentice or anyone not entitled thereto shall be fined not less than One Hundred Dollars ($100.00) for each offense."

"Sec. 23. Approval of Membership Application.

No affiliated local shall be permitted to accept into membership any applicant whose application has not first been approved by the General Secretary-Treasurer. Neglect of this requirement shall subject the offending local to a fine of not less than Twenty-five Dollars ($25.00) for each offense.

Sec. 24. Transfer Cards.

Local Unions shall be obliged to issue upon request to any member in good standing an honorable transfer card to enable him to gain admission to a sister local. If for any reason such transfer card is returned within ninety (90) days of date of issue, the member shall be reinstated to membership without payment of initiation or reinstatement fee. Violation of this section shall subject the offending local to revocation of charter."

"Sec. 43. Local Constitution and By-Laws; Proposed Amendments.

Constitution and By-Laws, or proposed amendments thereto, must be submitted to the General

Office for approval prior to adoption. Any local failing to comply with this section will be subject to a fine of Twenty-five Dollars ($25.00)."

3. That Section 1, Article 2 of the By-Laws of The International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of The United States and Canada, under Exhibits D-8 and D-9, is the only provision referring to Home Rule.

4. That under Exhibits D-8 and D-9 which appear in the State of Case, Article 2, Section 18 (set forth in Paragraph 2 aforesaid, of this stipulation), and Article 3, Section 12, are the only sections in the International Constitution and By-Laws that directly or indirectly mention "APPRENTICE", and that nowhere in the International Constitution and By-Laws hereinbefore referred to, are the word "JUNIOR" membership used.

5. That under Exhibits D-8 and D-9 as appear in the State of the Case, Article 9, Sections 1 to 8 inclusive, and Article 10, Sections 1 to 7, inclusive of the International By-Laws are the only provisions which apply to this controversy as to charges and appeals within the organization.

6. That the applications of the appellants, as well as all other permit men, to become members of Local No. 384, were made on the same identical printed form as Exhibit C-2; the said applications differ in respect to the names and addresses of the various applicants, the dates of the applications, the amount of the initiation fees paid (which names, dates and initiation fees are set

forth particularly in Exhibit C-9 of the State of Case), and in the words inserted in ink in the blank spaces provided in said printed application forms relating to the applicant's birthplace, age, occupation, previous experience, and the names of the members of the local who vouched for the applicant.

7. That the contracts signed by the complainants are all the same as Exhibit C-1 with the exception of the names.

8. That the amendments to Exhibit C-4 which is the 1931 Constitution and By-Laws and which appear as Exhibit C-5 in the State of the Case, are the only amendments that have any bearing on or pertain to the controversy.

9. That the original of the within stipulation be filed with the Clerk of the Court of Errors and Appeals, and a printed copy thereof be annexed to the brief to be filed on behalf of the defendants-appellees.

10. The Exhibit D-11 which is an index card from the International Office, is the same as to form for all members of the "JUNIOR" department of Local No. 384. That after the names on each card appears the abbreviation (appren.).

11. That Exhibit D-10 being extracts taken from the Minute Book of Local No. 384 and printed on pages 460 to 462 inclusive of the State of Case, be supplemented by the addition of the following, which shall be considered part of Exhibit D-10, viz:

Stipulation.

"REGULAR EXECUTIVE BOARD MEETING HELD AT OUR REGULAR MEETING HALL FEB. 18, 1930. ALL MEMBERS PRESENT. MEETING CALLED TO ORDER AT 12:45.

Executive Board recommends the initiation fee for local 384 be $1000 and one third of said amount to be paid as first payment on presentation of application, also said applicants when qualified are first to be admitted as a member of the junior local before they are eligible to become a senior member.

Executive recommends that Bro. Evins send a telegram to local 225 of Atlanta, Georgia and also one to local 244 of Newark, N. J. requesting for a copy of their by-laws governing their junior local, and after they are obtained the executive board will take further action.

Executive Board recommends that any member may vouch for the down payment of application, providing said applicant is a member of his immediate family.

Executive board recommends that any immediate member of the family of a senior, when admitted to the junior local, to be given seniority rights over other members when acceptance of senior members are considered.

Executive Board recommends a flat rate of $10. per month dues. This payment of $10. is to include payment for premium on our group insurance policy, and also the obligation to the 1% committee, thereby discontinuing said committee, furthermore the secretary-treasurer is to deduct $3 from the $10 payment and deposit to the sinking fund account.

Stipulation.

Executive board recommends that the membership of the senior local is never at any time to exceed 80 members.

Meeting adjourned 3-30.

WALTER A. BEMIS
President Secretary"

"SPECIAL EXECUTIVE BOARD MEETING HELD FEB. 27th, 1930. BRO. WEDEMEYER AND CANTOLI AND NEATHERY ABSENT.

EXECUTIVE BOARD SPOKE OF DRAFTING BY-LAWS FOR THE JUNIOR LOCAL."

Meeting adjourned 1-30.
Pres.

WALTER A. BEMIS

FRANK MANDRAKE
President."

12. Exhibits D-2 and D-3 which have been omitted from the State of Case, are photographs of the TESTIMONIAL BANQUET given to the senior members by junior members of Local 384, I. A. T. S. E., Elk's Club, Union City, N. J. April 1930, which banquet was attended by all or practically all of the complainants-appellants.

13. That Exhibits D-6 and D-7 which have been omitted from the State of Case, contain Junior members 10% dues for the year 1930 to 1933 inclusive; that the 10% paid by the appellants into the treasury of Local No. 384, for the year 1930, is indicated as follows:

Stipulation.

	Jan.	Feb.	Mar.	Apr.	May	June
Berkowski, F.			$16.00	36.00		16.00
	July	Aug.	Sept.	Oct.	Nov.	Dec.
	16.00	20.00	8.00	8.40		
	Total					
	120.40					
	Jan.	Feb.	Mar.	Apr.	May	June
Cameron, W.			35.00	76.00		33.00
	July	Aug.	Sept.	Oct.	Nov.	Dec.
	22.00	21.85	30.50	19.20	33.80	26.80
	Total					
	298.15					
Giardini, F.	Did not work during the year 1930 as Operator.					
	Jan.	Feb.	Mar.	Apr.	May	June
Muller, Geo.			30.95	65.92		30.85
	July	Aug.	Sept.	Oct.	Nov.	Dec.
	29.70	32.25	25.15	26.85	33.70	30.00
	Total					
	305.37					
	Jan.	Feb.	Mar.	Apr.	May	June
McCarthy, T. J.			32.96	59.70		3070
	July	Aug.	Sept.	Oct.	Nov.	Dec.
	21.60	21.40	17.60	26.50	36.80	16.50
	Total					
	263.56					
	Jan.	Feb.	Mar.	Apr.	May	June
Sepanor, V.			33.60	63.95		22.10
	July	Aug.	Sept.	Oct.	Nov.	Dec.
				13.90	34.60	27.80
	Total					
	195.95					

	Jan.	Feb.	Mar.	Apr.	May	June
Steiner, Jr.						3.39
	July	Aug.	Sept.	Oct.	Nov.	Dec.
	8.46	6.30		5.25	24.40	21.55
	Total					
	69.35					

All of the juniors (including complainants) paid into the treasury of the defendant, Local Union No. 384, 10% in addition to the per capita tax and insurance premiums for four years, the following sums:

Year	*Amount*	*No. of Members*
1930	$ 7,186,59	41
1931	11,138.03	41
1932	8,599.55	41
1933	7,436.54	41
	$34,360.71	

Dated, October 10th, 1934.

WALLACE P. BERKOWITZ,
Solicitor of Complainants-Appellants.

SAUL NEMSER,
Solicitor of Defendants-Appellees.

PART TWO.

Notice of Appeal.

(Filed Jan. 23, 1934)

IN CHANCERY OF NEW JERSEY.

Between

WILLIAM CAMERON, *et als.*,
Complainants,

and

THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, LOCAL UNION NO. 384, OF HUDSON COUNTY, NEW JERSEY, *et als.*,
Defendants.

On Bill, &c.

The complainants, William Cameron, Frank Giardina, Frank Barkowski, Joseph Steiner, Jr., George Muller, Thomas J. McCarthy and Vincent Sepanor, hereby appeal from the final decree made in the above entitled cause by the Chancellor on advice of Vice Chancellor Fallon on the 13th day of January, 1934, and from the whole and every part thereof to the Court of Errors and Appeals in the last resort in all causes.

Dated: January 20, 1934.

WALLACE P. BERKOWITZ,
Solicitor for and of Counsel with Complainants.

I conceive there is a good cause for appeal in the above entitled cause.

WALLACE P. BERKOWITZ,
Of Counsel with Complainants.

Petition of Appeal.
(Filed Feb. 11, 1934)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

WILLIAM CAMERON, *et als.*,
Complainants-Appellants,

and

THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, LOCAL UNION NO. 384, OF HUDSON COUNTY, NEW JERSEY, *et als.*,
Defendants-Appellees.

On Appeal from the Court of Chancery.

TO THE HONORABLE THE COURT OF ERRORS AND APPEALS IN THE LAST RESORT IN ALL CAUSES:

The petition of William Cameron, Frank Giardina, Frank Barkowski, Thomas McCarthy, Joseph Steiner, Jr., Vincent Sapanor, and George Miller, the appellants in the above entitled cause, respectfully show that:

Petitioners find themselves aggrieved by a Final Decree made in the Court of Chancery by his Honor Luther A. Campbell, Chancellor of the State of New Jersey, and advised by his Honor John J. Fallon, Vice Chancellor, bearing date the thirteenth day of January, Nineteen Hundred and Thirty-four, in a certain cause in said Court of Chancery wherein the said William Cameron, Frank Giardina, Frank

Barkowski, Thomas McCarthy, Joseph Steiner, Jr., Vincent Sapanor, and George Miller were complainants, and the said The International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Local Union No. 384 of Hudson County, New Jersey, et als, were defendants, a true copy of which Final Decree is hereto annexed and made a part hereof and designated as Schedule A, in the following respects, to wit: That it dismisses the Bill of Complaint and that it orders said Complainants to pay the costs of said suit to be taxed, including a Counsel Fee of Fifteen Hundred Dollars.

And Petitioners appeal from said Decree of the Chancellor on the ground that the same is erroneous in that:

1. It denies to complainants all of the rights, remedies and reliefs prayed for by them in said Bill of Complaint (as amended) and to which they were and are rightfully and equitably entitled.

2. It sustained as valid and enforceable, and in effect permits the enforcements of the so-called "contract" entered into by complainants with the defendants on or about March 4th, 1930, and specifically referred to in paragraph 7 of the Bill of Complaint, instead of decreeing the same to be null and void in whole or in part as prayed for by said Bill of Complaint as amended.

3. It sustained as valid and enforceable, and in effect permits the enforcement of the so-called Constitution and by-laws or amendments to Constitution and by-laws adopted by the defendants subsequent to the admission of complainants as members

to said Local Union No. 384, instead of decreeing the same to be null and void and not binding as to complainants and those other members in the same class and designated by the defendants as "Junior members".

4. It failed to decree that the rights and obligations of complainants and other members of the same class, that is to say, those designated by the defendants as "Junior members" were and are measured by the constitution and by-laws designated in the Bill of Complaint as the constitution and by-laws of 1923 and which were in effect at the time complainants became members of said Local.

5. It sustained the claim of the defendants that complainants and other members of the same class, that is to say those designated by the defendants as "Junior members" were not entitled to attend meetings of said Local and vote as members thereof on an equality with all other members thereof.

6. It failed to decree that complainants and other members of the same class, that is to say those designated by defendants as "Junior members" were and are in all respects entitled to the same rights, benefits and privileges in said Local as all other members thereof, particularly the same as those designated by defendants as "Senior members."

7. It sustained the claim of the defendants that sections 6 and 9 of the so-called "Contract" made by complainants with the defendants, hereinabove referred to and also referred to in paragraph 7 of the Bill of Complaint, were and are enforceable ac-

cording to the terms thereof, instead of declaring the same to be null and void as to complainants and other members of the same class, that is, those designated by the defendants as "Junior members."

8. It sustained the claim of the defendants that the elections of said Local held subsequent to the admission of complainants as members to said Local, were and are valid, instead of decreeing the same to be null and void as to complainants and other members of the same class, that is to say, those designated by the defendants as "Junior members."

9. It failed to decree null and void those portions of said "contract" providing for and setting forth the terms on which complainants could become members of said Local of the class designated by the defendants as "senior members" instead of decreeing said portions to be null and void as to complainants.

10. It failed to enjoin the defendants from depriving complainants of employment and opportunity of employment, and from designating which members of said Local should become employed by designated employers and which members should not become so employed.

11. At the final hearing of said cause, the evidence disclosed that the said defendant union Local No. 384 has contracts with approximately thirty-five out of a total of forty-seven employers of moving picture machine operators in Hudson County, by the terms of which contract said employers agree to employ only members of said defendant union

Local No. 384. And the evidence further disclosed that the said defendant union Local No. 384 has in the past and will in the future attempt to negotiate contracts with those employers of moving picture machine operators in Hudson County who are not under contract at the present time, thereby monopolizing complete control over all available positions of moving picture machine operators in Hudson County.

12. It awarded taxed costs, including a counsel fee of fifteen Hundred Dollars against the complainants, when in fact no award of either costs or counsel fees should have been made against them or any of them, in that said counsel fee is excessive in amount; and that there should have been an award of taxed costs and counsel fee in favor of the complainants and against the defendants.

Petitioners therefore pray that the said Decree of said Chancellor may be wholly reversed, set aside and for nothing holden, and that Petitioners shall have such other relief in the premises as to this Court shall seem proper.

WALLACE P. BERKOWITZ,
Solicitor of Complainants.

NORBURY C. MURRAY,
Counsel with Complainants.

Schedule A.

IN CHANCERY OF NEW JERSEY.

96/548

Between

WILLIAM CAMERON, *et als.*,
Complainants,

and

THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, LOCAL UNION NO. 384, OF HUDSON COUNTY, NEW JERSEY, *et als.*,
Defendants.

On Bill, &c.
Final
Decree.

This cause coming on to be heard, in the presence of Wallace P. Berkowitz, Solicitor of Complainants and Norbury C. Murray, of Counsel with complainants, and Saul Nemser, Solicitor of defendants and John Milton of Counsel with defendants; and the Court having examined the pleadings and having taken proofs orally and in open court, and having heard and considered the arguments of counsel thereon, and being satisfied that complainants are not entitled to relief herein; it is on this 19th day of January, 1934,

ORDERED, ADJUDGED AND DECREED that complainants' bill of complaint, be and the same is hereby dismissed.

FURTHER ORDERED that the complainants, William Cameron, Frank Giardina, Frank Barkowski,

Schedule A.

Joseph Steiner, Jr., George Muller, Thomas J. McCarthy, and Vincent Sapanor, pay to the defendant, Local Union No. 384 the costs of this suit to be taxed, including a counsel fee of Fifteen Hundred ($1,500.00) Dollars which is hereby allowed to said defendant within ten days after service upon complainants of true, but uncertified copies of this Decree and of said taxed costs and that in default of such payment, execution issue therefor, according to the practice of this Court, against the goods and chattels, lands, tenements, hereditaments and real estate of said complainants.

LUTHER A. CAMPBELL, *C.*

Respectfully advised,
JOHN J. FALLON, V. C.

Bill of Complaint.

(Filed June 13, 1933)

IN CHANCERY OF NEW JERSEY.

To the Honorable Luther A. Campbell, Chancellor of the State of New Jersey:

The complainants, William Cameron, Frank Giardina and Frank Barkowski, of Hudson County, New Jersey, and any and all other junior members of Local No. 384, International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, who shall come in and contribute to this action, say that:

1. The defendant, The International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada is an unincorporated organization of approximately 692 affiliated local unions scattered over the United States and Canada, and claims jurisdiction over the moving picture machine operators in the United States and Canada.

2. Said International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada has an international president, an international secretary, an international treasurer and 7 international vice-presidents, with its general office located in the City of New York; said international vice-presidents having jurisdiction over various districts in the United States and Canada.

3. That said international organization has a constitution and by-laws regulating the conduct of its business, actions and the business and actions

of its affiliated local unions. Said constitution is familiar and well known to the defendants herein and copies of the same are in their possession, and a copy of this constitution will be produced in Court at the trial of the matters herein set forth.

4. Among the local unions affiliated with and a part of the said International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada is Local Union No. 384 having jurisdiction and control of the moving picture machine operators of Hudson County, New Jersey; and it is of that Local that the complainants herein are members in good standing. Said Local Union No. 384 is an unincorporated organization and has a president, secretary, treasurer, vice-president and an executive board. Said Local No. 384 also has a constitution and by-laws regulating the conduct of its business and actions, its duties and obligations and the conduct of its officers and members. Said constitution and by-laws are familiar to the defendants herein and copies of the same are in their possession, and a copy of this constitution will be produced in Court at the trial of the matters hereinafter set forth.

5. Your complainants, during the month of June, 1929 made application to become regular members of Local No. 384 and paid the then existing initiation fee of $300.00.

6. Thereafter, your complainants worked as permit-men under the jurisdiction of Local No. 384 and paid 10% of their wages each, as a temporary measure until action was taken on their applications.

7. Thereafter, on or about March 4, 1930, your complainants were notified that their applications were accepted and were called down to a meeting of the Local No. 384 to be obligated. At this meeting they were confronted with a contract which, after certain representations being made as to the temporary nature of the said contract and of the necessity of this contract for a short time, they signed the contract; which classified them as Junior members of Local No. 384. Said contract contained a provision wherein the then regular members of Local No. 384 were to have the seniority right over the complainants as to employment. Further, that your complainants should continue to pay the sum of 10% of their respective weekly wages. Said contract is well known to the defendants herein and copies of the same are in their possession, and a copy of this contract will be produced in Court at the trial of the matters hereinafter set forth.

8. At the time of the initiation of your complainants into the Junior Department of Local No. 384 and the signing of the contract, there was then in existence the constitution and by-laws of Local No. 384 which will be referred to in this bill of complaint as the 1923 constitution and by-laws of Local No. 384. Said constitution is familiar and well known to the defendants herein and copies of the same are in their possession and a copy of his constitution and by-laws will be produced in Court at the trial of the matters hereinafter set forth.

9. The 1923 constitution and by-laws hereinabove mentioned contained a clause wherein all members of Local No. 384 had the right and privilege to attend the meetings as specified in said constitution

and by-laws, and also had the right and privilege to have a vote and a voice in the running of the business of the said Local Union.

10. Notwithstanding the provisions in the 1923 constitution and by-laws under which your complainants became members, the officers and senior members of the defendant Union secretly conspired to and did on or about the 12th day of May. 1931, revise and amend the said 1923 constitution and by-laws without notice to or consulting your complainants and in violation of their rights, and in breach of the agreement between your complainants and the defendant union removing from the constitution and by-laws, among other things, the right to attend meetings and voting, and substituting in its place, the following:

"Section 30:

> Junior members shall, at no time, be permitted to attend the meetings of the Senior Body, unless called upon for certain reasons. They shall have no vote on anything pertaining to the business of this Local, but may speak in their own behalf when assembled in their own meeting."

A copy of the constitution and by-laws of 1931 are familiar and well known to the defendants herein and copies of the same are in their possession; and a copy of this constitution and by-laws will be produced in Court at the trial of the matters hereinafter set forth.

Also contained in the 1923 constitution was the following clause relative to amendments:

"Section 1.

Amendments must be in writing. A proposed amendment to, or alteration to this constitution must be presented in writing at a regular meeting of this Union.

Section 2.

Two readings: No proposed amendment or alteration of this constitution shall be voted upon by this Union until it shall first have been read at two consecutive regular meetings.

Section 3..

Majority vote of the members present at the regular meeting must vote in favor of any proposed amendment or alteration before the same shall be declared adopted and become part of this constitution."

11. Also contained in the 1923 by-laws was the following clause:

"Article 1, Section 1.

Regular meetings are to be held twice each month at hours, place, days and time as designated by this local from time to time. All members are expected to attend regular meetings of this union."

12. Not only did the officers and senior members conspire to revise and amend the constitution and by-laws, but they also changed the written contract entered into between the local and your complainants. Among the changes are the following:

(a) *Section 7, Paragraph B.*

Relegating the complainants to the status of an apprentice instead of their contractual status of junior members.

(b) Removing the entire paragraph known as Section A under the contract with the exception of the part referring to the tax to the I. A. and insurance, which left the juniors without a meeting and also

(c) Removing from their contract the stipulated sum of dues which they were to pay.

A copy of the amended contract is familiar and well known to the defendants herein and copies of the same are in their possession; and a copy of this amended contract will be produced in Court at the time of the trial of the matters hereinafter set forth.

13. Complainants believe and charge the fact to be true that from the date of their initiation and obligation as junior members into the Local No. 384 up to and including the present time, the officers and senior members have formed a conspiracy to and did prohibit, restrain and enjoin, and have refused to permit them and any of the junior members to attend any and all regular meetings of Local No. 384 and to vote or have a voice in the conduct and the business of the Local No. 384.

14. Complainants further charge and believe the fact to be true that the defendant union, its officers, executive board and senior members have intimidated, coerced and otherwise used high-handed and racketeering methods to prohibit, enjoin and re-

strain them from attending meetings and voting or voicing any opinion in the running of the business of Local No. 384.

15. Your complainants further charge in support of the already mentioned fact that the officers, executive board and senior members have intimidated them and used high-handed methods in keeping your complainants from attending meetings and voting, by fining certain members of the junior organization for asking questions on the floor at the meetings of the junior members; and further, that when certain members of the junior organization presented a petition to the officers, executive board and senior members of Local No. 384 complaining about changes that took place affecting the junior members and asking for their rights, the officers and senior members of Local No. 384 complaining preferred charges against four of the alleged leading members, resulting in their trial and subsequent ousting from the union; all of which had a great effect upon your complainants and the other junior members unnecessarily putting them in fear of also being expelled from the union, as well as losing their jobs, if they complained.

Your complainants further state that two junior members, one, Sapanor and one, Spano, who had supported the four ousted junior members at their trial with the defendant Union and who had testified in their favor by telling that the executive board had intimidated them to give false testimony against the accused, were penalized by being brought up on charges and fined $50. and $250. respectively.

All of the above acts of the officers, executive board and senior members unnecessarily put your

complainants in fear of the same or similar action against them, were they at any time to raise their voices in protest to the injustices which were taking place and have taken place within the organization.

16. Complainants further say that under the system now in force within the organization as to charges of violation of the rules of the defendant union, the following procedure is followed:

If charges are brought against a junior member, these charges are brought before a regular meeting at which only senior members attend. The senior members then determine whether or not the charges shall be sustained, and the accused junior member tried. If the senior members decide on a trial, the accused junior member is then notified of the charges against him and a trial committee, which acts as a jury, is then picked from the senior group. At the time of the trial, the junior member must appear before the senior body and must choose one of the senior members to help him in his defense—if one of the seniors will consent to do this—if not, he stands trial without any assistance. If he is found guilty by the trial committee, consisting of the senior members, he is then brought on the floor of the senior meeting at which time the senior members vote whether or not the trial committee's verdict shall stand. If it stands and he is found guilty, he is then penalized by the senior body.

At no time is the junior permitted to call upon a junior member to assist him or to have the junior organization pass upon the charges or vote upon his conviction.

17. Your complainants further charge that the executive board and business agent have the au-

thority and power to give employment to and take from a junior who is working, his job. The complainants charge that the executive board and the business agent are unfair and discriminate in the handing out of positions by giving the better and higher priced jobs to their relatives and friends and always keeping relatives and friends working steadily and letting the other junior members to go for long periods of time without getting any form of work, thereby making conditions intolerable for the junior members who are not friendly or in the good graces of the executive board and business agent, and leaving them at the mercy of the said business agent and executive board.

18. Your complainants further charge that under the present constitution and by-laws, the senior members have a so-called seniority right over the junior members. This seniority right consists in the following:

Any time a senior member is out of employment or wishes to change his position, or if a junior member has a better position than the senior member who is working, then the senior member can at any time he sees fit take the position of the junior member without reason or cause, thereby throwing the junior member out of work and giving him no right or recourse; which complainants charge is in violation of their rights.

19. Complainants further charge that under the present system now used, the junior member cannot solicit or ask for a position from the employer or theatre owner; and further that notwithstanding the fact that his employer is satisfied with his work, he is subject to losing his position at any time a

senior desires to take it; and further, that the employer or theatre owner under the existing contract between the Local and the theatre, has no right to demand or insist or require that a junior member work for him; all of which your complainants claim is unfair, and denies complainants the right to freely engage in their lawful business, free from hindrance or distinction by their fellow men, which is against public policy and in restraint of trade.

20. Your complainants further charge that under the present constitution and by-laws and system used within the organization, that they are and have been enjoined and restrained and prohibited from attending meetings, voting or voicing any opinion as to the manner in which the union business and affairs should be conducted.

21. Your complainants further charge that the officers and executive board and all elected positions within the local are elected without their knowledge or consent or without their being given an opportunity to vote for or against the man or men who are to conduct the affairs of the organization of which they are members.

22. Your complainants further charge that these men or members are elected from the senior body, by the senior body, thereby taking from your complainants any and all rights which are granted them under the constitution and by-laws of the Local Union as well as the State and Federal Constitution.

23. Your complainants further charge that notwithstanding the fact that they are prohibited, enjoined and restrained from attending meetings, voting as to the men who shall run the affairs of

the union, still these officers and senior members pass resolutions, amendments and vote on the business affairs of the organization which they attempt to make binding on your complainants; and further, that they make contracts with theatres, reduce salaries and pass any and all rules and regulations affecting your complainants; but at no time permit or allow your complainants to have any say in the rules and regulations and business which affect your complainants—such as, voting for assessments to be levied against the junior members; increasing the dues paid by the junior members; taking reductions in wages; all of which affect the junior members, as well as the other acts hereinbefore mentioned.

24. Your complainants charge that their positions within the organization are no better than that of serfs, and that they have been deprived of the rights and privileges that they are entitled to as citizens of the State of New Jersey; that they are being charged prohibitory dues, which is in effect, "taxation without representation".

25. Your complainants state that there are approximately 41 members in the Junior Department of the said Local No. 384, who have each paid the sum of $300 to $500 initiation fee. Your complainants and the other junior members also have paid the sum of 10% of their weekly wages since the year 1929.

26. Your complainants believe and charge the fact to be true that they as well as the other junior members have paid into the treasury of Local No. 384 approximately the sum of $55,000 which is made up of the initiations fees and the 10% per week dues.

27. Your complainants believe and charge the fact to be true that there are approximately 75 senior members in Local No. 384, each of whom pays the sum of $80 per year as dues.

28. Your complainants believe and charge the fact to be true that the senior members of Local No. 384 have paid in as dues approximately the sum of $25,000 since the time of your complainants' becoming members of the said Local Union.

29. Your complainants further say that in addition to the initiation fees and dues hereinbefore mentioned they have each paid also the sum of $160 to the defendant, The International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, for international membership and compulsory insurance.

30. Your complainants have at various times requested of the officers and senior members of Local No. 384 a financial statement showing the condition of the treasury of the said Local No. 384, and also an accounting as to where and how the moneys collected from your complainants and the other junior members was spent; and also requested the right to inquire into and voice an opinion as to how these funds should be spent, but the defendant union, its officers, and senior members have steadfastly refused to give any information as to the financial standing, condition of the treasury or the manner in which the funds paid by your complainants and the other junior members was spent.

31. Your complainants, further say that since the date of their and each of their initiation and

obligation into the defendant Local No. 384 as junior members, they have had no say in the conducting of the business or affairs of the said Local No. 384; and that the senior members, the officers, and executive board of the said Local No. 384 have assumed complete charge of the conducting of the business affairs of said Local, including the giving and spending of dues and assessments, and that they have steadily refused your complainants (who are regular members of the junior Department of Local No. 384, to even discuss the said affairs of the union; and further have invoked a rule that the senior members shall not, under penalty of being brought up on charges, find $100 and suspension for 6 months, divulge any of the business of conduct of the said Local No. 384 to the junior members, thereby keeping your complainants and the other junior members in total ignorance of any and all business or affairs of the union which might affect your complainants and the other junior members.

32. Your complainants believe and charge the fact to be true that the officers, executive board and senior members of Local No. 384 are incompetent to conduct the said business and affairs of the union; and that they have been negligent and have mismanaged the said Local business; and your complainants have been informed by various officers and senior members that the defendant Local Union is in financial difficulties, having no funds in the treasury except those collected weekly or monthly from the junior and senior members.

33. Your complainants believe and charge the fact to be true that within the last four years, the officers, executive board and senior members of

New Jersey State Library

Local No. 384 have collected initiation fees, dues, assessments and other sums to the total of approximately $80,000; and that with all ordinary expenses in the conducting of its ordinary business, said defendant union should have in its treasury at the present time about $50,000. Said Local Union has no death benefit or unemployment benefit, and outside of its salary to the business agent and the rent for its quarters and ordinary expenses of mailing, there are no additional burdens put upon the treasury.

34. Your complainants further charge the fact to be true that the officers and senior members of Local No. 384 have spent large sums of money for unlawful and illegal purposes not in the course oof ordinary union affairs and charge that the officers and senior members are incompetent to handle the funds of the union. And complainants further say that because of the unnecessary and unlawful expenditure of the funds of the union by the defendant union, its officers, executive board and senior members, that they should account to your complainants for the money, funds, etc., that have come into their hands, and the manner in which they have spent and disposed of these funds and sums of money so that this Court can determine the purposes for which this money was disbursed by the members in charge of said funds.

35. Your complainants believe and charge the fact to be true that the defendant Local No. 384 has a concealed fund of money located in the Bowery Savings Bank of New York City, which is outside of the jurisdiction of this State; and charge that the purpose of putting these funds in a bank

outside of the State of New Jersey is for the purpose of removing said sum of money from the jurisdiction of the junior members of said Local No. 384 and the jurisdiction of this Court. And further say that this sum of money is in unfriendly hands and is liable to be dissipated by those in charge of the funds, and your complainants therefore feel that for their protection as well as the protection of the other members of the Local Union, the Court of Equity should appoint a receiver to take charge of said funds and determine to whom these funds belong and for what purpose these funds are to be used. And your complainants feel that if this is not done, the defendant union, its officers, executive board and senior members will dissipate and spend these sums for purposes not authorized for Local business.

36. Your complainants further charge that in addition to the day's pay which the officers and members of the executive board receive from the union, they also receive stipulated sums at the end of each month as pay for the work which they do in the local union. In addition to this, the local union has employed and uses a business agent, paying him the sum of $105 per week plus $20 per week expenses, which your complainants charge to be highly excessive and an unnecessary job; and that the funds of the union are being depleted in this manner by the officers, executive board and senior members.

37. Your complainants further charge that the defendant union, its officers, executive board and senior members have unnecessarily spent the sum of about $14,000 within the last year to unionize

or force a theatre in Hudson County to employ members of the defendant local, but have failed to so unionize the said theatre, notwithstanding the expenditure of this sum of money.

38. Your complainants further charge that the defendant Local Union, its officers, executive board and senior members have unnecessarily spent the sum of approximately $6,000 because of their acts of preferring unfounded charges against four members of the junior organization in February, 1932, and ousting them from the union, and that because of these unfounded and unwarranted charges preferred against the four junior members, they were reinstated by order of this Court; and thereafter in May, 1933, the defendant Local No. 384, its officers, executive board and senior members, realizing their mistake, then settled this pending suit in the Court of Chancery with the four ousted junior members, admitting that the charges preferred against the junior members were null and void. By reason of the unlawful and unwarranted acts of the defendant union, its officers, executive board, and senior members, the funds of the union were depleted to the sum of $6,000 as hereinbefore mentioned—$3,000 being awarded to the four ousted junior members for their loss of wages and expense in protecting their rights, and the balance of $3,000 going to counsel which the officers, executive board and senior members of said Local No. 384 hired to protect their interest in Court.

39. Your complainants further charge that the officers, executive board, and senior members have so carelessly and negligently conducted the business of the local union that the senior members have within the last two months agreed to take a

30% cut in wages, which 30% reduction affected your complainants and other junior members of the defendant local, although your complainants and the other junior members were never consulted, never given the opportunity to discuss this with the union, and could have adjusted this matter with the theatre owners on a 10% reduction in salaries; whereas because of the poor management of its business agent, officers, executive board and senior members, the entire union suffered as hereinbefore mentioned.

40. The senior members have refused to take any time off in order to relieve the unemployment situation, and when a senior member became unemployed, he would immediately step in and take a junior member's position, thereby throwing the junior member out of employment and maintaining steady employment for himself throughout the entire year. In addition to this, the senior members, during vacation time, have "doubled up" on the job; that is, refused to give an unemployed junior his place while he, the senior, took a vacation; and instead, has the senior member who works with him cover his job during his vacation period.

41. During the summer months of 1932 there were only about sixteen (16) junior members steadily employed out of the 41 members, the rest being unemployed. However, during the same period of time, all seniors were employed throughout the entire summer as well as prior and subsequent thereto. Notwithstanding this steady employment on the part of the senior members, during the month of July, 1932, the senior members at one of their meetings decided to relieve the

unemployment situation then existing among the junior members. This relief consisted in the following:

The senior members passed a resolution that the employed junior members should take off one week in every five weeks and give that one week to some unemployed junior member. However, the senior members continued to work, and failed to contribute either time or money to the unemployed junior members. Notwithstanding this condition existing within the ranks of the junior members, the union still exacted from the junior members, who were unemployed, the usual 10% dues for the week or day which the unemployed member worked.

42. Your complainants charge that the officers, executive board and senior members of Local No. 384, in taking upon themselves ways and means to relieve the unemployment existing among the junior organizations by taking from the employed junior members time off for the benefit of the unemployed junior members, were unnecessarily discriminating between the junior members and the seniors; and also taking from the junior members the right to have no say in the manner in which they were to be employed and to whom they shall give employment.

43. Your complainants are informed and charge the fact to be true that because of the financial condition of the defendant Local No. 384, and because of the fact that the officers, executive board and senior members have agreed and settled the case which was pending between the four ousted junior members and the organization in which the sum of $3,000 was paid, that they as well as the

other junior members are about to be taxed with an assessment to defray the cost of this expense.

44. Your complainants charge that because they were not given any opportunity to vote as to whether or not charges should be preferred against the four ousted junior members hereinbefore mentioned, and because of the fact that they were not present or permitted to be present at the trial of said four men; and because of the fact that they were not permitted to vote on the suspension, ousting and fining of the four junior members hereinbefore mentioned; and because of the fact that they were in no wise permitted or allowed to enter into any form of discussion as to the legality and the advisability of preferring the charges and the subsequent ousting from the union of the four men, that they should not be charged with any of the cost of the litigation and the subsequent settlement thereto.

45. Your complainants further charge that the entire acts of the officers, executive board and senior members of the defendant union were unlawful and malicious and done with the intention of penalizing, intimidating and otherwise frightening the other junior members; and because of these facts above stated, your complainants feel that the entire burden shall be placed upon the parties responsible—that being, the officers, executive board and senior members of the defendant union.

46. Your complainants further say that there is an annual meeting for the election of officers for the ensuing year, to be held on the 26th day of June, 1933, and your complainants believe and

charge the fact to be true that they have a right to participate in the choosing and voting for officers who shall conduct and run the business and affairs of the said Local No. 384 for the ensuing year; and your complainants and each of them know that they will be prohibited and barred from attending the said annual meeting at which this election will take place, just as they have been in the past.

47. Your complainants believe that as members of Local No. 384, they have the right to participate in the affairs of the Local which include the voting for officers, and that being deprived of this privilege, the said defendant union, its officers, executive board and senior members are interfering with complainants' constitutional rights.

48. Your complainants further charge that the contract entered into between themselves and the said Local No. 384 hereinbefore mentioned under paragraph 7 of this bill of complaint is illegal, void and against public policy in part, in that the contract contains a clause prohibiting your complainants from resorting to a court of law, and penalizing them if they so go into a court of law, by expulsion and forfeiture of all rights in the said Local.

There is a further clause in the contract requiring the complainants to pay 10% per week each on the amount of money complainants earn, respectively; whereas the senior members of the said defendant Local are required to pay only $6.00 per month. Your complainants draw the analogy between their status in the Local and that of a senior member—wherein, if your complainants or any

junior members earn the sum of $100 per week they must pay to the Local the sum of $520 per year, plus $24 I. A. dues. A senior member in the same position and earning the sum of $100 per week pays only the sum of $80 per year to the Local and I. A.

49. Your complainants say that they are being unnecessarily burdened with the weight of dues charged against them and that they as well as the other junior members are carrying the burden of the expenses in the maintenance and running of the Local Union No. 384, whereas the Local Union, its officers, executive board and senior members are unnecessarily discriminating against them and the other junior members and interfering with their rights to participate in the business and affairs of the said defendant union.

50. Complainants further state that the defendant Union Local No. 384 has a contract with practically all the theatres in Hudson County wherein the theatre owners agreed to hire only members of Local No. 384. The union retains the right to supply operators they wish, taking from the theatre owners the right to hire your complainants; thereby making it impossible for your complainants to seek employment. Thereby defendant Local No. 384, its officers, executive board and senior members take unto themselves the exclusive right to deal in labor, all of which complainants charge is a monopoly and against public policy and contrary to the law of the State.

51. Complainants believe and charge the fact to be true that after coming into this Court, they will be prejudiced and discriminated against and prob-

ably expelled from the union by the officers and senior members, because of the rules of the union, that if they go into court, they are subject to expulsion, which complainants claim is unlawfully imposed upon them.

52. Complainants charge that they have no relief within the organization, as the methods prescribed by the rules of the defendant union make it futile, illusory and vain to attempt to accomplish or receive justice and fair play; and further, that the time necessary to go through this procedure with the union will consume approximately two years and much money, during which time the complainants would be punished by the local for going against their wishes, and unnecessarily would be out of employment, and, possibly, starve.

53. Complainants further charge that that portion of the contract hereinbefore mentioned which requires them to receive the consent of the executive board of the defendant Local No. 384 before making application to become a senior member is unfair and against their rights. Said provision makes it impossible for a junior member to become a senior member, thereby making the senior group a closed body, which is against the principles of organized labor.

54. And your complainants further state that within the last four years the books of the defendant union have never been opened for new members, and there has not been within the time above mentioned any new members made.

55. Your complainants further say that they are listed and called by the defendants, The Inter-

national Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, "regular members" and that The International Alliance of Theatrical Stage Employees and Moving Picture Operators of the United States and Canada has only one kind of membership—that is, regular membership.

56. Your complainants further charge that the defendant Local No. 384 has a large sum of money in a sinking fund, and that nowhere in the constitution and by-laws of the said local or The International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada is there provision giving the Local the right or authority to establish this sinking fund; and complainants charge that the establishment of this sinking fund is unlawful, and that the funds of the Local have been diverted and unlawfully transferred by the officers and senior members of Local No. 384 to the sinking fund; and that these funds are trust funds and that they are in unfriendly hands and will be dissipated, if the opportunity arises; and that, therefore, the court of equity should place these funds in the hands of a receiver or trustee until the court determines to whom these funds belong.

57. Your complainants further charge and believe the fact to be true that The International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada and its officers, upon hearing of this suit will forfeit the charter of the defendant Local No. 384, according to the rights given to them under the International constitution and by-laws,

which charter, they charge, is very valuable to the local as well as to your complainants; and your complainants therefore feel that unless this Court appoints someone to protect this charter, that they will be greatly damaged and lose their employment.

Complainants are without adequate remedy in the Courts of law and therefore pray:

1. That The International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Local Union No. 384 of Hudson County, The International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Frank Mandrake, president, individually and as agent of the senior members of Local Union No. 384, and Fred Hoppke, vice president; Charles May, secretary and treasurer; Frank L. Brown, recording secretary; Anthony Boscorelli, business agent, and Albert De Titta and Frank X. Maurus, officers and members of the executive board, who are the defendants to this suit, may answer this Bill of Complaint and each statement therein made.

2. That the sinking fund created by the defendants to be declared null and void and be adjudged and declared to be a trust fund for the benefit of members of Local No. 384 and that an accounting be taken of the amount of said fund, from what source derived and what amounts.

3. That a custodial receiver be appointed by this Court who shall under the authority and direction of this Court have immediate possession of

the funds of said Local, including the general funds, the sinking fund and any and all funds in the name, possession or control of Local No. 384 or any of its officers or members, for the purpose of preventing diversion or dissipation thereof, until an order and decree shall be made by this Court in regard thereto. Also to take charge and possession of the Charter of the said Local No. 384 for the purpose of preventing The International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada from revoking or cancelling said charter, until the further order of this Court.

Also to take possession of the treasurer's book of account, bank books, check books and any and all books of the treasurer, recording secretary, financial secretary, and the correspondence relating to the business and affairs of the said Local No. 384.

That the Receiver, when appointed, be authorized to take such testimony as in his judgment may be necessary for the purpose of establishing the facts as to the said funds of the Local and any other facts necessary to the proper management of the affairs of the union.

Also to take an accounting of the moneys received and disbursed, and the manner and purposes of said disbursements.

3(a). That said receiver be authorized and directed to collect dues from members and to pay from the funds the necessary expenses of the Local; and that he be further authorized to retain or dismiss necessary or unnecessary employees and agents to assist him in his duties.

4. That the president of said Local No. 384, Frank Mandrake; the vice president, Fred Hoppke;

the secretary and treasurer, Charles May; the recording secretary, Frank L. Brown; the business agent, Anthony Boscorelli, and the senior members as well as all other persons coming in concert with them, be restrained and enjoined from secretly hiding or destroying books, cards, ledgers, correspondence and any and all other property of the Local No. 384 which the receiver has been directed to take charge of.

5. That the said defendants herein be restrained and enjoined from taking any action whatever affecting, injuring or destroying the rights of the complainants in Local No. 384 by reason of their membership thereof; and that the provisions of the contract prescribing the complainants from coming into this Court, be suspended until the further order of this Court.

6. That the Court order, adjudge and decree that the complainants have the right to attend regular meetings of the Union and that they have the right to vote and voice an opinion in the running and management of the affairs of the Local Union and that the Court enjoin and restrain the officers, executive board and senior members from interfering with this right.

7. That the Court order, adjudge and decree that the acts of the officers, executive board and senior members in amending, revising and changing the constitution and by-laws subsequent to March 4, 1930, are no part of the agreement between the defendants and complainants and be declared null and void and of no effect; and that the constitution and by-laws in force at the time that the complainants became members be declared in

full force and effect and part of the complainants' contract.

8. That the Court order, adjudge and decree that the defendants be restrained and enjoined from nominating and electing officers for the ensuing year until the further order of this Court; and further, that the Court order an election under the supervision of the Court, with all junior and senior members present, giving to all members, both senior and junior, the right to nominate and elect officers for the ensuing year.

9. That the Court order, adjudge and decree that those portions of the contract—namely, that portion dealing with seniority rights; that portion prescribing your complainants from coming into court; that portion requiring an additional application and consent of the executive board to become a senior member—be declared to be illegal, null and void and of no effect. And that these portions be stricken out and removed from and as part of the contract of the junior members.

10. That the Court order, adjudge and decree that the action heretofore taken by the defendants in changing and amending their written contract heretofore entered into be declared null and void and of no effect.

11. That the Court order, adjudge and decree that the defendants abolish the practice of giving the executive board and business agent authority to control the positions within the organization; and further, that they abolish the practice of senior members taking the positions of the juniors without cause and redress.

12. That the Court order, adjudge and decree that any and all rules, resolutions and regulations passed by the defendants affecting the junior members, be declared null and void and of no effect.

13. That the Court enjoin and restrain, pendente lite, the defendants from passing and putting into effect any rules or regulations affecting the junior members until the further order of the Court.

14. That the Court order, adjudge and decree that the constitution and by-laws adopted in May, 1931, be declared null and void and of no effect.

15. That the Court order, adjudge and decree that the cost and expense of the litigation occasioned by the ousting of the four junior members in February, 1932, be charged against the defendants, and that the Court order adjudge and decree that the junior members pay no part of this expense and be not charged with any of this cost.

16. That the Court order adjudge and decree that the complainants pay no greater sum as dues than that paid by the senior members.

17. That the receiver or some person to be appointed by the Court be given the power to inquire into and investigate the unfair preferences given to certain members of the defendant local and to inquire into the manner in which the work is distributed between the members, and any and all unfairness or discrimination which exists within the organization.

WALLACE P. BERKOWITZ,
Solicitor for and Of Counsel with Complainants.

STATE OF NEW JORSEY }
COUNTY OF HUDSON } ss.:

WILLIAM CAMERON, FRANK GIARDINA and FRANK BARKOWSKI, being duly sworn according to law on their respective oaths saith:

1. That we each of us has read the above bill of complaint and know the contents thereof, and that the same is true of our own knowledge and of the knowledge of each of us except as to the matters which are therein said to be on information and belief or the particular knowledge of one individual, and as to these matters each of us believe them to be true.

2. That we are members in good standing of the defendant, The International Alliance of Theatrical Stage Employees and Moving Picture Operators of the United States and Canada, Local Union No. 384, of Hudson County, New Jersey, and also the other defendant, The International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada.

3. We further state that the defendant, The International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada is an unincorporated organization of approximately 692 affiliated local unions scattered over the United States and Canada and claims jurisdiction over the Moving Picture Machine Operators in the United States and Canada.

4. We further state that Local Union 384 is affiliated with and a part of the said The Interna-

tional Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada having jurisdiction and control of the moving picture machine operators of Hudson County, New Jersey.

5. We further state that during the month of June, 1929, we made application to become regular members of Local No. 384 and paid the then existing initiation fee of $300.00.

6. Thereafter we worked as permit-men under the jurisdiction of Local No. 384 and paid 10% of our wages each, as a temporary measure until action was taken on our applications.

7. Thereafter, on or about March 4, 1930, we were notified that our applications were accepted and we were then called down to a meeting of the Local No. 384 to be obligated. At this meeting we were confronted with a contract which, after certain representations were made to us as to the temporary nature of the said contract and of the necessity of this contract for a short time, we signed said contract; which classified us as junior members of Local No. 384. Said contract contained a provision wherein the then regular members of Local No. 384 were to have the seniority right over us as to employment. Further, that we should continue to pay the sum of 10% of our respective weekly wages.

8. At the time of our initiation into the Junior Department of Local No. 384 and the signing of the contract, there was then in existence the constitution and by-laws of Local No. 384 referred to in the

bill of complaint as the 1923 constitution and by-laws of Local No. 384.

9. The 1923 constitution and by-laws mentioned above contained a clause wherein all members of Local No. 384 had the right and privilege to attend meetings as specified in said constitution and by-laws and also had the right and privilege to have a vote and a voice in the running of the business of the said Local Union.

10. Notwithstanding the provisions in the 1923 constitution and by-laws under which we became members, the officers and senior members of the defendant union secretly conspired to and did on or about the 12th day of May, 1931, revise and amend the said 1923 constitution and by-laws without giving notice to or consulting us, and in violation of our rights, and in breach of the agreement between ourselves and the defendant union, removing from the constitution and by-laws, among other things, the right to attend meetings and voting and substituting in its place Section 30 as set out in the bill of complaint.

11. Also contained in the 1923 constitution and was the clause relative to amendments containing sections 1, 2 and 3, as set out in the bill of complaint.

12. Also contained in the 1923 by-laws was the clause in Article 1, Section 1, pertaining to the time and place of meetings at which all members were expected to attend, which said clause is set forth in the bill of complaint.

13. We further state that not only did the officers and senior members conspire to revise and amend the constitution and by-laws, but they also changed the written contract entered into between ourselves and the local. Among the changes made were the following:

(a) *Section 7, Paragraph B.*

Relegating us to the status of apprentices instead of our contractual status of junior members.

(b) Removing the entire paragraph known as Section A under the contract with the exception of the part referring to the tax to the L. A. and insurance, which left us without a meeting.

(c) Removing from our contract the stipulated sum of dues which we were to pay.

14. We believe and charge the fact to be true that from the date of our initiation and obligation as junior members into the Local No. 384 up to and including the present time, the officers and senior members have formed a conspiracy to and did prohibit, restrain and enjoin us and have refused to permit us to attend any and all regular meetings of Local No. 384 or to vote or have a voice in the conduct and the business of Local No. 384.

15. We further charge and believe the fact to be true that the defendant union, its officers, executive board and senior members have intimated, coerced and otherwise used high-handed and racketeering methods to prohibit, enjoin and restrain us from attending meetings and voting or voicing any opinion in the running of the business of Local No. 384.

16. We further charge in support of the already mentioned fact that the officers, executive board and senior members have intimidated us and used high-handed methods in keeping us from attending meetings and voting, by fining certain members of the junior organization for asking questions on the floor of the meetings of the junior members; and further that when certain members of the junior organization presented a petition to the officers, executive board and senior members of Local No. 384 complaining about changes that took place affecting us juniors and asking for their rights, the officers and senior members of Local No. 384 immediately preferred charges against four of the alleged leading members, resulting in their trial and subsequent ousting from the union; all of which had a great effect upon us and the other junior members and unnecessarily putting us in fear of also being expelled from the union as well as losing our jobs, if we complained.

17. That we further state that two junior members named Sapanor and Spano respectively, who had supported the four ousted junior members at their trial with the defendant Union and who had testified in their favor by telling that the executive board had intimidated them to give false testimony against the accused, were penalized by being brought up on charges and fined $50. and $250. respectively. All of these acts of the officers, executive board and senior members unnecessarily put us in fear of the same or similar action against us, were we at any time to raise our voices in protest to the injustices which were takingg place and have taken place within the organization.

18. We further state that under the system now in force within the organization as to charges of violation of the rules of the defendant union, the following procedure is followed.

If charges are brought before a regular meeting at which only senior members attend. The senior members then determine whether or not the charges shall be sustained, and the accused junior member tried. If the senior members decide on a trial, the accused junior member is then notified of the charges against him and a trial committee, which acts as a jury, is then picked from the senior group. At the time of the trial, the junior member must appear before the senior body and must choose one of the senior members to help him in his defense—if one of the seniors will consent to do this—if not, he stands trial without any assistance. If he is found guilty by the trial committee consisting of the senior members, he is then brought on the floor of the senior meeting at which time the senior members vote whether or not the trial committee's verdict shall stand. If it stands and he is found guilty, he is then penalized by the senior body.

At no time is the junior permitted to call upon a junior member to assist him or to have the junior organization pass upon the charges or vote upon his conviction.

19. We further state and charge that the executive board and business agent have the authority and power to give employment to and take from a junior who is working, his job; that the executive board and the business agent are unfair and discriminate in the handing out of positions by giving the better and higher priced jobs to their relatives

and friends and always keeping relatives and friends working steadily and letting your deponents and other junior members to go for long periods of time without getting any form of work, thereby making conditions intolerable for the junior members who are not friendly or in the good graces of the executive board and business agent, and leaving them at the mercy of the said business agent and executive board.

20. We further state that under the present constitution and by-laws the senior members have a so-called seniority right over the junior members. This seniority right consists in the following:

Anytime a senior member is out of employment or wishes to change his position, or if a junior member has a better position than the senior member who is working, then the senior member can at any time he sees fit take the position of the junior member without reason or cause, thereby throwing the junior member out of work and giving him no right or recourse, which is in violation of our rights.

21. We further state that under the present system now used, we juniors cannot solicit or ask for position from the employer or theatre owner; and further, that notwithstanding the fact that an employer is satisfied with a junior's work, he is subject to losing his position at any time a senior desires to take it; and further, that the employer or theatre owner under the existing contract between the Local and the theatre, has no right to demand or insist or require that a junior member work for him; all of which we claim is unfair and denies us the right to freely engage in our lawful business free from hindrance or distinction by our fellow men,

which is against public policy and in restraint of trade.

22. Under the present constitution and by-laws and system used within the organization, we are and have been enjoined and restrained and prohibited from attending meetings, voting or voicing any opinion whatever as to the manner in which the union business and affairs should be conducted.

23. That all elected positions within the local are elected without our knowledge or consent or without our being given an opportunity to vote for or against the man or men who are to conduct the affairs of the organization of which we are members.

24. We further state that these men or members are elected from the senior body, by the senior body, thereby tatking from us any and all rights which are granted us under the constitution and by-laws of the Local Union as well as the State and Federal Constitution.

25. We further charge that notwithstanding the fact that we are prohibited, enjoined and restrained from attending meetings, voting as to the men who shall run the affairs of the union, still these officers and senior members pass resolutions, amendments and vote on the business affairs of the organization which they attempt to make binding on us; and further, that they make contracts with theatres, reduce salaries and pass any and all rules and regulations affecting us; but at no time permit or allow your deponents to have any say in the rules and regulations and business which affect your depon-

ents—such as, voting for assessments to be levied against us and the other junior members; increasing the dues to be paid by us; taking reductions in wages; all of which affect us and the other junior members, as well as the other acts hereinbefore mentioned.

26. By reason of the aforesaid acts we are no better than serfs, as far as our positions in the organization is concerned, and we have been deprived of the rights and privileges that we are entitled to as citizens of the State of New Jersey; that we are being charged prohibitory dues, which is in effect, "taxation without representation."

27. We further state that there are approximately 41 members in the Junior department of the said Local No. 384, who have each paid the sum of $300. to $500. initiation fee. We and the other junior members also have paid the sum of 10% of our weekly wages since the year 1929.

28. We believe and charge that we as well as the other junior members have paid into the treasury of Local No. 384 approximately the sum of $55,000. which is made up of the initiation fees and the 10% per week dues.

29. We believe and charge that there are approximately 75 senior members in Local No. 384, each of whom pays the sum of $80. per year as dues.

30. We believe and charge that the senior members of Local No. 384 have paid in as dues approximately the sum of $25,000 since the time of our becoming members of the said Local Union.

31. We further say that in addition to the initiation fees and dues hereinbefore mentioned we have each also paid the sum of $106 to the defendant, The International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada for international membership and compulsory insurance.

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32. We have at various times requested of the officers and senior members of Local No. 384 a financial statement showing the condition of the treasury of the said Local No. 384, and also an accounting as to where and how the moneys collected from us and the other junior members was spent; and also requested the right to inquire into and voice an opinion as to how these funds should be spent, but the defendant union, its officers and senior members have steadfastly refused to give any information as to the financial standing, condition of the treasury or the manner in which the funds paid by us and other junior members was spent.

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33. We further say that since the date of our initiation and obligation into the defendant Local No. 384 as junior members, we have had no say in the conducting of the business or affairs of the said Local No. 384; and that the senior members, the officers and executive board of the said Local No. 384 have assumed complete charge of the conducting and running of the business affairs of said Local, including the giving and spending of dues and assessments, and that they have steadily refused us (who are regular members of the junior department of Local No. 384) to even discuss the said affairs of the union; and further invoked a rule that the

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senior members shall not, under penalty of being brought up on charges, fined $100. and suspension for 6 months, divulge any of the business or conduct of the said Local No. 384 to the junior members, thereby keeping us and the other junior members in total ignorance of any and all business or affairs of the union which might affect us and the other junior members.

34. We believe and charge the fact to be true that the officers, executive board and senior members of Local No. 384 are incompetent to conduct the said business and affairs of the union; and that they have been negligent and have mismanaged the said Local business; and we have been informed by various officers and senior members that the defendant Local Union is in financial difficulties, having no funds in the treasury except those collected weekly or monthly from the junior and senior members.

35. We believe further that within the last four years, the officers, executive board and senior members of Local No. 384 have collected initiation fees, dues, assessments and other sums to the total of approximately $80,000.00. Said Local Union has no death benefit or unemployment benefit, and outside of its salary to the business agent and the rent for its quarters and the ordinary expenses of mailing, there are no additional burdens put upon the treasury.

36. We further believe and charge the fact to be true that the officers and senior members of Local No. 384 have spent large sums of money for unlawful and illegal purposes not in the course of ordi-

nary union affairs, and charge that the officers and senior members are incompetent to handle the funds of the union. We state that because of the unnecessary and unlawful expenditures of the funds of the union by the defendant union, its officers, executive board and senior members, that they should account to us for the money, funds, &c. that have come into their hands, and the manner in which they have spent and disposed of these funds and sums of money so that this Court can determine the purposes for which this money was disbursed by the members in charge of said funds.

37. Upon information and belief, which fact we charge to be true, the defendant Local No. 384 has a concealed sum of money located in the Bowery Savings Bank in New York City, which is outside of the jurisdiction of this State; and we charge that the purpose of putting these funds in a bank outside of the State of New Jersey is for the purpose of removing said sum of money from the jurisdiction of the junior members and the jurisdiction of this Court.

38. We further say that this sum of money is in unfriendly hands and is liable to be dissipated by those in charge of the funds, and we therefore feel that for our protection as well as the protection of the other members of the Local Union, a receiver should be appointed to take charge of said funds and the Court determine to whom these funds belong and for what purpose these funds are to be used. We feel that if this is not done, the defendant union, its officers, executive board and senior members will dissipate and spend these sums for purposes and uses not authorized for local business.

39. We further charge that in addition to the day's pay which the officers and members of the executive board receive from the union, they also receive stipulated sums at the end of each month as pay for the work which they do in the local union. In addition to this, the local union has employed and uses a business agent paying him the sum of $105. per week plus $20. per week expenses, which we charge to be highly excessive and an unnecessary job; and that the funds of the union are being depleted in this manner by the officers, executive board and senior members.

40. We further charge that the defendant union, its officers, executive board and senior members have unnecessarily spent the sum of about $14,000 within the last year to unionize or force a theatre in Hudson County to employ members of the defendant local, but have failed to so unionize the said theatre, notwithstanding the expenditure of this sum of money.

41. We further charge that the defendant Local Union, its officers, executive board and senior members have unnecessarily spent the sum of approximately $6,000. because of their acts of preferring unfounded charges against four members of the junior organization in February, 1932, and ousting them from the union, and that because of these unfounded and unwarranted charges preferred against the four junior members, they were reinstated by order of this Court; and thereafter in May, 1933, the defendant local No. 384, its officers, executive board and senior members, realizing their mistake, settled this pending suit in the Court of Chancery with the four ousted junior members, admitting that the charges preferred against the

junior members were null and void. By reason of the unlawful and unwarranted acts of the defendant union, its officers, executive board, and senior members, the funds of the union were depleted to the sum of $6,000. as hereinbefore mentioned—$3000. being awarded to the four ousted junior members for their loss of wages and expenses in protecting their rights, and the balance of $3000. going to counsel which the officers, executive board and senior members of said Local 384 hired to protect their interest in Court.

42. We further charge that the officers, executive board and senior members have so carelessly and negligently conducted the business of the local union that the senior members have within the last two months agreed to take a 30% cut in wages, which 30% reduction affected us and other junior members of the defendant local, although we and the other junior members were never consulted, never given the opportunity to discuss this with the union and could have adjusted this matter with the theatre owners on a 10% reduction in salaries; whereas, because of the poor management of its business agent, officers, executive board and senior members, the entire union suffered as hereinbefore mentioned.

43. We further state that the senior members have refused to take any time off in order to relieve the unemployment situation, and when a senior member became unemployed, he would immediately step in and take a junior member's position, thereby throwing the junior member out of employment and maintaining steady employment for himself throughout the entire year. In addition to this. the senior members, during vacation time, have

"doubled up" on the job that is, refused to give an unemployed junior his place while he, the senior, took a vacation; and instead, has the senior member who works with him cover his job during his vacation period.

44. We further say that during the summer months of 1932 there were only about 16 junior members steadily employed out of the 41 members, the rest being unemployed. However, during the same period of time, all seniors were employed throughout the entire summer as well as prior and subsequent thereto. Notwithstanding this steady employment on the part of the senior members, during the month of July, 1932, the senior members at one of their meetings decided to relieve the unemployment situation then existing among the junior members. This relief consisted in a resolution being passed by the senior members whereby the employed junior members should take off one week in every five weeks and give that one week to some unemployed junior member. However, the senior members continued to work, and failed to contribute either time or money to the unemployed junior members. Notwithstanding this condition existing within the ranks of the junior members, the union still exacted from us who were unemployed, the usual 10% dues for the week or day which the unemployed member worked.

45. We further charge that the officers, executive board and senior members of Local No. 384, in taking upon themselves ways and means to relieve the unemployment existing among the junior organization by taking from the employed junior members time off for the benefit of the unemployed junior members, were necessarily discriminating

between the junior members and the senior members; and also taking from us, the junior members, the right to have any say in the manner in which they were giving employment or how we were to be employed.

46. We are informed and charge the fact to be true that because of the financial condition of the defendant Local No. 384, and because of the fact that the officers, executive board and senior members have agreed and settled the case which was pending between the four ousted junior members and the organization, in which the sum of $3000. was paid, that the other junior members as well as ourselves are about to be taxed with an assessment to defray the cost of this expense.

47. We further charge that because we were not given any opportunity to vote as to whether or not charges should be preferred against the four ousted junior members hereinbefore mentioned, and because of the fact that we were not present or permitted to be present at the trial of the said four men; and because of the fact that we were not permitted to vote on the suspension, ousting and fining of the four junior members hereinbefore mentioned; and because of the fact that we were in no wise permitted or allowed to enter into any form of discussion as to the legality and the advisability of preferring the charges and the subsequent ousting from the union of the four men, that we should therefore not be charged with any of the cost of the litigation and the subsequent settlement thereto.

48. We further charge that the entire acts of the officers, executive board and senior members of the defendant union were unlawful and malicious and

done with the intention of penalizing, intimidating and otherwise frightening the junior members, including ourselves; and because of these facts above stated we feel that the entire burden should be placed upon the parties responsible—that being, the officers, executive board and senior members of the defendant union.

49. We further state that there is an annual meeting for the election of officers for the ensuing year, to be held on the 26th day of June, 1933, and we believe and charge the fact to be true that we have a right to participate in the choosing and voting for officers who shall conduct the business and affairs of the said Local No. 384 for the ensuing year; and we feel and know that we will be prohibited and barred from attending the said annual meeting at which this election will take place, just as we have been barred and prohibited in the past.

50. We believe that as members of Local No. 384 we have the right to participate in the affairs of the Local which include the voting for officers, and that being deprived of this privilege, the said defendant union, its officers, executive board and senior members are interfering with our constitutional rights.

51. We further charge that the contract entered into between ourselves and the said Local No. 384 hereinbefore mentioned under paragraph 7 of the bill of complaint, is illegal, void and against public policy in part, in that the contract contains a clause prohibiting us from resorting to a court of law, and penalizing us if we should so go to court, by expulsion and forfeiture of all rights in the said Local.

52. We further state that there is a further clause in the contract requiring us to pay 10% per weak each on the amount of money we earn respectively; whereas the senior members of the said defendant Local are required to pay only $6.00 per month. We draw the analogy between our status in the Local and that of a senior member—wherein, if we or any junior member earn the sum of $100. per week we must pay to the Local the sum of $520. per pear, each plus $24. I. A. dues. A senior member in the same position and earning the said sum of $100. per week pays only the sum of $80. per year to the Local and I. A.

53. We further say that by reason of the acts of the officers, executive board and senior members of Local No. 384, that we are being unnecessarily burdened with the weight of dues charged against us and that we as well as the other junior members are carrying the burden of the expenses in the maintenance and running of the Local Union No. 384, whereas the Local Union, its officers, executive board and senior members are unnecessarily discriminating against us and the other junior members and interfering with our rights to participate in the business and affairs of the said defendant union.

54. We further state that the defendant union Local No. 384 has a contract with practically all the theatres in Hudson County wherein the theatre owners have agreed to hire only members of Local No. 384, and the Union retains the right to supply the operators they wish, taking from the theatre owners the right to hire us, thereby making it impossible for us to seek employment. Thereby defendant Local No. 384, its officers, executive board

and senior members take unto themselves the exclusive right to deal in labor, all of which we claim is a monopoly and against public policy and contrary to the law of the State.

55. We believe and charge the fact to be true that after coming into this Court that we will be prejudiced and discriminated against and probably expelled from the union by the officers and senior members, because of the rules of the union, whereby we are subject to expulsion, which we claim is unlawfully imposed upon us.

56. We further charge that we have no relief within the organization, as the methods prescribed by the rules of the defendant union make it futile, illusory and vain to attempt to accomplish or receive justice and fair play; and further, that the time necessary to go through this procedure with the union will consume approximately two years and much money, during which time the deponents would be punished by the local for going against their wishes, and would unnecessarily be out of employment, and, possibly, starve.

57. We further charge that the portion of the contract hereinbefore mentioned which requires us to receive the consent of the executive board of the defendant Local No. 384 before making application to become a senior member, is unfair and against our rights. Said provision makes it impossible for a junior member to become a senior member, thereby making the senior group a closed body, which we claim is against the principles of organized labor.

58. We also state that within the last four years the books of the defendant union have never been opened for new members, and there has not been within the time above mentioned any new members made.

59. We further say that we are listed and called by the defendant, The International Alliance of Theatrical Stage Employees and Moving Picture Operators of the United States and Canada, "regular members" and that The International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada has only one kind of membership—that is, regular membership.

60. We further believe and charge to be true the fact that the defendant Local No. 384 has a large sum of money in as sinking fund, and that nowhere in the constitution and by-laws of the said local or The International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada is there provision giving the Local the right or authority to establish this sinking fund; and complain further that the establishment of this sinking fund is unlawful, and that the funds of the Local have been diverted and unlawfully transferred by the officers and senior members of Local No. 384 to the sinking fund; that these funds are trust funds and that they are in unfriendly hands and will be dissipated, if the opportunity arises; and that, therefore, the Court should place these funds in the hands of a receiver or trustee until it is determined by the Court to whom these funds belong.

61. We further believe and charge the fact to be true that The International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada and its officers, upon hearing of this suit will forfeit the charter of the defendant Local No. 384, according to the rights given to them under the International constitution and by-laws, which charter, we charge, is very valuable to the Local as well as to ourselves; and we therefore feel that unless this Court appoints someone to protect its charter, we will be greatly damaged and lose our employment.

WILLIAM CAMERON,
FRANK GIARDINA,
FRANK BURKOWSKI.

Sworn and subscribed to before me this 9th day of June, 1933.

SIGMUND AUERBACH,
Master in Chancery,
of New Jersey.

Answer.

(Filed July 8, 1933)

IN CHANCERY OF NEW JERSEY.

Between
WILLIAM CAMERON, *et als.*,
Complainants,

and

THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, LOCAL UNION NO. 384, OF HUDSON COUNTY, NEW JERSEY, *et als.*,
Defendants.

On Bill, &c.

The answer of the defendants, International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Local Union No. 384 of Hudson County, Frank Mandrake, President, individually and as agent of the senior members of Local Union No. 384, and Fred Hoppke, Vice President, Charles May, Secretary and Treasurer, Frank R. Brown, Recording Secretary, Anthony Boscarelli, business agent and Albert DeTitta and Frank X. Maurus. Officers and members of the Executive Board.

These defendants answering the bill-of-complaint, jointly and severally, say that:

1. They admit the allegations of Paragraph 1, except that as to the jurisdiction claimed by the International Alliance, over moving picture machine

operators, they beg leave to refer to the Constitution of the International Alliance, as revised and adopted by the Thirty-first Convention, held at Columbus, Ohio, June 6th, 1932, effective August 1st, 1932.

2. They admit the allegations of Paragraph 2, except that as to the jurisdiction of said International Vice Presidents, they beg leave to refer to the Constitution of the International Alliance.

3. They admit the allegations of Paragraph 3.

4. They admit the allegations of Paragraph 4, except that they deny "that the complainants herein are members in good standing", and further answering say that the complainants are apprentices or Junior Members of Local Union No. 384.

These defendants further answering say that the defendant, Local Union No. 384, has a constitution and by-laws, which are familiar and well known to the complainants and binding on said complainants; that said constitution and by-laws, were approved at a regular meeting of Local Union No. 384 held on Tuesday, May 12th, 1931, and were approved by the International Alliance, on May 18, 1931; that the complainants have consented to and acquiesced in such Constitution and By-laws, ever since said time and have received the benefits and privileges therein provided, so that complainants are now estopped by their acts and conduct in the premises, from denying the validity or binding effect thereof.

5. They deny the allegations of Paragraph 5.

Answer.

6. They deny the allegations of Paragraph 6, except these defendants admit that complainants worked as permit-men.

7. They deny the allegations of Paragraph 7, except as hereinafter admitted.

These defendants further answering say, that on March 4th, 1930, each of the complainants and the defendant, Local Union No. 384, entered into a written contract, which provided for the admission of the complainants into the Junior Department of said local, and which contract is well known to the complainants herein; that ever since March 4th, 1930, the said complainants, and each of them have consented to and acquiesced in the terms and provisions of said contract, and have until a short time prior to the institution of this suit, complied with and duly performed and executed the provisions of said contract on their part to be performed, and have received and participated in the benefits and privileges therein provided, so that the complainants are now estopped in pais, by their acts and conduct in the premises, from asserting or denying the validity of said contract or any part thereof.

8. They deny the allegations of Paragraph 8.

9. They deny the allegations of Paragraph 9.

10. They deny the allegations of Paragraph 10, except as herein admitted.

11. They deny the allegations of Paragraph 11.

12. They deny the allegations of Paragraph 12.

Answer.

13. They deny the allegations of Paragraph 13, except they admit that the complainants as apprentices or Junior Members of Local Union No. 384, have in the past and still do, attend regular meetings of the junior department of said local, in accordance with the provisions of their written contract of membership, and have neither voice nor vote in the regular meeting of the senior membership of said local, nor have they any right to participate in such meetings.

14. They deny the allegations of Paragraph 14.

15. They deny the allegations of Paragraph 15.

16. They deny the allegations of Paragraph 16, and beg leave to refer to the local's constitution and by-laws as to the system now in force within the organization as to charges of violation of the rules of the defendant union, and the procedure thereon.

17. They deny the allegations of Paragraph 17, except that they admit "That the executive board and business agent have the authority and power to give employment to and take from a Junior who is working his job," and that the same applies to senior members, as well.

Furthermore answering these defendants say, that the defendant local union has written contracts with various exhibitors located within its jurisdiction, to supply competent moving picture machine operators; that said contracts regulate working hours and conditions, as well as the rate of wages and provide that said exhibitors shall employ moving picture machine operators who are members of said defendant union; that said con-

tracts are for the benefit of the complainants, and the other members of Local Union No. 384; that the complainants have been and are accepting and participating in such benefits, ever since the inception of their membership in the Junior Department of Local 384; that said contracts, impose a burden on said local union, to supply competent and efficient operators, and the Exhibitors have the right to discharge operators, at anytime, in accordance with the terms of such employment contracts; and the right and power of the Executive Board and Business Agent to assign both juniors and seniors to employment at the various theatres, is limited and subject at all times to the approval and confirmation of the Local Union, in meeting assembled.

18. They deny the allegations of Paragraph 18, except that they admit that senior members have seniority rights to employment over all other members or apprentices, and that such seniority rights, are expressly provided for, in the contracts between the complainants and the defendant local union, No. 384, entered into on March 4th, 1930, heretofore mentioned, and that such seniority rights have been at all times recognized and complied with, by these complainants without objection on their part, up to the institution of this suit.

19. They deny the allegations of Paragraph 19.

20. They deny the allegations of Paragraph 20, except that they admit that the complainants, as apprentices, have no vote and have never voted, without any objection on their part.

Answer.

21. They admit the allegations of Paragraph 21.

22. They deny the allegations of Paragraph 22, except as herein admitted.

23. They deny the allegations of Paragraph 23, except they admit, that the complainants do not have the right to vote.

24. They deny the allegations of Paragraph 24.

25. They admit the allegations of Paragraph 25.

26. They deny the allegations of Paragraph 26.

27. They admit the allegations of Paragraph 27.

28. They deny the allegations of Paragraph 28.

29. They deny the allegations of Paragraph 29, except they admit that a portion of complainants' dues are allocated to the payment of International per capita tax and the payment of premiums on group life insurance.

30. They deny the allegations of Paragraph 30.

31. They deny the allegations of Paragraph 31.

32. They deny the allegations of Paragraph 32.

33. They deny the allegations of Paragraph 33.

34. They deny the allegations of Paragraph 34.

35. They deny the allegations of Paragraph 35.

Answer.

36. They deny the allegations of Paragraph 36, except they admit that certain officers of the defendant local union, receive nominal sums, while engaged in the performance of the local's business, and admit that the business agent is paid a weekly salary of $105.00, plus $20.00 per week for expenses, and further answering say that such expenditures are incurred in protecting the interests of these complainants and the other apprentices of said local union.

37. They deny the allegations of Paragraph 37.

38. They deny the allegations of Paragraph 38.

39. They deny the allegations of Paragraph 39.

40. They deny the allegations of Paragraph 40.

41. They deny the allegations of Paragraph 41, except they admit that during the summer of 1932, an unemployment relief plan was set up for the benefit of the unemployed apprentices of said local union, with the consent of said apprentices.

42. They deny the allegations of Paragraph 42.

43. They deny the allegations of Paragraph 43.

44. They deny the allegations of Paragraph 44.

45. They deny the allegations of Paragraph 45.

46. They admit the allegations of Paragraph 46, except they deny the right of complainants to participate in the choosing and voting for officers, and say that complainants, as apprentices, do not have

the right to vote, and that the complainants were fully aware of and knew ever since March 4th, 1930, and for a long time prior thereto, that they would not have the right to vote, and consented thereto, at the time they executed their contracts with the defendant local union, as aforementioned.

Further answering, defendants say that complainants are now estopped, from asserting or maintaining an alleged right to vote.

47. They deny the allegations of Paragraph 47.

48. They deny the allegations of Paragraph 48, and beg leave to refer to the contract and the particular provisions thereof.

49. They deny the allegations of Paragraph 49.

50. They deny the allegations of Paragraph 50, except as herein admitted.

51. They deny the allegations of Paragraph 51.

52. They deny the allegations of Paragraph 52.

53. They deny the allegations of Paragraph 53.

54. They deny the allegations of Paragraph 54.

55. They deny the allegations of Paragraph 55, and further answering say, that complainants are registered in the International Alliance as apprentices.

56. They deny the allegations of Paragraph 56.

57. They deny the allegations of Paragraph 57.

Answer.

FIRST DEFENSE.

1. The International Alliance and all of its subordinate local unions and members are governed by a written constitution and by-laws, the last edition of which became effective on August 1st, 1932, a copy of which constitution will be produced in open court at the trial of the issues herein.

2. Local Union No. 384, the defendant herein, is governed by a set of by-laws which have been approved by the International Alliance, a copy of which will be produced at the trial of the issues herein.

3. The Constitution and by-laws of Local Union 384, Article 5, Section 8, reads as follows:

"ORDER OF APPEALS.

Sec. 8. (1) To the Local Union from its own decision or its officers' decisions; (2) From decision of the Local Union to the International President of the Alliance; and further as prescribed by the Constitution and By-Laws of the International Alliance."

Article 10 of the Constitution of the International Alliance, Sections 1 to 7 entitled "Appeals", provides as follows:

"ARTICLE TEN.

APPEALS.

Section 1. TIME ALLOWED FOR FILING.

Appeals from a lower to a higher tribunal of this Alliance shall be cognizable only if filed

within thirty (30) days after receipt of decision by the accused.

Section 2. MUST BE IN WRITING.

All appeals must be submitted in writing and no verbal plea shall be entertained. A member filing an appeal against the action of his local union shall be required to file a copy of such appeal with the local union.

Section 3. FORM.

All appeals shall contain a clear and concise review of the case from inception to date of appeal, including reference to the section or sections of the Constitution and by-laws not properly interpreted by preceding tribunals, together with notation of those facts which are considered to entitle Appellant to reversal of ruling.

Section 4. SIGNATURE OF APPELLANT.

All appeals must be personally signed by the appellant and must set forth the name and number of the local of which he is a member.

Section 5. ORDER OF APPEAL.

The Order of appeal shall be:

(1) To the local Union from its own or its officers decision;

(2) From decision of local union to the International President of this Alliance;

(3) From the decision of the International President to the General Executive Board;

Answer.

(4) From the ruling of the General Executive Board to this Alliance in convention assembled, and the latter body shall be the tribunal of ultimate judgment.

Section 6. APPEAL FROM PRESIDENT'S DECISION.

In event of appeal being taken from the decision of the International President of this Alliance to the General Executive Board, it shall be the duty of the President to submit a written statement to the General Executive Board setting forth reasons in support of his ruling.

Section 7. APPEAL FROM EXECUTIVE BOARD.

If appeal be entered against decision of the General Executive Board, it shall be the duty of the General Secretary-Treasurer, upon receipt of notice from appellant, immediately to inform all interested parties that the case is docketed for consideration by the Alliance in convention assembled."

4. Complainants have not exhausted the remedies provided for within the ranks of the Association, viz.: They have not exhausted the remedies available to them as provided for by the by-laws of the defendant union 384, nor have they exhausted the remedies available to them in accordance with the Constitution and by-laws of the International Alliance as aforesaid.

5. These complainants at the time of their initiation as Junior Members of the defendant Local Union, took the following oath or obligation:

Answer.

"OBLIGATION

I, (full name), do solemnly pledge my word of honor as a man to abide by the Constitution and By-Laws of Local No. 384 of the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada. I further affirm that I will obey the mandates of the American Federation of Labor so long as the International Alliance be a part of that organization. The will of the majority I shall always abide by. I will use every honorable means to secure employment for the members of this union, in preference to non-members. Also I pledge to keep confidential the work of this body and to do all in my power to discourage and prevent violation of this requirement by brother members. Should I fail to keep true this, my solemn obligation, I shall willingly submit to such discipline as my lack of loyalty may bring upon me."

6. Complainants, therefore, have a full, complete and adequate remedy for redress for any alleged wrongs or grievances by utilizing the appellate procedure outlined above.

SECOND DEFENSE.

1. Complainants have a full, complete and adequate remedy at law.

SAUL NEMSER,
Solicitor of Defendants.

Order Amending Bill of Complaint.

(Filed Sept. 18, 1933.)

IN CHANCERY OF NEW JERSEY.

Between WILLIAM CAMERON, *et als.*, Complainants, and THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, LOCAL UNION NO. 384, OF HUDSON COUNTY, NEW JERSEY, *et als.*, Defendants.	On Bill, &c.

This order being consented to by Counsel for the respective parties,

IT IS on this 18th day of September, 1933, ORDERED that the Bill of Complaint heretofore filed in said cause be and the same hereby is amended in the following respects and particulars, to wit:

That Paragraph 9 of said Bill of Complaint be amended so as to read as follows:

> "Complainants and the other so-called 'junior' members were duly initiated and obligated as, and became members of, said Local 384 under the said 1923 constitution and by-laws and their rights and obligations were measured thereby, except to the extent, if any, to which the same might be illegal or invalid, and not by the aforesaid so-called 'contract'

which was and is ultra vires said Local 384 as well as illegal and void and contrary to public policy; said 1923 constitution and by-laws did not provide for or admit of any classification of or differentiation between members of said Local, and in effect provided that each member should in every respect be on a parity with every other member; complainants and the other so-called 'junior' members did not acquiesce in or consent to their classification as 'juniors' and the attempted differentiation between them and the so-called 'senior' members, and all acts by them seemingly evidencing such acquiescence therein or consent thereto were wholly the result of coercion and intimidation on the part of the defendants and said 'seniors' are not voluntary on the part of complainants or the other so-called Juniors".

At the end of Paragraph 57 of the Bill of Complaint immediately at the end of the first section thereof and immmediately before the words "coplainants are without adequate remedy in the courts of law and therefore pray," there be added a new paragraph to be known as Paragraph No. 58, and to read as follows:

"The intended purpose, tendency and effect of all of the aforesaid complained of acts on the part of the defendants was and is at the expense of the so-called 'juniors,' employers and the public, to secure to and for the officers, executive board of said Local 384 and the so-called 'senior' members thereof, within the jurisdiction of said Local 384, a complete and unreasonable monopoly and control of motion

picture operator employment; the power afforded to them by said monopoly and control has been and is being oppressively, unjustly and discriminatorily used for their own advantage by the defendants, and said 'seniors' to the detriment of said so-called 'juniors,' employers, and the public; said purpose has been and is effective because among other things the aforesaid employment contracts (many of which were entered into by employers as a result of coercion and intimidation) provide that only members of said Local 384 shall be employed as motion picture operators, and this, coupled with the so-called seniority rights and the power which the defendants have to select a particular member for a particular job, renders it impossible for a man to obtain within the jurisdiction of said Local 384 sufficient employment to enable him to earn a living at his trade unless he is a member of said Local 384; the members and particularly the so-called 'junior' members knowing that to lose their membership in said Local 384 is in effect equivalent to losing their ability to earn their living at their trade within said jurisdiction, and cognizant of the ability of the defendants to oust them from membership in Local 384 thereof, by means of unfair trials or trumped-up charges to deprive them of their means of livelihood, have been and are intimidated to such an extent that they have not dared, until driven by desperation, to protest or object to the acts herein complained of."

That there be added immediately after prayer No. 17, four further prayers, to respectively read as follows:

"18. That it be decreed that the attempted classification of members into 'seniors' and 'juniors' or 'apprentices', and of attempted distinctions and discriminations between them are null and void, and that said so-called 'juniors' or 'apprentices' be decreed to have and be entitled to the same rights and benefits and privileges as the said so-called 'seniors', and that defendants be enjoined and restrained from in any manner attempting to maintain, or enforce any classification, distinction or discrimination between them."

"19. That complainants and the other so-called 'junior' members be given credit on account of all future sums payable by them to said Local 384 for all sums heretofore paid by them to it, in excess of the sums paid to it during the same period by said so-called 'seniors' in such manner that the difference in sums heretofore paid by said so-called 'juniors' and 'seniors' will be equitably adjusted and compensated for."

"20. That the defendants and their successors in office, and all other persons acting on their behalf be perpetually enjoined and restrained from assigning a member of Local 384 to a particular job, or a particular job to a particular member, and from suggesting to an employer or prospective employer, or his agent or representative that he employ or retain in his employment any member of Local 384 in preference to any other member thereof, or that he discharge any member of said Local 384, and that each of them be perpetually enjoined and restrained from doing anything which will in

anyway restrict the employer in exercising a unrestricted and unhampered judgment as to which members of said Local 384 it desires to employ or retain in its employment."

"21. That the complainants and those on behalf of whom this action is instituted, may have such other and further relief in the premises as equity and good conscience may require."

Entry of the foregoing order is hereby consented to.

SAUL NEMSER,
Solicitor for and of Counsel with Defendants.

WALLACE P. BERKOWITZ,
Solicitor for and of Counsel with Complainants.

NORBURY C. MURRAY,
Of Counsel with Complainants.

Answer to Amended Bill of Complaint.

(Filed Oct. 20, 1933)

IN CHANCERY OF NEW JERSEY.
96/548

Between
WILLIAM CAMERON, *et als.*,
Complainants,

and

THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, LOCAL UNION NO. 384, OF HUDSON COUNTY, NEW JERSEY, *et als.*,
Defendants.

On Bill, &c.

The answer of the defendants, International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Local Union No. 384 of Hudson County, Frank Mandrake, President, individually and as agent of the senior members of Local Union No. 384, and Fred Hoppke, Vice President, Charles May, Secretary and Treasurer, Frank R. Brown, Recording Secretary, Anthony Boscarelli, business agent and Albert DeTitta and Frank X. Maurus, Officers and members of the Executive Board.

These defendants answering the amended bill of complaint (as said mandatory matter is set forth in the Order amending bill of complaint entered on September 18th, 1933) jointly and severally say that:—

Answer to Amended Bill of Complaint.

1. They deny the allegations in Paragraph "9" of the bill-of-complaint, as amended.

2. They deny the allegations of Paragraph "58".

3. These defendants further answering say that the complainants are guilty of laches because they have delayed for an unreasonably long length of time in the institution of this suit, and that complainants' delay has prejudiced these defendants.

SAUL NEMSER,
Solicitor of Defendants.

Replication.

(Filed July 21, 1933)

IN CHANCERY OF NEW JERSEY.

Between
WILLIAM CAMERON, *et als.*,
Complainants,

and

THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, LOCAL UNION NO. 384, OF HUDSON COUNTY, NEW JERSEY, *et als.*,
Defendants.

On Bill, &c.

Complainants join issue on the Answer of the defendants.

WALLACE P. BERKOWITZ,
Solicitor of Complainants.

Notice, dated January 13, 1934.
(Filed Jan. 15, 1933)

IN CHANCERY OF NEW JERSEY.

Between
WILLIAM CAMERON, *et als.*,
Complainants,

and

THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, LOCAL UNION NO. 384, OF HUDSON COUNTY, NEW JERSEY, *et als.*,
Defendants.

On Bill, &c.

We, the undersigned, parties complainant in the above entitled cause of action, wish to notify the Hon. John J. Fallon, Vice Chancellor, that pursuant to his statement that if we stipulate on the record that we will not appeal from the decision rendered against us in the above entitled cause, that the Court will then take into consideration this fact and may not award a counsel fee against us in the sum of $1,500 as requested by the solicitor of the defendants (or some lesser sum which the Court may deem proper); and we feeling that to make such promise at this time would be signing away our constitutional rights which we feel are given to parties litigant who may be aggrieved by the decision of the Court of Chancery, and in view of this—although we have not come to any conclusion as to the advisability of appealing this case—

we still feel that making such a promise would only have the effect of showing our acquiescence in the decision of the Court.

Therefore, we feel that we do not care to waive our right to appeal and cannot make a promise not to appeal, and now reiterate our opposition to the award of counsel fees, as stated by our counsel yesterday.

Dated January 13, 1934.

Respectfully,

WILLIAM CAMERON,
FRANK BARKOWSKI,
FRANK GIARDINA,
JOSEPH STEINER, JR.,
THOMAS J. MCCARTHY,
GEORGE MULLER,
VINCENT SAPANOR.

Petition for Leave to Intervene.
(Filed Jan. 9, 1934)

IN CHANCERY OF NEW JERSEY.

Between
WILLIAM CAMERON, *et als.*,
Complainants,

and

LOCAL 384 of the INTERNATIONAL ALLIANCE, etc., *et als.*,
Defendants.

On Bill, &c.

To His Honor, LUTHER A. CAMPBELL,
Chancellor of the State of New Jersey:

The petition of NEAL FARGO, WALTER F. HENTSHELL, GEORGE SIBERRY and JOSEPH UDILJAK, of the County of Hudson, and State of New Jersey, respectfully shows that:

1. The bill of complaint herein was filed June 13th, 1930, seeking among other things to declare a certain contract entered into between Local 384 of the International Alliance, etc., and certain members thereof known as junior members null and void on the ground of fraud, etc. Subsequently an amended bill was filed by which the members known as junior members sought to have themselves declared as members in equal standing with those members known as senior members of Local 384 and in said bill of complaint more particularly described.

2. By virtue of a certain contract entered into between Local 384 and the permit men dated Feb-

ruary 11th, 1930, the said junior members, then known as permit men, were inducted as junior members of Local 384 of the International Alliance, etc., in March, 1930.

3. Your petitioners have been advised that the bill filed heretofore in this cause is in the nature of a class bill. It is their desire and intent that the said contract dated February 11th, 1930, shall be enforced and declared valid in all respects.

Petitioners therefore pray that they may be made parties complainant or parties defendant to the bill of complaint heretofore filed herein.

SAMUEL S. STERN.
Solicitor for Petitioners.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } ss.:

NEAL FARGO, of full age, being duly sworn, according to law upon his oath, deposes and says:

1. I am one of the petitioners named in the foregoing petition. The contents of said petition are true, and in particular it is true that the bill of complaint was filed herein on June 13th, 1930, seeking among other things to declare a certain contract entered into between Local 384 of the International Alliance, etc., and certain members thereof known as junior members null and void on the ground of fraud, etc. Subsequently an amended bill was filed by which the members known as junior members sought to have them-

selves declared as members in equal standing with those members known as senior members of Local 384 and in said bill of complaint more particularly described.

2. By virtue of a certain contract entered into between Local 384 and the permit men dated February 11th, 1930, the said junior members, then known as permit men, were inducted as junior members of Local 384 of the International Alliance, etc., in March, 1930.

3. I have been advised that the bill filed heretofore in this cause is in the nature of a class bill. It is my desire and intent that the said contract dated February 11th, 1930, shall be endorsed and declared valid in all respects.

NEAL FARGO.

Subscribed and sworn to before me
this 9th day of January, 1934.

JOSEPH ROSENTHAL,
Master in Chancery
of New Jersey.

Order.

(Filed Jan. 12. 1934)

IN CHANCERY OF NEW JERSEY.

Between WILLIAM CAMERON, *et als.*, Complainants. and LOCAL 384 of the INTERNATIONAL ALLIANCE, etc., *et als.*, Defendants.	On Bill, &c. On Petition, for Leave to Intervene.

A petition having been filed by Neal Fargo, et als., whereby it appears that subsequent to the filing of the bill of complaint herein, the said petitioners acquired an interest in the above entitled cause which the decree in this cause will effect;

And it appearing that the Court has read and considered the petition and affidavit filed by said petitioners, and having duly considered the matter, and being satisfied of the truth of the matters in said petition contained, and that the said Neal Fargo, et als., have an interest in the aforesaid suit, which the Decree in this cause will affect;

It is on this 12th day of January, 1934, ORDERED, that the said Neal Fargo, Walter J. Hentshel, George Siberry and Joseph Udiljak be made parties to the bill of complaint filed in this cause; and it is

FURTHER ORDERED that the said petitioners serve true but uncertified copies of the petition, affidavit

of Neal Fargo, one of the petitioners herein, and of this order, on the Solicitor for the Complainants and the Solicitor for the Defendants, this date.

LUTHER A. CAMPBELL,
C.

Respectfully advised:

JOHN J. FALLON,
V. C.

Oral Opinion.

The Court: All right. I feel that the application of well settled principals of law, with the proofs which have been presented to the court in this case, warrants me in advising a decree dismissing the bill of complaint for a number of reasons. First of all I am impressed with the very patent fact that the controversy in question is merely one between members of an organization. Whether you call them seniors or juniors is not for the purpose of my determination now, and therefore a matter that this court has no authority to inject itself into. This court has no right to substitute its judgment for the judgment of the members of an organization with respect to the conduct of the organization in the admission of members or the rules of the organization which should bind those members. Furthermore, I am impressed that there is no question of public policy concerned here, but as I have just stated it is merely a controversy between the members of the organization itself. It is not anywise like a case where the interests of the public have been affected or are being affected such as where employers are complaining of the activities of the members of this organization, and therefore this case is clearly distinguished from the case of Walsch v. Sherlock and other cases of that kind. The Stone Cutters case that Mr. Nemser has referred to is fairly indicative of the rule of law that the organization itself should control its own activities insofar as those activities are within the law and not outside of the law. I have had occasion a number of times within the past few years in the determination of matters to point out that officers of a corporation, and in that respect I am considering this unincorporated body as similar for the purpose of the matter that I am discussing, that

is, a corporate body, have an undoubted right to guide the activities of the corporation without any interference by the court and without the substitution of the court's judgment for their judgment so long as they act within the law. And by that I mean particularly so long as they do not contravene the law of the land or commit acts which are manifestly *ultra vires* the constitution and by-laws of the organization. Then again the constitution and by-laws of this organization affords to members of the organization who claim or feel they are in anywise aggrieved a recourse to a method of appeal for a redress of their grievances. The appeal in the first instance, if it be from the determination of an officer of the organization, and I mention that because of so much having been said throughout the case about it—I think they call him the business manager or business agent, that if he should put any order into effect which a member may feel that he was aggrieved by, that member has a right under the rules to appeal to the organization local itself, and if the determination of the local organization should be adverse to him he then has a right to appeal to the president of the parent body—I forget the name of it, it has five or six words in its title. And then again if that president should declare against the member the member has a right to appeal to the general executive board, which I believe is the term used, and then again a further appeal from that general executive board to the convention assembled of the parent body. Now, there is no proof in this case at all that would warrant me in determining that it would be futile to undertake to have recourse to such method of appeal within the order. And in that respect the case is very clearly distinguishable from the case of Walsche v.

Sherlock, and also distinguishable from other labor organization cases that I myself have decided within the past year or so. In the case that is now before me it appears that this local has been in existence for quite a number of years, and that about in the year 1928, owing to the innovation in the motion picture industry of sound effect it became necessary to have two men employed in an operator's booth in a motion picture theatre rather than one as previously. The proofs disclose that prior to 1929 these complainants and others availed themselves of the opportunity of obtaining employment in that industry and were taken within the fold of the local by those who comprised its membership at that time, and they were denominated permitmen. Matters went on in that way I think until 1929, when the complainants and quite a number of others of their kind made formal application to the local organization for some better recognition than ordinary permitmen. And apparently a scheme was devised by the members of the local organization whereby they did establish what has been called a junior membership. Applications for membership were made by the complainants and others in 1929, but no action was taken upon them insofar as admitting them to membership until March 4, 1930, when 42 men, if I have the number correctly, were admitted to what has been denominated junior membership. Now, at that time the senior members, if I may so term them, and I mean by that the members of the local as had existed prior to the admission of others called juniors, consisted of 74 or possibly 75 members in all. Mr. Nemser has said in his remarks that the organization now consists of 116 members. And if that be so it bears out pretty much what I have in mind that 75 of

those members comprised the so-called seniors and the rest the so-called juniors. I may be wrong in my numbers, but it is immaterial for the purpose of my remarks. The proofs show that sometime prior to March 4, 1930, Mr. Evins, I think the name was, who was, according to the testimony of some of them the chief factotum of this organization, although they did not use that word, looked about to see by what means an opportunity could be afforded of adding these additional personnel to the local organization without prejudicing the rights of those who had become members of the organization up to that period. And he corresponded with other locals and the result seems to have been that from some source he obtained a form of a so-called junior membership contract, and then he seems to have been the one that caused those so-called junior membership contracts to be printed. And he and those other seniors associated with him called together an assemblage of these men who were endeavoring to come within the fold, or the organization, and they met on March 4, 1930, at which time the proofs clearly manifest to me in this case, notwithstanding the contrary statement of one witness, that Mr. Evins read that so-called contract paragraph by paragraph and asked those there assembled if they thoroughly understood its contents. And at the conclusion of the reading the whole contract he and others asked whether any one there assembled wished to ask any questions with respect to the contract which they were then expected to sign. And only one man, as I remember it, a man named Woods, interjected some inquiry about some of the by-laws. And he was told by a man who was the then presiding officer of the organization, that is, the president of it, that there were no constitution

and by-law copies available but they were having a committee working, or about to go to work, in the redrafting of an amended constitution and by-laws and they would be ready shortly. Apparently those amended by-laws and constitution did not come into effect until about six months thereafter. Now, throughout the bill of complaint and throughout also the amendment to the bill of complaint, the complainants and those who are associated with them as so-called junior members are classified clearly as such, and are distinguished from the older members of the organization who are classified in the bill of complaint as senior members. Furthermore, in the complaint signed by the present complainants in this matter they again refer to themselves as junior members throughout. That paper writing clearly indicates that they well knew that their status of membership was as junior members so-called when these men—42, or whatever the exact number may have been, were obligated. As it has been claimed on March 4, 1930, they obligated themselves among other things to abide by the will of the majority. This contract so-called. which is Exhibit C-1, reads: "Rules Governing Membership, Application and Agreement for Junior Department Local 384, I. A. T. S. E. & P. O. of United States and Canada", and then the word "Membership" appears, and it is dated February 11, 1930. Now, the date of February 11, 1930, is apparently quite significant as being the date when the so-called senior body amended their constitution or by-laws, whichever they were as were referred to in the minute book which was offered in evidence, providing for this so-called junior membership. And that which is the constitution and by-laws, whichever it actually was, appears to be in accordance with the

requirements of the 1926, or 1923 constitution and by-laws which requires two readings several weeks apart. I think it was, but sometime apart anyhow. But the minute book shows it was read on two different meetings. Now, the so-called contract Exhibit C-1 is a plainly printed instrument and contains in Section 6 the names of those who comprised the membership of the local organization before the association with them of these so-called juniors. It was said by some one in the course of the hearing that the number of names stated therein was 74. Section 6 says—"The following named members shall be recognized as Senior members. They shall have and are hereby given seniority rights over all other members with reference to employment". A great deal has been said in this case, and I think the complaint of counsel of the complainants seems to be, that the seniors have asserted from time to time their so-called seniority rights by taking the jobs held by the juniors. But the proofs clearly disclose no grievous injury was done to any junior by any such method. Some of these juniors, and Cameron particularly, have been pretty steadily employed throughout. I gather from all that I have heard in this case that counsel for the complainants undertakes to characterize this contract as a harsh, as an inequitable, and as an untenable instrument. Well, even though it may be harsh the complainants cannot complain thereof because it is written in very clear print, and not only could they themselves read it very readily if they wished so to do, but the proofs show that it was read to them paragraph by paragraph and that they were well informed of its contents. The proofs further show that before this contract so-called was signed that those parties who signed it were called

singly into an outer office from the room in which they were then gathered and the matter was again explained to them, and they were again asked whether they understood the paper they were about to sign, and only until they did make known that they were well informed thereof did the man who witnessed the signatures, Mr. Boyd, I think was the man—I can't very well read his signature here, then allowed them to sign the paper in his presence and he then witnessed them. Boyd apparently was so particular in trying to impress upon these men the significance of that paper that in two instances the papers had been signed by the junior members so-called before they entered the room wherein Boyd was, and Boyd would not accept those signatures because he did not see them sign them, and had them sign other papers in lieu thereof. Boyd further testified there were two persons among the 42, if that was the number of the juniors, who because of the reasons stated by him he would not witness their signatures, and those signatures apparently were witnessed by some other parties. I mention that in passing to indicate the great care which seems to have been exercised in effectuating the so-called junior membership. Now, after the junior membership was effectuated by means of this agreement, it then appears that the junior members were so well pleased with the fact that they had been received into the organization in the manner in which they were received, that they conceived the idea of holding a banquet to which they invited quite a number of seniors, if not all, and other persons too. And that banquet must have been a pretty swell affair because my recollection is I mentally calculated while they were testifying with respect thereto that the amount they each contrib-

uted multiplied by the number of those who contributed showed an aggregate of about fourteen or fifteen hundred dollars which had been collected for this affair. It has been testified there were some presents given to some of the officers and also a lady who was the wife of some officer of the general body. I hardly think they spent much of the money on those gifts. I thing they spent a great deal on the food and beverages they were enjoying. I mention that also to indicate that those men knew very well what they were doing. Now, those things ran along until December, 1931, and within that time some of them were displaced in their jobs by seniors so-called within the purview of the seniors' rights as manifested by the so-called contract. And not until December 31, 1931, was there a formal complaint made of such undertaking by the so-called seniors. Now, it is a well known principle of equitable jurisdiction that a court of equity will only grant relief to those who are diligent and not those who slumber upon their rights. And notwithstanding that these men know the causes of complaint of which they are now here complaining, they took no action either within the order or by recourse to the court to remedy the condition. And even though on December 31, 1931, they complained in the manner as read by Mr. Nemser from one of the exhibits in evidence here, they took no action either within the organization to bring matters on under their right of appeal, and they did not seek recourse to the courts for redress. Subsequent to that date some of these complainants were again affected by the claims of the so-called seniority rights and removed from time to time in their positions to give way to the seniors. Now, the juniors tacitly acquiesced in this course of procedure upon the

part of the seniors from March 4, 1930, right down to June 13, 1933, when the bill of complaint was filed in this cause. A supplement to that bill of complaint, or an amendment to it, was filed September 18, 1933. The application blank for members which is marked as Exhibit C-2, and which has been attached to Exhibit C-1 as part of the contract, although it is conceded they are separate instruments, has upon it "Junior Department". It is said that stamp was not upon the application blank at the time it was signed but placed thereon thereafter, and I believe that seems to be conceded by the defendants. The application of Cameron which I have before me is dated June 15, 1929, but, notwithstanding, he was not admitted to even junior membership until March 4, 1930. Now, when he and his fellows assumed even junior membership in the organization they undoubtedly knew that that organization must have had a constitution and by-laws and that they would be bound by not only those by-laws which were then in force, but any by-laws that would be thereafter made. Apparently it was in May, 1931, that the new by-laws came into being, or amended by-laws, or revised, whichever you want to call them. And those revised or amended by-laws evidently recognized the action which had been taken by the organization as of February 11, 1930, because they refer thereto. Now, I have stated throughout the hearing of this case at different times, and particularly to counsel for the complainants, that I was of the impression up to that time that these complainants having made their bed, as I described it, ought to be required to lie upon it. I have in mind that these men who were permitted to obtain what has been termed junior membership accomplished much thereby. The proofs show that

at or about that time those men earned a considerable sum of money per week—ninety dollars, a hundred, a hundred and twenty-five, a hundred and fifty, and perhaps more. At the present time the pay is not so good, and because perhaps it is not so good they now see fit to complain of that which has been going on since March 4, 1930, and which they tacitly acquiesced in and which they quiescently submitted to. Now, these complainants seek their equities and relief here at this late day to complain of that which occurred on March 4, 1930. They must take the lean with fat, and while their pockets were pretty well lined at or about the time they were admitted to junior membership because of the emoluments that came to them by means of greater pay at the time which existed, they cannot very well complain of the emptiness of the pocketbook at this late day when the pay is not so good. One of the principal questions of complaint as I gather from the proofs submitted in behalf of the complainants is the allegation that the rights of the Junior members have been affected by the exercise by the seniors of what they regard as their superior rights. It has been argued by counsel for the complainants that there is a sort of a monopoly existing with respect to this motion picture operator's industry, if I may call it. But I fail to find in this case that such is the fact. It is clear to me from the proofs herein that this organization is one of the exceptions that have come to my knowledge in the hearing of labor troubles in that it has not exercised the power and strength of the union organization through the mediums of boycotts, strikes, and the like, against owners of motion picture theatres. The proofs indicate that all of the motion picture theatres in Hudson County are not unionized. It

has been stated by Mr. Nemser that the total number of moving picture theatres in the county is approximately forty-nine, of which approximately seventeen or eighteen the organization has no control whatever of in the way of contracts. It has been testified by one or more of the complainants themselves that any man who is a motion picture operator may go out and find a job for himself if he can. For instance, if a new theatre is opened up and one of the juniors is on the alert there appears to be nothing to stop him from going to that owner or operator of that new theatre and have himself employed, if they will employ him, and if he is employed no one connected with the organization interferes with his employment. Some of the papers that have been offered in evidence here indicate that the juniors have earned pretty good money. They have been required to pay ten percent of their earnings to the organization. That ten percent as stated by Mr. Murray may have been approximately a hundred dollars a year on the average, whereas the senior members only contribute eighty dollars a year—twenty dollars a quarter, I think, to the union. I fail to see any harsh distinction in that.

Mr. Murray: The juniors five hundred dollars.

The Court: You mean to say the juniors have made five thousand a year?

Mr. Murray: My statement is if the working agreement is a hundred dollars a week they earn five thousand approximately and pay five hundred, whereas the seniors only pay eighty.

The Court: If they work steady, and some of them claim they are not working steady. Some of the proofs indicate they worked eight and ten months. However the fact may be, some of them

were engaged in the grocery business and in the automobile repair business and other business enterprises; and they did well in having themselves admitted to membership in this organization, and they ought to be very thankful indeed to be afforded an opportunity of recompensing those who gave them the opportunity of employment by paying the excess over and above the amount paid by the seniors. It has been frequently stated in the law, and the cases are numerous in that respect, that persons are not obliged to contract in any given instance, and if, per chance they do, and thereafter feel that the contract they entered into is a harsh one, that they have not the right to ask to be relieved therefrom because they could in the making of that agreement have required the insertion of a provision to protect them from any harshness which might thereafter operate adversely to them. It ill becomes, it seems to me, these complainants to wait for a period of three and a half years or thereabout before seeking redress from this court against the so-called inequitable contract of which they now complain. I understood counsel for the complainants to say that he did not complain of monopoly, but upon my interrogating counsel with respect to just what he meant by that I think he undertook to minimize what he thought was the effect of his remark, and the record will show what was said in that respect. I made a note of the thing and it says "We are not complaining of the fact that there is a monopoly". Now, I took that statement at the time it was made to mean that notwithstanding the bill of complaint did charge these so-called seniors with maintaining a monopoly as against the juniors, that counsel had a change of conscience since the bill of com-

plaint was filed and undertook to recede from that position because counsel did state throughout the case that complainants receded from a number of matters which they complained of in the bill of complaint for the purpose of this particular suit without prejudice to their future rights. I believe I have already indicated that this labor organization does not control the labor market insofar as motion picture operators are concerned in all motion picture theatres in Hudson County. The proofs as I recall them indicate that the membership has been very tolerant in allowing so-called non-union picture houses to continue on the even tenor of their way without molestation upon the part of the so-called unionized labor in such respect. Now, paragraph 47 of the bill of complaint indicates that the complainants accepted as members of Local 384 had a right to participate in the affairs of the local which included the voting for officers, and being deprived of that privilege the defendant union, its officers, its executive board and senior members are interfering with the complainants' constitutional rights. As I have indicated before it is a late day, it seems to me, to be complaining of a violation of their alleged constitutional rights, and a court of equity will not, after they have slept upon their rights for a period of three years or more, undertake to alleviate whatever grievances they may have in such respect. Where the discretionary right of the Court of Chancery is sought as is sought in a case of this kind by reason of the relief which is prayed, aggrieved parties are required to resort to the Court of Chancery for redress promptly after the alleged grievance first became manifest to them, and I am quite sure no court of equity will tolerate a

delay of three years or three and a half years after the violation of the alleged rights has been made known to a party claiming that their rights have been violated before they seek redress therefor in our court. All through the bill of complaint, as I have stated, it contained recitals distinguishing between the senior and junior members. I called attention thereto to counsel for the defendants at some time during this proceeding. Counsel for the defendants has referred thereto particularly and mentioned paragraphs of the bill wherein such recitals are contained. This court has no means and is without authority to make any decree or mandate to require this defendant corporation to grant to these complainants any particular benefits which they may consider they are entitled to by reason of their membership therein. That is clearly a matter that the complainants must seek within the order itself. Occasionally members of labor organizations have resorted to the courts by way of mandamus to compel the organization to recognize those members in various ways, and the courts have repeatedly held that they will not undertake to compel, and that is what would happen if the mandamus issued, a labor organization to confer upon its members rights which the members claimed they were entitled to if the members had a right to seek a determination of those rights within the organization itself. Our courts have repeatedly held with respect to corporations, and again I say an unincorporated body will be regarded by me for the purpose of my discussion in this matter as a corporation, as to the corporation's policy of management and rules, as to the conduct of the organization, and rules as to the admission of members and the like, are solely committed to the

discretion of the organization itself, and a court has no right to interfere therewith. It is only when an organization such as the one now in question contravenes the law of the land and subjects a member to a violation of such laws which affect his property rights in that organization that the court of equity interferes. I fail to appreciate in this case that there is any property rights of these complainants affected. And it is very significant in this case that notwithstanding the so-called junior membership is comprised of forty-two in number only three thereof filed the bill of complaint in this cause which has been denominated a class bill, a bill which would permit any other persons alleging themselves to be aggrieved in the manner in which complainants claim, to join therein as parties complainant. Only four of the so-called junior members applied subsequent to the filing of the bill for leave to be admitted as parties complainant. And as against that four union members have asked leave to intervene as parties defendant for the purpose of circumventing, insofar as they may, the activities of the complainants in bringing about the result sought to be attained by them. Those four members, contrary entirely to the claims of the complainants, assert that they well recognize the contractual obligation as between themselves and the organization and assert their willingness to be bound thereby. In cases such as this the greatest number of them prevail especially inasmuch as the junior members obligated themselves, as I have indicated before, to abide by the will of the majority. The contract in question is clearly, in my judgment, not void in its entirety, nor is it void in the particular respects alluded to by counsel for the complainants. And

even though it may be regarded as void my determination herein now is they are too late to complain thereof because of their inactivity and inaction for the long period of time that has passed since they entered into the contract. Allegations are contained in the bill of complaint that the contract was forced upon the junior members through fraud and coercion. Perhaps some other words were used in that connection, but my understanding is that counsel for the complainants waived for the purpose of this particular suit any claim of that kind. But whether I am mistaken in that respect or not I will say at this time I find no cause of complaint of fraud or coercion employed against the so-called junior members which brought about the effectuation of the so-called contract, Exhibit C-1. In view of the fact that the complainants have conceded so many times in their bill of complaint and in the amendments to the bill of complaint, and in this complaint in writing of December 31, 1931, that they were distinctly and unequivocally junior members, I fail to appreciate now why they should undertake to claim any rights of participation in the organization as members generally without regard to the distinction of junior members. It has been shown by the proofs in this case that the senior members so-called have a very valuable asset of senior membership. Of course no one can blame junior members for trying to avail themselves of that valuable asset. But there is nothing in the proofs to indicate that if members of the so-called senior body die or withdraw, and I guess there are very few withdrawals today, junior members shall not be admitted to membership in the senior body. As a matter of fact the law seems to require that the membership in the senior body

when vacancies occur come from the junior body. Of course I can readily appreciate, however, seniors can circumvent the right of junior members in this respect if as stated by Mr. Nemser in his allusion to a case that he cited, seniors would not be obliged to make up the senior membership from the junior membership according to the period of time of admission of the junior members to the junior body. I believe Mr. Nemser said that the court in one case said they might go so far as to take a man from the bottom of the list and admit him to the senior body. Now, that these junior members recognized that they were not to participate in the meetings of the senior membership is clearly manifested again, because in Exhibit C-1, Section 8, it says: "Junior members shall meet every fourth Tuesday of each month, at midnight, said meeting to be conducted by the executive board of the Senior body. All Junior members are to pay Per Capita Tax to I. A. and Insurance, also all assessments. Dues of the Junior members to be 10% of salaries earned." I do not feel that I am obliged to pass on Section eleven, which reads: "All members and persons becoming members agree to abide by the rules of this Union, without resort to a court of law, and in the event of expulsion agree to forfeit all property rights in the Union." That matter is a matter that is not for me to pass upon, and I will not give any judicial opinion which would be either obiter dicta or judicial dictum which may hereafter confuse any of the parties in interest. I do not find anything in the way of proofs in this case that would warrant me in determining that the contract, Exhibit C-1, should be regarded as void because of its being against public policy. As I have indicated before, I do not

appreciate there is any question of public policy involved in the matter which I have before me at this time. Counsel for the complainants argues that complainants should not be bound by that contract, and I am of the opinion that inasmuch as they entered into it understandingly and have acquiesced in it as they undoubtedly have for the period of years since March 4, 1930, that they cannot at this late day complain thereof in this court of equity and obtain any relief therefrom. It might raise a significant question in this case if the court should hold this contract void as against public policy, as to what might then be the status of the so-called junior members with respect to the organization. Counsel for the defendants has alluded to a slight extent as to that aspect of the case, and I will not touch upon it because I deem it advisable for me to keep away from it for the reason that I do not find it necessary to make any determination with respect to it in view of my determination, as I have indicated it to be, based on other facts. I am making mention of it only to indicate it has not slipped my mind in my consideration of this matter. I don't know of anything else I feel I ought to say at this time. There is much that I might say, but I have taken the pains to narrate upon the facts as I regard them to be and the rules of law that I consider should be applicable to those facts, because I feel that I am about to retire from the Bench and in the event of appeal I would not have an opportunity of amplifying what I have already stated through the medium of a formal opinion. I certainly would not be accorded that opportunity unless per chance in the event of an appeal the Chancellor may, in his discretion, deem it advisable to designate me as an

Advisory Master to take further cognizance of this case with a view of lending on appeal such strength as I may possibly be able to lend by the writing of a formal opinion and setting forth therein a particular citation of cases which will manifest the rules of law that I have already indicated are well established. Now, I will close by saying again that I am clearly convinced that this court cannot undertake to regulate the internal affairs of this labor organization, and that for the court to grant to the complainants the relief which they seek herein would be an undertaking by the court so to do. I will advise a decree accordingly.

Final Decree.
(Filed Jan. 13, 1934)

IN CHANCERY OF NEW JERSEY.
96/548

Between WILLIAM CAMERON, *et als.*, Complainants, and THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, LOCAL UNION NO. 384, OF HUDSON COUNTY, NEW JERSEY, *et als.*, Defendants.	On Bill, &c.

This cause coming on to be heard, in the presence of Wallace P. Berkowitz, Solicitor of complainants, and Norbury C. Murray, of Counsel with complainants, and Saul Nemser, Solicitor of defendants and John Milton, of Counsel with defendants; and the Court having examined the pleadings and having taken proofs orally and in open court, and having heard and considered the arguments of counsel thereon, and being satisfied that complainants are not entitled to relief herein;

It is on this 13th day of January, 1934,

ORDERED, ADJUDGED AND DECREED, That complainants' bill-of-complaint, be and the same is hereby dismissed.

Final Decree.

FURTHER ORDERED, That the complainants, William Cameron, Frank Giardina, Frank Barkowski, Joseph Steiner, Jr., George Muller, Thomas J. McCarthy and Vincent Saponar, pay to the defendant, Local Union No. 384, the costs of this suit to be taxed, including a Counsel fee of Fifteen Hundred Dollars ($1500.00), which is hereby allowed to said defendant, within ten days after service upon complainants of true, but uncertified copies of this Decree and of said taxes costs; and that, in default of such payment, execution issue therefor, according to the practice of this court, against the goods and chattels, lands, tenements, hereditaments and real estate of said complainants.

LUTHER A. CAMPBELL,
C.

Respectfully advised,

JOHN J. FALLON,
V. C.

Case.

IN CHANCERY OF NEW JERSEY.

Between WILLIAM CAMERON, *et al.*, Complainants, and THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, LOCAL UNION NO. 384, OF HUDSON COUNTY, NEW JERSEY, *et als.*, Defendants.	On Bill, &c.

Transcript of stenographic record of final hearing before His Honor, JOHN J. FALLON, Vice Chancellor, at the Chancery Chambers, Jersey City, New Jersey, January 3, 1934, in the presence of Wallace P. Berkowitz for complainant (Norbury C. Murray, of Counsel), and Saul Nemser for defendants (John Milton, of Counsel).

LOUIS F. BEACHNER,
Official Stenographer in Chancery,
51 Newark St., Hoboken, N. J.

CASE FOR THE COMPLAINANTS.

CHARLES MAY, being sworn:

DIRECT EXAMINATION BY MR. BERKOWITZ:

Q. Where do you live, Mr. May? A. Jersey City —76 Van Wagnen Avenue.

Q. And what position do you hold in Local 384? A. Secretary and treasurer.

Q. And what are your duties as secretary and treasurer? A. Handle all the financial matters of the organization.

Q. Only financial matters? A. Occasionally I write letters. That's about all.

Q. Well, now, can you tell me who was the financial secretary and treasurer in 1930? A. Yes.

Q. Who? A. William H. Meyers.

Q. Can you tell me who has charge of the minutes and records and books of your organization—what officer? A. Pertaining to my books as secretary.

Q. No, who had charge of the minute books and other records of the organization—not financial? A. The recording secretary.

Q. And who was he in 1930? A. Frank Mandrake.

Q. And today who holds that office? A. Frank L. Brown.

Q. Now, you have with you today the contracts signed by the junior members on March 4, 1930? A. Yes.

Mr. Berkowitz: He has got all the records and will testify to the records. As to those things which he has no knowledge of himself we will call the other men.

Mr. Nemser: Let me explain a little more fully. Mr. Berkowitz submitted a large list of the records he thought he wanted. I promised to get them for him and I had Mr. May working for a week compiling them for Mr. Berkowitz.

Mr. Berkowitz: We will use Mr. May for them all. If not we will call the other men.

The Court: He has the contracts?

Mr. Nemser: Yes.

The Court: Offer them in evidence but read one of them to me first.

Mr. Berkowitz: I would prefer if you have no objection Mr. Nemser—

The Court: No, you must state what you are going to offer in evidence.

Mr. Berkowitz: The application to become a member and the contract are attached. That was not the procedure at the time I take it. They are two separate things.

The Court: How do you know they are? You are not testifying. You haven't brought out any proof to that effect.

Mr. Nemser: That's the fact, your Honor.

The Court: When were they attached?

Mr. Nemser: They were attached either on March 4, 1930 when they were sworn to or an hour or two thereafter, but at the time they made their application the contracts weren't really in existence.

Mr. Berkowitz: In other words, I want to offer the contract alone without the application attached thereto.

The Court: All right let it be marked.

(Contract marked Exhibit C-1 in evidence.)

Mr. Berkowitz: I offer the application too.

The Court: All right.

By Mr. Berkowitz:

Q. I notice here Mr. May an application to become member of Local 384 with the name William Cameron on it and signed William Cameron. Was that the application if you know that Mr. Cameron made to become a member of Local 384? A. Yes.

Q. I see on this application "junior department". When was that put on if you know? A. That I don't know.

The Court: What paper did you offer in evidence?

Mr. Berkowitz: The contract first. Now, I am offering the application to become a member.

Q. You don't know when that was put on there? A. No.

Q. Now, do you know as a matter of fact when this application was made, whether or not there was a junior department? A. There was no junior department when this application was made.

Q. So that the junior department had not been in existence at the time this application was made by Mr. Cameron, is that right? A. Undoubtedly.

Mr. Berkowitz: I offer the application (Application marked Exhibit C-2 in evidence).

Mr. Berkowitz: Mr. Nemser will you stipulate all the other applications are the same as this is?

Mr. Nemser: Yes, I am stipulating all of the applications are similar. They are all similar but they bear different dates. They have different initiation fees but the printed matter is

the same. In other words, I want the admission confined to the fact the printed forms are identical.

The Court: All right, they are in evidence and we can see later what the difference is. Read the application.

(Counsel reads application.)

The Court: What about the contract?

Mr. Berkowitz: I will now read the contract.

(Counsel reads contract.)

BY MR. BERKOWITZ:

Q. Now, Mr. May, you have a copy of the 1923 constitution and by-laws in force at the time that these men became members of the organization? A. Counsel has it.

Mr. Nemser: We have what purports to be a copy of the constitution and by-laws in force in 1923. We do not admit they were in force in 1930 when these men signed the contracts.

The Court: He is clearly asking for the production of the constitution of 1923 and he coupled it up at the time they became members.

Mr. Nemser: We deny that.

Mr. Berkowitz: I will withdraw the last part of the question and say 1923 constitution and by-laws.

Mr. Nemser: The question is "Will you produce the 1923 constitution and by-laws?"

Mr. Berkowitz: That's right.

Mr. Nemser: Here it is.

BY MR. BERKOWITZ:

Q. Is this the constitution in force in 1923, Mr. May? A. Yes.

The Court: What are you going to do with that?

Mr. Berkowitz: We will offer it in evidence.

(Constitution and by-laws marked Exhibit C-3 in evidence.)

By Mr. Berkowitz:

Q. Now, Mr. May, do you know of your own knowledge whether this constitution was in force on March 4, 1930? A. It was not.

Q. Well, do you know of any amendments that were made to that prior to March 4, 1930? A. There was by resolution.

Q. Do you have that resolution here? A. They are in the minutes.

Q. Will you produce them please? A. Yes. (Minutes produced by witness.)

Q. I asked you whether or not you can tell me if there had been any amendments to the 1923 constitution and by-laws up to the time of March 4, 1930? A. Yes.

Q. Will you show me what you have? A. For instance we will take the raising of the iniation fees.

Q. On what date? A. Under date of February 18th.

Q. What year? A. 1929.

By the Court:

Q. What do you find there as of that time? A. Minutes of February 18, 1930.

By Mr. Berkowitz:

Q. 1930? A. Yes.

Q. And it raised the initiation fee from what to what? A. The executive board recommended that the initiation fee for Local 384 would be a thousand. It was raised from five hundred to a thousand.

Q. Now, will you read into the record whether or not that resolution or amendment was made to the constitution or whether it was simply a recommendation by the executive board? A. That was a recommendation by the executive board presented to the body.

Q. Did the body pass that recommendation? A. Yes. It became a law at that time after the body passed it.

BY THE COURT:

Q. Maybe it did and maybe it didn't. Read and see what it says. Read from the minutes and tell us what you have reference to. A. At the next regular meeting it says "Resolution made and carried".

Q. What minutes are you reading from? A. That's the following meeting.

Q. What date? A. March 11, 1930. The resolution was referred to new business.

BY MR. BERKOWITZ:

Q. And you know of your own knowledge that that referred to the recommendation made by the executive board. A. It does.

BY THE COURT:

Q. What was the new business and what was done? A. In this particular matter there was nothing done about it. I merely cite that to show how the thing went on.

BY MR. BERKOWITZ:

Q. Then there was no activity, Mr. May, is that correct? A. There was no regular activity.

BY THE COURT:

Q. You mean there was nothing done about the recommendation of the executive committee? A. I am just trying to show the executive board did bring in a recommendation and if that were done the body would act on it.

Q. And they acted on it and referred it to new business? A. Yes, it was referred to new business.

BY MR. BERKOWITZ:

Q. Now, will you show me any amendment to the constitution and by-laws?

Mr. Nemser: If your Honor please I want to object if counsel's theory is they became members in 1923. Unless they can show they became members under the 1923 constitution they have no interest.

Mr. Berkowitz: We became members on March 4, 1930 upon having made an application to become members.

The Court: He wants to know when you became members. You say March 4, 1930.

Mr. Nemser: They were obligated into the union.

The Court: What I want to know is when you became members.

Mr. Nemser: I want to have their theory down definitely. Counsel should be able to state definitely and clearly when they contend they became members.

The Court: He said March 4, 1930.

Mr. Murray: They were obligated in 1930.

The Court: I am not concerned about obligations. That calls for a conclusion. The question was will you indicate when you became members and Mr. Berkowitz said March 4, 1930. That's a plain question.

Mr. Murray: We acquired membership as of the time that our applications were put in.

The Court: Now, show me proof of that.

Mr. Murray: The applications are already in.

The Court: You mean to tell us when an application is made and not acted upon for a year you become a member of that organization?

Mr. Murray: It is a question of law.

The Court: Do I understand you were actually inducted into membership on March 4, 1930 but you made your application a long time prior thereto?

Mr. Murray: That's right.

Mr. Nemser: Will counsel state for the benefit of the record his understanding how these men were obligated?

The Court: I don't know. I presume they will try and show that.

Mr. Berkowitz: I can't testify.

The Court: Perhaps you can refer to some records and show when they were obligated. Let me see that application. Is this the application?

Mr. Berkowitz: That's the application attached to the contract.

The Court: Where is there anything in that application, which appears to be dated June 15, 1929, which makes the man who is the applicant a member *nunc pro tunc* on that date

when he was actually inducted into membership on March 4, 1930.

Mr. Murray: He paid the application fee at that time and thereby acquired his right as of that date.

The Court: Show me anything in there about that giving him any rights if he paid his application fee. I can't follow you on that. I would like to have you point it out to me. Now, a man pays his application fee and is rejected afterwards? Do you say he is obligated after?

Mr. Murray: No, but I say when he is an applicant he is *nunc pro tunc,* so far as his rights are concerned, so far as the date of his application.

The Court: You will have to show me that. If that rule were applied to a fraternal organization it would give a man benefits which he would not have ordinarily.

Mr. Murray: As long as the facts are in I think possibly we can argue on the law. I am not sure it will become material.

The Court: It may become material. It may simplify this case if I know what the situation is. If the situation is as you contend it is I think I can make short work of this case. In other words, you are claiming some rights and privileges which you say accrued to your clients previous to March 4, 1930, is that it?

Mr. Murray: Exactly. We claim our rights are acquired as of one or two dates, and we believe the date of the application. Either the date of the application or the date of the actual obligation, which is March 4, 1930. Now, it will be a question of law as to which date we acquired our rights. We claim first that it was from the date of the application and if not

from the date of the application as a matter of time then on March 4, 1930.

The Court: All right, proceed Mr. Berkowitz.

BY MR. BERKOWITZ:

Q. Will you point out to us any amendments to the 1923 constitution and by-laws which were in effect on March 4, 1930?

Mr. Nemser: I object if your Honor please until they prove these men became members under the 1923 by-laws, or at least until they were obligated as members.

The Court: What is the materiality of that?

Mr. Murray: The materiality is this. We claim that our rights were fixed by the constitution and by-laws as they existed at either the date of the application or March 4, 1930. We have already offered in evidence as Exhibit C-2 a document which was the constitution and by-laws of 1923. This question is designed to bring out the fact, if it is the fact, that there were amendments or no amendments to the constitution and by-laws up to the date of the application first, and whether or not there were any further amendments to that constitution and by-laws up to March 4, 1930.

The Court: He has a right to have in evidence here any proofs as to the constitution and by-laws which were in effect on March 4, 1930.

Mr. Nemser: The 1923 constitution was not in existence on March 4, 1930.

The Court: I don't know what the fact is. The question is what amendments if any were

made to that constitution between 1923 and March 1, 1930. Were there any?

The Witness: I wouldn't say there were any.

The Court: You wouldn't say there were any. What is the fact?

The Witness: Well, the fact is we were guided by these—

The Court: No, what is the fact. Were there any amendments made to that constitution between 1923 and March 4, 1930, if you know?

The Witness: I can't answer that question.

The Court: All right, that's your answer. You don't know.

The Witness: I don't know.

By Mr. Berkowitz:

Q. Have you the minute book there? A. Yes.

Q. Now, by looking through the minute book can you point out to us any amendments that took place during that period of time?

The Court: Suppose you take a look at the book.

Mr. Berkowitz: I would rather have him.

A. We were guided by—

The Court: You are asked about the amendments to the constitution. Let me ask you this, Mr. Berkowitz. Does the constitution of 1923 provide how amendments may be made?

Mr. Berkowitz: Yes.

The Court: What does it say about how amendments may be made?

Mr. Nemser: By a majority vote.

The Court: Let him read it.

Mr. Berkowitz: On page 28 of Exhibit C-2, Section 1—"No part of these By-Laws shall be repealed, altered, annulled or amended unless all members of this Union shall have been notified to this effect at least one month prior and then only by a majority vote present". That is on the by-laws. Now Article eleven of the constitution says, Section 1—"Amendments must be in writing. A proposed amendment to, or alteration to this constitution must be presented in writing at a regular meeting of this Union". Section 2—"Two readings: No proposed amendment or alteration of this constitution shall be voted upon by this Union until it shall first have been read at two consecutive regular meetings". Section 3—"Majority vote of the members present at the regular meeting must vote in favor of any proposed amendment or alteration before the same shall be declared adopted and become part of this constitution". That is all on that.

The Court: All right, it is up to you to prove if you can there were amendments to the constitution and by-laws. This witness apparently doesn't know.

By Mr. Berkowitz:

Q. Who was the secretary at that time you say, Mr. Mandrake? A. Yes.

Q. Do you know if any part of the 1923 constitution was repealed in part?

The Court: Now, Mr. Berkowitz, if he can't answer wouldn't it be calling for a conclusion of his? Isn't the best evidence the minutes of the organization which will show whether

the by-laws and constitution were complied with?

Mr. Nemser: He might save some time by offering the whole minute book and pick out the parts he wants.

Mr. Berkowitz: No, I don't want the whole minute book.

The Court: I can't let the witness testify as to whether the constitution was amended.

Mr. Nemser: From his personal knowledge as a member he should know.

The Court: He may think he knows and he may be wrong.

BY MR. BERKOWITZ:

Q. If there were any sections of the constitution repealed it would appear in the minute book, is that correct, Mr. May? A. It should.

Q. Mr. May, do any of the minutes show that? Do any of the sections of the minutes relate to the repealing of any part or parts of this constitution?

The Court: You mean in the manner required by the constitution or in any way.

Mr. Berkowitz: In any way.

A. Not to my knowledge.

BY MR. BERKOWITZ:

Q. Then do you mean the constitution as it was in 1923 was in force in 1930?

Mr. Nemser: If your Honor please I object.

The Court: I will sustain the objection.

Mr. Berkowitz: We will let that go for the time being.

The Court: You have the minute book kept by the previous secretary.

Q. Now, do you have the 1931 constitution and by-laws? A. Which one, the one adopted on May 12th?

Q. Yes.

Mr. Nemser: I have what purports to be the May, 1931 constitution and by-laws but I object to the offer because I don't see the materiality.

The Court: Are you offering it?

Mr. Berkowitz: Yes.

The Court: It is objected to on the ground stated.

Mr. Murray: It is offered for the purpose of showing what we are endeavoring by this proceeding to have annulled. It was that constitution and that by-laws which created the differentiation between the junior and senior members which we by this proceeding seek to have annulled, and for that reason we are offering it in evidence.

Mr. Nemser: Does counsel take the position his men are junior members? This case ought to be decided on some definite theory.

The Court: This application has "Jr." stamped on it.

Mr. Nemser: Counsel is contending that constitution is no longer in existence. There are no junior members. I think counsel ought to state definitely on what theory he is trying this case on. In parts of the bill they say they

are junior members and in other portions they are not junior members but regular members.

Mr. Murray: That is not the fact.

The Court: I gather from what counsel has stated these men went into this organization as junior members as indicated by the application blanks and this contract, but counsel is claiming that is not their present status because the organization had no right to make any distinction between senior members and junior members, and inasmuch as they were admitted to membership on March 4, 1930 they are in the same class as the senior members. Is that your stand?

Mr. Murray: Yes, sir, there was no distinction.

The Court: I will receive it subject to your objection, Mr. Nemser.

By Mr. Berkowitz:

Q. Is this the present constitution and by-laws?
A. Yes.

Mr. Berkowitz: I offer it.

The Court: No other since 1931?

The Witness: No.

The Court: Let it be marked.

(Constitution and by-laws marked Exhibit C-4 in evidence.)

The Court: As you go along will you read what you think has application to the membership?

Mr. Berkowitz: I would like to read this particular section on page 22, Section 4—"Only Senior Members who have been in continuous good standing for one year just pre-

vious to nomination, and who have been members of the International Alliance for not less than five years, and who have never been debarred from holding any office in this Local shall be eligible for nomination to any office, or serve as delegates or on committees."

Mr. Nemser: I might say there is nothing in the bill of complaint that charges anything in regard to that section.

The Court: All right, what's the next question, Mr. Berkowitz.

Mr. Berkowitz: Section 13 on page 41—"The Examining Committee for the purpose of examining applicants and applications shall be appointed by the President from the Senior membership, and in compliance with Article Three, Section 4 of this Constitution and for such duration, and at any time that this Union may be in need of such Committee."

Mr. Nemser: I might also say to the court I don't recall anything in the bill charging that subject matter or anything about it or any relief prayed for. I also call your Honor's attention to the fact this constitution came into effect on May 12, 1931.

Mr. Berkowitz: Now, Section 16 on page 55—"No member of this Union shall be permitted to give positions to Junior members, or members of sister locals unless sanctioned by this Union. All reliefs must be paid by members not later than the first pay day after such work was performed. The Business Agent, at the direction of the Executive Board, shall remove any member from his position until such time as he complies with this Section". And on page 57, Section 21—"Any member of this

Union informing outsiders or suspended members not in good standing with this Union, of any business transacted or acted upon in meetings or otherwise, shall be suspended for six months and fined $100.00. This law also applies to Senior Members informing members of the Junior Body of anything transpired in regular or in any other meetings of this Union. Any members knowing of such violation and not reporting same shall be deemed equally guilty and be subject to the above penalty". Now, Section 30 on page 60—"Junior members shall, at no time, be permitted to attend the meetings of the Senior Body, unless called upon for certain reasons. They shall have no vote on anything pertaining to the business of this Local, but may speak in their own behalf when assembled in their own meeting". Now going back to Section 1 on page eleven—"Local 384 shall consist of a Senior and a Junior Body, all additions to the Senior Membership shall be taken from the rank and file of the Junior Body, apprentices of Local 384, and in accordance with Section 2 of this Article". Section 2—"Books to be opened at the first regular meeting in August. All Senior members to be notified by mail if applications are to be received, two-thirds vote secret ballot of Senior members shall be required to except the application". Section 3—"Any man who is twenty one years of age and who can secure four members in good standing with the Senior Body, who will vouch for him as to his age, good character and ability as an operator, and by signing their name on his application, may make application to become a member of the

apprentice body of Local 384, in accordance with all rules and regulations and laws of this Union and the International Alliance".

By Mr. Berkowitz:

Q. Now, you have an amendment book, Mr. May?
A. For what?
Q. For the amendments to the constitution and by-laws? A. Yes.
Q. This is the official amendment book, Mr. May? A. It is.

The Court: Are you going to offer it in evidence first before you refer to it?

Mr. Berkowitz: I offer the book in evidence.

(Amendment book marked Exhibit C-5 in evidence.)

Q. In other words, Mr. May, the amendments that appear here are all the amendments that were made to the 1923 constitution and by-laws adopted in 1931? A. Yes.

By the Court:

Q. Did you keep that book? A. The Recording Secretary.
Q. Did you make any of the entries in that book?
A. No, the Recording Secretary.
Q. How do you know it contains what it says?
A. Because I read them.

Mr. Nemser: I might say to the court there was an agreement between counsel to designate one man to gather together all the books.

BY MR. BERKOWITZ:

Q. Now, Mr. May, do you know, or have you here the amendment book to the 1923 constitution and by-laws?

Mr. Nemser: The witness has already answered he didn't know of any.

BY MR. BERKOWITZ:

Q. Have you an amendment book of the 1923 constitution and by-laws?

The Court: What is that book? Relating to what amendments? He said that was an amendment book.

Mr. Berkowitz: This starts September, 1931.

The Court: I understood him, when the book was offered in evidence, to say that book was an amendment book.

Mr. Berkowitz: Showing the amendments to the 1931 constitution and by-laws.

The Court: He testified there were amendments to the 1931 constitution and by-laws?

Mr. Berkowitz: Here they are. Let me clear it up.

Q. I show you the book, Mr. May, offered in evidence as C-5. Is that the official amendment book of the union? A. Yes.

Q. And this shows the amendments to the 1931 constitution and by-laws? A. Yes.

Q. It does not show anything pertaining to the 1923 constitution and by-laws? A. No.

Q. And as a matter of fact it starts September 14, 1931, is that correct? A. Yes.

Q. Now, do you have the official amendment book for the years 1923 and up to when this book was started? A. I have never seen any.

Q. Well, was there such a book? A. I don't know.

Q. Now, will you produce the minutes of March 4, 1930? A. Right here (indicating).

Q. Now, you don't know of your own knowledge whether this is the official minutes of the meeting of March 4, 1930, do you?

Mr. Nemser: He called the witness as a witness to produce certain books. We have a stipulation to that effect. Are you going to raise the question these are not the minutes of that meeting?

Mr. Berkowitz: Just a moment, Mr. Nemser. I want this record cleared up. I want to know if he knows from his own knowledge if they are the minutes.

The Court: It is the minute book of the organization which was produced as per your request.

Mr. Nemser: He has been referring to the book.

Mr. Berkowitz: No, I have not. This is just the first time.

Mr. Nemser: I assumed it was in evidence.

Mr. Berkowitz: I didn't offer it. I don't have to use it if I find it is not necessary. Have you any objection to my offering the minutes of March 4, 1930?

Mr. Nemser: No.

The Court: Let it be marked.

(Minute book marked Exhibit C-6 in evidence.)

The Court: Now read it to the court.
(Counsel reads minutes.)

BY MR. BERKOWITZ:

Q. Now, do you have the minutes of the following meeting after March 4th? A. Yes, March 11th.

Q. At the same time, Mr. May, can you tell me when that contract that was signed by these different men on March 4, 1930, was incorporated into the constitution and by-laws?

Mr. Nemser: I object. That calls for a conclusion.

The Court: I don't understand that question. When it was incorporated in the constitution?

Mr. Berkowitz: That's right.

Mr. Nemser: I think that is a question for the court to determine.

The Court: There is no proof of that.

Mr. Berkowitz: That is what I am trying to find out.

The Court: You mean the contract would be incorporated in the constitution?

Mr. Berkowitz: Yes.

Q. Mr. May, I show you Exhibit C-4, which is the constitution and by-laws now in existence for Local 384, and ask you whether or not incorporated in these constitution and by-laws is what purports to be a copy of the contract signed by the complainants on March 4, 1930.

The Court: Before you answer that question that is dated September, 1931—that constitution.

Mr. Nemser: May, 1931.

Mr. Berkowitz: I will reframe it.

Q. I ask you whether on page 14 of the minutes appears what purports to be a copy of the contract signed by the members on March 4, 1930. A. The essence of that contract is in there. That contract isn't in there.

Q. Well, Mr. May, can you point out to the court the difference between what appears to be here and the original contract signed by these men?

The Court: I guess I can read it as well as he can. I will find that out when I compare them.

Mr. Nemser: It is only assuming as a fact that the contract as signed by the men is in that constitution and by-laws. That is their contention. Our contention is very clear on that point about a junior member coming into the organization subsequent to May, 1931. The minutes cannot change the constitution and by-laws of 1930.

By Mr. Berkowitz:

Q. I understand there has been no effort made to change the contract, Mr. May, of March 4, 1930. A. We never changed it.

The Court: You are referring to Exhibit C-1 when you say the contract of March 4th.

Mr. Berkowitz: Yes, sir. The contract is dated February sometime.

Mr. Nemser: The printed date is February 11th but actually signed on March 4, 1930.

By Mr. Berkowitz:

Q. Mr. May, you have the authority to do the stamping on the cards, have you not, acknowledging receipt of dues and things like that? A. Yes.

Q. I show you a card of William Cameron, which is a membership card for the year 1931 and 32. Was that the card which Mr. Cameron used for that year? A. Yes, it was.

The Court: Have that marked.

Mr. Berkowitz: I offer it in evidence.

(Membership card marked Exhibit C-7 in evidence.)

Q. You notice, Mr. May, that this card is signed "Junior Department". A. I do.

Q. And on the other side it says "apprentice". A. I do.

Q. Now, can you tell the court why that was entered as apprentice? A. Yes.

Q. Go ahead. A. Because that is all the junior department consists of are apprentices.

Q. Can you show me on the contract signed on March 4, 1930, where it refers to apprentice?

Mr. Nemser: I object. It speaks for itself.

The Court: I will sustain the objection. The bill of complaint refers to senior members and junior members.

Mr. Berkowitz: We couldn't refer to them in any other manner.

Q. You attended all meetings of the organization? A. I do.

Q. And you now say that there was nothing done to change the contract of March 4, 1930, signed by these complainants? A. I do. It was never changed.

The Court: That means, Mr. Nemser, whatever rights were conferred upon these complainants by virtue of this so-called contract Exhibit C-1 remain in force and effect today.

Mr. Nemser: That's right. No attempt made to restrict them or encroach upon them.

Mr. Berkowitz: I call upon the defendants to produce your Honor at this time all amendments of the 1923 constitution and by-laws adopted up to March 4, 1930, and ask whether they have them here.

Mr. Nemser: We have no amendments or any other record except what Mr. May has in his possession. He says he doesn't know of any.

By Mr. Berkowitz:

Q. Now, Mr. May, were any of the so-called junior members permitted to attend the meetings at which the 1931 constitution and by-laws were adopted? A. No.

Q. None of the junior members so-called voted or had notice of this meeting or meetings? A. No, they had nothing to do with that.

Q. They were adopted solely by the so-called senior members of Local 384, is that correct? A. Yes.

Q. Now, you are the Financial Secretary and Treasurer, is that correct? A. I am.

Q. And do you collect from these men when they work at the rate of ten per cent per week of their salary? A. I do.

Q. I refer to the membership of the so-called junior members? A. I collect all the money that is paid into the organization.

Q. I refer particularly to the ten per cent. You say that ten per cent is collected from the so-called junior members each and every week from the amounts they earn each week, is that correct? A. No, the second and fourth Monday in each month.

Q. At the rate of ten per cent per week. When you collect it or when paid I don't care, but you collect it at the rate of ten per cent per week? A. Yes.

Q. The senior members do not pay you at that rate, do they? A. No, regular dues.

Q. What is the regular dues? A. Twenty a quarter.

Q. Does that include the six dollar I. A. stamp or is the six dollars for I. A. stamp and insurance? A. Six dollars for I. A. stamp and insurance. That is two dollars a month.

Q. And is that included in the twenty which the seniors pay? A. Yes.

Q. And in addition to the ten per cent which is paid by the so-called junior members do they also pay six dollars for I. A. stamps and insurance money? A. I don't get the drift of that question.

Q. I say in addition to the ten per cent which is paid by the so-called junior members do they also pay six dollars for the I. A. stamp and insurance per quarter? A. Yes, they pay two dollars a month for I. A. and insurance.

Q. Every quarter they paid six dollars for I. A. the same as the senior members? A. Yes.

By the Court:

Q. In addition to the ten per cent? A. Yes.

By Mr. Berkowitz:

Q. Now, Mr. May, are you acquainted with the wage scale of the so-called senior and so-called junior members? A. I know of it.

Q. Can you tell us the union and non-union houses in Hudson County?

The Court: Are you going to have him give us a list of all the houses in Hudson County?

Mr. Berkowitz: Yes.

The Court: Of what materiality is it? I will take it for granted there are a great number of moving picture houses. What difference does it make if there is one or a hundred?

Mr. Murray: It shows the control of which the organization has over the jobs in the trade. I am speaking about the moving picture houses controlled by the organization through contracts.

The Court: I will overrule that. If it is objected to I will overrule that.

Mr. Nemser: I do object. The question is how many union and non-union houses there are. That doesn't mean anything.

Mr. Berkowitz: I will reframe the question.

Q. How many theatres are there in Hudson County you have working contracts with? I am referring to the union.

Mr. Milton: If he knows.

A. We have about—

The Court: Don't guess. He is asking you how many of those houses there are.

By Mr. Berkowitz:

Q. Do you know? A. I am under the impression—

The Court: I will strike out your impression.

The Witness: Then I don't know.

By Mr. Berkowitz:

Q. Well, have you here the contracts and working agreements entered into between Local 384 and the various theatres throughout Hudson County? A. We have.

Mr. Berkowitz: Do you want to give the number, Mr. Nemser?

Mr. Nemser: I would rather have the witness say of his own knowledge.

The Court: Can't you concede how many moving picture houses there are to save time?

Mr. Nemser: We have written agreements with twenty-six theatres in Hudson County and oral agreements with six—thirty-two. There are a total of thirty-nine in Hudson County.

Mr. Berkowitz: Can you make one more stipulation? How many theatres in the county are closed at the present time?

Mr. Nemser: Out of thirty-two we have agreements with, written and oral, two of the theatres are closed. There are forty-nine houses altogether. We have agreements, written and oral, with thirty-two of them.

Mr. Berkowitz: Can you tell me how many are non-union?

Mr. Nemser: The difference would be seventeen.

Mr. Berkowitz: That includes all places in Hudson County that run moving pictures and hire operators.

Mr. Nemser: So far as we know.

The Court: That they deal with.

Mr. Nemser: There may be others, I don't know. There are about four hundred in New York we have no agreement with.

BY MR. BERKOWITZ:

Q. Is this the regular form of contract signed by all exhibitors? Look it over before you answer. A. Yes.

Q. And all the contracts with the various theatres throughout the country are in the same form with the exception of the wage scale and the amount of operators employed. A. That's right.

Q. Do you know of any other difference? A. There ain't any.

Q. And this is the agreement entered into September, 1933? A. Yes.

Mr. Berkowitz: I offer them in evidence.

Mr. Nemser: I suggest you offer them as one exhibit.

Mr. Berkowitz: Yes.

(Contracts marked Exhibit C-8 in evidence.)

BY MR. BERKOWITZ:

Q. Now, Mr. May, do you know whether there has been any efforts made on behalf of the Local to get the other theatres—the remaining houses, to join up and become union houses? A. Yes.

Q. And when was that done or tried?

Mr. Nemser: I object if the court please.

The Court: I think they would be constantly trying.

Mr. Berkowitz: I would like to put it on the record.

The Court: He said they were trying. What's the difference when they tried. It is reasonable to presume they are constantly trying. Isn't that the fact?

The Witness: Yes, we are trying all the time.

By Mr. Berkowitz:

Q. Now, Mr. May, can you tell us the amounts of initiation fees collected from the so-called juniors when they entered into the organization on March 4, 1930?

The Court: Isn't it stated on each one of the applications?

Mr. Berkowitz: I thought it was understood he would have it tabulated.

The Court: You can tabulate them. You have so many contracts.

Mr. Berkowitz: It is three hundred and five hundred—different sums.

The Court: For juniors?

Mr. Berkowitz: Yes.

The Court: Do you know what the total is?

The Witness: Yes, $14,900 to date.

The Court: You mean initiation fees?

The Witness: Yes, altogether.

The Court: How many junior members have you?

The Witness: Forty-two.

BY MR. BERKOWITZ:

Q. Now, can you tell us Mr. May the amount of moneys that these juniors paid as initiation fee? By that I mean what the range was?

The Court: He told you the total.

BY MR. BERKOWITZ:

Q. Do you know what the lowest sum was that the juniors paid? A. Two hundred.

Q. And that went up to what? A. Up to three hundred and then to five.

Q. And some were admitted at different figures? A. Yes. That is in accordance when they filed their application.

BY THE COURT:

Q. The present fee is how much? A. The present fee for a junior member?

Q. If a person starts now? A. Five hundred dollars.

BY MR. BERKOWITZ:

Q. Now, can you tell us at what times, or can you show in the minute book when these various changes took place? A. In what?

The Court: From two hundred to three and from three to five.

The Witness: It is by resolution.

The Court: Isn't it shown on the list you have?

The Witness: No.

Mr. Nemser: What is the materiality of it?

Mr. Murray: They have acquired rights as of the date of the applications because they differentiated as to the dates.

The Court: Next year or next month they might increase it to a thousand. What difference would that make?

Mr. Murray: The very fact they paid a different initiation shows they recognized the force and effect of making the application when acquiring certain rights.

The Court: Can you give us the information, Mr. Nemser?

Mr. Nemser: Yes. During the latter part of 1928 and the beginning of 1929—

The Court: In 1928 or 29? He wants the junior applications. They didn't come in until March, 1930.

By Mr. Berkowitz:

Q. Let me put this question, Mr. May. In the latter part of 1928 or the early part of 1929, when the first applications were made by the so-called junior members, the initiation fee to become a member of Local 384 was $200.00. A. It was up to some time in 1929.

Q. And the organization raised the initiation fee to become a member of 384 to $300.00. A. Yes.

Q. And there were certain applications to become members at the rate of $300.00? A. Yes.

Q. Can you tell us when the next one was raised to five hundred? A. At a regular meeting held August 13th.

By the Court:

Q. What year? A. 1930. Wait a minute. No, 1929.

BY MR. BERKOWITZ:

Q. Will you take the minutes of 1929 and show me where it was raised to $500.00? A. At the regular meeting of August 13th.

BY THE COURT:

Q. What year? A. 1929.

Q. Is that the time it went from three to five hundred? A. Yes.

Q. How is it you admitted these other members at three hundred in March, 1930? A. Their applications probably came in before then.

Q. They were not admitted into membership until March, 1930. How did that come about? A. I will explain that.

Q. You can't explain anything except what are in the minutes. Now, show me by the minutes when that went into effect. You say in 1929 it went to $500.00? A. Yes.

The Court: All right, let it rest at that.

BY MR. BERKOWITZ:

Q. Now, when there was a change from three to five hundred there was an amendment to the constitution and by-laws, wasn't there, Mr. May? A. I wouldn't say it was an amendment because we were governed by resolutions at the time.

Q. How many meetings was that before the organization in particular? A. At its regular meetings—two readings.

Q. According to the constitution and by-laws in order to entitle—

The Court: He said two readings.

Mr. Berkowitz: I asked him before whether or not there was an amendment to the constitution at the time of the change from three to five hundred and he said no, and then he said yes.

The Court: He said a resolution.

Mr. Berkowitz: We can find it out from the minutes.

The Court: Find it out and don't be asking him. Is there anything in those minutes which would indicate that those two made the applications—Cameron and the rest of them, should be admitted for three hundred notwithstanding in 1929 they raised it to five hundred? In other words, I am trying to find out why you let them in for three hundred. Is there anything in the minutes to show that?

The Witness: Not that I know of.

By Mr. Berkowitz:

Q. Now, Mr. May, you have tabulated the same and the amount paid by each junior member as license fee? A. I have.

Q. Will you read the names and amounts off?

The Court: Offer it in evidence. Where did you get the data from?

The Witness: From the auditors' reports.

The Court: Why not take that sheet and offer it in evidence?

Mr. Berkowitz: We will put the sheet in subject to correction, if any.

The Court: Let it be marked.

(Sheet marked Exhibit C-9 in evidence.)

BY MR. BERKOWITZ:

Q. Now, have you tabulated in your book the amount of dues paid by the so-called junior members up to the present time?

Mr. Nemser: I object on the ground it is immaterial.

The Court: I don't see the materiality but I will let go in if he has the tabulation. Have you tabulated the amount of dues they paid?

The Witness: Yes.

The Court: Can you tell the sum total?

The Witness: Of the ten per cent?

The Court: If they paid ten per cent, plus the dues.

The Witness: For all the periods? I can only give you what I have had since I am in office.

The Court: That won't help us. I will overrule it.

Mr. Berkowitz: We will get from this witness what he got and from some other witness what they got.

Mr. Nemser: I object to it.

The Court: I will sustain the objection.

Mr. Murray: One of the things we are going to show is the practical operations, and particularly with regard to the finances and financial operations, so that these men are subject to have their jobs taken away and deprived of all voice in the local affairs and yet are charged for dues far more than the seniors.

The Court: You knew that when you went in.

Mr. Murray: It is one of the things showing the unreasonableness and unfairness to which

the union can go and is entirely material for that purpose, and are facts and circumstances to determine whether the contract is violative of public policy.

The Court: I will overrule it so far as doing it piece-meal. I don't want to sit here while he tabulates it.

Mr. Murray: We can't call two men at a time.

The Court: Can you give us the amount since you went into office?

The Witness: I can give you figures since March 4th, but I can only vouch for the figures since I was in.

The Court: Give us the figures since March 4, 1930.

The Witness: The juniors paid a total of $38,194.71. That is the ten per cent. regular dues and I. A. assessment and saving plan. A total of $31,207.06 in I. A. assessments, regular assessments and regular dues. In addition to the thirty-one thousand they paid at least a total of four thousand or one per cent assessment during the years 1929 to 1931. There is about two thousand difference.

The Court: From March 4, 1930 up to what date?

The Witness: Up to the 9th of December, 1933.

By Mr. Berkowitz:

Q. Can you tell us one thing more, this figure here of thirty-one thousand for the juniors, does that include the six dollars also paid for I. A. and insurance? A. Yes.

Q. It includes that? A. Yes, but it does not include their initiation fees.

Q. Mr. May, you are a member of the executive board by reason of being an officer? A. I am.

Q. And that executive board is composed of other officers and three senior members, is that correct? A. Four.

Q. Now, can you tell us what officers or group of officers hand out the jobs to the so-called junior members? A. The jobs to the junior members are handed out by the business agent with the sanction of the executive board.

Q. Will you tell us how that comes about when you say with the sanction of the executive board? A. When a job comes in and the business agent puts the man to work at the next executive board meeting he reports to the board the man he puts to work and where he puts him to work and all particulars pertaining to the work.

BY THE COURT:

Q. Does the board reach a decision? A. If the man is not capable the board will dismiss him.

BY MR. BERKOWITZ:

Q. And when they dismiss him the executive board will make a recommendation for somebody else and he carries out that recommendation? A. Yes.

Q. And the executive board are the one's that pass upon the qualifications of the so-called junior members? A. Yes, and the business agent also.

Q. On new jobs that are going to open up, you know in a week or two or three weeks in advance

it is going to open then the executive board and the business agent get together and propose men for the job? A. Yes.

Q. And the only reason that the business agent does first act is when the emergency arises and he has to take immediate steps, is that right? A. Yes.

Q. Can you tell us as a member of the executive board what governs the selection of a particular man for a particular job? A. The first thing is his qualifications.

Q. How is that determined? A. If he has worked on a similar job to the one that he goes to.

Q. Can you tell us this, Mr. May, are all the jobs similar with the exception of the vaudeville houses? A. No.

Q. Isn't every man capable of running a show in the different theatres throughout Hudson County?

The Court: That is a tough question to ask him.

By Mr. Berkowitz:

Q. You are capable of running any show in this county, aren't you, Mr. May? A. I wouldn't say that.

The Court: My recollection is the first department has much to say about the moving picture houses.

By Mr. Berkowitz:

Q. When new theatres open up, Mr. May, the seniors are given the preference to pick the position if they desire it? A. They are.

Q. And if no senior wants it then the executive board will pick out one or two or whatever the number from the so-called juniors for leave to fill the position? A. They don't pick them out. Whoever happens to be out of work they will take the one capable.

Q. Then it isn't a question of qualifications? A. Oh, yes, it is. If it happens that the man who is out of work isn't qualified to fill a job we go to work and try to switch him around with some other man who is and give him the other man's job providing everybody is satisfied.

Mr. Berkowitz: I will excuse Mr. May at this time.

The Court: No, you will have to exhaust your examination of him. Any witness you call you must exhaust your examination unless the other side is willing.

Mr. Nemser: No, I want to cross examine him.

By Mr. Berkowitz:

Q. Mr. May, was you an officer of the defendant Local 384 when Mr. Dulberger, Cancalosi, Gold and Wood were brought up on charges? A. I was.

Q. You didn't take the minutes of that meeting or meetings, did you? A. The secretary did.

Q. Have you them here? A. It is in the 1931 minute book. It is not in this book.

Q. Can you tell us the present scale of the highest price house and the lowest price house? A. Offhand I can't. I would have to refer to the contracts to tell you what.

Q. Will you refer to the contracts and tell us the highest price job and the lowest price job?

The Court: You folks do that at recess and put it in the record.

Q. Mr. May, have you a record of the fines imposed against junior members? A. I have.
Q. Have you got them tabulated?

The Court: What has that to do with the case I have to determine? I am not going to try questions of trials and charges.

Mr. Berkowitz: We are going to try to establish that these men were fined.

Mr. Nemser: None of whom are the complainants. The four men who got in trouble with the union were fined. The case was tried before Vice Chancellor Bigelow. We paid the money back. I have no objection to the fines outside of that case. I think they only amount to a dollar fifty.

The Court: I can't see the materiality of it. If you think it is material collate those figures.

Mr. Berkowitz: If I am going to withdraw this witness I won't have the privilege of putting him back to establish those facts.

The Court: They will concede those figures.

The Witness: One dollar fifty.

Mr. Nemser: Total fines for the juniors?

The Witness: Yes.

Mr. Nemser: The only one that was paid was a dollar fifty?

The Witness: Yes.

Mr. Nemser: How much was the seniors?

The Witness: I couldn't say now.

Mr. Nemser: More than a dollar fifty?

The Witness: More than twenty dollars.

New Jersey State Library

By Mr. Berkowitz:

Q. That is since March 4, 1930? A. Yes.

Q. You are sure of that? A. Yes.

Q. Does that show the fines that were levied against the juniors and then returned to them? A. That's a different thing.

Q. All right. Have you permitted any of the so-called junior members to attend any of the seniors' meetings and vote thereon or therein?

The Court: You have already brought out they were not permitted to attend meetings of the seniors. The record shows they were not entitled to attend meetings of the seniors.

The Witness: That's right.

By Mr. Berkowitz:

Q. Mr. May, sometime in the summer of 1932 do you recall a resolution brought up and passed by the senior group designating how the juniors shall work? Let me be more explicit, that each junior should take off one week out of five to relieve the unemployment situation existing in the junior department? Do you remember that? A. Yes.

Q. Can you tell us the date when that took place? A. It is very hard for me because it was a thing that started like a small ball and got bigger.

Q. You mean the unemployment started small. A. Yes, and it got bigger. There was no particular date when it started.

Q. Do you know how many seniors have been out of work since March 4, 1930, if any? A. I will answer for myself. I have been out of work.

Q. For how long a period? A. We were locked out once for two weeks and another time when the theatre closed last December.

Q. How long were you out at that time? A. A matter of weeks. It may have been a week or two weeks.

BY THE COURT:

Q. And you are a senior? A. Yes.

Q. And you allowed the juniors to work notwithstanding? A. I took them off.

BY MR. BERKOWITZ:

Q. In order to get work for yourself you had to take a junior off his employment? A. Yes, that's right.

Q. That has been the privilege of the senior members if a theatre closed or for any reason they were out of employment to take the jobs of the junior department.

Mr. Nemser: There have been a lot of leading questions which I have not objected to, but there should be some limitation put upon it. I object to the question because it is leading.

The Court: I will sustain the objection as to the form. You are telling him what the fact is.

Mr. Berkowitz: It is all admitted in the pleadings. I thought there would be no question of form.

Q. Can you tell us the procedure followed when a so-called senior member is thrown out of employment by any means?

Mr. Nemser: I object unless counsel mentions specific instances.

The Court: He is looking for information.

The Witness: Do you want me to answer that question?

The Court: Yes.

A. They apply to the executive board and tell them whose job they want. The executive board gives the business agent orders to remove that man from the job and put the senior to work, and if possible they will give him two weeks' notice.

By Mr. Berkowitz:

Q. And the man you refer to as a rule is one of the junior department. A. Yes.

Q. And the senior who is looking for a job at that time picks the job he wants? A. Yes.

Q. The executive board doesn't pick his job? A. The senior member exercises his seniority rights in that respect.

The Court: He picks it but the committee must approve it. He can't take a job unless the executive board approves of it.

The Witness: They can't do that. They could go around taking a day here and a day there spoiling every job in the country.

By Mr. Berkowitz:

Q. As a matter of fact, Mr. May, there are men today—senior members working in a theatre four days a week on what we call a regular job, and they take one or two days from juniors in other theatres, isn't that correct?

Mr. Nemser: I object on the ground it is leading. Counsel is testifying.

The Court: I will let him answer that. Is that the fact, what he says?

The Witness: Yes.

The Court: A senior works four days in one house and he finishes out the week in another house?

The Witness: Yes.

BY MR. BERKOWITZ:

Q. Is Dobner working in the Tivoli Theatre? A. So far as I know he is a relief man up there.

Q. And only has four days a week. A. Yes.

Q. And he is working two days a week in the Strand Theatre in Jersey City. A. I don't know whether he is or not.

The Court: He is a relief man.

The Witness: Yes.

BY MR. BERKOWITZ:

Q. But there is nothing unusual about a man splitting up his time. A. It is nothing unusual.

Q. But working in the Strand Theatre he doesn't work as a relief man, does he? He works to fill up a week's work. A. Yes.

Mr. Nemser: So we can get this clear can the juniors do the same thing as the seniors?

The Witness: Yes.

Mr. Nemser. Put some days in one house and other days in another house?

The Witness: Relief work.

The Court: What do you mean by relief work?

The Witness: We work six days a week and the theatres operate seven days and a relief man is sent to the theatre to relieve the men.

By Mr. Berkowitz:

Q. As a matter of fact every man, or every senior who is working four days in one theatre and two days in another theatre he is not necessarily a relief man, is he? A. We still consider him a relief man unless he works six days in one house.

Q. Elisha Evins works four days in some theatre in Kearney, doesn't he? A. Yes.

Q. And that is a steady job he has in Kearney. A. A steady relief job.

Q. And he works two days down in the Majestic now, doesn't he? A. Yes.

Q. So that gives him six days a week. A. Yes.

Q. Do you know of any senior member who is working every day in the week who is not a split man? A. I don't know.

Mr. Berkowitz: I think that's all.

Cross Examination by Mr. Nemser:

Q. Now, is there any difference between the way the juniors and the seniors work? Are there juniors that work parts of a week in one house the same as a senior? A. Yes.

Q. Outside of the seniority rights of a senior is there any difference in the way the juniors and seniors work? A. None whatever.

Q. Now, during your entire experience in the local how many cases do you know of where seniors

have taken juniors' jobs by virtue of their seniority rights? A. In three years possibly four or five cases.

Q. And in those cases that you know of was the junior knocked off the job for a long period of time? A. No.

Q. For how long? A. In my own case he was knocked off about two months and then he went back on the job again.

Q. Did he get any other work by that time? A. Yes.

Q. Do you know where? A. I can't say offhand but I know he got other work in between the time.

BY THE COURT:

Q. Other work in the same line of business? A. Yes. They gave him day's work or whatever came in.

BY MR. NEMSER:

Q. Are there any juniors that are making as much money as the seniors, if you know? If you don't know say so.

Mr. Berkowitz: I object.

Mr. Nemser: I withdraw the question.

Q. You said something about ten per cent dues that are paid by the juniors. That is only paid while they actually work, isn't that so? A. Yes.

Q. In other words, when they don't work they don't pay the ten per cent. A. Yes.

Q. The seniors pay the ten per cent all the time. A. Yes.

Q. Have you a resolution there about the Seniors forming a Junior local? A. Yes.

Q. Will you give us the first reference you have. A. Right here.

Q. You are referring to what minutes. A. January 14th.

Q. What year. A. 1930.

Q. What reference have you in those minutes to the formation of a junor local. A. A resolution in regards to former Junior Local No. 384 presented by Brother Evins and received its first reading.

Q. Is there any other reference of a subsequent meeting in regards to the forming of a junior local? A. Yes.

Q. What date. A. At a regular meeting held Tuesday, February 11, 1930.

Q. What is the reference. A. Resolution creating a junior local received its final reading therefore becoming legal.

Q. What was that date? A. February 11, 1930.

Q. I call to your attention the fact that the printed form of the contract Exhibit C-1 is February 11, 1930, although actually signed on March 4, 1930. Were you present at the assemblage of the apprenticeship on March 4, 1930? A. I was.

Q. Was that a meeting of the senior body or a meeting of the organization? A. No, it was not a meeting.

Q. What was it? A. An assemblage.

Q. For what purpose? A. It was an assembly, I would say it was a meeting to create the junior body, so both seniors and juniors was there.

Q. How many of these permitmen were there? A. I figure around thirty or thirty-eight.

Q. And do you recall Evins getting up and reading the contract marked Exhibit C-1—the junior members contract? A. Very distinctly.

Q. And did he read it section by section? A. He read each paragraph over and stopped after each paragraph.

Q. And did he ask for any questions? A. He asked if there was any questions—"Do you understand what the contents of this is? Do you understand it?" And they not answering he called on certain juniors throughout the reading. For instance, he would say "Cameron, do you understand?", or "Sapanor, do you understand it?" I am just using these names, not that he did call them, but to demonstrate.

Q. What was their response? A. That they understood the contents of the contracts.

Q. And after he got through reading the draft of the contract what happened? A. He again asked them if they understood the contents of the draft. They repeated that they did.

Q. All right. What happened after that? A. They all answered that they understood.

Q. When was the contract signed? That same evening? A. The contract was signed—Let's see—

Q. Was the contract signed on the evening of March 4, 1930? A. Yes.

Q. Did all the men sign in the presence of each other? A. Yes.

Q. How was it done? Was there a lineup? A. There was a lineup on the outside of the office.

Q. Was a notary public present? A. Yes.

Q. Do you recall Mr. Boyd, one of the senior members? A. Yes, he witnessed the contract.

Q. And do you recall before each junior signed Mr. Boyd asked him a question?

Mr. Berkowitz: I object.

The Court: I will let him answer.

A. Mr. Boyd asked each one of the members if they knew what they were signing.

By Mr. Nemser:

Q. After all the contracts were signed and notaried, what happened? A. They were obligated.

Q. Tell us the procedure. Did they all go back to the assembly hall? A. Yes.

Q. Did anybody address them? A. The chair addressed them—Bemis.

Q. Who is Bemis? A. The chairman.

Q. What did he say? A. He told them they would have to take an oath of obligation before they would become juniors.

Q. What happened? He told them that and explained to them they would not have voice or vote in any of the meetings of the local—that they wouldn't be allowed to attend seniors' meetings.

Q. Did anybody raise an objection? A. No.

Q. Were they then obligated? A. Yes.

Q. In what manner and form were they obligated? A. In the regular form.

Q. What did they do? A. They placed their right hand—either their right or left hand—I think their right hand, on their breast and held a senior member's hand and took the oath of obligation.

Q. When that was done, what happened? A. Then they were all sitting around the room and we had a talk on good welfare.

Q. Who talked? A. The seniors.

Q. Did any of the obligated junior members talk? A. I don't recall.

Q. Did any of the juniors ask any questions that night at all? A. There was only one that I can remember. He asked a question—Woods, I think.

Q. John Woods? A. Yes.

Q. A present member? A. Yes.

Q. What question did he ask? A. He asked for a copy of the by-laws.

Q. Who did he ask that of? A. Bemis.

Q. The chairman? A. Yes.

Q. Then what happened? A. The chairman explained that the last by-laws they had printed was in 1923, and we could only be guided by these by-laws in a parliamentary way, and as far as working conditions were concerned we couldn't be guided by them.

Q. Did he say why? A. Yes, that he had appointed a new by-law committee to draft new by-laws, and as soon as the new by-laws were drafted and printed they would each receive a copy.

Q. Now, the working conditions that Mr. Bemis referred to was amended. A. Yes.

Q. They were amended obsolete of the working conditions. A. Yes.

Q. So the only part of this 1923 constitution that remained was the parliamentary procedure. A. Yes.

Mr. Berkowitz: I can't see how this man can bring that out. If they have minutes, put them in evidence.

Mr. Nemser: It is cross examination.

Mr. Berkowitz: They can't throw the whole constitution out by word of mouth.

The Court: He is telling what happened and what was said.

Mr. Nemser: I will withdraw the last question.

Q. Are you certain when Woods asked Bemis for a copy of the by-laws that Bemis stated what you related? A. Yes.

Q. What did Woods answer to that? A. Well, he was satisfied.

Mr. Berkowitz: I object to that.
Mr. Nemser: I consent to that.

Q. Was that said in the presence of all the new obligated juniors? A. Yes.

Q. And whatever seniors were present? A. Yes.

Q. Did you that night hear anybody object to the signing of the contract? A. I didn't hear a single word about it. Everybody was tickled pink about it.

Q. In order to show their appreciation and pleasure at being obligated as juniors the juniors gave a banquet to the seniors. A. They did.

Mr. Berkowitz: I object.
I will overrule your objection.

By Mr. Nemser:

Q. When was the banquet given? Was it April, 1930? A. Yes.

Q. Who paid entirely for it, the juniors or the seniors? A. The juniors paid it.

Q. Were there any gifts handed out by the junior members? A. Yes.

Q. Were there any speeches made by the junior members? A. I remember one—Harry Nyland.

Q. Was he one of the junior members that were obligated on March 4, 1930? A. He was.

Q. And was he the toastmaster or the leader of the juniors on the night of this banquet? A. I think he acted as chairman.

Q. When was the banquet? It was April 22, 1930, wasn't it? A. Yes.

Q. In the Elks Club in Union City? A. Yes.

Q. And do you recall Mr. Nyland's remarks made in behalf of the juniors? A. He extolled the senior members, you know.

Q. Tell us what he said? A. I can't use the words.

Mr. Berkowitz: I want to object to what Mr. Nyland said on behalf of the junior members.

The Court: Why?

Mr. Berkowitz: How does this man know that Nyland spoke on behalf of the junior members?

Mr. Nemser: I will ask that.

Q. Were there any junior members present at the banquet? A. Yes.

Q. Was Mr. Nyland one of the junior members? A. Yes.

Q. Tell us what he said. A. He said the seniors done a wonderful thing for them in forming the junior local and they got a lot of protection from the senior local and stuff all along that line. I can't just remember it. It was three years ago.

Q. And was the juniors' wives and so not present there? A. Yes.

Q. And some of the seniors'? A. Yes.

Q. Was the president of the International Alliance there? A. I think his wife was.

Q. Did the juniors give any gifts to the seniors? A. Yes.

Q. What did it consist of? A. A diamond pin to Brother Evins.

Q. Brother Evins was the business agent? A. Yes.

Q. And he was the man that got up the junior members' local? A. Yes.

Q. Were there any other gifts given out? A. Evins got some other gift.

Q. He got some other gift? A. Yes.

Q. Did any of the seniors pay for the banquet? A. No.

Q. It was all paid by the juniors. A. Yes.

Q. I show you what purports to be a menu card entitled "Testimonial banquet dedicated to the senior members by the junior members," and ask you if that was the menu card distributed on the night of the banquet. A. It is.

Q. And I call your attention to the committee—John E. Wood, Chairman; Vincent M. Sapanor, Harry Nyland, Peter M. Cross, Theodore Cancalosi, Peter Palesado, and ask you if that committee served as a committee of the whole for the members who were obligated on March 4, 1930. A. Yes.

Q. And on the back on the last page the page is entitled "Members of the Junior Department, Local 384," listing their names. I should judge about thirty odd names. Was that on there when you saw it? A. Yes.

Mr. Nemser: I ask it be marked for identification.

(Menu card marked D-1 for Identification.)

Q. I show you what purports to be two photographs of the banquet held on the night of April 22, 1930, given by the juniors to the seniors, and ask you if you recognize those two pictures.

Mr. Berkowitz: If your Honor pleases maybe we can save a lot of time by admitting that juniors were present at the banquet.

Mr. Nemser: You will have to admit more than that.

The Court: And the juniors paid for it?

Mr. Berkowitz: What do you want us to admit?

Mr. Nemser: Nothing. I ask these two pictures to be marked for identification.

(Photographs marked O-2 and 4-3 for Identification.)

The Court: We will now take a recess until two o'clock.

AFTERNOON SESSION.

CHARLES MAY, recalled.

CROSS EXAMINATION CONTINUED BY MR. NEMSER:

Q. Mr. May, you referred in your testimony to the meeting of January 14, 1930, the first meeting which was had on the creation of the junior local. I ask you is this the original resolution presented at the meeting? A. It is.

Q. Presented by who? A. By Brother Evins.

Mr. Nemser: I ask it be marked for identification.

(Resolution marked D-4 for Identification.)

Q. Before March 4, 1930, and the obligation of the juniors, I understand they were working as permit men. A. Yes.

Q. Is this the kind of a working card they had? A. Yes.

Mr. Nemser: I ask it be marked for Identification.

(Card marked D-5 for Identification.)

Q. Now, while they were permit men did they pay any dues into the organization? A. No.

Q. What did they pay? A. They paid ten per cent of their earnings.

Q. When they worked. A. When they worked.

Q. If they didn't work they didn't pay? A. They didn't pay anything.

Q. Do you know how the ten per cent was arrived at or what its purpose was? A. Yes, to carry the expenses that the local was put to in keeping these fellows working.

Q. What expense were they put to that they didn't have before these men came into the picture? A. Well, these men were to get business experience. They weren't experienced men. I would say they were greenhorns. They would go in and ruin the show and we would have to send the business agent up and start it again and straighten out the damage they had done, and constantly keep the local in hock.

Q. Prior to the advent of these permit men did the local have a business agent? A. Yes, two days a week.

Q. How much were they paying the business agent? A. About two days' salary.

Q. What change did that make when they came into the picture? A. We have had to have a business agent six days a week.

Q. And how much was the salary? A. The salary went up to a hundred and sixty-five a week and expenses.

Q. And were there any other changes that were brought about because of the induction of these permit men besides increase in the business agent's salary? How about the meeting hall? A. We had to have a place for them to entertain themselves

when they weren't working. We had to go to work and furnish up a meeting hall and put a pool table in it.

Q. Did you have that before? A. We never had to have that.

Q. Was the ten per cent that the permit men were paying and the ten per cent they pay as juniors up to the present time just to pay the expenses brought about by their induction into the organization? A. No, sir.

Q. Has the local ever made a profit on the ten per cent? A. No.

Mr. Berkowitz: I object to that.

Mr. Nemser: I withdraw the question.

Q. Was that ten per cent which the local imposed just to cover the expenses brought about by the juniors?

Mr. Berkowitz: I object.

The Court: I think it is material. One of the allegations is they are making unreasonable charges against the men.

Mr. Berkowitz: How can he say?

By Mr. Nemser:

Q. You are the financial secretary? A. Yes.

Q. And you keep records of all incoming and outgoing payments? A. Yes.

The Court: He is asking whether there was a surplus remaining after the receipt of income or credits.

BY MR. NEMSER:

Q. What did these junior men earn at the time they were obligated on March 4, 1930?

Mr. Berkowitz: I object unless he testifies to any particular men.

BY MR. NEMSER:

Q. What was the average, if you know, of salaries earned by the juniors at that time?

Mr. Berkowitz: I object to his testifying to an average.

The Court: You can take the sum total and divide it by the number of men.

Mr. Nemser: I would like to know if he can arrive at it.

Q. Are you able to arrive from any information at the average earned by juniors from March 1930? A. Yes.

Q. How can you arrive? A. From records.

Q. Have you inspected those records? A. Yes.

Q. And have you been able to strike the average? A. I haven't struck an average. I have a list of what every one of them earned.

Q. What was the highest they earned? A. A large majority at the time made over a hundred a week.

Q. How did that compare with what the seniors were earning at that time? A. There was very few seniors making that kind of money.

The Court: You can arrive at the average by taking the lump sum total and dividing it by the number of men.

By Mr. Nemser:

Q. What experience did these men have when they first became connected with the organization?

Mr. Berkowitz: I object. How does he know?

The Court: I don't know.

The Witness: I happened to be on the committee investigating the applications. Even after they were in we found out one of them worked as a grocery clerk and another one worked in a filling station.

The Court: You mean you tested their qualifications and found out what their previous business was?

The Witness: Yes.

By Mr. Nemser:

Q. Did some of them go to school to learn the motion picture business? A. Yes.

Q. And did some of them have more experience than others? A. Those that didn't work in the business had no experience whatsoever.

Q. How did you break them in? How did the organization break them in and teach them the business? A. We put them in with one or our other members.

Q. You mean the experienced members? A. Yes, and they learned from them.

The Court: And while they were learning them the house was paying them full salary.

The Witness: Yes.

By Mr. Nemser:

Q. As a result of your investigation as a member of this committee did you ascertain what these men were making before they were inducted into office? A. We asked them in an offhand way.

Q. What was the answer?

Mr. Berkowitz: I object. How can he say what were the earnings of forty-one men or what they did?

The Court: This man may have kept tabs on them.

Mr. Berkowitz: I object to the type of question put.

The Court: I will overrule your objection.

Mr. Berkowitz: Will your honor grant me an exception.

The Court: You don't have to take an exception. If he knows he will say so.

By Mr. Nemser:

Q. Before you answer, is your answer based on your actual experience? A. Not me, but the committee.

Q. Were you present? A. Yes.

Q. What did you ascertain? A. In one particular case one fellow made fifteen dollars a week in a filling station and one fellow made eighteen as a grocery clerk.

Mr. Berkowitz: I move to strike it out unless they specify who those men were:

By Mr. Nemser:

Q. Do you remember the names of those two cases? A. Yes.

Q. Who? A. One was McCarthy and one was Steiner.

Q. Two of the complainants in this case? A. Yes.

Q. Now, getting back to the question of initiation fee. I think you showed the minutes where it was increased to five hundred. It was increased from five hundred to another sum? A. Yes.

Q. What meeting? A. At the meeting of October 8th.

Q. What year? A. 1929.

Q. Increased to what amount? A. From five hundred to a thousand.

Q. Was it ever increased after that? A. It was.

Q. When? A. December 10, 1929. The resolution was presented by brother Evins to increase the initiation from a thousand to three thousand, and it was adopted on January 4, 1930.

Q. That applied to whom? A. Senior members.

Q. Now, referring to the 1931 constitution, do you remember how long the by-law committee functioned before the constitution was adopted in May, 1931? A. A long time.

Q. How long? Several months at least? A. At least six months.

Q. And during that period of time did the junior members know the fact this committee was functioning? A. Why, certainly.

Q. What do you base that on? A. I base that on the fact that at the junior meetings this fellow Woods, or Dulberger, would get up and ask for by-laws and the chair told him the by-laws were

in process of being formulated or made, and as soon as they were printed they would receive a copy of them.

Q. And did any junior member insist upon a participation or right to have a voice in the revising of those by-laws? A. Never.

Q. And at the time the by-laws were finally accepted and approved by the senior organization were copies given to the junior members? A. Yes, sir.

Q. Were each junior's name printed on the cover? A. Yes, it was embossed in gold on the cover.

Q. And at the time they were handed out did any of the junior members object to the provisions of the by-laws? A. Never.

Q. When was the first time you knew the juniors objected to their status in any way at all? A. After Evins was put out of office then the trouble started.

Q. When was that? A. I should think about May, 1931. It started then.

Q. Do you recall the meeting at which you first ascertained that some of the juniors were objecting to their status? A. It was an executive meeting where they brought in a petition. That was the first I ever heard of it.

Q. When was that? Fix that date.

Mr. Murray: I notice the witness is referring to a document there.

Mr. Nemser: He has testified that matter was called from something prepared by himself.

Q. For the purpose of the question disregard that document entirely. You say it was a meeting of the executive board? Was that held sometime in December, 1931? A. Yes.

Q. Was it the time that Dulberger and Gold and these other fellows got into trouble? A. Yes.

Q. Prior to that day in your official capacity or in any other capacity did you know of any junior to object in any manner, shape or form as to their status? A. No, they were all well satisfied.

Q. Now, this local was chartered in 1915. A. Yes.

Q. How long have you been a member? A. Since 1916—January.

Q. How many senior members are there? A. At the present time seventy-four.

Q. Now, prior to March 4, 1930 how many members were in the organization? A. Eighty.

Q. Was it limited to eighty? A. Yes.

Q. Why was that? A. Because we didn't have more work than that.

Q. In other words, you limited the membership in accordance with the amount of jobs obtained? A. That's right.

Q. After the juniors came in that brought the total membership well over a hundred? A. Yes.

Q. How many of the present seniors of your organization were members back since 1916? A. Oh, not many.

Q. Are there any members still in the organization who were charter members? A. Yes, about four or five.

Q. At the time you became connected with the organization what was the practice or the custom or rule when men couldn't work?

Mr. Berkowitz: If your Honor please, I object to the question because I think the constitution and by-laws should set forth the terms and conditions existing in the organization as of that time.

The Court: Suppose the practice is different from the constitution and by-laws.

Mr. Berkowitz: Then it should appear in the regular record of amendments and should be produced.

The Court: I think I will receive it. You can contradict it if you can.

10

By Mr. Nemser:

Q. What was the custom or rule in the organization from 1916 in regard to men getting work? A. They always got work under the business agent.

Q. Was there ever a time when a man could go out and solicit a job without the business agent? A. Yes, they can go to the theatre where we had our contracts.

20 Q. Do they do that today? A. I wouldn't say they do it, but they can do it.

Q. Do you know of any actual case within the last year or two where one of the members of the organization, junior or senior, actually worked in a house where you had no agreement whatever? A. Yes.

Q. Where? A. I think Harry Gold worked in a house in Hoboken where we had no agreement.

30 Q. Are there any instances in the local today where members of 384 are working alongside of non-union men? A. Yes.

Q. What instances are they? A. I myself am.

Q. Where are you working? A. In the Lincoln Theatre in Arlington.

Q. Is there another man in the booth? A. Yes.

Q. Is there another man in the booth? A. Yes. Regular man is and the relief man is not.

40

Q. Let us get that straight. Have you had occasion to work in the booth at the same time the relief man has? A. Yes.

Q. And has any member of the local objected to it? A. No.

Q. Do you know of any other case where members of your organization have gone to work in a non-union theatre where you have no contract? A. I can't think of one of them now, but I know it has happened.

Q. Do you know that there was any abuse of privileges upon the part of the men prior to 1916 where they could go out and get their own work? A. We had a lot of trouble at the time.

Q. What was the trouble?

Mr. Berkowitz: I object.

Mr. Nemser: I want to show they must get their jobs through the business agent and the executive board.

Mr. Berkowitz: After all the resolutions and constitution are here and how and why they arrive at it I can't see is material.

Mr. Nemser: Counsel contends that is one of the irregularities of the contract. One of the allegations is that these men cannot get jobs as they please.

The Court: Is that so?

Mr. Berkowitz: Yes, but I can't see the materiality of what they did before.

Mr. Nemser: I will bring it up to the signing up.

Q. Give us some of the abuses that existed. A. One of the worst abuses a fellow would go up to a theatre that we had a contract to work there for

certain scale of wages, and they would work for less money, and the man would lose his job for no reason at all.

Q. Any other? A. A new house would open and a fellow would get himself a job and after he was on the job he couldn't make good. He couldn't put the show on. He would have broken film and fires in the booth. There would be interruptions in the show and the managers would complain something terrible, and the managers would call the business agent to send competent men on the job.

BY THE COURT:

Q. Do you remember the trouble they had up in the Pastime Theatre in Union City at one time? A. In regards to what?

Q. Trouble with the men in the operating room? A. Our men were taken out of there by the agent.

Mr. Berkowitz: I would like to have my objection on the record this testimony has no materiality to the issues.

The Court: There was a whole lot that went in that was not material and I allowed it to go in.

BY MR. NEMSER:

Q. Mr. May, were there any other abuses which led up to the rule you must get your jobs from the business agent? A. There was many abuses I couldn't outline right now.

Q. Had that been the practice in the organization since 1916 down to date? A. Yes.

Q. And does it apply equally to senior and junior members? A. Yes.

Q. Can a senior go out and solicit a job where you have a contract? A. No.

Q. Neither can a junior? A. No.

Q. Under the contracts that have been offered—Exhibit C 8, the local is obligated to supply skillful and competent operators, isn't that so? A. That's right.

Q. And if the local sends any man out that does any damage the local loses, isn't that so? A. Yes.

Q. Now, what is the value of the machines that are used by the operators? I mean by that are they expensive machines or cheap machines? A. They are very expensive.

Q. How high do they range? A. You take a sound apparatus. I know one that comes to forty-six thousand, and the projectors come to about three or four thousand that work in conjunction with the sound apparatus.

Q. Now, if a man is sent to a theatre who isn't familiar with that kind of apparatus is there any danger in working that apparatus? A. He only has to make one mistake in turning the switches.

Q. Is there any danger of fire hazard? A. Yes.

Q. Do you know of any occasion where the theatres were under contract or not where they sent on operator into the booth and he lost his life? A. Yes, an operator in Hoboken lost his life there.

Q. What theatre was that? A. I think the Rivoli.

Mr. Murray: I want to enter an objection to this man's testimony of what took place, the facts of which he has no knowledge of except through newspapers as to how it happened.

The Court: He says he knows. You can cross examine him.

By Mr. Nemser:

Q. What theatre in Hoboken? A. I think the Rivoli.

Q. Is that a theatre that had a contract with the local? A. At one time.

Q. I mean at the time of the fire. A. Not at the time of the fire but before that.

Q. Was the man that was killed a member of your local? A. He was a non-union man.

Q. Now is every senior competent to work at any other senior's job? A. Yes.

Mr. Berkowitz: I object.

Mr. Nemser: I withdraw that question.

Q. Does every theatre have the same type of machinery? A. No.

Q. For instance, take Loew's Theatre in Journal Square, in Jersey City. Have you an agreement with them? A. Yes.

Q. How many of the men are working there? A. Five.

Q. All seniors? A. All seniors.

Q. Are there any men now in the local that can take their place? A. They could not walk in that place there and fill that job because it requires competent and skilled men—men of experience.

Q. Is there such a thing in the business as one man going to a theatre—any theatre, to operate the booth cold? I mean without any previous experience in that particular booth? A. It couldn't be done.

Q. Why not? A. Because every booth is different. The equipment is arranged different. The switches are arranged in different places and you

don't know if you turn on one switch what damage you are going to do.

Q. What do you do when a new theatre opens? A. We put a man in there about a week ahead of time and he goes over it with the engineers.

Q. What engineers? A. The sound engineers and the projection engineers who make the machines, and the electricians.

BY THE COURT:

Q. You mean they familiarize themselves with the apparatus? A. Yes.

BY MR. NEMSER:

Q. Does the local ever send men out on a job that has no experience in that type of employment before? A. I don't understand the question.

Q. Does the local make a practice of sending any man on a job—junior or senior, where he hasn't worked there before? A. They don't make a practice of doing that.

Q. In the cases where they have done it have they sent them there rehearsal or to get experience a couple of times before the show goes on? A. They always do.

Q. For instance, can you be transferred from the theatre where you work in Kearny and on the same day go and operate the booth at the Stanley Theatre in Jersey City? A. I could not.

Q. You mean because of the difference of constructions? A. Exactly.

By Mr. Nemser:

Q. Now, has it been the practice in the local in assigning men to work to keep the same man at work in the same theatres as long as possible? A. Wherever possible.

Q. Now, take the seniors. Of the seventy-five men how many of those men are working in the same theatre for the last two or three years? A. I would say about ninety-eight per cent.

Q. So that the question of assigning seniors to work comes up very seldom, isn't that so? A. Very seldom.

Q. How many members of the junior body are working in the same theatre for the past two or three years? A. I would say about twenty or thirty.

Q. Take Mr. Cameron, one of the complainants in this case. Do you know the name of the theatre where he works? A. In the Embassy in Bayonne.

Q. How long has he worked there? A. As long as I can remember back.

Q. How long? A. Three years.

Q. Has he ever been suspended from the job to your knowledge? A. No, he has not.

Q. How about McCarthy. A. He has been working in the Strand steady for about a year.

Q. How about Steiner? A. Steiner has been working steady in the same house for two or three years.

Q. How about Muller. A. Muller has been working three or four years.

Q. In the same house? A. Yes.

Q. How about Barkowski? A. He has been working in the Embassy for about three or four years I know of.

Q. How about the complainant Saponar. A. Saponar has been working in the Cameo Theatre for at least a year.

Q. How about the complainant Guardain. A. Giardina has had a lot of trouble wherever he works. He can't make good.

Q. In what theatre is he working in now? A. He is not working at all.

Q. Do you know how many seniors are out of work today? A. I know one who is sick.

Q. Outside of being sick. A. There are no seniors out of work entirely.

Q. How many juniors are out of work? A. To my knowledge about three.

Q. Now, do all the seniors work six days a week? A. No.

Q. How do they split up? A. There are two or three seniors that are only working four days a week.

Q. Are there any more than that working less than four days? A. Not that I know of.

Q. Are there any juniors that work six days a week? A. Any juniors.

Q. Yes. A. Plenty of them.

Q. How about Cameron. A. Cameron works six days.

Q. Has Cameron ever been out of work so far as you know? A. Only when he took off one week.

Q. You mean in the summer of 1932? A. Yes.

Q. How about McCarthy. A. McCarthy has been out of work.

Q. For how long, do you know? A. Not over any lengthy period of time. Maybe one week or two weeks in all.

Q. When a house closes down, regardless of whether it is a senior or a junior, when that house

reopens do they always send the same man back? A. Yes.

Q. Why? A. Because they are experienced. They know where to put their hands on things in case they need them.

Q. Is there any danger attached to operating the apparatus? A. Yes.

Q. Give us something briefly to indicate what the danger is. A. To be very brief the film must be in perfect condition. If there is the least thing wrong you have got a fire and the fire spreads very quick.

Q. Any danger of explosion? A. I don't want to be around when it happens.

Q. The film is made out of celluloid. A. Yes.

Q. It runs on a reel. A. Yes.

Q. How many feet a minute or a second? What is the exact feet? A. Ninety feet a minute.

Q. Is it subject to any heat? A. Yes.

Q. How much candle power, do you know? A. I couldn't tell.

Q. Supose that the operation stops for a second is there any danger? A. If it stops for half a second there is a fire.

Q. Is that the reason why there have to be two men in the booths since sound was in effect? A. Yes, two men must stand at each machine.

Q. You mean two different kinds of machines? A. One man must stand at each projector while the projector is running.

Q. Are there any cases in the organization where seniors work alongside of juniors? A. I have worked alongside of juniors.

Q. Do you know how the juniors were listed in the International Alliance? A. Yes.

Q. How? A. As apprentices.

Mr. Berkowitz: I object. There should be no evidence of that before the court.

The Court: He said he knows. You can find out how he knows afterwards. As long as he said he knows I can't rule it out. If you show he doesn't know I will strike it out.

BY MR. NEMSER:

Q. Were there any apprentices in Local 384 prior to March 4, 1930? A. What do you mean.

Q. Apprentices. A. Yes, we had one or two at sometime or other.

Q. Can you mention their names? A. Yes, I can. Butler was one.

Q. How long was he an apprentice? A. For about four or five years.

Q. Did he become a full fledged member? A. Yes.

Q. Who was the other fellow? A. Tobbey and Abramowitz.

Q. How long? A. About the same length of time.

Q. Prior to March 4, 1930 did you have a copy of the constitution and by-laws that were passed in 1923? A. I didn't have any, no.

Q. Do you know of anybody that did? A. I heard of them but I never saw any one that had them.

Q. Were they ever referred to in the presence of the permit-men or seniors at the meeting of March 4, 1930? A. No.

Mr. Berkowitz: I object. It has no materiality.

The Court: He don't know.

By Mr. Nemser:

Q. Did any one pay any attention to the so-called 1923 constitution on March 4, 1930, or was it spoken of at the meeting of the permit-men?

Mr. Berkowitz: I object to that.
The Court: I will sustain that.

By Mr. Memser:

Q. Did any of the juniors who were obligated that day mention the 1923 constitution? A. No.

Q. Was it mentioned by anybody that day? A. No.

Q. Do you know how many copies of the 1923 constitution were available on that date—March 4, 1930? A. I imagine the business agent had one at that time.

Q. What makes you say that? Did you see him have it? A. I simply heard he had one.

Q. Now, you testified on one occasion you exercised your seniority rights and took off McCarthy, is that right? He is one of the complainants in this case. A. Yes.

Q. Did he object? A. No, he was very nice about it. He said "I signed the contract and have to live up to it".

Q. What time of the year and month. A. In the month of December, 1932.

Q. What theatre was he working in at the time? A. In the Strand Theatre in Jersey City.

Q. And you stood on that job how long? A. About a month.

Q. And what did McCarthy do in the meantime? A. He got other work.

Q. Did he earn as much as in the Strand Theatre? A. I think he earned more.

Q. And when you left the Strand Theatre after working there a month or so did McCarthy go back to the job and has he been working there ever since? A. Yes.

Q. Do you know of any case where prior to this suit any of the junior members objected to the seniority rights of any of the seniors? A. I never heard of any of them object to it.

Q. Now, I understood you to testify that the seniors work at different wage scales, is that so? A. Yes.

Q. And so do the juniors. A. Yes.

Q. In other words, there is no standardization of wages in the local. A. No.

Q. Can you tell us briefly why that is. A. Yes. You can't expect a house, for instance, the Embasy where Cameron is working, to pay the same scale of wages as Loew's.

Q. Has the seating capacity of the house anything to do with it? A. Loew's has about five thousand seats and the other only five hundred.

Q. Is the wage scale greater according to the seating capacity of the house? A. Yes.

Q. And the same thing applies to juniors also. A. Yes.

Q. Just referring back to the banquet which was held in 1920. Were any of the complainants in this suit at the banquet? A. I think they were all there.

The Court: The pictures are there. Take a look at them.

The Witness: There is one right here (indicating).

By Mr. Memser:

Q. What's his name? A. Saponar.
Q. One of the complainants in this case? A. Yes.

Mr. Berkowitz: We admit they were there.
Mr. Nemser: All there?
Mr. Berkowitz: Yes, as many as we can. We admit they were there.
Mr. Nemser: That's all.

Redirect Examination by Mr. Berkowitz:

Q. Now, Mr. May, you say the initiation fee was raised from five hundred to a thousand, and then to two thousand, and then to three thousand, is that correct? A. No. It was raised from five hundred to a thousand and from a thousand to three thousand.
Q. Have you got the dates in those original minutes of those changes? A. Yes. Do you want to see the minutes?

By the Court:

Q. I understood you to say that initiation relates to seniors. A. Yes.
Q. What date? A. October 8, 1929. This is a copy.

Mr. Murray: It was the first reading.

By the Court:

Q. When was the final reading? A. November 12, 1929.

Q. What does it say on November 12th? A. It says—"A resolution increasing the initiation from five hundred to a thousand received its final reading and became legal".

By Mr. Berkowitz: Let me ask him one question.

BY MR. BERKOWITZ:

Q. Is that the manner in which this became law in the organization?

The Court: I won't let you ask him that. That is argument. He is merely telling you what the minutes show. You are asking him to state a conclusion.

BY MR. BERKOWITZ:

Q. What's the next minute on it? A. Here it is —"Resolution increasing initiation fee from a thousand to three thousand presented by Brother Evins. It was presented to Brother Evins and received its first reading and was passed".

BY THE COURT:

Q. When did it receive its final reading? A. January 4, 1930.

BY MR. BERKOWITZ:

Q. Mr. May is your own record different type in the bottom part of that resolution as the original is? A. Maybe.

BY THE COURT:

Q. Can you account for it? A. I have no explanation for it.

BY MR. BERKOWITZ:

Q. In other words, Mr. Mandrake, who was the secretary at the time, would know more about it. A. Yes.

BY THE COURT:

Q. You cannot account for it, can you. A. No.

Q. All right, go to the meeting about the three thousand. A. It should be the 14th—"Resolution increasing initiation fee from a thousand to three thousand received its final reading thereby becoming legal". That is the 14th.

BY MR. BERKOWITZ:

Q. Can you tell me whether all the so-called juniors were taken in at that first meeting on March 4, 1930, or were other members taken in after that? A. They were not all taken in that day.

Q. How many were taken in on March 4, 1930? A. The way I figure it about thirty-eight or thirty-seven.

Q. Thirty-seven or thirty-eight. And how many were taken in after that? A. The balance of them.

Q. How many juniors are there about? A. There are about forty-two.

Q. And then there were four or five taken after that? A. Yes.

Q. Now, as a matter of fact, Mr. May, wasn't there about sixteen taken in after March 4th? Have

you got the number correct? A. No, there was no sixteen taken in.

Q. After March 4th there were not sixteen? A. No. There could be about four or five.

By the Court:

Q. Are you sure there were thirty-seven or thirty-eight came in on March 4th? A. My records show it.

By Mr. Berkowitz:

Q. Will you refer to your records on that particular thing? A. I have a record here when every one of them was obligated.

Q. Will you tell us how many were obligated on March 4, 1930? Is that the original record? A. Yes. It was handed down to me by Meyers.

Q. He was the recording secretary? A. Yes. Thirty-eight came in on March 4th.

Q. When was the next meeting they came in, if you know? A. May.

Q. There is one in April, I think? A. My records show one came in on April 8th—John Spano. Then in May there was one, two, three, four in May. I will change that to two in April.

By the Court:

Q. Two on April 8th? That record shows three on May 13th, and one on May 15th. A. The last one is June 9th.

Q. In May? A. May was three.

Q. Three on May 13th? Two on May 13th. A. Yes.

Q. And one on May 15th. A. Right. There was one taken in on March 25th.

Q. The one on March 25th was who? A. George Sibery.

The Court: Do you want that marked for identification?

Mr. Berkowitz: No, I am satisfied to take the witness' testimony on that.

The Court: All right.

By Mr. Berkowitz:

Q. Now, before in answer to Mr. Nemser's question you said when the junior members came in that caused an increase in expenses. A. I did.

Q. And because of that you had to put a business agent in the field? A. Yes, we did.

Q. And pay him a hundred and sixty-five dollars per week? A. We did.

The Court: With expenses. That included the expenses.

The Witness: Yes.

By Mr. Berkowitz:

Q. Now, can you tell us who fixed the wages for the business agent? A. Yes. It was generally conceded that the business agent receive the highest salary.

The Court: He wants to know who fixed it.

The Witness: Evins.

The Court: Who is Evins?

The Witness: He fixed his own salary.

BY MR. BERKOWITZ:

Q. Well, did the organization of seniors and juniors consent to it or did the seniors consent to it? A. If the seniors didn't consent to what Evins did it was just too bad for them.

Q. The senior organization agreed to pay him the hundred and sixty-five a week and the juniors had nothing to do with it. A. Not a thing.

Q. And you say because of these junior members coming in you had to furnish quarters for them to lounge around in.

The Court: He said to play pool in.

BY MR. BERKOWITZ:

Q. To establish some quarters for these men. A. Yes.

Q. In those days all the junior members were working, weren't they? A. Yes.

Q. And still you provided a place for them to hang out in. A. Yes.

Q. Now, you said a majority of the junior members made a hundred a week. A. Yes.

Q. And the seniors made less than them. A. Yes.

Q. Will you get your records out and show us that? A. Certainly. You are talking about 1931?

Q. Let's start with 1930 when they came in and see how they worked.

The Court: Now, the witness has before him three sheets which seems to have some information contained on them. Why not have them marked.

Mr. Berkowitz: I want him to give me some names from those records.

The Witness: All right, 1930.

By Mr. Berkowitz:

Q. Will you pick out the junior members who were making a hundred dollars a week or more, if more they were making? A. I got the monthly reports here. It would be pretty hard to tell that right off-hand. Take William Schwartz, for instance. During the month of April he earned $624.50 for one month's salary.

By the Court:

Q. Is he a junior or a senior? A. A junior. These here are juniors records. They paid ten per cent of that amount. There is any amount of them down the line here in the month of April—every darn one of them.

By Mr. Berkowitz:

Q. Every one of them made six hundred? A. Over a hundred dollars a week. Of course I wouldn't swear to this record because it is not my record. I took it off the then secretary-treasurer's books.

Q. Then you don't know if these figures are correct or not. A. No. The only thing I can say I took it off the books.

Q. Well, haven't you the books here? A. Yes.

The Court: I won't sit here while you check them up. Let that be marked now for identification and then you can check up and see if

they agree and if they do you can put them in evidence.

(Sheets marked C-1 for Identification.)

By Mr. Berkowitz:

Q. Now, just to refer to one, William Abramowitz appears on the sheet for March, 1930 $26.00. That is the total of dues he paid for that month, is that correct? A. Yes.

Q. That means he made two hundred and sixty that month, is that correct? A. That's right.

Q. Then the next man is fifty-eight seventy. That means he made five hundred and eighty-seven, is that correct? A. Yes.

Q. And then for the month of May he didn't work because there was no money paid. A. There is no records in that month.

Q. And then for the month of June he made two hundred and sixty, didn't he? A. Yes.

Q. And the month of July two hundred and sixty. A. Yes.

Q. And the month of August a hundred and ninety-five. September he didn't work. October he made a hundred and thirty-eight. November three hundred and eighteen. December two hundred and forty dollars. A. That's right.

Q. And as a total year's salary he made twenty-two hundred and fifty-eight dollars.

Mr. Nemser: That isn't so. Eight months he made twenty-two fifty-eight.

Mr. Berkowitz: Well, we have the months here.

Mr. Nemser: It is ten months.

Mr. Berkowitz: Where is the months of January and February?

The Court: I only had them marked for identification so you could check up on it. Did you make these sheets yourself?

The Witness: Yes.

The Court: From your records or somebody else's records.

The Witness: My records start in August, 1931. Up to that point they were not my records, but from that point on they are.

By Mr. Berkowitz:

Q. Do you have the seniors' work list or the salaries that the seniors received during that period? A. We never kept anything like that.

Q. Never kept any records of the senior organization? A. We didn't keep no records as to the salary they earned. We always assumed the senior members were receiving the proper salary we had contracted for.

Q. Now, Mr. May, as a matter of fact the seniors took the big theatres and the big jobs with the organization. A. They took them? You don't mean that. These men were on the job before the juniors came in.

Q. They were on the job when the juniors came into the organization. A. Yes.

Q. And they retained those jobs. A. Yes.

Q. And if new theatres opened up a senior took it and the junior took the senior's job, isn't that the way they worked it? A. Not necessarily.

Q. Well, the seniors wouldn't pass up the good jobs, would they? A. No.

Q. They took the best jobs available, didn't they? A. Yes.

Q. So that if these men were making a hundred per week average then the seniors were making better salaries than that, isn't that correct? A. Yes.

Mr. Nemser: Is that the fact or not the fact?

The Witness: The juniors were making more than the seniors.

The Court: Let those three papers be marked for identification.

(Sheets marked C-2, 3 and 4 for Identification.)

Mr. Berkowitz: I am waiting for a response to that last question.

The Court: Put your question.

BY MR. BERKOWITZ:

Q. You testified before that the seniors had the better jobs in the organization. A. Yes.

The Court: He said they had the jobs before the juniors came in.

Mr. Berkowitz: I asked him if they didn't retain the better jobs for themselves.

Mr. Nemser: The juniors you mean were making a hundred a week.

The Court: On an average.

BY MR. BERKOWITZ:

Q. And isn't it the fact that the senior members had the better jobs over the junior members?

The Court: He said yes, but that don't mean the better paying jobs.

Mr. Berkowitz: We will come to that.

The Court: You have it in already the juniors were getting the better pay.

By Mr. Berkowitz:

Q. When you say a better job, the bigger theatre the more money they pay. A. Yes.

Q. And did the juniors have the big theatres? A. They didn't work in them.

Q. The seniors had the bigger theatres. A. Yes.

Q. And therefore the seniors made more money than the juniors.

The Court: You are getting around it by deduction. You ought to take the records.

Mr. Berkowitz: He says he knows of his own knowledge.

The Witness: I don't know what he is getting at.

The Court: He is trying to show you were wrong in saying that the juniors were making more money than the seniors.

The Witness: The records show it.

By Mr. Berkowitz:

Q. Does Loew's Theatre in Jersey City pay more than the Cameo Theatre in salary? A. Yes.

Q. Who works in Loew's Theatre, seniors or juniors? A. Seniors.

Q. Who works in the Cameo Theatre in Jersey City? A. Juniors.

Q. What is the rate of wages in Loew's Theatre? A. About seventy-five dollars a week.

Q. What do they make down in the Cameo? A. The whole booth pays about a hundred and thirty-seven dollars.

Q. How much does each man get? A. Divide it up.

Q. How many men are employed in that place? A. Three men.

Q. Three men get a hundred and thirty-seven? A. They get on an average of about forty-seven a week.

Q. And is that the same amount for the Strand and the Tivoli? A. Yes.

Q. And isn't it a fact that the senior men all work in the large theatres and the junior men all work in the low theatres? A. Yes.

Q. And therefore the seniors are making more money than the juniors. A. They make less.

Q. And in 1931 did the junior men work in the larger houses? A. The junior men never worked in the larger houses.

Q. The seniors always worked there. A. Yes.

Q. And the juniors get the small ones. A. You wouldn't get far with an inexperienced man up in Journal Square.

Q. Yet the juniors made more money than the seniors in 1930, 31 and 32?

The Court: Made more than the seniors in 1931 and 32?

Mr. Berkowitz: And 1930.

A. If I were to go by my records they were. The juniors were making more money.

Q. But you have no records of what the seniors were making, have you? A. No.

Q. And the fact is that the seniors worked in the bigger theatres, isn't that the fact? A. Yes.

BY THE COURT:

Q. According to your knowledge of what the seniors' earnings were compared to what the juniors were you mean the juniors made more than the seniors? A. Only at those times.

Q. The times to which those papers relate? A. Yes.

Q. Those papers relate to— A. 1931, 2 and 3.

Q. C-1 for Identification shows a total of 7186.59 which they paid, or ten per cent. That means ten times that was what they earned, is that right? A. That's right.

Q. C-2 for Identification, which relates to the junior members for 1931, the total is 11,138.03, and the juniors earned ten times that much, is that right? A. Yes.

Q. C-3 for Identification relates to the junior members for 1932 and the total is 8599.55. So they earned ten times that amount throughout the year. A. That's right.

Q. In Exhibit C-4 for Identification, which relates to the year 1933, the junior members paid a total of $7436.54. So they earned ten times that during that year 1933. A. That's right.

BY MR. BERKOWITZ:

Q. And in 1930 from the records which you have there it shows to your way of thinking that the juniors made more money than the seniors. A. Yes. They were permitted to work seven days a week if they were nice to the business agent. The seniors could only work six days.

Q. And notwithstanding the fact you say they were inexperienced. A. Yes.

Q. The business agent was elected by the senior group, is that correct? A. That's correct.

Q. And he was in office for how many years—Evins? A. I would say for seven or eight years.

Q. Do you recall him being in about twelve years or thirteen years? A. No.

Q. But he was elected that time as the business agent. A. Yes. Nobody dared to run against him.

By the Court:

Q. How long is he out now? A. He is out since 1931.

Q. Who is the busines agent now? A. Boscarelli.

By Mr. Berkowitz:

Q. And you said the junior members, or the elected junior members, asked for a copy of the constitution and by-laws about six months before May, 1931. That is the first time any person asked for them, is that correct? A. Yes.

The Court: Six months before what?

Mr. Berkowitz: May, 1931, when they were officially handed out.

Mr. Nemser: He testified the by-law committee was functioning for six months prior to 1931. He testified the first one who asked for the by-laws was Dulberger.

By Mr. Berkowitz:

Q. Now, you said the first objection you knew of came around December, 1931, an objection by the junior members to the constitution and by-laws. A. Yes, they brought in some kind of a petition.

Q. You knew what it was. You were an officer. A. It was read.

Q. Have you that petition here? A. Yes.

Q. Will you let me have it?

Mr. Nemser: I will give it to you in a minute. (Counsel produces petition.)

The Court: How about the paper you called for.

Mr. Berkowitz: I will use it late, if at all.

The Court: If you call for papers and examine them they go in evidence. I have allowed you heretofore not to be bound by that but I can't permit you to go on that way all through.

Mr. Berkowitz: This is my first chance.

The Court: You have asked for it.

Mr. Berkowitz: All right, I will let it go in.

The Court: Let it be marked.

(Petition marked Exhibit C-10 in evidence.)

By Mr. Berkowitz:

Q. You say that there are approximately seventy-four senior members? A. That's right.

Q. And at that time on March 4, 1930 there were eighty members in the senior department. A. Yes.

Q. And you said the amount of eighty was limited. A. Yes.

Q. Now, will you show me something in the constitution and by-laws limiting the number to eighty? A. I think it is in the present by-laws.

Q. Will you read that? A. February 11, 1930—

Q. Read that section there (indicating). A. "Brother Boscarelli spoke of incorporating in the resolution a statement providing for a standing

membership of eighty members at all times in our senior local. Same was left in the hands of the executive committee for further discussion."

Q. Now, will you show me where it was taken up for further discussion? A. The by-law committee took that up. Here (indicating).

Q. Read that. A. "A regular executive board meeting held at a regular meeting held February 18, 1930. Executive Board recommended that the membership of the senior local is never at any time to exceed eighty members."

Q. Now, will you show me where it became a part of the minutes? Do you find it? A. No, I can't find it.

Q. Then there is nothing in the records showing that the limitation of eighty members is part of your rules and regulations. A. It is generally conceded so.

Q. Can you show me anything in the minutes, constitution or by-laws, or any official papers that you have, that that limitation limits it to eighty? A. Only what I have referred to.

Q. Is there any meeting incorporating that into your organization?

The Court: He has already read in the record some reference.

By Mr. Berkowitz:

Q. A recommmendation by the executive board. Can you point it out here? A. I can't point it out.

Q. Do you know if that has been done? A. We have never taken in over eighty.

Q. Can you tell me whether that is a rule of the organization? A. Yes.

Q. Can you point it out to me? A. It is an unwritten law.

Q. Do I understand it is an unwritten law in the organization? A. That's all I know about it.

Q. Then you don't know of it being adopted as official? A. No.

Q. Will you read this particular section here under the regular meeting held Tuesday night, March 11, 1930, what Brother Evins did?

Mr. Nemser: Suppose you do.

Mr. Berkowitz: It says "Brother Evins read the agreement to the body now prevailing which covers the junior local."

The Court: Where is says *now prevailing* that indicate it was prevailing. That seems to be against you a little bit.

Mr. Berkowitz: No, I am satisfied with it.

The Court: In Exhibit C-10 it refers distinctly to your clients as acknowledging they were junior members. The first part of the petition says "On or about February 11, 1930 the undersigned became junior members of your body pursuant to a certain contract entered into on said date, a copy of which is annexed hereto."

Mr. Berkowitz: Yes, I am satisfied with that going in as it is. They can't change what the facts are.

The Court: I might as well read another thing into the record as to the seniority rights of the senior members. I think it is in the contract Exhibit C-2. The ninth section of the contract reads—"The junior members will at all times be subject to removal from jobs when such jobs are desired by senior members."

Mr. Berkowitz: That is in the contract. There is no doubt about that.

BY MR. BERKOWITZ:

Q. Now, you said you took McCarthy's job in December of 1932. Am I correct on that date? A. Yes.

Q. And how long did you retain that position, Mr. May? A. I would say about four or five weeks.

Q. And during that time you said McCarthy worked. A. Yes.

Q. And you also said he made more money working elsewhere than he did in your position.

The Court: He didn't say that.

Mr. Berkowitz: I remember that he did.

The Court: I don't remember him saying that.

BY MR. BERKOWITZ:

Q. Did you say that McCarthy made more money after you had taken his position? A. I said maybe he did.

Q. You didn't say maybe he did. A. I didn't say he did. I said maybe he did.

Q. Now, before you explained the dangerous opperation of a moving picture machine and you said that prior to sound you only needed one man in the booth, is that correct? A. That's right.

Q. And when sound came then yon needed two men in the booth because of danger of fire. A. Yes.

Q. Now, isn't it a fact, Mr. May, that a film works in both machines, silent and sound, with the same speed of operation, and that fires can

happen with the same equipment if you have the same candle power, and there is no difference in the fire hazard between sound and silent? A. So far as the sound there is a whole lot of difference. In the days of silent we hadn't the same amount of lamps or arcs.

Q. They still have the arc lamps? A. Yes, but it is three times the amount and the amount is ten times as more intense as it was in those days.

Q. Now, have you had any fires that you know of in the theatres operated or run by Local 384? A. Yes.

Q. Recently? Within the last four years, say? A. Yes.

Q. Where were they? A. We had one in the Orient Theatre. A number of reels were destroyed.

Q. Any other?

The Court: He said one was burned to death in Hoboken.

By Mr. Berkowitz:

Q. That was a non-union house in Hoboken. A. Yes.

The Court: He also said they work in non-union houses.

Mr. Berkowitz: I want to bring that particular section out.

Q. Do I understand your organization sanctions men working in non-union houses with a non-union operator?

The Court: What does that mean, the organization as a whole? If it binds the organ-

ization as a whole I suppose you should refer to the constitution and by-laws. You are referring to some book.

Mr. Berkowitz: Without referring to the book. He testified to that before.

The Court: All right, go ahead. We could be more specific if it related to the organization or just a conjecture of the others.

Mr. Berkowitz: Whether it is a rule of the organization. I am trying to find out from this man.

The Court: All right.

By Mr. Berkowitz:

Q. Can you tell us the basis of your statement you made before relative to the fact that any man can go out and solicit a non-union job and work with a non-union house with a non-union operator as you are doing at this time? A. As long as the organization sanctions it it is perfectly okay.

Q. Then it must be sanctioned by the organization. A. Absolutely.

Q. Then it is your claim as you said before that a man can go out and solicit his own job and nobody can complain about it.

The Court: Why are you asking him what the practice is? There is a lot of conjecture in that question.

By Mr. Berkowitz:

Q. What part of your organization does the sanctioning of this practice? A. The executive board.

Q. And they are members of the senior group.

The Court: No, they are not. It is composed of officers and four members.

Mr. Berkowitz: The officers are senior members.

The Court: When you say the senior members there are about eighty.

Mr. Berkowitz: I am satisfied to qualify it to that extent.

Q. Are you acquainted with Sections 6 and 7 of the constitution and by-laws of 1931?

Mr. Nemser: What page?

Mr. Berkowitz: Page 51.

A. Yes. This here particular section was amended.

Q. Will you show us the amendment? A. Yes, in the amendment book.

Mr. Berkowitz: Have you the amendment book?

Mr. Nemser: Yes.

The Court: Find that amendment.

The Witness: That relates to the employment.

By Mr. Berkowitz:

Q. You are referring to the soliciting of positions by members? A. It has been amended. Only the employment situation has been amended.

Q. Then those parts are still unaffected by any amendments and is still the law of your organization? A. Yes.

The Court: What parts are you referring to?

Mr. Berkowitz: Six and seven on page 51 of the constitution and by-laws.

The Court: You say they are not amended?

The Witness: No.

BY MR. BERKOWITZ:

Q. Now, Mr. May, can you tell us when your books were opened to receive or accept senior members into the organization? A. Yes, they have been opened since last August.

Q. Are they still opened? A. Yes.

Q. When prior to that were they opened? A. I think a year before that.

Q. For how long a period? A. They were opened a period of twenty minutes.

Q. Have you the minutes of that meeting? A. I believe so.

Mr. Nemser: Iook at August of last year, Mr. May.

Mr. Berkowitz: We have August of last year. We are looking for August, 1932, now.

The Witness: Here it is.

BY MR. BERKOWITZ:

Q. Will you read that? A. This is a regular meeting of August 8, 1932.

BY THE COURT:

Q. What do you find? A. The books were opened for members. A recess was declared for five minutes from 1:17 to 1:22 A. M. "Regularly moved

and seconded that the books be closed for another year, there being no applicants at this time".

Q. What meeting was that, juniors or seniors? A. The books were opened for senior members and there were no applications and we closed it out.

Mr. Berkowitz: Here is a notation: "Regular meeting of Local 384 held in the regular meeting rooms Monday, August 8, 1932, called to order at 12:45 A. M. with all officers present." Then it goes on.

By Mr. Berkowitz:

Q. Can you tell me when they were opened prior to 1932, or in 1931? How long? A. When they were opened in August?

Q. When the books were opened for members prior to August of 1932. A. The same time as the year before.

Q. And do you know how long they were opened for at that time? A. It would be hard to remember that long.

Q. Can you show us in the minutes how long they were opened for? A. It would be in the minute book here. A regular meeting of August 10, 1931.

Q. Can you tell us how long the books were opened at that time? A. It doesn't say. It says—"Motion by Brother Boscarelli, seconded by Brother Barber, that the books opened to members be closed until next August, 1932". It was opened all the time.

Q. All what time? A. From the time the meeting opened.

Q. Will you look back at the meeting before that and see if they were opened at that meeting? A.

I don't think there would be any reference to it. The by-laws say the books shall be opened at that time.

Q. Now, Mr. May, for 1932 and '33 you were the secretary and treasurer. A. From 1931.

Q. You came in in May or June, 1931. A. No, in July, 1931.

Q. Now, do you know whether prior to the meeting of August, 1931, and prior to the meeting of August, 1932, and prior to the meeting of August, 1933, notices were sent to the junior members that the books would be opened for applications in the senior department? A. They may have been sent, but I have no knowledge of it.

Q. Now, there was a banquet in April, 1930, given by the junior members to the senior members, is that correct? A. Yes.

Q. And the toastmaster, you say, was Nyland. A. Yes.

Q. Are you sure about that, Mr. May? A. I know he was the one that done all the talking. I am not sure now. It is not up to me to say who was the toastmaster. I know he done a lot of talking.

Q. It was about a month after the men were taken in. A. Yes.

Q. At that time no senior had taken a junior's job. A. There was no necessity for it.

Q. No, not at that time. A. No.

Q. Now, before the so-called junior members were taken into the so-called department or local, whichever you want to call it, they had an examination by the senior members. A. Some of them did and some of them didn't.

Q. And the purpose of the examination was to test their ability to run moving picture machines. A. Those that were examined, that was the purpose.

Q. That was a rule in the organization to give the men an examination before coming in. A. It was, yes, and still is.

Q. And each man was supposed to be examined prior to coming in as a member.

The Court: He said some of them weren't examined.

By Mr. Berkowitz:

Q. What members weren't? A. I can't say that off-hand, but I dare say forty-five per cent of the juniors haven't been examined.

Q. That is a guess on your part. A. You can look at the applications and see it.

Q. Do you remember right after these men came into the organization, and even prior to being obligated in the organization, that some of these junior members went out and installed apparatus in the theatres? A. That was real hearsay. I knew nothing about it. I heard about it at the Dulberger trial.

Q. Would you be surprised if I told you that the so-called complainant members had installed film equipment?

The Court: I don't want to be listening to that kind of questions.

By Mr. Berkowitz:

Q. Right after these men were obligated into the organization they worked without senior members, didn't they? A. I think after they were obligated they worked with senior members.

Q. All of them? A. Not all of them, but most of them.

Q. In other words, all the junior members did not work with senior members on the jobs after their application? A. No, not all of them, but some of them.

Q. And after some of them made the application for a year or six months they were working by themselves without any seniors. Do you know of any such thing? A. I don't know of any.

Q. You don't? A. No.

Q. Do you remember before saying that McCarthy and Steiner were grocery clerks and gasoline station employees prior?

The Court: He didn't say they were both.

By Mr. Berkowitz:

Q. Yes, one was one and one was the other. Can you tell us which of them? A. McCarthy ran a filling station across the street from the Stanley.

Q. And Steiner was the grocery boy. A. The grocery clerk.

Q. That you know of your own knowledge? A. No, I didn't know that. That developed in the conversation.

Q. Do you know that of your own knowledge or did somebody tell you? A. The first that I knew Steiner was when he became a junior. I didn't see him working in the grocery store.

Q. Now, you say that Gold worked in a house where you had no contract? A. That's right.

Q. What house was that? A. I think the Rivoli in Hoboken.

Q. Did you have a working agreement with that house? A. At one time we did.

Q. And the organization gave him permission to work in that theatre?

The Court: How can he tell that?

Mr. Berkowitz: He has been doing it all day.

The Court: He can't speak for the organization.

By Mr. Berkowitz:

Q. Do you know whether the organization authorized Gold to go down there and work in that house? A. The organization didn't have anything at all to say to him.

Q. Did they penalize him for it? A. No.

Q. You say there are about four or five charter members in the organization? A. Yes.

Q. Do you know Muller or Miller, one of the complainants in this case? A. Yes.

Q. Do you know whether he was one of the charter members? A. No, he was not. I am pretty sure of it.

Q. Do you know whether or not he was in the organization at the time you were in as a regular member? A. He was in, yes.

Q. As a regular member? A. Yes, as a regular member at one time.

Q. And he withdrew? A. He did not. He didn't pay his dues and he was just dumped from membership.

Q. And he came back into the organization again in 1930 or 28 or 29. A. No, he came back with the Juniors in 1931.

Q. Do you remember Muller paying his back dues to the organization? A. He didn't pay them to me.

Q. He made an application to become a member again of the local. Do you recall that?

Mr. Berkowitz: Will you give me his application, Mr. Nemser, of George Muller?

Mr. Nemser: Here it is.

The Witness: That's his application.

(Application marked Exhibit C-11 in evidence.)

The Court: Make a note in the record there is a contract attached to the application the same as the previous applications.

By Mr. Berkowitz:

Q. Do you know who the recording secretary was in 1927? A. If you will tell me his name I will tell you.

Q. Was it Nicholas Cantobe? A. Yes. The man died.

Q. Do the junior members ever take a senior member's job? A. What?

Q. Do the junior members ever take a senior member's job? A. When he gets it.

Q. But he has no right to take it, has he? A. He has no what?

Q. He has no right to take it? A. He can't take it unless it is given to him.

Q. That is different from the seniors and the juniors. A. The senior don't take his job. He has to go to the executive board and get it.

Q. But the junior hasn't that right? A. No.

Q. You worked in the Cameo Theatre for a while, didn't you? A. I did to my sorrow. They still owe me eight dollars pay. Don't forget it.

Q. Did they ask for your removal by the theatre owners? A. They did not.

The Court: How am I concerned with all that.

Mr. Berkowitz: That's all.

Mr. Murray: I would like to ask one question to get the record straightened out as to the junior department.

REDIRECT EXAMINATION CONTINUED BY MR. MURRAY:

Q. Mr. May, I notice here in the minutes of the regular meeting of January 14, 1930 the following —"Resolution in regards to forming Junior Local No. 384 was presented by Brother Evins and received its first reading". Then in the minutes of the meeting of February 11, 1930 appears this— "Resolution creating a Junior Local received its final reading therefore becoming legal". A. That's right.

Q. Now, up to that time was there any record in the organization in the minute book, by-laws, constitution or elsewhere specifying how the junior local should be set up and what its rules and regulations should be? A. You will have to ask Brother Evins that. He can answer that question.

Q. You don't know of any? A. No.

Q. Now, I ask you whether, so far as you know, there was any further specification as to what this junior department should consist of up to as late as March 4, 1930, other than what is referred to in the minutes of that date?

The Court: Minutes of what date?

Mr. Murray: March 4, 1930.

The Court: February 11th.

BY MR. MURRAY:

Q. Then the only specification of dates or rules and regulations of this junior department is what is in the contract? A. In the contract and what is in the minutes.

Q. Which I just read? A. Yes.

Mr. Murray: That's all.

RECROSS EXAMINATION BY MR. NEMSER:

Q. When did Evins cease to be business agent? A. During I think May or June, 1931.

Q. And up to that time he had been the sole collector of the ten per cent money? A. He was.

Q. And was there any way of checking his ten per cent collections? A. No.

Q. And after you and your associates got into office was that changed? A. Yes.

Q. Was an accounting firm brought in? A. Yes.

Q. And are they recognized accountants and auditors? A. Yes, they are.

Q. And Evins was removed because he did not account for moneys he collected? A. He was removed for a dozen different things—malfeasance and everything.

Q. For destruction of books and records—for dishonesty? A. Yes.

Q. Did he pay some money back to the local? A. Yes.

Q. And was he forever barred from holding office in the local? A. Yes, he has been.

Q. Do you know what connection Evins has with the complainants in this case? A. Yes, he is very friendly to them.

Q. Do you know what he has done to assist them in this suit? A. Yes, he is advising them.

Mr. Berkowitz: Now, that calls for a yes or no answer.

The Court: He said yes. Do you know that he is advising them?

The Witness: Why, yes.

BY MR. NEMSER:

Q. After Evins was removed as business agent did he ever make any statement in your presence as to what he intended to do.

Mr. Berkowitz: I object your Honor. I can't see what Evins would say in his presence would be binding on the complainants.

The Court: If he was speaking for your people?

Mr. Berkowitz: Let him bring that out.

The Court: He is after telling us Evins has been advising them.

Mr. Berkowitz: I don't object to the court asking.

The Court: I only asked him to make sure of that which I had in my mind before from the statement which he has previously made.

Mr. Nemser: I will withdraw the question.

Q. Did Evins ever state to you or in your presence to the juniors as to what he intended to do with the junior body after he was removed from office?

Mr. Berkowitz: I object. It is not material. He has no authority to do anything or speak for anybody.

The Court: It might show some pique on his part. It might show some understanding with your clients.

Mr. Berkowitz: How will it be binding upon my clients?

The Court: I don't know.

Mr. Berkowitz: Let him say in the presence of what junior members.

The Court: I will let him ask and if it is not material and you object I will strike it out.

By Mr. Nemser:

Q. Was any such statement ever made in your presence? A. What statement?

Q. Any statement at all as to what he intended to do with the junior body of the local? A. He made statements by innuendo.

Q. Then he made no statements? A. No.

Q. Now, as a matter of fact the books were opened every year for senior members? A. Yes.

Q. Is that the customary practice? A. Yes.

Q. Has it been done this year? A. Yes, the books are opened up.

Q. Have there been any applications made? A. Yes, two.

Q. Who are they? A. James Mullen and John Spano.

Q. That was the year 33? A. Yes.

Q. The year 1933, the present year? A. Up to date.

Q. Has any action been taken by the seniors because of those applications? A. No, they are still considering them.

Q. Do you know whether Evins received the advice of counsel in drawing the contract. I want your best knowledge. Do you know whether or not Evins received the advice of counsel in drawing the contract? A. Only what I heard.

Mr. Berkowitz: I object.

Mr. Nemser: Never mind. That's all.

REDIRECT EXAMINATION BY MR. BERKOWITZ:

Q. Mr. May, just one question. How many of the junior members—when I say junior members, I mean those men who came in on March 4th or thereafter and are in the so-called junior department, have been elevated or made senior members? A. None.

Q. Well, can you tell me whether or not while the application of the juniors, or the so-called junior men, were on file before their obligation into the union, any members came into the senior organization? A. There was I believe nine taken in.

Q. And do you know whether their applications were dated before or after this group that were later taken in on March 4, 1930? A. There was no applications dated after March 4, 1930.

Q. That is not my question.

The Court: Didn't they have the right to take in all the members they liked notwithstanding the pending of the other applications?

Mr. Berkowitz: Yes.

The Court: You must have had some motive in asking.

Mr. Berkowitz: I hoped to work up to a certain point.

The Court: They had the right to take in all they liked up to the time they acted on the other applications.

Mr. Berkowitz: That's all.

RECROSS EXAMINATION BY MR. NEMSER:

Q. Have there been any additions to the junior body since the present forty-two men were taken in? A. No.

Q. None since June, 1930? A. No.

Mr. Nemser: That's all.

FRANK MANDRAKE, being sworn:

DIRECT EXAMINATION BY MR. MURRAY:

Q. Mr. Mandrake, you were the recording secretary of the local in 1929, in December? A. I was.

Q. And I show you a minute book and ask you if that is your signature at the end of the minutes of December 10, 1929? A. It is.

Q. Now, I call your attention to the last clause reading "Resolution increasing initiation fee from one thousand to three thousand presented by Brother Evins received its first reading and was passed". I ask you if that resolution was presented by Mr. Evins in writing? A. It was.

Q. Well, where is the resolution? A. In the records or in our files.

Mr. Murray: I call for the production of the resolution.

Mr. Nemser: It wasn't called for in the notice but we will try to get it for you.

By Mr. Murray:

Q. I call your attention to the fact that the typewriting in the last part of that memorandum which I just read appears to be in different typewriting than the first part. Is that true? A. No, it is not.

Q. You mean it is the same typewriting? A. Yes.

Q. Did you do this typewriting yourself? A. Yes.

Q. Can you say it is positively the same typewriting? A. Yes.

Q. Can you say that all this line was typewritten at the same time (indicating)? A. Exactly.

Q. Now, turning to the minutes of January 14, 1930. That is also your signature as recording secretary. A. It is.

Q. I call your attention to this clause—"Resolution in regards to forming Junior Local 384 presented by Brother Evins and received its first reading". Now, I call your attention to a document which has been marked D-4 for Identification, dated January 14, 1930, and signed by a number of individuals reading—"We, the undersigned do hereby present the following resolution. Resolved that a Junior Local 384 be created within the jurisdiction of Local 384 by the T. S. M. & M. P. M. Said local to be governed by the senior local in all things. Signed by the following members in good standing". Is that the resolution referred to in the minutes of January 14, 1930? A. It is.

Q. Now, I call your attention to the minutes of February 11, 1930 reading—"Resolution creating

Junior Local received its final reading therefore becoming legal". That is the resolution which we just referred to as D-4, is that correct? A. Yes.

Q. That is what I just read from the minutes of February 11th was the last and only action taken by the members with regard to the creation of a junior organization between January 14, 1930 and February 11, 1930, is that correct? A. To my knowledge, yes.

Q. That's the only thing the minutes show. If there was some other action taken formally the minutes would show it. A. Now if the business agent would take it of his own volition.

Q. But any action taken at the meeting assembled would be in the minutes. A. Yes, that's right.

Q. Now, I find nothing regarding the details or set up acted on by the membership according to the minutes until March 4, 1930. There was no action taken by the members in regard to that matter between February 11, 1930 and March 4, 1930. A. Not to my knowledge, no.

Q. You would know if there had been any taken. A. In meeting assembled I would know.

Q. You were secretary up to and subsequent to March 4, 1930? A. That's right.

Q. Then the contract so-called referred to in the minutes of March 4, 1930 was the first time when the detail of this junior department was set out in any record—were officially set out or acted upon by the members? A. I just don't understand that question.

Q. Up to March 4, 1930 had the members adopted any resolution relating to the creation of a junior local except that known as D-1 for Identification and dated January 14, 1930? A. There were no

resolutions adopted but for years back it was spoken of.

The Court: I will strike that out.

The Witness: The answer is no.

The Court: On February 11th there was other action taken. The resolution you are calling attention to is January.

Mr. Murray: And the meeting you are speaking of is the second reading. I am asking was there any other action up to March 4, 1930 and the answer is no.

The Court: All right.

By Mr. Murray:

Q. Now, the minutes of March 4, 1930 marked Exhibit C-6 is the only action taken with regard to the creation of a junior department or local on that date by the members, is that not correct?

Mr. Nemser: I object to that because the minutes of the meeting of March 4, 1930 show the members took no action.

Mr. Murray: I withdraw the question.

Q. Do the minutes of March 4, 1930 set forth all that took place at that time regarding the creation of the organization or junior department of the local?

The Court: You had better look at the minutes before you answer that question.

The Witness: In reference to what?

The Court: He wants to know if those minutes as scant as they are before you represent everything that was done at that meeting.

The Witness: To my recollection there were for the reason some of them signed, but not all. I wouldn't swear to anything, no.

The Court: You didn't put in all the names of these men that were admitted to membership at that time.

The Witness: That's correct.

By Mr. Murray:

Q. Now, there were no resolutions adopted at that time? A. It was not a meeting.

Q. There were no resolutions adopted at that assemblage. A. None outside of the contract.

Q. And what was done with reference to the contract is fully set forth in the minutes C-6? A. Yes.

The Court: What do the minutes C-6 say?

Mr. Murray: "Assembly of permit-men for the purpose of forming the junior local held March 4, 1930, Tuesday midnight, at our new meeting hall. Called to order at 12:45. Meeting started with the calling of the roll, and as each members' name was called, they were each handed a copy of the agreements as required by the senior local. Said copy to be signed by each individual member, before being eligible to become a member the junior local. Brother Evans read every Section of the agreement to all those present, and after he had finished reading all articles, the chairman asked all those present if they understood every article as read and explained by Brother Evans, to which they voiced no objection. Brother Evans requested that prospective brother Mr. Woods

make a motion that the prospective Junior local accept the agreement in its entirety. Motion was made by Mr. Woods and seconded by Mr. Harry Nyland that the prospective Junior Local accept the agreement in its entirety. The above mentioned motion was unanimously carried. Each prospective member was then called into the office to sign the agreement before a Notary Public and a member of Local 384 to be present as a witness. Motion made by Brother Evans, seconded by Brother Cantoli that the secretary cast a ballot to carry the motion to obligate all prospective members to Junior Local. Carried. The chairman then read the oath of obligation to all the prospective members resent, thereby admitting them to membership of Junior Local 384, Brother Boyd, Neathery, Dulberger, Steiner, Furkey, Boscarelli, Peterson and Evans spoke on good and welfare. Meeting adjourned 2:45." The minutes are signed by Frank Mandrake, secretary, president Walter A. Bemis. That's all.

CROSS EXAMINATION BY MR. NEMSER:

Q. Do you remember that somebody asked for by-laws at this meeting? A. Yes.

Q. Who was that? A. Brother Wood.

Q. And do you remember what the president answered? A. The president told him at that time they had no bylaws; that there was a committee appointed to make up new by-laws to meet conditions existing at the present day on account of the advent of sound pictures, and just as soon as the by-laws were completed and available they would be distributed to the members.

Q. Now, did any of those permitmen present on March 4, 1930 have copies of the contract they signed for a period of time prior to March 4, 1930 for their consideration? A. I don't know.

Q. This group that was gathered together on March 4, 1930 was not a meeting of 384, was it? A. It was not.

Q. At any time during this meeting was the 1923 constitution and by-laws mentioned? A. No.

Q. Were there any copies of the 1923 constitution and by-laws available that you knew of? A. I never saw any.

Q. Now, after the meeting of March 4, 1930 you said Wood or Dulberger, junior members, asked for by-laws? A. Why, that's the very first thing they did, and they were given the same answer that the committee were working on them and they would be given a copy of them.

Q. As a matter of fact the by-laws weren't ready until sometime after May, 1931. A. After they were adopted.

Q. During all that time between March 4, 1930, and sometime in 1931 when the by-laws were distributed, did you ever know of any junior member to complain because he was not consulted in the revision of those by-laws? A. Never.

Q. During that period of time did any junior member ever ask for the right to vote? A. No.

Q. Now, at the meeting of March 4, 1930 I believe Mr. May testified that it was explained by Evins and Benis and other men present that these men would have no right to vote. Do you recall that? A. Very distinctly I do.

Q. Do you recall Evins calling upon some of these permitmen and asking if they had any questions to ask? A. That is absolutely correct.

Q. Were these men inducted into office as junior members in the same manner that you induct men into senior office? A. The same except the word junior was included in the obligation.

Q. Was there a ballot taken on the junior members? A. No.

Q. Now, previous to March 4, 1930 there was only one class of members, isn't that so? A. That's right.

Q. Certain members were admitted as regular members. A. That's correct.

Q. How were they admitted? A. They were examined and after passing a suitable percentage they were balloted upon.

Q. Just what do you mean. A. The name of the applicant is presented to the meeting assembled and they then ballot upon them, and if they receive the required number of white ballots which signifies in favor of receiving the applicant, they are accepted and obligated to membership. If they are rejected, which is signified by black ballots, they are naturally rejected and the application is returned to them.

Q. In other words, prior to March 4, 1930, the balloting was done by white and black balls secretly. A. That's right.

Q. And every member present voting. A. That's correct.

Q. And it required a majority vote. A. At that time I believe a majority vote.

Q. Was that procedure followed out at that meeting of March 4, 1930? A. It was not.

Q. Did any of the members of the local have the opportunity of balloting upon these juniors? A. No, none.

Q. Who handled the creation and formation of this entire contract? A. Now, during my term of office as secretary I believe Brother Evins had the full control of the formation of the junior body.

Mr. Murray: That is not cross examination. I didn't ask him about the contract.

Mr. Nemser: I withdraw it.

Q. Will you explain in a little more detail what did you hear Evins say or do about the contract? A. You mean before the formation of the contract?

Q. Yes. A. At that time we had permitmen working in our jurisdiction before the formation of the junior body, and Brother Evins thought it would be a very good idea to form the junior body.

Q. Did he ever express himself at the meetings? A. Absolutely. And he told how he could guide himself in the formation of this body by communicating with some local in Atlanta, Georgia, I believe, requesting them to send him a copy of their rules and regulations concerning a similar body. Therefore Brother Evins continued to act until he got all the desired information he was seeking, and he had this document drawn.

BY THE COURT:

Q. Did he report it to the membership when he had it drawn? A. He did.

BY MR. NEMSER:

Q. Go on. A. And the only time that this document was presented to the organization was when

it was in the printed form and ready for distribution to prospective junior members.

Q. Was it so distributed, do you know? A. They were individually.

Q. I mean before March 4, 1930? A. I don't know.

Q. Now, was the junior membership discussed prior to the meeting of March 4, 1930? A. For years back.

Q. Was it known to the permitmen? A. It was.

Q. Did they know for a considerable time prior to March 4, 1930 that they were going to be inducted into the organization as juniors or apprentices? A. As juniors.

Q. Did the permitmen know for a long time prior to March 4, 1930, to your personal knowledge that the members of the local intended to obligate these permitmen as junior members with certain limited rights? A. They did.

Q. For how long a time would you say prior to March 4, 1930? A. I would say for over a year.

Q. So that when this contract or agreement was presented on March 4, 1930, it was not a surprise to the permitmen, was it? A. Certainly not.

Q. And when did you first hear the term apprentice used as being applied to the so-called juniors? A. I had been informed that the International termed them as apprentices.

Q. That is based on what somebody else told you? A. That's right.

Mr. Murray: I don't want to interrupt counsel but this is my witness.

The Court: He is his witness now. I thought you were through with him.

Mr. Murray: He interrupted me.

Mr. Nemser: I am very sorry for that.

The Court: I thought you were through. We will proceed regularly now.

REDIRECT EXAMINATION BY MR. MURRAY:

Q. Mr. Mandrake, do I understand at this assembly on March 4th these so-called permitmen were given to understand by Mr. Bemis and some of the officers there were no by-laws or constitution in force at that time? A. There was a constitution in force.

Q. That isn't my question. My question is do I understand you to say they were told there were no by-laws in force at that time? A. I did not say they were not in force.

The Court: What the witness said somebody asked about by-laws and Mr. Bemis told them they were formulating new by-laws.

Mr. Murray: The witness didn't say new by-laws.

The Witness: I stated the by-laws were absolutely obsolete insofar as working conditions of the present day.

BY MR. MURRAY:

Q. Didn't Mr. Bemis or some other officer tell those permitmen there were by-laws and constitution in force at that time? A. I don't know.

Q. Well, you were there, weren't you? A. I don't remember that.

BY THE COURT:

Q. What did they say about by-laws? A. Just as I stated before Brother Wood asked for the by-

laws and Brother Bemis said there were by-laws but they could not apply to present day conditions on account of the advent of sound which naturally revised conditions in the theatre so far as the booth was concerned.

Q. What else did he say? A. He also said that a committee had been appointed to draft by-laws whereby he could control working conditions and just as soon as they were available they would be distributed to the members.

By Mr. Murray:

Q. Now, Mr. Mandrake, will you point to anything in the records which were in existence on March 4, 1930, that authorized Mr. Bemis or any other officer to tell these permitmen at that time that when they became members they would not have a right to vote? Will you point to any record that—

Mr. Nemser: I think the contract speaks for itself.

Mr. Murray: The contract is silent on the right to vote.

The Witness: I understand they are governed by the senior body.

Mr. Murray: I would like to have the question answered.

The Court: He wants to know if there is anything in those minutes which warranted Mr. Bemis in making that statement.

The Witness: I believe it is in one paragraph which I cannot find just now.

By Mr. Murray:

Q. Just show it to me. A. I can't find it but I can refer to Section 8 where they are governed by the executive board of the senior body.

Q. Section 8? A. Of the agreement or contract.

Q. Is that the only record to which you can refer to as authority for Mr. Bemis or any other officer for saying to the permitmen on March 4, 1930, that they have no right to vote? A. That's right.

Q. That's the only authority you know of? A. Yes.

Q. How long at that time had you been recording secretary? A. Over a year.

Q. You were familiar with the action taken in the preceding year, of course? A. Yes.

Mr. Murray: That's all.

RECROSS EXAMINATION BY MR. NEMSER:

Q. Did the junior members from March 4, 1930, down to December 1931 ever ask for the right to vote? A. They never did.

Q. Did they say anything about their right to vote at the banquet? A. Their attention was called by Mr. Bemis to the contents of the contract.

Q. And to show their elation they gave out a lot of gifts? A. Yes.

Q. Now, when is the first time you heard the 1923 amendments to the by-laws mentioned? A. I can't recall the date but I can recall the incident. The time that took place to my knowledge was when Brother Evins was being removed from the office of business agent. From that time on questions of rights cropped up from time to time.

Q. Now, you were asked by counsel whether you had any other record outside of the contract which would indicate the right to vote and you said no. I call your attention to D-4 for Identification, which is the petition for the creation of the junior local,

headed by the signature of Elisha Evins, as follows—"Said local is governed by the senior local at all times". Is that another record in answer to counsel's former question? A. It is. That's the one I was looking for.

Q. From March 4, 1930 I understand that the junior membership had records of their own, is that right? A. That's right.

Q. And they held so-called good and welfare meetings at which they took no action? A. That was all explained to them at the night of the induction.

Q. And these meetings were conducted under the supervision of the executive board of the local union? A. That's right.

Q. And were they ever allowed to participate in the meetings of the seniors? A. Never.

Q. Did they ever participate prior to December, 1931? A. No.

Q. Or prior to the petition which was referred to? A. No.

Q. Now, as a matter of fact, Mr. Mandrake, prior to March 4, 1930, and for a considerable period of time prior, was a by-law committee working on the by-laws? A. Yes.

Q. Did that committee function? A. Not very well.

Q. Why did you need new by-laws? A. On account of conditions arising since the advent of sound working conditions were entirely revolutionized.

Q. Do you recall when the 1931 constitution was distributed amongst the members? A. The 1931 what?

Q. Constitution was distributed amongst the members? A. Yes.

Q. And each member's name embossed upon the cover? A. That's right.

Q. And were you present when all of these copies were distributed amongst the junior members? A. I was.

Q. Did you ever hear any of them protest or complain they were not valid by-laws? A. Not one.

Q. Did you ever have apprentices in the local prior to March 4, 1930? A. We did.

Q. Now, prior to March 4, 1930, you had the right to reject that permit at anytime, isn't that right? A. That's right.

Q. Was there any special reason for having these men inducted into the membership? A. That was more for their own benefit to protect them from outsiders coming in and demanding their jobs.

Q. Did they have a right to demand their jobs? A. Absolutely under a ruling of the parent body.

Q. Then the formation of the junior local was primarily for the purpose of protecting the permitmen from outsiders, is that right? A. Absolutely.

Q. Were you present at the banquet, Mr. Mandrake? A. Yes.

Q. Do you know who the toastmaster was? A. We had a spokesman and a toastmaster.

Q. Who was the spokesman? A. Brother Nyland.

Q. Was he a junior? A. Yes.

Q. And do you recall the remarks he made at the banquet? A. The first remarks was the banquet was merely a spread as a token of appreciation for what the senior body had done for the junior body.

Q. Anything else? A. They believed also they owed it to them as an expression of gratitude.

Q. And did they signify their gratitude in any respect that night? A. By offering gifts.

Q. What gifts, do you recall? A. To the president and the business agent, and Mrs. Canavan, the wife of the International President.

Q. Was anybody there from the International office? A. There was, but I don't just recall who.

Q. Was anything said by Nyland or any other junior at that time? A. I don't remember.

Q. As a matter of fact, did any person speak outside of Nyland? A. I don't know.

Q. Do you know how much they contributed to that dinner? A. Approximately thirty-five dollars a piece.

Q. Did any of the seniors contribute to it? A. No.

Q. Do you know how much they spent for this dinner? A. I don't know.

Q. Did any of the juniors tell you who was on the committee? A. On the dinner committee of the banquet? No.

Q. Now, Mr. Mandrake, I show you page 51 of the 1931 constitution and by-laws, Section 7, and ask you if there is anything in Section 7 which prevents any members of the organization from soliciting his own job. A. No.

Q. Section 7 as I see it applies only to houses with which they have written contracts, isn't that so? A. That's correct.

Q. Is that the way you interpret it? A. That's the way we run our organization.

Mr. Murray: I object to it. It speaks for itself.

The Court: It isn't going to influence me.

BY MR. MEMSER:

Q. There is no question either so far as juniors or seniors are concerned no one has a right to solicit a job with a house with which they have no contract? A. No, there is no distinction.

Q. I understand since June, 1930, there have been no junior members taken into the senior body? A. No.

Q. And no men taken into the junior body? A. None.

Mr. Nemser: That's all.

Mr. Berkowitz: I called Mr. Mandrake as the former secretary of the organization. Now I want to examine him as the present president of the organization.

REDIRECT EXAMINATION BY MR. BERKOWITZ:

Q. Now, Mr. Mandrake, I show you a card. Will you tell us what that card is? A. Yes, it is a card belonging to a junior member.

Q. John Steiner, Jr. A. That's correct.

Q. And that is his membership card in Junior Local 384. A. Yes.

Q. Will you let me see your working card, Mr. Mandrake? A. Yes.

Mr. Berkowitz: Will you mark this in evidence?

(Steiner card marked Exhibit C-12 in evidence.)

Mr. Berkowitz: I want to offer the card of Frank Mandrake into evidence.

(Mandrake card marked Exhibit C-13 in evidence.)

By Mr. Berkowitz:

Q. Now, Mr. Mandrake, taking these two cards, C-12 and C-13, will you tell us if there is any difference except the fact that C-12 has junior department stamped on it?

The Court: Isn't that self-evident?

A. Yes, the number is different.

Q. They are very similar, Mr. Mandrake, with the exception of the names of the members.

The Court: What's the use of asking him that? We can read that. You have them both in evidence. You can make such comment as you wish about them.

By Mr. Berkowitz:

Q. As president you are a member of the executive board. A. That's right, chairman of the executive board.

Q. By reason of being president. A. Yes.

Q. Now, as chairman of the executive board you have the duty of handing jobs out. In other words, the solution with the business agent of his jobs.

The Court: He is your witness. Don't be putting the words in his mouth. The question is objectionable the way you are putting it.

Mr. Berkowitz: Counsel is not objecting.

Q. Now, Mr. Mandrake, as chairman of the executive board, what are your duties? A. My duties are to conduct the executive meeting.

Q. And will you tell us the duties of the executive board? A. The executive board?

The Court: Are they described in the by-laws—the duties?

The Witness: Why, the individual officers, yes.

The Court: The reason I asked if they are, what's the use of asking him?

By Mr. Berkowitz:

Q. Will you tell us the procedure relative to handing out jobs to juniors?

Mr. Nemser: I object unless the question is broad enough to cover seniors.

Mr. Berkowitz: I don't think I have the right to ask.

The Court: Go ahead. I will overrule the objection. What is the procedure in handing out jobs to juniors?

A. The handing out of jobs, if the executive board is not in session, is done by the business agent, and later on at the next executive board meeting he reports what he has done, and the executive board either approves or disapproves of his action.

By Mr. Berkowitz:

Q. And if it disapproves? A. Then it will be rectified immediately.

Q. By the executive board taking someone else on the job? A. If they see fit.

Q. And the executive board has full power to hand out jobs to juniors. A. Between meetings,

and the action of the executive board must be ratified at the next regular meeting.

Q. At the next regular meeting after the executive board meets—the regular meeting of the seniors, then they ratify the executive board's action. A. That's right.

Q. And if they fail to act on the action of the executive board, what do they do? A. The body will dispose of it as they see fit.

Q. Does the senior body hand out a job to a junior? A. The executive board is always under orders of a majority of the members.

The Court: He is speaking of the members at the meeting. Can the members of the senior body at a meeting give a job to a junior?

The Witness: Where they so instruct the executive board or the business agent to do so.

By Mr. Berkowitz:

Q. So, in other words, the senior department at a regular meeting has the last word in handing out a job to a janitor. A. They don't hand jobs out.

Q. If the executive board or the business agent places a junior on a particular job, from what you said before I understand that then the action of the executive board or business agent, or both, can be rejected, if you want to put it in that fashion, by the senior group at a regular meeting.

The Court: You are only balling the thing up. The business agent does not report to the regular meeting.

Mr. Berkowitz: He also reports to the regular meeting.

Q. Does the business agent have to report to the regular organization? A. He has to report by the next regular meeting.

BY THE COURT:

Q. Didn't I understand you to say the business agent reports to the executive board? A. Yes.

Q. And the executive board approves or disapproves of the action of the business agent. A. That's right.

Q. At the next meeting of the senior members the executive board reports to that body. A. That's right.

BY MR. BERKOWITZ:

Q. If the body is not satisfied with the action taken by the executive board, then they can instruct the executive board to take one junior from a particular job where he was placed by the executive board and put some one else in his place. A. No. The way I interpret the laws the executive board places the junior members on the job.

Q. In other words, the executive board has the last say as to the placing of jobs of junior members, is that correct? A. That's correct.

BY THE COURT:

Q. Are the duties of the executive committee defined in the by-laws so we can know what the duties of the executive committee are? A. I don't know.

Mr. Murray: Page 55—"No member of this union shall be permitted to give positions to

junior members, or members of sister locals unless sanctioned by this union. All reliefs must be paid by members not later than the first pay day after such work was performed. The business agent, at the direction of the executive board, shall remove any member from his position until such time as he complies with this section".

The Court: We will now take a recess until January 9th.

January 9, 1934.

Mr. Murray: If your Honor please, in this case it has been agreed between counsel that the allegations and particulars of the bill respecting irregularities, diversion of funds, waste of funds, extravagance and other financial forms of mismanagement alleged in the bill and for which remedy is prayed, are eliminated from the bill without prejudice, however, to making those matters the subject matter of a later proceeding.

The Court: You mean you are abandoning those matters at this time?

Mr. Murray: At this time, but without prejudice to making them the subject matter of a later proceeding, leaving in the case, however, the question of the right of the so-called junior members to have information as to how their money is being expended and access to the books, et cetera, and to have determined in the decree what their general status and rights are in the organization. Is that correct?

Mr. Nemser: That's correct.

FRANK MANDRAKE, recalled:

REDIRECT EXAMINATION BY MR. BERKOWITZ (Continued):

Q. Mr. Mandrake, are you acquainted with the theatres that are union and non-union in Hudson County? A. I am.

Q. Now, can you tell us by name the theatres that are not in the union? A. Well, I would have to think them over and try to recall where they are.

Q. If I should mention them to you, would you know them? A. I may not, I don't know. Theatres may open over night also without my knowledge.

Q. Do you know that the City Theatre in Union City has a union license. A. A non-union.

Mr. Nemser: By non-union I assume—

The Witness: That they do not employ our members.

BY MR. BERKOWITZ:

Q. Your union has jurisdiction in Hudson County, is that correct? A. As far as the control of the International is concerned.

Q. And how many men do they employ in the City? A. What do you mean they?

Q. The City Theatre. A. The City Theatre? I don't know. They have none of our members employed.

Q. Weren't they at one time one of your theatres, or having a contract with your organization? A. With the City Theatre?

Q. Yes. A. Years back, yes.

Q. Do you know how many men they employed then?

The Court: I will strike that out. I am only concerned as of the present time.

By Mr. Berkowitz:

Q. The Columbia Theatre in Union City. A. Does not employ our men.

Q. Palace Theatre in Hoboken. A. Does not employ our men.

Q. The Pastime Theatre in Union City. A. Likewise.

Q. The Rialto in West New York. A. Does not employ our men.

Q. The Rivoli in West New York. The same thing.

Q. The Rivoli in Hoboken? A. The same thing.

Q. The Strand Theatre in Union City. A. Employs our members.

Q. Employs your members. A. Yes.

Q. And how many members are employed there? A. Two.

Q. Two members? A. Yes.

Q. The Temple Theatre, I think, in Union City is non-union. A. Non-union. It does not employ any of our members.

Q. The Transfer Theatre. A. Does not employ our members.

Q. Did they employ your members up until a few weeks ago? A. I don't know a few weeks ago, but a few months ago. About a few months.

Q. And the Bishop in Hoboken. A. Does not employ our men.

Q. And if I showed you a list of theatres in Hudson County, would you know by glancing at this whether or not this includes all the theatres which runs moving pictures for a business? A. Just as I stated before, theatres may open between last night and this morning.

Q. I am asking you if that's a list of theatres in Hudson County which run moving pictures as a business.

The Court: He is after telling you.

A. I can't. There are conditions from day to day in the county.

By Mr. Berkowitz:

Q. You should be able to tell us if this is a list of the theatres in Hudson County. I don't care whether they employ union or non-union help. I am only asking you if this is a list of theatres in Hudson County? A. What is this "L" Jersey here?

Q. That's Loew's. A. One theatre listed here is not open.

Q. There are three listed there that are not open. A. You want to know if they are in the county?

Q. That's it. A. To my knowledge, yes.

Q. Now, can you tell us after looking at that list whether or not there are any theatres in Hudson County that are not listed here? Any that you know of? A. No. There may be, I don't know. Not to my knowledge.

Q. Now, Mr. Mandrake, one more question relative to this list. Will you look at that list and see if that sets forth the amount of men employed in each theatre? Can you possibly tell whether

or not that is the truth? A. May I ask when the list was made up?

Q. A week or so ago. A. I can't account for the men because conditions change from time to time. Many would be absent on account of sickness and leaving on a vacation and until those places would be filled with another man—

Q. Do you know how many are employed in each theatre?

Mr. Nemser: Do you?

The Witness: I do know, yes.

By Mr. Berkowitz:

Q. Does the Apollo in Jersey City employ five junior members?

The Court: You mean at the present time?

Mr. Berkowitz: Yes.

Q. If there are any changes, you pick out the change. A. I can't give you an answer on that. I would like to confer with the business agent with the permission of the Court. The business agent has more jurisdiction over that and is more capable of giving you a more correct answer on that.

Mr. Berkowitz: Then I will use the business agent for that purpose later. I would like to offer this for identification.

The Court: All right.

(List marked C-5 for Identification.)

By Mr. Berkowitz:

Q. Now, about April or May or possibly March of 1933, you were the president of the local. A. I was.

Q. Do you remember at that time the wage scale being reduced within your jurisdiction? A. I do.

Q. Do you know approximately when that was? Can you give me the time? A. I just can't recollect when it was. I believe you are in the right time.

Q. Were there contracts pending with the theatres at that time? A. I wouldn't say all of them.

Q. Were there contracts pending? A. There were contracts, yes.

Q. And when you reduced the wage scale, did you do that voluntarily so far as the theatres that had contracts with you were concerned? A. You mean the organization did it voluntarily or I did it.

Q. No, the body or the organization. How was the reduction in the wage scale accomplished? A. You mean right from the very beginning, what was the cause of the reduction?

Q. No, just what your organization did to reduce the wage scale.

The Court: That means by the board or body.

By Mr. Berkowitz:

Q. The procedure followed. A. We got the International permission. We were authorized by the body at a regular meeting to arbitrate. At that time the men were thrown out of the theatres and locked out, and in order to reinstate our men we had to hear evidence and the organization authorized the committee appointed at that time to arbitrate and compromise so that our men could go back to work again.

Q. Who was the committee appointed by? A. The committee was appointed indirectly by the organization itself through the chair.

Q. And that committee arbitrated the reduction in wage scale, is that correct? A. That's right.

Q. And you say that was authorized at a regular meeting of the organization? A. That's right.

Q. And when you say a regular meeting of the organization you mean the so-called senior organization. A. Correct.

Q. Did you notify any of the juniors to come to that meeting—this regular meeting? A. The so-called senior meeting?

Q. Yes. A. No, I did not.

Q. No junior member was permitted to vote for or against—

The Court: They were not there. How could they vote?

By Mr. Berkowitz:

Q. No junior member was permitted to vote for or against the wage scale reduction. A. When you say vote, no.

The Court: You stated they were not at the meeting.

The Witness: That's correct.

The Court: So they couldn't vote.

The Witness: No.

By Mr. Berkowitz:

Q. Did you have a meeting of both so-called senior and junior members, or an assembly I would say of both groups, relative to this alleged or pro-

posed reduction. A. We had a joint assembly—not a meeting.

Q. And do you recall any one of the juniors, so-called junior members, saying "Let's forget the fact that we are juniors and seniors and let us discuss this thing from a standpoint of finding out what to do about it"? Do you remember any person using words similar to that?

The Court: Suppose there were conversations with him by the individuals, how can it bind the organization?

Mr. Berkowitz: This was said to the man at the assembly meeting.

The Court: The assembly was not a meeting of the corporation. How is it material? I am dealing here with transactions between an organization and two sets of its members. I wouldn't care if they sent the president of the union here and had an assembly, it couldn't affect the organization as a body. Schumm v. Seymour in 24 Equity and other cases indicate that.

Mr. Berkowitz: If I can show this was an assembly called by the officers or officer?

The Court: You haven't shown that.

Mr. Berkowitz: Well, I will show it in a minute.

Q. Who called the assembly or meeting of the senior and junior group? A. I requested the presence of the juniors and the seniors to attend the assembly.

The Court: How is that going to be binding on the organization? What right had this man to do it?

Mr. Berkowitz: He has a right to call meetings.

The Court: No.

Mr. Berkowitz: The by-laws show that.

The Court: Show me the by-laws that this man can call a meeting of the organization of seniors. I don't want to sit here listening to a lot of matter that will not be helpful to me.

Mr. Berkowitz: I am trying to show what is being done to these men.

The Court: What you are showing me is officious actions and not official and is of no legal significance.

Mr. Berkowitz: I will withdraw it.

Q. Now, tell me this, Mr. Mandrake. Are you acquainted with the fact of a man—one of your men working in a non-union house? A. What time, and when and where?

Q. Just say as a general rule. Is that permitted by the organization? A. The organization does not restrict the action of any member securing jobs.

Q. In other words, would you say that the union permits a man to work in a non-union house without censure?

The Court: That isn't so. No such question was put to him. I will overrule the question. If you want to testify, get up here and testify, but this man hasn't said a word about censure.

Mr. Berkowitz: He said they are permitted to do anything they want.

Q. Does the organization ever censure a member for working in a non-union house without the permission of the union? A. I wish you would substitute another word for the word censure.

The Court: He doesn't want to substitute another word.

The Witness: I don't understand it.

The Court: All right.

Mr. Berkowitz: Let us substitute the word—

The Court: Put your question.

By Mr. Berkowitz:

Q. Does the organization ever criticize a man for working in a non-union house without its permission?

The Court: Mr. Nemser is sitting here without objecting to the questions, but they are improper. You are asking this witness to state a conclusion of what an organization may do and he can't do that. I don't mind you bringing out facts, but no conclusions.

Mr. Berkowitz: If your Honor please, I don't know how I can bring out any more than what this man does as an officer of the organization.

The Court: You are asking him what the organization does.

Mr. Berkowitz: The organization works through its officers.

The Court: Does it? An organization works different ways. If you heard some of the cases I hear you wouldn't say they work through its officers.

By Mr. Berkowitz:

Q. Mr. Mandrake, is there any rule or regulation in the organization—your union, which permits or does not permit a member to work in a non-union house without first receiving permission of

the organization? A. There is no law of the organization which restricts a man from working in any house.

The Court: Let me know how it is material to the question before me. All I am concerned with is a question between so-called seniors and juniors and the organization itself. Now, of what significance can it be as to whether any one of them would be permitted to work in a non-union house?

Mr. Berkowitz: We are attempting to show the monopolistic theory of this contract.

The Court: All right, go ahead if you think you have a purpose in view.

By Mr. Berkowitz:

Q. Has it adopted any policy penalizing members for so doing?

Mr. Nemser: I object. It is immaterial and irrelevant.

The Court: I will sustain the objection. If you are going to show what policy an organization has adopted you will have to show it by the regular routine of the organization and not this witness. The president of an organization is not the whole organization. If you will read the case of Klein v. Journal Square National Bank, which I decided, you will see I said the president of a bank was not as much as he thought he was.

By Mr. Berkowitz:

Q. Is there anything in the minutes touching upon that particular subject?

The Court: Doesn't that call for a conclusion? If there is anything in the minutes, produce the minutes.

Mr. Berkowitz: I am trying to eliminate—

The Court: All right, I will let him answer it. Do you know of any such thing contained in the minutes?

The Witness: I don't know.

By Mr. Berkowitz:

Q. Well, as a member of the union, can you tell us how many times your members were permitted to work in non-union houses during this year without permission of the organization?

The Court: Is it material how many times? He has plainly told you they can take a job where they wish. What difference does it make how many times they do it?

By Mr. Berkowitz:

Q. Do you know of any member, Mr. Mandrake, at this time working in a non-union house? A. How can it be a non-union house if we have our members working there?

The Court: Mr. May said he was working in a house with a non-union man.

The Witness: He didn't ask me that.

By Mr. Berkowitz:

Q. I will ask you this question. Do any of your members at this time work in a house with non-union members? A. Do they or are they?

Q. Are they? A. Yes.

Q. Who? A. The man that was on the stand before me was working with a non-union man.

The Court: Mr. May.

By Mr. Berkowitz:

Q. Do you know of any other case? A. Lyceum Theatre in Bayonne.

Q. Now, did they get permission from any one or any permission from the organization to work there? A. Undoubtedly they did.

By the Court:

Q. Do they have to ask permission about it to go to work there? A. No.

By Mr. Berkowitz:

Q. In what manner do they get permission or why do they get permission?

Mr. Nemser: I object. I have been sitting here hoping to save time. Now, the witness has testified there is no restraint upon a member going to work in any house. Another witness also testified they have a contract with that particular theatre.

The Court: He also testified they do not have to get permission.

Mr. Berkowitz: He also said they did have to get permission.

The Court: I will sustain the objection.

BY MR. BERKOWITZ:

Q. Mr. Mandrake, let me ask you this question. The man who works with Mr. May and the man who works in the Lyceum Theatre, the so-called non-union help, are managers of the theatre in both cases, isn't he? A. I don't know.

The Court: Suppose he is a manager, would that make him any better? What right has a manager to operate? An owner has, if I remember the law.

BY MR. BERKOWITZ:

Q. Mr. Mandrake, are you one of the signers of contract with the theatres? A. I am.

Q. Now, as a matter of fact, don't you know that when you made the contract with the theatre in which Mr. May works, and the contract, in the Lyceum Theatre, that you gave the right to the managers to operate as a concession for putting your man in?

Mr. Nemser: I object for two reasons. In the first place the contracts speak for themselves and are in evidence. In the second place I don't know what power this man would have to give permission to any one.

The Court: I will sustain the objection. Suppose this man assumed power to do these things, it would not bind the organization.

Mr. Berkowitz: When he is out signing contracts he has a right to bind the organization.

The Court: You think so?

BY MR. BERKOWITZ:

Q. Was you authorized by the organization to go out and sign these contracts? A. Who told you we had a contract with that theatre?

The Court: Don't you know the question of whether they were authorized to go out and sign a contract with a theatre is a conclusion? What's the use of losing all this time?

Mr. Berkowitz: If your Honor please, I would like to introduce the final decree in the Dulberger case in this proceeding. I have the papers here.

The Court: What is the materiality?

Mr. Berkowitz: The final decree of itself shows that there were certain charges preferred against four members of the union, and this decree sets forth the fact that the charges preferred against these men were null and void.

The Court: What has that to do with this case? Each case has to be tried on its own merits.

Mr. Nemser: There was a settlement—a compromise.

Mr. Berkowitz: It shows the deception practiced against the junior members.

The Court: No, these men are entitled to their say. I will overrule that offer as immaterial.

Mr. Berkowitz: Will your honor grant me an exception?

The Court: You don't have to ask for an exception.

Mr. Berkowitz: What I wanted to introduce is the final decree in the case of Dulberger v. Local Union 384.

The Court: Docket 89 page 198.

Mr. Berkowitz: Now, I would like to call on the defendants to produce the charges.

The Court: Are you through with this witness?

Mr. Berkowitz: Not yet. It would be in connection with his testimony. The charges resulting in the trial of the four men Dulberger, Wood, Cancalosi and Gold.

Mr. Nemser: I object to it.

The Court: You are declining to produce them.

Mr. Nemser: Yes.

The Court: I will sustain counsel.

Mr. Berkowitz: Those things can establish the deception practiced by the so-called seniors against the juniors.

The Court: I will overrule it. If you could prove it in the other case prove it in this case. I won't let you prove in this case what you proved in another case and have me accept it as proof in this case.

Mr. Berkowitz: We are just introducing it to show the practice.

The Court: I will overrule it as being entirely immaterial.

Mr. Berkowitz: That's all.

RECROSS EXAMINATION BY MR. NEMSER:

Q. Mr. Mandrake, when an employer with whom you have a contract asks for a particular man on a

job does the local comply with it? A. If advisable, yes.

Q. Do you know of instances where they have complied with it? A. Yes.

Q. And does the local at all times to your knowledge comply with the employer's reasonable request? A. At all times.

Q. There are seventy-four senior members in the local at the present time, is there not? A. Yes.

Q. Do you know how many senior members there were on March 4th? A. Seventy-five.

Q. And there have been some deaths since that time. A. That's right.

Mr. Berkowitz: Was that March 4th seventy-six?

The Witness: Seventy-six. The difference is the deaths.

By Mr. Nemser:

Q. What percentage of senior members who were working at specific theatres on March 4, 1930 are still working at those theatres?

Mr. Berkowitz: I object unless he can specify the seniors.

The Court: If he can specify.

Mr. Berkowitz: I object to the question.

By Mr. Nemser:

Q. Are you familiar with the theatres in which the various senior members of the local work at the present time? A. I am.

Q. Are you familiar with the theatres in which those seniors were working on March 4, 1930? A. I am.

Q. What do you base your familiarity on? A. Contact.

Q. With the senior body? A. That's right.

Q. Can you tell us what senior members are working in specific theatres today that were not working in those thatres on March 4, 1930? A. What percentage of senior members?

Q. What particular ones if you can remember. A. Do you want me to mention names?

Q. Can you give us the number? A. To my knowledge I don't think more than about eight. No more than eight.

Mr. Berkowitz: I move the answer be stricken. This man said he was going to give names.

The Court: He didn't say he would give names. You are interfering with the examination.

Mr. Nemser: I will withdraw the question.

Q. How many senior members, if you know, are working in theatres today that were not working there on March 4, 1930? A. Not more than eight.

Q. Now, in other words, all of the seventy-four senior members today, with the exception of eight, are working on the same jobs they had on or before March 4, 1930. A That's right.

Q. Now, take the junior body that were working on March 4, 1930. Out of all the juniors in the local how many, if you know, are working in different theatres today than they were working in on March 4, 1930.

Mr. Berkowitz: I want to register my objection to this man giving numbers.

The Court: What is your legal objection?

Mr. Berkowitz: The legal objection is this man should not—

The Court: I want to know your legal objection.

Mr. Berkowitz: I don't know of any other. I am telling you this man should give—

The Court: Then I will overrule your objection.

A. Not more than twenty-five per cent, I would say.

By Mr. Nemser:

Q. In other words, you mean by that seventy-five per cent of the juniors today have the same jobs they had on March 4, 1930. A. That's right.

Q. Do you know of any instances where junior members are working on the same jobs today they were working on when they were only permitmen? A. I do.

Q. How many can you designate? A. I can designate two.

Q. Who are they? A. Two of the complainants —Barkowski and Cameron.

Q. They are working on the same job how long? A. Ever since the inception of the junior body and before that.

Q. Are the occasions for the assignment of men to work, juniors or seniors, frequent or infrequent? A. Very infrequent.

Q. Why? A. Because the men generally work on the jobs steady or because they are familiar with

the theatres, and we don't care to change them around unless by their request.

Q. Now, are theatres opened and closed during the different periods of the year? A. Yes.

Q. And does that necessitate the switching around of men? A. Yes.

Q. And men taken sick and other men assigned to their place? A. Yes.

Q. And some men take vacations. A. Yes.

Q. I am applying my questions to both seniors and juniors. A. I take it for granted you are.

Q. Are there any cases that you know of where junior men are working in the same theatre in the same booth with senior members? A. Yes.

Q. And in those cases do the junior members earn the same rate of wages as the senior men do? A. Yes.

Q. Is there any difference in the wage scale between the juniors and the seniors as such? A. No.

Q. What is the distinction in the wage scale? A. There is no difference.

Q. Are all the seniors salary the same? A. No.

Q. What is the differentiation as to what a senior's salary is or the amount of wages he gets? A. There is no distinction between the seniors or juniors salary.

Q. What governs the amount of wages they get? A. Their qualifications in the various theatres.

Q. In other words, different theatres pay a different wage scale according to the contract depending upon the seating capacity. A. Yes.

Q. So when a junior works in the same booth with a senior he gets the same rate of wages. A. Exactly.

Q. Now, in the cases where a senior exercises his seniority rights and takes a junior's job does the

senior get the same rate of wages that the junior got? A. He certainly does.

Q. Are there any cases that you know of where juniors have replaced seniors temporarily, or otherwise? A. Yes.

Q. And in those cases have the juniors received the same rate of wages as the seniors? A. Exactly.

Q. Now, as I understand it, in your local, and applying to both juniors and seniors, the men are classified as steady men and relief men? A. That's right.

Q. What is the difference? A. A steady man in a theatre is a man that works six days in that particular theatre and is relieved for the seventh day by his so-called relief man, and that relief man's work consists of relieving in the various theatres the men that he relieves for their seventh day.

The Court: He gets a day in one theatre and fills in six days a week.

The Witness: Yes.

By Mr. Nemser:

Q. There are some relief men that only work six days a week and some five days? A. Yes.

Q. And the same thing applies to both senior and junior bodies. A. Absolutely.

Q. Now, are you familiar with the clause in the contract that an employer can discharge any one of your men on two weeks' notice? A. I am.

Q. And has that ever been done to your knowledge? A. Yes.

Q. Can the employer do that under the contract without any reason or question whatsoever? A.

Not without a reason. Yes, he can do it on two weeks' notice.

Q. If you want to take a man, junior or senior, off a job for any reason, you have to give the employer two weeks' notice? A. Yes.

Q. Is there any such provision in the contract? A. Yes.

Q. Is there any provision in the contract giving the employer a right to discharge a man for cause without notice? A. Yes.

Q. And have they exercised that right in the past? A. No, I don't think so. I can't recollect.

Q. What theatre are you working in, Mr. Mandrake? A. Loew's Theatre, in Jersey City.

Q. Is that considered one of the largest theatres? A. It is.

Q. How long have you been a member of the organization? A. Since 1916.

Q. Generally speaking, out of seventy-four senior members today in the local how many of those men have been members for more than ten years? A. Over eighty-five per cent.

Q. And are there some members in the organization now called senior members who have been in since the very inception? A. Yes.

Q. Are there some men who have been in since 1920? A. No.

By the Court:

Q. No senior members since 1920. A. Since 1920? Yes.

Q. You say there were? A. Yes.

By Mr. Nemser:

Q. There are however certain members now in the organization, now members of the senior body,

who have been members for the past three or four years. A. Yes.

Q. Were those the men that were taken in while you had permitmen? A. Yes.

Q. And before you had a senior and junior body? A. That's correct.

Q. How often does it occur that the business agent or the executive board, or both, assign a member, junior or senior, to permitmen jobs? A. Not very often. Very infrequent.

Q. Why is that? Can you give us a reasonable explanation for it? A. Because the men that are employed in the theatres at the present time generally stay there unless they are removed for a cause.

Q. Do you know how many men in the local today—116 I believe, are out of employment? A. You mean totally out of employment?

Q. Yes. A. I don't think more than one or two.

Q. Out of the total membership, juniors and seniors, how many men have had steady jobs for at least a year? A. I would judge over eighty or eighty-five per cent.

Q. Now, what is the determining feature when a job is open, such as a new theatre opening up or a theatre opening up after it had been closed, in assigning men to work? A. Qualifications.

Q. What do you mean by qualifications? A. We take into consideration their past performances, who they have worked for, what the results were, and what equipment they have worked on, and we generally decide to place the men back on the same equipment they were familiar with so they won't do any damage to the equipment, or to the theatre, which goes into a large sum of money on account of the equipment.

BY THE COURT:

Q. Is that done by the local itself at a meeting or by some officer who has had power conferred upon him? A. Previously the business agent had the authority but now it is governed by rules and regulations.

Q. What do you mean by that, some authority conferred upon the business agent to do that thing? A. That is right, and ratified by the executive board.

BY MR. NEMSER:

Q. And is a report made to the senior body at its regular meeting? A. It is.

Q. Is there any consideration given to the time the man is out of employment? A. Yes.

Q. Are there cases, or have there been instances in the past, where a man was out of work longer but didn't get the job because he didn't have the qualifications? A. I don't know.

Q. Would you send a man to a job no matter how long he was out of work if he didn't have the qualifications? A. Absolutely not.

Q. Why not? A. We have contracts with theatres and we have contracts to supply competent and able men, and men that will not be sent there and damage their outfits.

BY THE COURT:

Q. You mean the men may be qualified in the statement made for some particular theatres and not be qualified for others? A. That's right.

By Mr. Nemser:

Q. Now, take your work in Loew's. Do you consider yourself competent to go and run a booth in another theatre? A. I would not be competent to go into that booth and put a show on.

By the Court:

Q. What booth? A. In any booth in question unless I first familiaried myself with the entire equipment.

Q. How long would it take you to familiarize yourself with the equipment? A. That all depends upon the qualifications of the men.

Q. What would you say would be the minimum time? A. I don't know whether I can tell or not. It took me about a week to familiarize myself in the theatre where I am working now.

By Mr. Nemser:

Q. Is that the underlying reason why they try to send the men back to the same theatres and the same type of equipment they had previously worked on? A. That is correct.

Q. What is the danger, if there is any danger, in a man being assigned to a job in a booth where he is not familiar with the apparatus or equipment? A. Well, they would have an explosion if they sent a man into a booth and he wouldn't know the exact location of the switches. There are some switches that control the expensive sound outfit and if he wrongly worked those switches it may be just too bad for the show that day and perhaps for a few days to follow.

BY THE COURT:

Q. You mean by that he would put the mechanism out of business? A. That's right.

BY MR. NEMSER:

Q. Any other danger? Any danger to the public? A. The danger or fire hazard would be very great.

Q. Why would there be danger of a fire hazard with a new man going into a booth? A. If the new man doesn't familiarize himself with the outfit which comprises the arcs that portrays the film and is not familiar with the intensity of heat, he naturally creates a danger right then which may cause a fire if he is not familiar with the particular outfit.

Q. What usually causes fires in a booth from your experience? A. Film lugs break in films. If a person is not qualified for the job he naturally does not know what to do in the event of an emergency arises and fire naturally follows.

Q. Do fires break out frequently? A. They do at times.

Q. What causes the fire? A. Film breaking.

Q. What do you mean by film breaking? A. Film in the course of running through a machine at times breaks and if you are not alert the arcs portraying the film on account of the intense heat created by the arcs will ignite the film.

BY THE COURT:

Q. I suppose the operation has something to do with it. A. The film is always under the pressure

of heat but in the event the film stops there is danger of fire.

Q. How many feet a minute? A. Ninety feet a minute projects through the projectors.

By Mr. Nemser:

Q. How is that different from the rate of speed prior to the induction of sound? A. Prior to the induction of sound the rate of speed of the projectors was sixty feet per minute. Since the advent of sound the film is projected at a rate of ninety feet a minute.

Q. Does that increase the danger of fire? A. Naturally it increases the danger of fire hazard.

Q. You say naturally? A. On account of the speed of the film going through the machines.

Q. You say there is an arc light operated in connection with the films? A. It is projected through the films so that the image is projected on the sheet.

By Mr. Nemser:

Q. Now, is the candle power to which the film is subjected larger with sound than during silent pictures? A. Yes.

Q. How much? A. During the time we had silent pictures I operated an outfit that used amperage of 28 to 30 ampers. I am now operating an outfit which uses from 1925 to 140 ampers. You may readily see the difference in heat.

Q. Does it take a second or a minute for a fire to break out if anything goes wrong with the film? A. Any fraction of a second a fire may happen if anything goes wrong with the film.

Q. What precautions do the operators of booths employ to distinguish the fire in the first place? A.

In order to be cautious you are to be alert by standing at the machines while being projected. The only way you can avoid fires is by standing there.

Q. What equipment have you to put fires out? A. Fire extinguishers and sand which are mostly effective in film fires.

Q. Now, do you have any trouble with the theatres under contract because of mistakes made by the men—juniors or seniors? Have you had complaints about shows being ruined? A. Yes.

Q. What has been the procedure to remedy that? A. Our procedure is to determine who has been to blame for it. It may be at times the film is defective, but in spite of that fact they try to adjust matters because of the stipulation in our contract that we are responsible.

Q. For any damage? A. For any damage done to the booth.

Q. Now, this sound machinery or sound equipment is more expensive than the equipment for the silent pictures? A. Far greater.

Q. Take in the theatre you operate now at Loew's. Do you know what it costs to install the sound machines? A. I couldn't tell you but I know it goes over a hundred thousand dollars.

Q. Will the employers with whom you have contracts tolerate men who make frequent mistakes? A. They will not.

Q. What do you base that on? A. Mistakes? Every one is human and makes mistakes.

Q. What are the ordinary mistakes? A. Lights can go out because of some cause or perhaps defective carbon.

Q. What other. What human mistakes ordinarily made and not mechanical? A. Human mistakes? I don't know of any outside of spoiling the show and that is not pardonable.

Q. How would a man spoil the show? A. By running the wrong reel.

Q. Has that ever happened? A. Yes.

By the Court:

Q. Have you ever been in theatres when they boo and stamp when lights go out? A. I worked in those theatres.

By Mr. Nemser:

Q. Do you recall the first time sound came into effect in 1928. A. I do.

Q. And can you tell us what actually happened to the sound pictures when they were first introduced? A. In what way?

Q. As to the quality of the performances? A. The performances at that time were terrible.

Mr. Murray: I don't want to interrupt counsel—

Mr. Nemser: I will withdraw the question.

Q. Has the local had claims against it by employers under their contracts for damage? A. Yes.

Mr. Murray I object to it.

Mr. Nemser: I will withdraw the question. That's all.

Redirect Examination by Mr. Berkowitz:

Q. How long has the rate of pay of juniors and seniors been the same? A. It has never been any different.

Q. Always the same? A. Always.

Q. Now, how does the relief man cease to be such and become a regular man? A. By promotion.

Q. Who promotes him? A. Who promotes him? The proper authorities.

Q. Who are the proper authorities? A. The business agent with the sanction of the executive board.

Q. They do the promoting? A. Yes.

Q. Are juniors relief men or regular men? A. What do you mean?

Q. Well, do you classify juniors as relief men or regular men in theatres when they are working in theatres? A. There is no distinction between junior and seniors so far as relief work is concerned. They are regular men.

Q. Now, Mr. Mandrake, isn't it the fact that there is a similarity in the equipment, and the chief difference seems to be in knowing where the switches are to start the equipment in motion? A. It is not the fact.

Q. The theatre that you work in is what you call first run houses like Loew's and the Stanley and the State. They are first run houses, aren't they? A. Yes.

Q. And when you say first run houses they get the film before other theatres in the town, generally speaking. A. We have no decision on what first run is.

Q. You know what the expression is as an operator working in the booth for a good many years? A. Perhaps. But my interpretation may be wrong.

Q. Will you tell us what your interpretation is of first run pictures? A. I don't know.

Q. Now, Mr. Mandrake, the film that comes to Loew's, is that film let us say never and less han-

dled than those which go to smaller theatres in town? A. I don't know.

Q. You don't know? A. How can I know?

Mr. Berkowitz: That's all.

RECROSS EXAMINATION BY MR. NEMSER:

Q. Mr. Mandrake, weren't you in error before when you answered counsel's question that the rate of pay of juniors and seniors is the same? A. I did say that.

Q. Weren't you in error? A. No, that is the established fact. There is no difference between juniors' and seniors' pay.

Q. Was that always the rule so far as you know? A. Absolutely.

Mr. Nemser: That's all.

The Court: We will now take a recess until two o'clock.

AFTERNOON SESSION.

ELISHA EVINS, being sworn:

DIRECT EXAMINATION BY MR. BERKOWITZ:

Q. Mr. Evins, how long have you been a member of Local 384? A. Since March, 1919.

Q. And have you held any office in Local 384? A. With the exception of the first three months after becoming a member of 384 I have been continually in office.

Q. What offices have you held? A. Financial and recording secretary for the first three months of 1919, immediately after my joining; then after that business agent.

Q. And how long were you business agent? A. From the early part of 1920 to the time of my impeachment from office in 1931.

Q. During your session as business agent did you have occasion to take applications to become a member of Local 384, what is now called the junior group? A. I received—

The Court: Yes or no.

The Witness: Yes.

By Mr. Berkowitz:

Q. Now, can you tell us if the members of the junior local, the junior department, made these applications on the application blanks and gave them to you?

The Court: What are you talking about, the present time?

By Mr. Berkowitz:

Q. At the time these men made application to become members. A. What members do you mean?

Q. Let me reframe the question. Prior to these so-called juniors coming into the organization they had to make application to become a member of Local 384, is that correct? A. Yes.

Q. And do you know whether or not these so-called junior members made applications to become members of Local 384? A. At that time these per-

mitmen or these prospective members made an application to Local 384. Prior to the inception of the junior department we only had one form of application blank which was made by any one making an application.

The Court: Does that answer your question?
Mr. Berkowitz: Yes.

Q. Now, I show you an application made by William Cameron and marked in evidence as Exhibit C-2. Is that the form of application that all these men made? A. That is the application minus the stub which has been detached and mailed to the International Alliance office.

Q. Can you tell us what that stub had on it? Was it the name of the man? A. It was a record for them to keep for their files.

The Court: The particulars of the application was the name and address and age of the man, if that is what is on there.
The Witness: Yes.
The Court: What is the exhibit number?
Mr. Berkowitz: C-2.

BY MR. BERKOWITZ:

Q. Now, at the time these men made application was there a junior department in existence in Local 384?

The Court: At the time Cameron made application.
Mr. Berkowitz: Yes.

A. The date of the application was 1929 which was prior to the time of the junior department.

Q. Do you know now, talking of all the applications of these men who were admitted on March 4, 1930, whether or not the application was this form.

The Court: Don't let him generalize on that. Show him the papers.

Mr. Berkowitz: It has been stipulated.

The Court: Then don't ask him that. I can't see the materiality of it.

Mr. Berkowitz: I only wanted to find out if the application is the same.

Mr. Nemser: I am going to offer them all. May I make a suggestion to offer them in one batch—42 applications?

The Court: Then you can dictate into the record one of the applications in full so it will be seen they are all similar excepting as to the name.

Mr. Nemser: Yes. They are all the same. We have stipulated that.

By Mr. Berkowitz:

Q. Was that stamp "Junior Department" on these applications at the time they were made to the local?

The Court: You had better not ask him to generalize. Ask him about that application.

By Mr. Berkowitz:

Q. Was that "Junior Department" on this application? A. Not at the time it was made.

By the Court:

Q. How do you know that? A. I happen to be one of the endorsers of the application at that time

and we had no idea of incorporating into our department a junior department.

Q. Is that the reason why the men were not admitted into the organization then? You appreciate these men were not admitted for a long time after the applications. A. They were not admitted until March 4, 1930.

Q. All right, you were then the business agent? A. Yes.

By Mr. Berkowitz:

Q. Will you, Mr. Evins, explain the endorsement on the back of this application?

The Court: Can't we read it?

Mr. Berkowitz: I want him to explain what the endorsement means—this stamp.

The Court: I can read it as well as him. I won't let him explain it. It is there. If you want to read it into the record read it. It does not require an explanation.

Mr. Berkowitz: It does.

The Court: It is plain printed matter and handwriting.

Mr. Berkowitz: Yes, but what does it mean is the question.

The Court: I won't let him tell us what it means.

Mr. Berkowitz: All right, I will read it into the record. On the back of the application of William Cameron, Exhibit C-2, appears the following—"Endorsed by the I. A. T. S. E. & M. P. M. O." all capital letters.

The Court: That is printed matter.

Mr. Berkowitz: Yes, "Of U. S. & C. February 18, 1930, R. J. Green, Secretary-Treasurer".

Q. Do you know what the initials I. A. T., etc., stand for? A. I do.

Q. What? A. International Alliance of Theatrical Stage Employes and Moving Picture Machine Operators of the United States and Canada.

Q. Can you tell us what purpose the stamp on the application has?

Mr. Nemser: I object.

The Court: I will sustain the objection. I am not concerned with purposes or intentions. He gave the purpose before and it is plain to me that application was stamped by the general secretary, whoever he was, as having been received by him.

Mr. Murray: The purpose of this is to show that was the manner in which the International organization recognized the admission of these men into membership.

The Court: You won't prove it that way. These men were not admitted until March 4, 1930. The stamp won't prove it.

Mr. Murray: The date is on there.

The Court: You don't mean to argue these men were admitted to membership in February.

Mr. Murray: Not at all. I am going to argue that is the recognition by the International or either the membership or right of membership of these men.

The Court: You might argue that but you won't get far with it. Offer what you like and I will rule on it.

By Mr. Berkowitz:

Q. Now, Mr. Evins, as the business agent for the years 1920 up to 1931, you had occasion to send

men on jobs at different theatres—different men? A. Yes.

Q. And at that time, if you know, did you have to receive the sanction of the executive board, or was that your sole power? A. My power at that time was a little bit more than the present business agent's is.

10

By the Court:

Q. Where did you derive the power from? A. The local gave it to me.

Q. By what means? A. By vote.

The Court: All right, refer to the vote. You will have to produce the minutes showing that power conferred upon him. I won't let the
20 witness tell what his power was. I don't mean any offense to the witness.

By Mr. Berkowitz:

Q. Were you acquainted with the qualifications of the members for the particular jobs? A. Yes.

Q. And knowing the qualifications of these men you sent them on different jobs the same as they
30 do today? A. Yes.

Q. Now, during your experience as business agent can you tell us of any case or cases where you were notified that the junior members or permitmen, as they were during your time, were incompetent to run the motion picture equipment?

Mr. Nemser: I object as immaterial, incompetent and irrelevant.

The Court: Where is there any proof from
40 any source to indicate the men were incompe-

tent? The general testimony is they determine for themselves whether or not the men were qualified for a particular work, but your question implies whether some complaint was made as to the competency of the men. I don't recall any proof as to a moving picture house complaining about the competency of the men.

By Mr. Berkowitz:

Q. Do you know of any case where a junior man was incompetent?

Mr. Nemser: How is it material, if you please?

The Court: He can say yes or no.

A. The question—

The Court: If you don't understand it say so.

The Witness: I don't understand the question.

The Court: Read the question.

(Last question read by stenographer.)

By Mr. Berkowitz:

Q. To handle moving picture equipment. A. I can answer that question much better if both juniors and seniors were mentioned.

The Court: You are only asked a question.

Mr. Berkowitz: I am asking if he knows.

The Court: The question is there. Let it be repeated. He said he can't answer the question unless—

Mr. Berkowitz: I withdraw the question.

Q. Do you know of any case in which members of Local 384 were incompetent? A. Yes.

Q. Will you tell us who, if you know?

Mr. Nemser: I object.

The Court: What is the materiality of it?

Mr. Berkowitz: We are trying to establish now—

The Court: I am not going to try the question of incompetency of these men.

Mr. Berkowitz: But we want to prove and show that these men are competent.

The Court: No one is saying they are not competent.

Mr. Berkowitz: There is plenty of testimony they are not.

The Court: Not at all. No one has said a word about the incompetency of any individual. You mention to me any testimony that indicates that any man was declared by any of the witnesses as being incompetent.

Mr. Berkowitz: I think it was said by Mr. May and Mr. Mandrake that the juniors were incompetent.

The Court: They testified they didn't consider they were qualified in a particular theatre to run their job. There is a big difference between that and incompetency. There is no question of incompetency.

By Mr. Berkowitz:

Q. Do you know of any case where a junior member was unqualified to handle any kind of moving picture equipment? A. No.

Q. Now, as a business agent are you acquainted with the wage scale received by the members of the union? A. During my term of office, yes.

Q. And can you tell us whether or not the junior members made more money than the senior members?

Mr. Nemser: I object, if your Honor please. In the first place the books and records are the best evidence.

The Court: I think I will let him answer yes or no. He has to say first whether he knows. Read the question.

(Last question read by stenographer.)

The Court: Do you mean at the present time?

Mr. Berkowitz: I am talking about the time he was in office.

The Court: Your question doesn't read that way.

Mr. Berkowitz: I will incorporate in the question—

The Court: Suppose you reframe it.

By Mr. Berkowitz:

Q. Can you tell us whether or not during the years 1929, 1930 and '31, until you got out of office, the junior members received more money than the senior members for wages for working? A. On some occasions on certain particular work.

Q. Now, can you tell us on what occasions and what work that was? A. The initial installation of sound.

Q. Now, can you tell us on how many occasions you had junior members installing sound? A.

New Jersey State Library

That is pretty hard for me to answer because I can't remember the exact occasions.

The Court: Don't guess.

By Mr. Berkowitz:

Q. But there were occasions when junior members installed sound equipment in theatres? A. Yes.

Q. And when they were installing sound equipment that is when they received a larger sum as installation fees, isn't that so? A. Yes.

Q. And as soon as the installation fee was paid then they received a regular wage scale in the house, is that correct? A. Yes.

By the Court:

Q. Do you mean that would be characterized as an installation fee or compensation during installation? A. That was the agreement reached by the Western Electric and the Internationl Alliance.

Q. As a fee? A. As a salary.

Q. He is characterizing it as a fee. Do you know what a fee is? A fee is a lump sum of money intended for a particular work. A. Well, it was a hundred and twenty-five a week. That was the salary agreed upon.

By Mr. Berkowitz:

Q. Will you tell us whether or not this hundred and twenty-five dollar installation charge was per week or for the particular installation job if it took two weeks? A. Per week.

BY THE COURT:

Q. During that installation? A. Yes.

BY MR. BERKOWITZ:

Q. Can you tell us from your experience how long it took or didn't take to install—

The Court: How is this going to enlighten me? I don't want to shut out anything, but I don't want to go far afield.

Mr. Berkowitz: I will withdraw that.

Q. Mr. Evins, what did you do to ascertain the qualifications of these so-called junior members before they came into the organization?

Mr. Nemser: I object. How is it material?

The Court: How am I concerned with what he did to ascertain the qualifications?

Mr. Berkowitz: He was told by the organization to ascertain the qualifications of the junior members.

The Witness: They appeared before an examination committee and were given a practical and technical examination.

Mr. Nemser: I object to the witness testifying unless he is testifying from his own knowledge.

The Court: Were you there present?

The Witness: I wasn't one of the examining committee, but from—

The Court: You knew there was such a test given.

The Witness: Yes.

By Mr. Berkowitz:

Q. Do you know if any of the junior members went to school to learn sound? A. Yes.

By the Court:

Q. If a man was not competent when he went into it as a junior he would be expected to go and find out something about it. A. Yes.

Q. And do you know of a case where a man was a grocery clerk when he went in as a junior? A. No, but will you allow me to explain?

Q. You heard testimony here one man was connected with an automobile repair concern and another man was a grocery clerk. Were you business agent at the time they went in? A. Well, I can't say what they were.

Q. You heard testimony that two of them were working in those capacities. If you were business agent you ought to know what positions they had before they went in. Your business was to go and interrogate them and find out. A. I had all the records on the applications.

By Mr. Berkowitz:

Q. Mr. Evins, can you tell us why the advent of talking pictures required a new constitution and by-laws of the union?

Mr. Nemser: If your Honor please, I object on the ground it is incompetent, immaterial and irrelevant, and furthermore there is no such testimony in the case.

The Court: I will sustain the objection.

By Mr. Berkowitz:

Q. Mr. Evins, at the assemblage on March 4, 1930, do you know if any one explained to the junior members the fact that the initiation had been raised to three hundred dollars? A. To the senior department?

The Court: Read the question.
(Last question read by stenographer.)

A. No.

By Mr. Berkowitz:

Q. Do you know whether anybody said that? A. I do not.

Q. And can you tell us who were the ones that talked that evening to the so-called junior members? A. The president of the organization—

The Court: I suppose first of all you ought to find out whether he was present.

By Mr. Berkowitz:

Q. Were you there on March 4th? A. Yes.

Q. And can you tell us who had anything to do with the inducting of these men in the so-called junior organization? A. The president and the vice-president, and myself and other officers at that time.

Q. Did any one of those men who had anything to do with the inducting of these juniors into the organization say anything about the raising of the initiation fee to three thousand dollars? A. No.

Q. Do you know whether or not at any time the junior members were told that the initiation fee was three thousand dollars? A. I don't quite understand that.

Q. Well, let me withdraw that question. After March 4, 1930, up to the present time, if you know, have you any knowledge that the senior department informed the junior department that the initiation fee was three thousand?

The Court: May I ask you if a senior department can inform a junior department?

Mr. Berkowitz: Then I will change it and say any of the officers of the organization.

Mr. Nemser: I object.

The Court: I will let him answer it. If you don't know, say so.

The Witness: I don't know.

By Mr. Berkowitz:

Q. Now, Mr. Evins, can you tell us if a junior member is qualified to take a senior member's job?

Mr. Nemser: I object if your Honor please. This organization is a pretty big body.

The Court: That might mean a thousand or a hundred men each with different abilities, and he is asked to take them and average them and do what he is asked. One man may be qualified and another man may be unqualified.

Mr. Nemser: We have not contended that.

Mr. Murray: We can save a lot of time if counsel will tell us on the record that they are not claiming that this junior department was not created because the so-called junior members were practical and plainly competent.

The Court: I have heard testimony that a grocery clerk came in as one.

Mr. Murray: If they won't admit that is not true then we will have to put these men on one by one and prove their competency.

Mr. Nemser: We have not raised any question in this case that any member was incompetent.

The Court: That is what I understood. They testified some were qualified to run the apparatus at Loew's and handle it properly and others may not be capable of doing it. There was a fire in the Rivoli in Hoboken. If he set fire to the Rivoli I don't know what he would do at Loew's.

Mr. Murray: If your Honor will permit me to ask one question.

DIRECT EXAMINATION BY MR. MURRAY (Cont.):

Q. Mr. Evins, you say you were familiar with the juniors' and seniors' ability to operate moving pictures when the juniors were first admitted?

The Court: He didn't say that.

BY MR. MURRAY:

Q. Were you familiar with their abilities? A. I was familiar with their abilities after they had been employed at various theatres.

Q. Was that before or after they became members? A. That was before and after.

Q. Some of their abilities you became acquainted with before they became members and some of them not until afterwards? A. Yes.

The Court: You mean before March 4th and after March 4th?

The Witness: Yes.

BY MR. MURRAY:

Q. Could you tell us about when you finally learned of the capabilities of all of the junior members?

The Court: There is no proof he ever heard of any such thing.

The Witness: I never heard anything to the contrary.

BY MR. MURRAY:

Q. As business agent you went around to moving picture houses two or three times a week? A. No, I won't say twice.

Q. Frequently? A. Yes.

Q. And saw how they were operating? A. Yes.

Q. And as a result of that didn't you become familiar with the various capabilities of junior and senior members?

The Court: How could this witness be familiar with the capabilities of the men unless he was in the booth and saw how they operated it?

Mr. Murray: He was.

The Court : He said he was around.

Mr. Murray: I am asking him if he did become acquainted with them.

The Court: I will allow you to question him as to his qualifications to testify as to their capabilities.

BY MR. MURRAY:

Q. Mr. Evins, up to the time you ceased to become business agent had you learned of the capability in their trade of all of the junior and senior members of the local? A. Yes.

BY THE COURT:

Q. By what means? A. Because I only had one way to prove it. Not having received a complaint against their ability I can only state that to prove their work was good.

The Court: Dou you think that testimony is any good?

BY MR. MURRAY:

Q. While you were business agent and were going around into moving picture houses as part of your duties did you hear complaints about any lack of capability on the part of junior members? A. Very rarely. Most of the discontent was lack of harmony in the booth. So far as the work was concerned practically all of the employers were satisfied.

Q. Now, this equipment that is used in moving picture theatres in Hudson County, that is owned by the various theatres in Hudson County, is manufactured largely by two concerns? A. Yes.

Q. What are they? A. The Radio Corporation of America and the Western Electric Corporation.

BY THE COURT:

Q. Are you swearing to that of your own knowledge? A. To the best of my knowledge it is the fact.

Q. Did you ever hear of the Bennett Film Corporation or the Spoor-Thompson Company? A. I understood him the ones that are practically in use.

By Mr. Murray:

Q. Mr. Evins, when you ceased to be business agent practically all the theatres in Hudson County used moving picture equipment manufactured by either one of the two concerns? A. May I ask you do you mean the sound equipment?

Q. The sound equipment. A. The biggest majority were equipped with General Electric.

By the Court:

Q. How do you know that? Did you examine the machines? A. I know the sound equipment that went into the various theatres.

Q. How could you distinguish between the two equipments? A. The firm's name printed where they were bought.

Q. And did you examine them to ascertain the distinction between the two? A. That means of what make of equipment it is?

Q. Will you say now you examined them and saw the name on the machine? A. No, your Honor, but looking at the equipment what it was without going through the equipment.

Mr. Nemser: I assume the witness is referring to sound equipment.

The Witness: Yes.

By Mr. Murray:

Q. Was there any great difference in the sound equipment manufactured by the two concerns so far as principle was concerned?

Mr. Nemser: I object.

The Court: I will sustain the objection.

BY MR. MURRAY:

Q. On March 4, 1930 was most of the sound equipment in use in the Hudson County moving pictures theatres constructed on the same principle? A. Yes.

Q. Was the difference, if any, in the type of moving picture equipment or sound equipment so great as to require an operator to spend any great length of time in learning the peculiarities of either type? A. We had two men in the booth—

The Court: Read the question.

(Last question read by stenographer.)

A. No.

BY MR. MEMSER:

Q. Could a junior that was just admitted into the organization go up to Loew's Theatre and operate the machine without familiarizing himself with the machine? A. If he was a permitman.

Q. I am speaking about a new man. A. No.

Mr. Nemser: Did any of these men who became junior members were they graduated from a school for the operation of sound equipment maintained by the R. C. A. Company?

The Witness: I can't answer that.

BY MR. MURRAY:

Q. Up to the time you ceased to be business agent do you know of any men, of any junior mem-

bers, whose job was taken away from him because a senior wanted it?

The Court: How is that material? The testimony is that would be the rule if a senior was out of a job and he wanted a junior displaced. Isn't that conceded?

Mr. Nemser: Yes.

Mr. Murray: That's all.

CROSS EXAMINATION BY MR. NEMSER:

Q. Isn't it the fact that Western Electric Company makes various types of sound equipment? A. Yes.

Q. Is that true of R. C. A.? A. Yes.

Q. So as a matter of fact, Mr. Evins, the "A" theatre may have Western Electric equipment and so would the "B" theatre and they would be entirely different in the manner of operation? A. The same principle.

Q. Would you say they were both operated in the same manner? A. The same principle—the amperage.

Q. So they operate the same way. A. Yes.

Q. Did you ever hear of the Trontone? A. Yes.

Q. Did you ever hear of the United Research? A. Yes.

Q. Did you ever hear of the High Fidelity? A. Yes.

Q. Those are all different types of sound equipment that have been installed in theatres in Hudson County? A. The High Fidelity is one of the Radio Corporation of America. That is an improvement on their machine.

Q. They are all different forms of machines. A. Different switches.

Q. They all at least have different switches. A. Yes.

Q. Is there anything else different in these various types? A. Possibly their construction.

Q. Anything else? A. Various places where they have their amperes place but they all get their round from the sound tract.

Q. Do they all look alike in the exterior appearance? A. No.

Q. Are they all the same size? A. No.

Q. Are they all of the same value? A. No.

Q. As a matter of fact there are several differences in these different types of machines, isn't that so? A. Yes.

Mr. Nemser: That's all.

REDIRECT EXAMINATION BY MR. BERKOWITZ:

Q. Can you operate any machine in any theatre in Hudson County?

The Court: How is that material? You are going far afield in that.

Mr. Berkowitz: To show what the similarity of equipment is.

The Court: All right, I will let him answer that question.

BY MR. BERKOWITZ:

Q. Can you operate any moving picture equipment in Hudson County? That is, in any of these theatres? A. Yes.

Mr. Berkowitz: That's all.

BY THE COURT:

Q. Have you been in all of the theatres to examine the machines to see what they consist of? All of them I said. A. Practically every theatre.

Q. Have you ever been in the Palace Theatre in Hoboken? A. Yes, I worked there.

Q. How many years ago? A. 1929.

Q. At that time the people who owned the Rivoli in Hoboken were operating those two houses. A. Yes.

Q. Were you ever in the Rivoli in Hoboken? A. I worked there.

Q. What kind of a machine? A. Not since sound.

Q. We are only concerned about sound. That is what I understood your testimony to relate to? A. Yes.

Q. How long has the Palace Theatre had sound machinery? A. Since 1929.

Q. Did you work there then? A. No.

Q. When did you work there? A. As a relief man about three or four years prior to that continuous.

Q. That would be about 1926. A. 26, 27 or 28.

Q. You said for three years you were a relief man prior to 1929. A. Yes.

Q. Were you in the place since 1929? A. Not since they were non-union.

Q. When were you in Bishop's Theatre in Hoboken? A. Not since they were non-union.

Q. Were you ever in the U. S. in Hoboken? A. Yes.

Q. Did you ever operate sound there? A. Not since they had sound.

Q. When did they have sound? A. In the latter part of 1928.

Q. Are you sure about that as to date? A. I wouldn't say the exact date.

Q. Who was the manager? A. Mr. Botjer was the owner and Mr. Sam Tamman was the manager.

Q. You know Mr. Botjer was not the owner. A. He was supposed to be part owner.

Q. He was supposed to be the owner of Bishop's at the same time. A. After the death of Mr. Bishop.

Q. Did you work there too? A. Yes, I worked as a relief man in Bishop's.

RECROSS EXAMINATION BY MR. NEMSER:

Q. As a matter of fact you said juniors installed sound. Isn't it the fact the engineers installed the sound and taught the juniors all that was too complicated? A. If I would be allowed to answer it I could answer it and give a fair explanation. The Electrical Research sends a sound engineer into our territory. The International stipulates that one of our men, whatever the case may be, is placed on the job and helps to do the installation with the engineer that is sent there by the Electrical Research.

Q. Who does the actual installation? A. Well, I won't say he does entirely all of it. There has been some jurisdictional rights as to the handling of machines.

Q. If the juniors are competent to install sound why do they need an engineer there? A. I won't say any of our men are competent. They were placed on the job with the engineers at that time. That was the procedure.

Q. To learn. A. Like any one else at that time.

Q. Were they there to learn? A. They were to do the work in the theatre. That was the procedure.

Q. They were there to be broken in by the engineer. A. They were there to help the installation.

BY THE COURT:

Q. And they got a hundred and twenty-five a week, did they? A. Yes.

Mr. Nemser: Thats all.

REDIRECT EXAMINATION BY MR. MURRAY:

Q. How did the seniors learn how to install and operate the sound equipment? A. The same identical way.

Q. When was that sound equipment first installed in Hudson County, if you know? A. In 1928.

Q. And was there any different method adopted to familiarize seniors with that equipment that was adopted to familiarize the juniors or not? A. No.

BY THE COURT:

Q. You mean to say seniors were sent there with the engineer from the research department from which the machinery was purchased to install it? A. No. They sent the engineer and we furnished the operators.

Q. To do servicing. You testified to help to install sound. A. Both.

Q. You did say so before. You said the juniors got a hundred and twenty-five. A. I thought I was only asked about one.

Q. So the installation was also done sometimes by seniors. A. A great deal more often.

Mr. Murray: That's all.

Mr. Morris Stern: I am appearing for Samuel Stern who has been retained by four members who are junior members of Local 384 of the International Alliance. The names of these members are Neal Fargo, Walter Hentchell, George Sibery and Joseph Udeljak. We want to ask the court to intervene either as parties complainant or parties defendants in this action. We feel that we have certain rights in and to the contract entered into between the junior membership and Local 384 of the International Alliance dated February 11, 1930. As far as these four members are concerned they are satisfied, and want it noted on the record at this time, with the terms and covenants of said agreement, and they feel that unless they at this time come into court and state their position, assuming the court at some subsequent time declares the contract is void, then they may be in their original status as coming under their permit cards which they don't care to do. And for that reason they ask the court for leave to enter into the action either as parties complainant or as parties defendants. Now, I may state at this time that I have not prepared a form of petition and order to that effect. They were just started late this morning before noon and I have not as yet prepared such petition and order, but I will present such petition and order to your Honor and have your Honor file same if you feel obliged, but we want at this time to state our position.

Mr. Murray: If your Honor please I think it is untimely. This case has been pending for months and months.

The Court: He has a right to apply at any time during the progress of the case. My recol-

lection is there were others that made application.

Mr. Murray: I have no objection to their putting on the record what their position is, but certainly they shouldn't be allowed to intervene at this time.

The Court: I won't let them intervene. I observe in the file the suit was started on the 15th of June, 1933 according to the bill. Now, there are several orders admitting different parties. On the 29th of June the court on proper application admitted George Muller and Joseph Steiner as parties to the bill of complaint. By the way that application too was made by Mr. Berkowitz who is also representing the complainants. Vincent Saponar was admitted also. His petition is dated August 4, 1933. The order upon that I don't happen to have handy.

Mr. Berkowitz: There was only four, your Honor. Three men at one time and one another time.

Mr. Murray: Inasmuch as they are opposing the bill here if they are going to be admitted they ought to be admitted as defendants and they ought to come in under the answer as now filed. If they do that I will have no objection to their coming in at this stage of the game.

The Court: I won't deal with the matter until they present to me a form of petition.

Mr. Stern: Except I understand your Honor may formally close this matter today.

The Court: I don't know. The way it is going we are not making very much progress. Go and prepare your petition and I won't close the case until you come back. I am assuming you will present the petition today.

Mr. Stern: Yes, I will present it today.

The Court: If there is going to be any particular conflict of course it might raise some question as to whether you might come in at this late day.

ANTHONY BOSCARELLI, being sworn:

DIRECT EXAMINATION BY MR. BERKOWITZ:

Q. Mr. Boscarelli, can you tell us the name of the theatres and the amount of men working in the theatres which are covered by contracts or working agreements in this county in the union?

The Court: How is this man competent? You had better bring out what his competency is.

BY MR. BERKOWITZ:

Q. What position do you hold, Mr. Boscarelli? A. Business Agent.

Q. And as such you are in the field, as you might say, for the union. A. I am.

Q. You visit from time to time all the theatres within your jurisdiction that are working with your union or have working agreements. A. I do.

Q. Now, do you know where these theatres are and the names of them? A. I do.

Q. Can you give us a list of the theatres that you have contracts or agreements with and the amount of men working for them?

The Court: You don't want him to give them all. You have a list there. Let him identify it.

Mr. Berkowitz: Mine has some extra data on it.

Mr. Nemser: He can give you the approximate figures.

BY MR. BERKOWITZ:

Q. Will you look at the names there and disregard the rest and say if that is a list of the theatres in Hudson County as you know them?

The Court: You mean a list of the theatres they are identified with?

Mr. Berkowitz: Yes.

Q. Let me know if this is a list of the theatres in Hudson County that you are identified with. Is that a list of the theatres in Hudson County? A. It is not a complete list.

Q. You haven't read it all yet. Will you tell me what theatres are missing? A. Community Theatre of Secaucus.

Q. Can you tell me any other one? A. Cameo Amusement of Jersey City.

Q. Any others?

The Court: There are two already. The list is not very accurate.

A. The Plaza of Jersey City.

The Court: Why can't you gentlemen agree on the number of theatres between now and the close of the case. Why take up the time.

Mr. Murray: It seems we ought to but we haven't been able to do it yet.

The Court: All right, go ahead.

Mr. Nemser: Maybe we can clear it up.

The Court: Mr. Murray says you haven't been able to do it yet. Ask your question.

By Mr. Berkowitz:

Q. Are there any other theatres which are not on this list? A. Yes, the Liberty Theatre in Jersey City.

Q. Any others, Mr. Boscarelli? A. That's all.

Q. Now, of the last four theatres that you mentioned which are not on the list, the Liberty in Jersey City, is that operating? A. No, it is closed.

Q. How long has it been closed? A. More than three years.

Q. And the Plaza in Jersey City. Can you tell me how long that one is closed? A. About a year and a half.

Q. And it only ran for a short time and was closed for a long time prior to that. A. It was opened for about six months at least. Something like that.

Q. And during the time it was opened it had union men—the last time. I think two of the members of your union operated the place. A. Two of the members of the local as owners of the theatre.

Q. And were union members at that time. A. Yes.

Q. And the Cameo Amusement Theatre in Jersey City. How long has that been closed? A. About four years.

Q. And the Community in Secaucus. How long has that been closed? A. That is open.

Q. Now, Mr. Boscarelli, can you tell us how many theatres on this list are union and have working agreements or contracts with your union and how

many men they employ? A. How many theatres on that list?

Q. Yes. In other words, look over the list. I have them designated as union and non-union. You can check them up if you wish. A. That have contracts?

Q. Contracts or working agreements. A. That our men are working with?

Q. Yes.

The Court: He wants to know how many of those theatres have men working there by contract or otherwise.

Mr. Berkowitz: Yes.

The Court: Put a check mark on them.

Mr. Nemser: Can you testify from your own records?

The Witness: Yes.

By Mr. Berkowitz:

Q. If you have the number of theatres and the amount of men employed. A. I can't give you the amount.

Q. You can read off the name and the amount and I will check them off. A. Plaza in Bayonne.

Q. How many men in the Plaza in Bayonne? A. Two men and a relief man.

Q. That is three men employed there. A. Right. De Witt, Bayonne. At the present time there are two operators and two relief men. One relief man each week. It follows from week to week. The Lyceum Theatre in Bayonne, two men. Owner does relief. Embassy in Bayonne, the same thing. Two men and the owner furnishes the relief.

BY THE COURT:

Q. What does that mean? A. He either goes up himself—the manager.

Q. You mean the manager of the theatre? A. Yes. Fulton Theatre, Jersey City, two steady men and one relief. Monticello, Jersey City, two steady men and two relief. Apollo Theatre in Jersey City, five men split up that job. Rialto Theatre, Jersey City, two men and two relief.

BY MR. MURRAY:

Q. Is that the same as West New York? A. No, that is Jersey City.

BY MR. BERKOWITZ:

Q. Is there one in West New York? A. Yes, the same as the other place. The next one is the Tivoli, Jersey City, two men and two relief. Strand, Jersey City, five men who practically split up that job. Cameo Theatre in Jersey City, three men split up that job. State Theatre in Jersey City, five men. Loew's Theatre, Jersey City, five men. Stanley Theatre, Jersey City, five men. Orpheum Theatre, Jersey City, three men. Central Theatre, Jersey City, two men and two relief. I made a mistake on Loew's and Stanley. That is four men and one relief. Ritz Theatre—

Q. Jersey City? A. Jersey City, two men and one relief. Capitol Theatre, Jersey City, four men and one relief. Roosevelt Theatre, Union City, two men and one relief. Summit Theatre, Union City, two men and the owner furnishes relief. Lincoln Theatre, Union City, two men and one relief. Twin-Capitol, Union City, four men and one relief. Em-

bassy, Woodcliff, four men and one relief. U. S. in Hoboken, two men and one relief. Broadway, Woodcliff, two men and owner furnishes relief. Fabian in Hoboken, four men and one relief. Regent in Kearny, two men and one relief. Hudson in Kearny, two men and one relief. Union men working in theatres without contracts. Lincoln in Kearny, two men and owner furnishes relief. Mayfair, West New York, two men and one relief. Majestic in Jersey City, four men and two relief. Strand, Union City, I just got yesterday what men went back to work. Two men and owner furnishes relief. Palace in Jersey City, four men and one relief. Theatres not employing our men. Do you want them?

Q. Yes. A. Palace in Hoboken, Rivoli in Hoboken.

Q. Just a minute, Mr. Boscarelli. Will you tell us how many men are employed in the Palace?

The Court: He says they haven't their men.

Mr. Berkowitz: If he knows.

The Witness: I haven't any knowledge. That is not under our jurisdiction.

The Court: Give us the names of the theatres which you say are not union.

The Witness: Palace in Hoboken, Rivoli in Hoboken, Rialto, Hoboken. Rialto in West New York. Rivoli in West New York. Columbia, Guttenberg. City in Union City. Pastime, Union City. Temple, Union City. Community Theatre in Secaucus. Theatres closed. Twin-State in Union City. Strand Theatre in Bayonne. Plaza in Jersey City. National in Jersey City. Liberty in Hoboken. Academy in Jersey City. Liberty in Jersey City. That's all.

BY MR. BERKOWITZ:

Q. Now, Mr. Boscarelli, can you tell me this? One of the witnesses previously said that there were about two men out of work in the union at this time. Is that correct, if you have personal knowledge of it? A. Today there is only one that hasn't got a job. He is working perhaps today. If he hasn't a steady job he works two or three days.

Q. Who is that? A. Mr. Giardini.

Q. When you say all men are working do you mean a full week or part of a week? A. Part and full both.

Q. Now, can you tell me who are the senior members that are working part of the week? A. Until last week—

Q. Now, Mr. Boscarelli. A. I have one just now, a senior sick.

Q. That doesn't answer the question. Do you know of any senior man who is not working a full week? A. One is not working at all.

Q. And he is home sick. A. Right.

Q. And do you know if there are any junior members who are not working a full week? A. Yes.

Q. Can you tell us approximately the amount that don't put in six days a week? A. About eleven.

Q. Eleven that work part time. A. Yes.

Q. Do you know of any seniors who work part time in one theatre and take the balance of the work from junior members? A. There are seniors taking both juniors and seniors part time.

Q. But you mentioned before that all seniors worked a full week at this time except one man who is home sick. A. Not all in one theatre.

Q. No, but six days work is what I am talking about. A. Yes.

Q. And some of these men who are working part time—some seniors, to finish up six days they take juniors' jobs to make it a six day week, is that right? A. Well, they do and they don't.

Q. That gives them six, Mr. Boscarelli.

The Court: That might. We will see what he says.

By Mr. Berkowitz:

Q. What do you mean by that? A. I mean if a man works four days in one house he can pull a senior or a junior and get two days in another house.

The Court: Do you understand it?

Mr. Berkowitz: No.

The Court: He explained it.

The Witness: A relief man, for instance, works in a theatre two days in one house and four days in another or vice versa. The same applies to the juniors.

By Mr. Berkowitz:

Q. Do you know Mr. Dobner? A. I do.

Q. He works in the Stanley Theatre. A. Four days.

Q. And he gets paid fifteen dollars a day, is that right? A. I couldn't tell you what he makes just now. I must look up the records.

Q. You know the wage scale. Have you any record with you which shows the wage scale at the Stanley Theatre? A. I believe thirteen dollars and some odd cents per day.

Q. And do you know whether Mr. Dobner has taken any work from junior members? A. Mr. Dobner works two more days in the Strand Theatre in Jersey City.

Mr. Nemser: I object to it. There is no testimony anybody's job was taken.

By Mr. Berkowitz:

Q. He has taken two days in the Strand Theatre. A. Right.

Q. And do you know who he has taken those two days from? A. No, I don't know just now.

Q. Do you know who works in the Strand Theatre? A. I do.

Q. McCarthy, Steiner and Muller. A. That's right.

Q. All junior members of the local. A. Correct.

Q. And do you know how many days each one of those men work? A. Yes.

Q. How many days does McCarthy work? A. McCarthy works four days.

Q. How many days does Steiner work? A. Steiner works three days and some extra hours.

Q. And how many days does Muller work? A. The same thing.

Mr. Nemser: Did you ask him about Cameron?

Mr. Berkowitz: Not yet.

Q. Who else works in the Strand Theatre besides those two? A. A senior member that works four days in the Orpheum and two days in the Strand.

Q. What is his name? A. Schultz.

Q. Schultz, Dobner, Steiner and McCarthy. And Schultz is a senior member. A. Yes.

Q. He works four days in the Orpheum and he gets two days at the Strand Theatre. A. Yes.

Mr. Berkowitz: That's all.

CROSS EXAMINATION BY MR. NEMSER:

Q. How many days did the juniors work in these theatres before March 4, 1930? A. I couldn't answer that. I wasn't an officer at that time.

Q. Where does Cameron work? A. He works in the Embassy in Bayonne.

Q. How many days a week does he work there? A. Six days.

Q. How long has he been working in the Embassy in Bayonne? A. Since he became a permitman.

Q. How long ago? How many years? A. Since 1928 or 29.

Q. And he has been working there ever since. A. Yes.

Q. Has the theatre been opened all the time? A. Except during two weeks, during the summer vacation.

Q. How about the complainant Barkowski? Where does he work? A. In the same place.

Q. How many days a week? A. Six days.

Q. How long has he been working in that place? A. Six years ago.

Q. How about McCarthy? Where does he work? A. Strand Theatre in Jersey City.

Q. How long has he been working? A. Three years.

Q. How many days a week? A. Four days a week.

Q. Take the complainant Muller. What theatre does he work in? A. Strand Theatre in Jersey City.

Q. How long has he been working there? A. Three years or more.

Q. And how many days a week? A. At the present time three days and several hours.

Q. How about the complainant Steiner. What theatre does he work in? A. The same place.

Q. And how long has he been working? A. About three years.

Q. And how many days does he work? A. At the present time three days and several hours.

Q. How about the complainant Sapanor. What theatre does he work in? A. Cameo Theatre.

Q. In Jersey City? A. Yes.

Q. How long has he worked there? A. About a year and a half.

Q. And how many days a week? A. That job is split up between three men. They average five days one week and three days every other week.

Q. How about the complainant Giardina? In what theatre does he work? A. He is not working regularly in any theatre at the present time.

Q. What was the last time? A. Transfer Theatre.

Q. Where? A. In North Bergen.

Q. Was that closed? A. It was closed and reopened a week after it was closed with non-union men.

Q. Now, you testified before that out of seventy-four senior members you said seventy-two work six days a week. A. Out of seventy-four?

Q. You have seventy-four senior members, haven't you? A. Yes.

Q. You testified before excepting one man they all work six days a week. A. This week.

The Court: One man sick this week.
The Witness: Yes.

BY MR. NEMSER:

Q. How many last week? A. Last week one man sick and one man worked four days.

Q. Are there any seniors today working five days a week? A. Most all of the seniors work five days a week, but it is equivalent to six days because they work Saturday nights. They get three hours each. They get three hours' pay for each day there.

Q. In the jobs that the seniors work with the juniors—there are some jobs of that kind, isn't that so? A. Right.

Q. Is there any difference in the rate of wages? A. On the same job both men get the same money.

Q. Both juniors and seniors. A. Yes.

Q. How many theatres have you under contract that are closed now, do you know? Can you remember that without consulting your records? A. Now? About seven.

Mr. Nemser: That's all.

REDIRECT EXAMINATION BY MR. BERKOWITZ:

Q. Weren't you mistaken when you said Saponar worked for a year and a half in the Cameo? Do you know when the Cameo opened? A. Wasn't it January or February in 1933? A. I think around September of 1932.

Q. That's the best of your recollection? A. Yes.

Mr. Berkowitz: That's all.

JOSEPH STEINER, being sworn:

DIRECT EXAMINATION BY MR. BERKOWITZ:

Q. Mr. Steiner, you are one of the complainants? A. Yes.

Q. Have you got your working card? A. I have.

Q. Are your dues paid up? A. They are.

The Court: No one is questioning that.

Mr. Nemser: All the complainants are paid up and in good standing.

BY MR. BERKOWITZ:

Q. How long have you been engaged in the trade of moving picture machine operator? A. Since 1929.

Q. What theatres have you worked in during that time? A. Well, I put time in considerable theatres.

Q. Can you give us a list of the theatres? A. Yes. The Strand in Jersey City. The Strand in Union City. The Ritz in Jersey City. The Tivoli in Jersey City. The Hudson in Kearny. Loew's in Jersey City. The Summit in Union City, and I think one or two more I just can't recall.

Q. Were you ever discharged for incompetency from any of these theatres?

Mr. Nemser: I object as absolutely immeterial.

The Court: I will sustain it. There is no question of incompetency.

BY MR. BERKOWITZ:

Q. Were you ever discharged for lack of qualifications?

Mr. Nemser: I object. It calls for a clear conclusion.

The Court: I don't think the other side are even claiming they were discharged.

Mr. Murray: The purpose is to show the setting up of this junior department was not because of any question of competency of these men, because they were all competent.

The Court: Nobody is claiming that.

(After further argument.)

The Court: My determination is they are competent and you are losing a lot of time. I will sustain the objection. It is incompetent.

Mr. Murray: To save time I hope the same ruling will be made as to the other questions.

The Court: As to incompetency but not as to their qualifications.

By the Court:

Q. Let me ask you. What did you do before 1929? I have a reason now in asking you. A. Right before I became an operator I was a real estate salesman.

Q. When did you come into the organization? What year and what month? A. I was accepted in on March 4, 1930.

Q. March 4, 1930. Now, before that in February, 1930, what did you do? A. In February, 1930?

Q. Yes. A. I was a permitman.

Q. Before you became a permitman what did you do? A. Before I became a permitman?

Q. Immediately before. A. Immediately before I learned the business of operating.

Q. Immediately before you learned the business of operating what did you do? A. Real estate.

Q. Were you in the insurance business? A. Yes.

Q. When? A. I had a business. That was in 1921.

Q. And from that you graduated into the real estate business? A. Yes.

Q. What qualifications did you have for the real estate business? A. It seems a gentleman was willing to take me in and teach me the business from the ground up.

Q. You went into the real estate business and was there for how long? A. Up until the time I became a projectionist.

By Mr. Murray:

Q. Mr. Steiner, how long did it take you to learn the motion picture business? How long were you in the moving picture business as a permitman before you went into the organization on March 4, 1930? A. Well, all told it was about three or four months.

Q. And that is how you became a permitman? A. Yes.

Q. How long had you been learning the motion picture operating business before you became a permitman? A. That is what I said. Before I became a permitman I studied three or four months or a year.

By the Court:

Q. What is the fact? A. From three to six months.

By Mr. Murray:

Q. You studied the business from three to six months before you became a permitman? A. Yes.

Q. Where did you study? A. I studied in a school in New York City.

Q. What school? A. Brown's School of Projection.

Q. Did you finish your course there? A. Yes.

Q. And got a certificate? A. Yes.

Q. Then what study did you take? A. I went into the booth and got practical experience.

Q. Whereabouts? A. In Loew's in Jersey City.

Q. For how long? A. Perhaps six weeks.

BY THE COURT:

Q. With whom did you go there? A. I was working there at that time with Brother Boscarelli, Steiner and Boyd.

Mr. Nemser: You are a Steiner.

The Witness: Yes, I happened to be there with my brother Francis. There were Marcus, Dulberger and Voorhees.

BY MR. MURRAY:

Q. Were they there with you? A. They were there at different times.

Q. Were they there learning also? A. No, they were the projectionists on the job.

Q. They were giving you the practical experience. A. My brother was giving me the practical experience.

BY THE COURT:

Q. Why your brother alone? A. He was the one I went to if I wanted to find out anything. I asked him the questions.

Q. Then you didn't serve with those men? A. I was just working there when they were on the job.

Q. You got no instructions from them. A. No.

Q. You got your instructions from your brother. A. From four to six weeks. What is the question?

Q. Is it six weeks or four to six weeks you got instruction there? You said six weeks and now you said four to six weeks. A. What I said before, six weeks I worked in that booth. Approximately four to six weeks.

Q. You didn't say approximately six weeks, you said six weeks. Now, is it six weeks or less? A. About six weeks.

Q. Was it six weeks? A. I couldn't state exactly.

Q. Do you remember you did say six weeks? A. Four to six weeks I worked there.

Q. Do you remember saying you were there six weeks? If you don't remember, say so. A. I don't recall.

Q. Then it was four to six weeks. A. The elapsed time was about, I think, six weeks, but the entire time I actually put in on work was less due to the fact I was not down there perhaps every day or every shift.

Q. You were not assigned there. You just went there to get the beneficence of your brother. A. That's it.

By Mr. Murray:

Q. Have you ever had a job taken away from you by any officer of your local and given to a senior?

Mr. Nemser: I object unless there is an explanation given about taking away a job.

The Court: I will let him answer it.

A. Yes, I have.

BY MR. MURRAY:

Q. Can you tell us just what happened, and when and where, naming the place. A. Really I was what we term "bumped off".

The Court: You are not asked that. Get those terms out of your head.

The Witness: I was taken off a job.

BY MR. MURRAY:

Q. By whom? A. The business agent.
Q. When? A. In July.
Q. Of this year? A. Of 1933.
Q. And what job? A. At the Strand Theatre.

The Court: Tell us the particulars.

The Witness: I was taken off in July until, I believe sometime in December.

BY MR. MURRAY:

Q. Who had your job in the meantime? A. Henry Stubel.

BY THE COURT:

Q. He was a senior, was he? A. Yes.
Q. What reason did the business agent assign to you for your being taken off? A. Due to the

fact that a senior member had lost his job because the theatre closed up for the summer and he assigned him, or the senior chose my job, and I was taken off by the business agent.

Q. Was that the first time that ever happened to you since 1930? A. No, it isn't.

Q. Then you weren't surprised by being taken off the job to make room for a senior? A. No, I wasn't.

By Mr. Murray:

Q. How many times have you lost jobs in the same way? A. I have been taken off exactly three times, and two days have been taken away from my regular week to give to senior members.

Q. When did you first learn that the fee required to be paid by you in order to become a senior member was three thousand?

Mr. Nemser: I object. It is immaterial when he first learned it.

The Court: I will let him answer it. It will save time.

A. It was the meting before the last or the last meeting in November, 1933.

By the Court:

Q. When did you find out as to that order going into effect? A. Two months ago.

By Mr. Murray:

Q. Did you attend the assembly meeting on March 4, 1930? A. Yes.

Q. Was there anything said by anybody at that assembly in regard to what the initiation fee was or wasn't going to be? A. No.

Mr. Murray: That's all.

CROSS EXAMINATION BY MR. NEMSER:

Q. Your counsel asked you before what theatres you worked in and you gave a list of four or five theatres, including Loew's. A. Yes.

Q. Did you ever work in Loew's and draw salary? You didn't mean that, did you? A. No.

Q. What you meant is you got about four or five days of experience with your brother covering a period of six weeks. A. What I meant I projected pictures onto the screen.

Q. Are you known as a projectionist or an operator? A. It is difficult to answer.

Q. In 1929 you said you were an operator, is that so? A. Yes.

BY THE COURT:

Q. What is the difference between the two? A. I really couldn't think of the difference.

Q. Why do you call yourself an operator one time and a projectionist another time? A. For the simple reason a number of years ago our business agent mentioned we should classify ourselves as projectionists, and I have done it ever since.

Q. How long ago? A. About two and a half years ago.

Q. Mr. Evins? A. Yes.

Q. Mr. Evins was the business agent when you signed your application? A. Yes.

Q. You were called an operator then. A. He didn't tell me when I signed the application.

Q. As a matter of fact, operator is the proper term in the union. A. I believe it is.

BY MR. NEMSER:

Q. Mr. Steiner, just before you became a permit man you had never worked in any theatre either as an operator or a projectionist. A. No.

Q. And what was the first job you got as a permit man? A. I don't recall.

Q. Do you know in what theatre it was? Do you know how much you made a week on the first job? A. I didn't have a full week.

Q. You are working now in what theatre? A. The Strand in Jersey City.

Q. And when did you commence to work in the Strand? A. The latter part of 1931.

BY THE COURT:

Q. You mean to say you can't tell us the first job you had? A. I can't your Honor. The reason is I was a permit man and was sent one day here and two days there for relief.

Q. Your first job didn't make any impression on your mind so that you can tell where it was. A. No.

REDIRECT EXAMINATION BY MR. MURRAY:

Q. You have been working in the same theatre for how many years? A. I have been working on and off in the same theatre since 1931.

Q. You have been working there steady since the theatre was opened? A. No.

Q. How many days a week do you work there? A. The most I worked there was five days.

Q. How many do you work there now? A. Three days and a few hours extra.

Q. Do you work in any other theatre? A. No.

Q. Then you have been working in the same theatre for two years? A. Yes.

Q. And you originally started there how many days a week? A. Two.

Q. And you are working there now three days? A. Yes.

BY THE COURT:

Q. Three days and some hours. How much do you earn per week now? A. I receive twenty-nine fifteen.

RECROSS EXAMINATION BY MR. NEMSER:

Q. That is after the cut? A. That is today.

BY THE COURT:

Q. It has been testified the average pay is thirteen dollars and some cents and you work three days and some hours? A. That is only in the higher theatres.

Q. How much do they get? A. Eight fifteen.

BY MR. NEMSER:

Q. You say you were taken off the Strand Theatre job and Stubel replaced you? A. Yes.

Q. And that was August to December, 1933? A. Yes.

Q. During that entire period of time did you work any place at all? A. No. I put in a few days.

Q. You did work in between? A. Yes.

Q. Did you work in the Strand in between? A. No, I did not.

BY THE COURT:

Q. How much did you work in between? A. Well, I couldn't tell you exactly, but I could approximate in the months I was out I had five or six days.

Q. Now, what is the fact, a few days or five or six days during the months from August to December? A. I couldn't exactly state.

BY MR. NEMSER:

Q. When did you go back on the Strand Theatre job? A. In December.

Q. And you have been working there ever since? A. Yes.

Q. At that time you got a letter, didn't you, from the senior member that exercised his seniority rights? A. Yes, I did.

Q. Who was he? A. Henry Stubel.

Q. And have you the letter with you? A. No, I have not.

BY THE COURT:

Q. Was that the mode of procedure they came with a letter to you? A. No, your honor. It was due to the fact we were in litigation in this court and the court urged they were supposed to give us notice.

Q. Did you hear the court or did somebody else tell you? A. My lawyer told me.

Q. He might not have told you right.

Mr. Nemser: We agreed on it.

The Court: All right.

By Mr. Nemser:

Q. Is there any other theatre you have worked in since you became a junior member in which a senior has grabbed some of your time? A. Only in the Strand Theatre.

Q. Who else besides Stubel? A. Louis Spano.

Q. When was that? A. The latter part of 31 or the early part of 32.

Q. How many days did you lose then? A. I had two days in the theatre at that time.

Q. He took two days? A. That's all I had and he took the two days.

Q. For how long? A. Oh, for about three or four months.

Q. And were you working in other theatres in between? A. No.

&. What other occasion did it happen? A. Ed Schwab.

Q. When was that? A. He also took two days from me in 1932.

Q. Is there a Spano who was a junior in the organization? A. Yes.

Q. Which one took your job? A. The senior member.

Q. Did he give you notice? A. He did not.

Q. What theatre? A. The Strand Theatre in Jersey City.

Q. The same theatre you are working in now? A. That's right.

Q. No one has been coming now taking you off the job. You have more than when these men bumped you off the job. A. These men haven't any of my time now.

Q. Nobody has any of your time? A. Oh, yes, two men have mine.

Q. When did they take that? A. One of them came in the latter part of 1932.

Q. You mean a senior? A. Yes, Arthur Schultz. And another member came in the early part of 1933—Dobner.

Q. Did you ever object to anybody about Schultz and Dobner taking your job? A. I did to the executive board.

Q. Why did you object? A. I didn't think it was a fair practice.

Q. But you knew about the practice when you came in? A. I did.

Q. Why did you object? A. They said they wouldn't take any work off or lose any time.

Q. Do you remember when it was you objected to the executive board? A. I can't remember the date.

Q. The year? A. 1933. And also 1932 I objected to the business agent.

BY THE COURT:

Q. What is his name? A. Elisha Evins.

Q. What did he say? A. He said this man, I believe Pagano, at that time was hungry for money and he refused to stay out of work a week or two until he was settled on his new job and he was down there crying for work and he had to do something and he gave him my time in the Strand.

BY MR. NEMSER:

Q. You say you protested to the executive board in 1933? That was the same year this suit was brought? A. Wait a minute.

Q. At any rate it wasn't 1933? A. Yes, I protested, too.

Q. Now, you protested again in 1932? A. Yes.

Q. Now, there were three occasions when you were taken off the job. When was the first time? A. 1931.

Q. Did you protest then? A. Yes.

Q. To whom? A. The agent, Evins.

Q. And what did he say? A. He said, "Well, things will be straightened out shortly. Just abide with us".

Q. So you worked then from the time you signed the junior membership contract in March, 1930, down to sometime in 1931 without any interruption by the seniors? A. Repeat that again.

Q. From March 4, 1930, down to sometime in March, 1931, you worked on various jobs without any interruption by any senior? A. Yes, but I had very little work.

Mr. Nemser: I ask that be stricken out.

The Court: Yes.

BY MR. NEMSER:

Q. In what month in 1931 were you knocked off by a senior? A. I don't recall.

Q. The latter part of 1931? A. Yes.

Q. And you protested to Evins? A. Yes.

Q. And you protested again in 1932? A. Yes.

Q. Don't you know that Evins wasn't business agent in 1932? A. That's right.

BY THE COURT:

Q. Were you wrong in the statement you made? A. I was wrong. I didn't protest to Evins the second time. It was business agent Boscarelli.

BY MR. NEMSER:

Q. What did Boscarelli say to you? A. He told me it was in the contract I signed.

Q. Oh, he called it to your attention? A. Yes.

Q. What did you say? A. The same as I am saying now, "I did not think it was such a justifiable thing. Due to the fact I didn't have much work at the time they should allow me to earn enough to keep my family together and get along".

BY THE COURT:

Q. When was it you were told that the man who was seeking your job was hungry for money? A. Beg pardon.

Q. When were you told that the man who was seeking your job was hungry for money? A. In 1931.

Q. Are you sure it was 31? A. Yes.

Q. What time in 1931? A. I think it was 1930.

Q. You are sure it was Evins? A. It was Evins. I know that.

Q. Just repeat what Evins said to you? A. Well, he said to me the man was hungry for money and was down there crying for work and in order to quiet him they had to send him on my job, and I complained mainly because I had went to work that day and when I appeared there I found this other senior man on my job, and he told me he was taking me off from that day on. So I said I didn't

think that was right to come in without even a day's notice. That when I came on the job I should at least be paid for that day, and I went right down and protested to Evins.

Q. When Evins told you that why didn't you object to the executive board? A. He said it would be all right presently.

Q. Didn't you know the by-laws provided a method of appeal? Didn't you know that Section 5 of the by-laws provided you had a right to appeal to the local union from any officer's decision? A. Yes.

Q. You didn't do that? A. No.

Q. Why not? A. Because I felt by doing that I would harm my status in the organization.

Q. You knew if the union decided against you you could appeal to the International President? A. Yes.

Q. And you knew you could appeal from the decision of the International President to the General Executive Board. You knew that? A. Yes.

Q. And you knew you could appeal from the ruling of the General Executive Board to the Alliance Convention. You knew that too, didn't you? A. Yes.

Q. But you concluded you wouldn't resort to any of those methods of appeal because of your assumption it might hurt your status? A. That and the time it would take if I went to the Convention.

Q. Leaving out the question of the Convention you didn't take the time to appeal to the local union? A. No, I didn't. But I assumed, as I said before, that Evins handled those matters.

By Mr. Nemser:

Q. I show you a junior member contract dated March 4, 1930, and ask you whether you signed that? A. I did.

Mr. Nemser: I ask it be marked for identification.

Q. I also show you the application annexed. That is your signature, isn't it? A. That's right.

Mr. Murray: You can put them in evidence if you want.

Mr. Nemser: All right, I offer them as one exhibit. Suppose you marked them for identification.

(Contract and application marked D-6 for Identification.)

Q. Did you attend the banquet given in April, 1930, by the juniors to the seniors? A. I did.

Q. And did you contribute to it? A. I had to.

Q. By whom? A. I don't recall.

The Court: You had better get your thoughts together. You are inferring a lot of matters that are concercive.

Mr. Murray: I call attention to the fact it was by virtue of counsel's objection—

The Court: I will allow counsel to bring it out to test the sincerity of this witness.

By the Court:

Q. Can you jog your memory and tell us whom you consider required you to contribute to that banquet? A. I do not recall your honor, I am frank to say.

Q. Do you want to adhere to that statement you were required to? A. I recall this much—

Q. Do you want to adhere to that statement that you were required to contribute to it or do you want

to withdraw the statement? A. No, I will stand by it.

Q. Then tell me who told you. A. I don't recall, your honor.

Q. Then tell me when it was done? A. It was done at the meeting hall, the reason—

Q. I don't call about the reason. You said at the meeting hall. When? A. It was quite sometime before the banquet and I was asked to contribute thirty-five dollars.

Q. Who was present when you were asked? A. I think Theodore Cancalosi.

Q. Will you say he was the one? I. don't want your guesses now, I want the fact. A. Theodore Cancalosi was present at the time.

Q. Now, who asked you to contribute? You said you were asked to contribute thirty-five dollars. I want to be able to test you. It is no mean sum of money. A. It is a long time ago.

Mr. Murray: If the witness don't remember I don't think he should be asked the same question over and over again.

The Court: You be seated, Mr. Murray.

Q. Will you tell us who it was that asked you to contribute thirty-five dollars?

The Court: Personally I don't believe the witness, Mr. Murray, and I am interrogating him to give him a chance to get out of a hole. That's the view I take.

The Witness: I retract that statement.

The Court: My judgment was correct. Go ahead.

Mr. Nemser: That's all.

REDIRECT EXAMINATION BY MR. MURRAY:

Q. What happened or what was said or done that made you feel you had to contribute thirty-five dollars?

The Court: I will overrule that question because he said he was wrong in making that statement.

Mr. Murray: If your honor please I ask that the witness be given an opportunity to explain why he felt he had to contribute to that dinner.

The Court: I will overrule the question. All right, go ahead. Put this witness in whatever position you like. If he persists in lying I will make an example of him and I will make an example of you if you take the action which you did a few moments ago.

Mr. Murray: I didn't mean any disrespect.

Q. Will you tell us? If you don't remember say so. If you do please tell us. I cannot remember the facts exactly enough to in anywise have them verified so I would rather not answer the question.

Mr. Murray: That's all.

BY THE COURT:

Q. Do you still insist that you were required to pay thirty-five dollars toward that banquet? A. I did not pay thirty-five dollars your honors.

Q. You mentioned thirty-five? A. I said they asked thirty-five dollars from all junior members.

Q. Don't say they asked. You said you were asked. A. Those who were doing the asking who got up the banquet assessed every junior thirty-five

for the expense of this banquet. When I complained about the thirty-five being too much they said "All right, if you are out of work you only have to pay twenty".

Q. So long as you remember that much about it— A. That just recalls to my mind your honor that part of it. I gave it to the business agent.

Q. You are a little too swift. As long as you are able to recall that will you tell me who told you you didn't have to pay thirty-five and would only be required to pay twenty? A. That I couldn't be sure of your honor. The only thing—

Q. If you don't know I don't want your guess. A. I want to tell you who I paid some of the money to.

Q. I don't care about that. Everybody paid money. They were given a receipt and the amount that everybody contributed was mentioned. I think fourteen hundred was the amount contributed, if I remember the figure right. A. I paid to Brother Evins, the business agent, at that time eight dollars and received a receipt from him.

Q. Did anybody other than Brother Evans talk to you about giving any money towards that banquet? A. Both Brother Evans and Brother Cancalosi.

Q. Did Brother Evins tell you you had to pay twenty dollars? A. I believe he was the man.

Q. Did he tell you? A. I don't know.

The Court: That's all.

Mr. Berkowitz: That's all.

WILLIAM CAMERON, being sworn:

DIRECT EXAMINATION BY MR. MURRAY:

Q. Mr. Cameron, before you became a permitman how much time did you spend in learning the business of moving picture operator? A. That would be hard to say. I would say six months.

Q. When did you become a permitman? A. In June of 1929.

Q. And will you tell us how and where you learned the business of moving picture operator during that six months as nearly as you can remember? A. I was an expert electrician some eighteen years ago, and during that period I was sent to work in a moving picture theatre in Europe, and during that time I was offered a job there as assistant, and that is where I picked up the trade of moving picture operator.

Q. Where? A. In the Town of Greenock.

Q. And when you picked up the trade as you put it in Europe did you then continue in the trade or did you stop? A. No, I stopped.

Q. When did you resume? What year? A. In 1929.

Q. And where did you start in? A. The Embassy Theatre in Bayonne.

Q. Under whose instructions were you there, if anybody? A. I wasn't sent there under anybody's instructions. I was sent there as an operator.

Q. Then you had learned the business by that time? A. Yes.

Q. Did you go to a school anywhere? A. I went to a school in New York.

Q. What was the name of it? A. I can't remember the name of the school. I only spent a few hours each morning.

Q. And you were given a job as well as given a permit? A. Yes.

Q. Can you give us some idea of the number of different theatres you have worked in since you became a permitman? A. Only one.

Q. Which one? A. The Embassy Theatre where I am employed in Bayonne.

Q. Has any of your working time in the theatre been taken away from you by any officers of the local and given to a senior? A. No.

Q. When did you first learn that the initiation fee or the fee for admission to seniority in the local had been increased to three thousand? A. About two months ago.

Q. Were you at the assembly meeting on March 4, 1930? A. Yes.

Q. Was there anything said there in regard to what the fee payable by a junior for admission to seniority was or would be? A. No.

By the Court:

Q. Do you remember what was said there at that time? A. About the initiation fee?

Q. That is away back in 1930. Do you remember what was said at that meeting? A. Part of it.

Q. Who spoke? A. The then president Walter Bemis, the business agent Mr. Evins, and one other gentleman that I can't recall. He was an entire stranger to me. I just came into the organization.

Q. What did Mr. Bemis say? A. He read off parts of the contract to us.

Q. Bemis? I thought Evins did that. A. No, according to my recollection Bemis did.

Q. What did Evins do? A. Towards the end he read off the contract. Bemis' eyes hurt him and Mr. Evins finished the job for him.

Q. Then Mr. Evins did not read that paragraph by paragraph and explain it at the end of each paragraph? A. No, sir, Mr. Bemis.

Mr. Murray: That's all.

CROSS EXAMINATION BY MR. NEMSER:

Q. Was the contract read from beginning to end? A. Yes, sir.

Q. In your presence? A. Yes, sir.

Q. And did Evins or Bemis or somebody call upon different permitmen to get up and say something? A. No, sir.

Q. Did they ask if anybody had any questions to ask? A. No, sir, not to my recollection.

Q. Now, you have been working on the same job for over four and a half years at this time? A. Yes, sir.

Q. The first job you ever got from the time you signed your application in June, 1929? A. Yes, sir.

Q. Six days a week? A. Yes, sir.

Q. And how much is your salary now? A. Forty-two.

Q. What was the salary you got in March, 1930? A. Fifty-two.

Q. Was it ever more than fifty-two? A. Sometimes.

Q. How high did it ever go? A. Ninety-one seventy-five for a seven-day week.

Q. For a seven day week? A. Yes.

Q. Did you ever make more than ninety-one a week? A. A question of overtime which we didn't get at that time. It was spread over a period of payments.

Q. And did you ever make more than ninety-one dollars a week as your regular wages? A. As I just explained ninety-one dollars and the installation money when we put in the new equipment. I worked some hours overtime and received pay for it but that payment was spread over a period of weeks.

Q. That was all in 1930? A. That would be—

Q. It was the same year during which you signed the junior member's contract? A. No, the original equipment was being replaced at that time. I was sent to work in the house.

Q. Did you ever make seven hundred and sixty-one dollars in one month? A. No, sir.

Q. Did you ever pay seventy-six dollars as a ten percent for the months of either January, February or March, 1930? A. No, sir.

Q. Who did you pay the ten percent to? A. To the business agent.

Q. Did you get a receipt for it? A. Practically for the first eighteen months we didn't get no receipt.

Q. Who collected it all that time? A. Mr. Evins.

Q. And you never got a receipt for it? A. No.

Q. And since when have you been getting receipts? A. I would say for the past two years or more.

Q. Since the present officers have been in office? A. I believe that's so.

Q. And there is a regular slip made out for the ten percent? A. Yes.

Q. What's the highest you ever made in one month? A. The highest I was ever paid was ninety-one seventy for a seven day week. If I had made a full month and including the overtime I received from the installation the highest I could possibly

receive from the house would be around three hundred and eighty.

Q. Mr. Cameron, I call your attention to C-1 for Identification, which the the junior members ten percent for the year 1930, and alongside your name W. Cameron for the month of March thirty-five, and for the month of April, 1930, seventy-six dollars. That means you earned seven hundred and sixty that month? A. It doesn't mean I earned seven hundred and sixty.

The Court: It means you paid ten percent on a total of seven hundred and sixty.

The Witness: No, sir.

The Court: What do you think that seven hundred and sixty dollars represents?

The Witness: That means I would earn seven hundred and sixty in the month of April, 1930.

By Mr. Nemser:

Q. You don't recall paying Mr. Evins that amount of money? A. No.

Q. I show you a junior member's contract dated March 4, 1930, and ask you if you signed that contract? A. Yes.

Q. And is that your signature on the application annexed? A. Yes, sir.

Q. And your application is dated June 15, 1929, is that correct? A. Yes.

Q. From that date on you were working in the same theatre six days a week? A. Except when I had to give up to the unemployed members.

Q. How often did you do that? How much time have you given up to unemployed members since

June 15, 1929? Altogether, now? A. I worked continually in that theatre up until the middle of 1930. We were very busy and I couldn't get a day off. After that the times slowed up and a relief man was sent there for one day and that was extended to two days and then they extended it to three days. I worked under that system for about four days a week until 1932. In September, 1932, a contract was drawn up by the local and the theatre in which I was employed for the substitution from one man in the booth to two men in the booth and my relief man came in as the second man, and there was two men in the booth. In 1932 and 1933 we worked under that arrangement, and in 1933 we were ordered by the executive board to give up certain parts of our time to unemployed members which we complied with. And that remains up to now.

BY THE COURT:

Q. What did you mean a moment ago that the relief man came in as the second man in the booth? You mean subordinate to you? A. No, sir, no chief. He made the second man in the booth.

BY MR. NEMSER:

Q. Who do you work with, a junior or a senior? A. A junior.

Q. Now, at the present time you are working six days a week? A. Yes, sir.

Q. Now, Mr. Cameron, did you go to the dinner which the juniors gave to the seniors in April, 1930? A. Yes, sir.

Q. And did you contribute to the payment of it? A. Yes, sir.

Q. How much did you pay? A. Thirty-five.

Q. Who did you pay that to? A. Jack Woods.

Q. And did you attend the dinner yourself personally? A. Yes, sir.

Q. And did you hear speeches there? A. No, I wouldn't say I did. I came there late and was stuck in a small dining room off the main room.

Q. And do you recall any of the juniors speaking at that dinner? A. No.

Q. Did you hear Mr. Wood or Mr. Nyland making a speech? A. I don't remember.

Q. Do you recall any of the juniors who did speak praising the senior members and thanking them for taking them into the department? A. I didn't hear them.

Mr. Murray: I object as not proper cross examination.

Mr. Nemser: I withdraw it. That's all.

REDIRECT EXAMINATION BY MR. MURRAY:

Q. Mr. Cameron, at a meeting or an assembly of the local of the junior department did you ever make a request of the officers for information as to the financial affairs of the organization? A. Yes, sir.

Q. Will you tell us when that was about, as near as you can remember?

The Court: And whom you made the request of.

A. I was obligated into the organization on March 4th and the following meeting after that, I couldn't remember whether one week or one month after that but the following meeting so far as my recol-

lection goes, I got up and asked the chair when we could expect a financial statement.

By Mr. Murray:

Q. Did anybody make a reply? A. I asked the chair the question but the business agent replied.
Q. And what did he reply? A. He said "When the seniors are ready. We will tell you when we get good and ready".

The Court: That was Mr. Evins.
The Witness: Yes.

By Mr. Murray:

Q. Was any member of the executive board present then? A. I wouldn't care to state.
Q. Who was in the chair? A. Mr. Bemis.
Q. He was the president of the local? A. Yes.

Mr. Murray: That's all.

Recross Examination by Mr. Nemser:

Q. Where were you working in June 1929 just before you made your application? A. As an electrical contractor.
Q. Where? A. 1 and 3 Edna Place.
Q. In business for yourself? A. Yes, sir.
Q. How long had you been in business for yourself? A. Roughly two and a half years.
Q. What had you done before that time? A. I worked for electricians in my trade.
Q. Where? A. In New York City.
Q. How long have you been with the electricians? A. Ever since I came to this country sir.

Q. When was that? A. 1920.
Q. Are you a citizen? A. Yes, sir.

Mr. Nemser: That's all.

By the Court:

Q. I heard you say it took you six months. What did you have reference to? A. That was the period of time when I was working in that theatre in Greenock, Scotland. It was a union shop and that is the reason I stayed on there until I finished my trade as an electrician.

Q. From there you came to this country and you went to a school in New York the name of which you don't remember, and you spent two hours a day. A. Three days two hours a day.

Q. And from there you went and took a job down in Bayonne. A. Yes.

Q. Who designated you to go down there? A. The business agent called me up at the house one day and asked me if I could be at the Embassy Theatre at two o'clock.

Q. You mean Evins? A. Yes.

Q. You went there with that scant experience of two hours a day for three days and took charge? A. I wasn't in charge. There was an operator there.

Q. Who was the other operator? A. Charles Ingersoll.

Q. And if Ingersool dropped dead or took ill then you were supposed to take charge? A. I did take charge. My employer recognized me at the time as competent.

Q. I am not speaking of the owner. One of you men had to take charge. A. The other man said "Are you an operator? and I said "Well, I

wouldn't exactly call myself an operator, but I am an electrician". He said "That's fine. You take the sound and I will take the rewinding bench".

Q. And from that time you took the sound. A. Until that man went out of the theatre. He was living in Jersey City three miles away.

The Court: Any other questions?
Mr. Nemser: No.

VINCENT SAPONAR, being sworn:

DIRECT EXAMINATION BY MR. BERKOWITZ:

Q. Mr. Saponar, how long have you been engaged in the moving picture business as an operator? A. Since I am in the local.

Q. As a moving picture operator either as a member of the local or before that? A. Since I have been twelve years old.

BY THE COURT:

Q. You mean you were a regular operator although you were only twelve years old? A. I take great pride in saying I was the youngest reel boy in the business.

Q. At twelve years of age? A. Yes.

BY MR. BERKOWITZ:

Q. When you say you were a reel boy you was not operating, you were working around the booth.

The Court: He said he was an operator.
The Witness: Yes.

BY MR. BERKOWITZ:

Q. When you say you was a reel boy what did you do? A. I wound up the reels for the operator in the theatre for about a year that way until I got to be about thirteen and I used to run the reels at night in a theatre in Jersey City.

BY THE COURT:

Q. Where did you do that in Jersey City? A. In the Minerva Theatre on Ocean Avenue.

Q. You knew there was a law applicable to a business of that kind? A. Yes.

Q. But you didn't pay any attention to it. A. No.

BY MR. BERKOWITZ:

Q. In what theatres have you worked in during the time you made application to become a member of Local 384? A. Ninety per cent of the theatres in Hudson County.

Q. Let me ask you this. What theatres didn't you work in in Hudson County? A. The three houses up at the square and the Regent and the Hudson in Kearney and the Temple and Nicolletti's places.

BY THE COURT:

Q. How about the Pastime in Union City. Did you work there? A. One day.

Q. How long ago? A. About 1928 or 29.

Q. Who operated it then? Do you remember who managed it at that time? A. No, I was only there one day.

By Mr. Berkowitz:

Q. When did you first learn that the initiation fee to become a senior member was three thousand? A. When did I first learn?

Q. Yes. A. About three or four months ago.

Q. Now tell me, has any senior taken your job at any time you was working since March 4, 1930? A. No, sir, only a junior.

Q. Have you worked steady since March 4, 1930? A. I did work pretty steady up until about 1932.

By the Court:

Q. You don't seem to have any complaint against the seniors, isn't that what you say? A. Yes, but the seniors were the cause of it.

Q. As long as you volunteered that tell me how you know that. A. I was in the Majestic Theatre. They closed up the house after having a full season and when a house closes up you stay out of work unless a fellow can get a day here and a day there. And when the house did open when it closed for three months and it opened up in September of 1931, I didn't go back due to the fact that the president and the business agent sent their relations. They gave all the jobs to their relations, their sons and nephews and cousins.

Q. Who told you that their relations were their sons and their cousins? A. No, they didn't tell me that. I knew that.

Q. Where did you get your information from? A. To be a relation you have to be a son or a cousin.

Q. A brother-in-law is a relation, but you knew they were sons? A. Yes.

Q. Tell me if you know how you knew the seniors were instrumental in taking the issue in taking

your job. A. The senior body designated the giving out of the jobs at that time. The delegate told me not to go back and the president told me "Well, we have another man covering your job—a junior".

Q. Why did you say that the seniors were instrumental in putting another man on your job? A. They were the only men at the time who could put men on a job.

Q. You mean they were the only men, or the business agent. A. The busines agent told the executive board.

Q. And he told you the relations wanted a job. A. And they were going to get it and they did get it.

Q. Who do you say got it? You told me a junior got it. A. They did put a junior on this job.

Q. Was the junior a relation of the seniors? A. Yes.

Q. What relation was he and what senior? A. Lawrence.

Q. Was he a senior? A. No, a junior.

Q. What senior was he related to? A. Howard Boyd.

By Mr. Berkowitz:

Q. Do you know of any other junior member who was related to a senior member who got jobs like that over you old members? A. The whole Majestic crew. None of the crew went back except one, and he was a relation.

Q. Who were the ones that went back to work in the Majestic in the place of you and the others. A. John Woods and myself and Abramowitz. I don't know who the relief man was. That was our steady job.

Q. Who went back when that place reopened? A. Abramowitz due to the fact he was a relation of one of the seniors.

By the Court:

Q. How do you know he went back because he was a relation of a senior? A. He told me they were going to be placed before you do.

Q. Who was the president that told you? A. Eddie Heyden.

Q. How many years ago was that? A. In 1931, wasn't it?

Q. I am asking you. A. It must have been in 1931 when he died.

Q. Don't you know Heyden was not the president in 1931? A. I may have the dates a little wrong.

Q. I want the fact. Who was the president? A. At this particular time of the Majestic Theatre Eddie Heyden, and Tony Boscarelli was business manager.

Q. That is long after 1931 because Evins was business manager up to 1931, wasn't he? Don't you remember Evins was business manager in 1931, or is your memory bad on that? A. Not all of 1931.

Q. Up to what time was he business manager in 1931? A. Until he was impeached.

Q. When was that? A. I don't remember.

Q. How do you know it was 1931 when you don't know when he was impeached? A. I am not so good at memory.

By Mr. Berkowitz:

Q. As a matter of fact, Mr. Saponar, in 1931 Mr. Heyden was elected president, wasn't he, and Mr.

Boscarelli business agent, and Mr. Hoppke, vice-president. In other words—

The Court: Ask him to mention them.

BY MR. BERKOWITZ:

Q. Was there a new group of officers that came in in June or thereabouts at the annual election in 1931, if you know?

The Court: You have about three questions.
Mr. Berkowitz: Let me withdraw that.

Q. Do you know when the present officers came into power or became officers of the union?

The Court: Do you know they were? If you don't know say so.

BY MR. BERKOWITZ:

Q. Can you tell us when Mr. Boscarelli became the business agent? A. Right after Mr. Evins was impeached.

BY THE COURT:

Q. What year was that? A. 31.

BY MR. BERKOWITZ:

Q. Are you sure about that now? A. Yes, it was 31.

BY THE COURT:

Q. You said a little while ago you didn't know. What refreshes your recollection? A. On account of the new year that started.

Q. 1934? A. Yes. I always figure two year instead of three years.

BY MR. BERKOWITZ:

Q. Now, do you remember signing a petition in the latter part of 1931? A. Yes.

Q. Who was in office at that time? A. Eddie Heyden.

Q. And do you remember the other officers who were in at that time? A. I know Boscarelli and Heyden and Bill Luden, and then he resigned. I don't know whether Howard Boyd was in in 31 or 32.

Q. Tell me how long have you been working in the Cameo Theatre? A. Since a week after it was reopened.

Q. When was it reopened? A. I went there around February.

Q. How long previous to your going to that place was it reopened? A. One or two weeks at the most

Q. When you say February—what year? A. 1932.

Q. Was it last year or was it two years ago? A. 32.

Q. 32 is two years ago. Have you been working in the Cameo for the last two years? A. Oh, say 33.

The Court: 33 is last year. Is that what you mean?

The Witness: Yes.

BY MR. BERKOWITZ:

Q. In other words, you went to work in February of last year in the Cameo? A. Yes.

Q. And worked there up to this time? A. Yes.

Q. And nobody took your job while you have been working up there? A. No, sir.

Q. Now, you mentioned before, and I think the Vice Chancellor wanted to bring out the point, you said something about you knew that the seniors were instrumental in taking your jobs. Do you have any recollection of a resolution or rule put into effect in the summer whereby the junior members working had to give one week out of every four or five to unemployed junior members, which rule or regulation was passed by the senior members in the summer of 1932? A. I don't know whether it was a rule or resolution passed.

Q. Did you ever take any time off, or was you working at the time? A. I took some off during that time.

Q. Was you working at the time the resolution went into effect? A. No.

Q. Did you get any work by reason of it? A. I got three weeks.

The Court: I thought you were working steady since February of last year.

Mr. Berkowitz: This is the summer of 1932.

Q. You was working steady at the Cameo Theatre from February 1933 up to the present time? A. That's right.

Q. Previous to February 1933 where did you work? A. I had no steady job.

Q. And was you working on a steady job during the summer of 1932? A. During the summer? No.

Q. And was that the time that this rule or regulation was passed by the seniors saying that the junior members should give up one week in four or five to the junior members? Was that the time that took place? A. Yes.

The Court: In the summer of 1932.

The Witness: Yes, when everybody was out of work.

Mr. Berkowitz: That's all.

CROSS EXAMINATION BY MR. NEMSER:

Q. I show you a junior member's application and ask you if part of that instrument bears your signature? A. Yes.

Q. Now, you say you were twelve years old when you first started to become an operator? A. A reel boy.

Q. A reel boy. How old were you when you became an operator?

The Court: He told you he was thirteen.

Mr. Nemser: I thought he said twelve.

The Court: Twelve when he was a reel boy and thirteen when he operated a machine. Any how, you operated the machine when you were thirteen.

The Witness: Yes.

BY MR. NEMSER:

Q. And you continued to do that from the time you were thirteen until the time you made your application? A. Not all the time.

Q. How long from the time you were thirteen years old until the time you made your application did you operate a moving picture machine? A. Until Charlie sold the house. Until the Minerva Theatre was sold I was working there.

The Court: He wants to know during what period of time you were an operator.

The Witness: You wouldn't call me an operator.

The Court: In your application there is something said about operator.

The Witness: I went with Barney Reitz' show for a period of four years.

By Mr. Nemser:

Q. Up to the time you made application in the union how many years experience did you have in operating a moving picture outfit? A. Five or six.

Q. You said you started in at the time you were thirteen, isn't that right, and you were twenty-four at the time you made your application? A. Yes.

Q. So you must have had eleven years experience? A. I wouldn't call it eleven years because I didn't work eleven years steady.

Q. I show you your application. Didn't you say you were born in New York City and were twenty-four years old and a resident of Jersey City twelve years? You gave as your occupation a motion picture operator and had worked in the following theatres—Apollo and Minerva, and on the road with shows for a period of four years? A. Yes.

Q. And that you were twenty-four years old at the time? A. Yes.

Q. Was the statement in your application truthful?

Mr. Berkowitz: I object to it.

The Court: What is the objection?

Mr. Berkowitz: It is in evidence. It speaks for itself.

The Court: He is asking if it is truthful.

Mr. Berkowitz: I was wondering whether he was going to question the contracts.

The Court: Just this one. My recollection is it is sworn to.

Mr. Berkowitz: No, it is not sworn to.

Mr. Nemser: The contract is sworn to.

The Court: What objection can you have to him stating whether it is truthful.

Mr. Berkowitz: Just that we are wasting a lot of time.

The Court: He is testing the credibility of the witness.

The Witness: When I put this application in I was still working with Barney Reitz. Is that my first application?

Mr. Nemser: Look at it.

The Witness: I had one that was supposed to cost me two hundred.

The Court: Take a look at that.

The Witness: No, I remember about that one being torn up.

The Court: Take a look at that and see what you were supposed to pay on that one.

The Witness: Three hundred dollars to join Local 384.

The Court: You paid one hundred down, did you?

The Witness: Yes.

The Court: And you were to pay two hundred more.

The Witness: I did pay it. That was supposed to be my full initiation fee for everything.

The Court: This application says you were an operator for a motion picture theatre for four years.

The Witness: That's right. I learned the business when I was twelve years old.

BY MR. NEMSER:

Q. You didn't say that in the application? A. It wasn't needed.

Mr. Nemser: I ask it be marked for identification.

(Application marked D-7 for Identification.)

Q. Since you filed the application with the local have you had any other job besides being a moving picture operator?

Mr. Berkowitz: I object. What has that to do with this case? We are trying to boil it down.

The Court: I think you are claiming he is being deprived of a job.

Mr. Berkowitz: Not this man. He is working four years.

The Court: I will let him answer the question anyhow. Have you been engaged in any other business excepting a moving picture operator?

The Witness: Yes, a half a dozen of them.

The Court: What business.

The Witness: Right now I own a saloon.

Mr. Nemser: That's all.

THOMAS J. MCCARTHY, being sworn:

DIRECT EXAMINATION BY MR. BERKOWITZ:

Q. Mr. McCarthy, how long have you been engaged in the moving picture operating business? A. Since the last part of 1929.

Q. Is that the time you made your application to become a member of Local 384? A. Yes.

Q. And can you tell us what theatres you have worked in during your membership in the local? A. Yes, I have made a list of them here.

Q. All right. A. The Stanley, Majestic, Central, Jersey City, Strand Theatre, Union City, the National, the Palace, the Orient, the Apollo and Strand, Jersey City, Tivoli Theatre, Cameo, Lyceum, U. S. in Hoboken, Hudson in Union City, Monticello, Grotto Auditorium and a high school in Union City.

Q. When you say the Grotto Auditorium that was just a private performance for one night or a day? A. One night.

Q. Did you have to install any equipment in those types of jobs? A. Yes, I worked in connection with another operator there.

Q. Did you install sound at that time? A. Yes.

Q. And you installed that with another operator. A. Yes.

Q. Has anybody taken your job while you were operating under jurisdiction of Local 384? A. Yes.

Q. Any senior, let us say? A. Yes.

Q. Can you tell us how many times and where you were working and where you were out of work? A. Charlie May in the Strand Theatre.

Q. How long was you out of work after that? A. I wasn't out of work very long. I went on the unemployment list and the Hudson Theatre opened up in Union City and I was sent there.

Q. Any other occasion when your job was taken by a senior? A. Not by a senior—by a junior.

Q. When did you first learn that the initiation fee was raised to the sum of three thousand dollars to become a senior? A. I think about two or three meetings ago.

Q. Where do you work now? A. Strand Theatre.

Q. How long have you worked there? A. About a year.

Q. And where were you working previously to that? A. In the Hudson Theatre in Union City.

Q. Since you have been working in the Strand Theatre how many days have you worked in the Strand Theatre? A. Four days a week.

Q. How many seniors have taken your job while working in the Strand Theatre? A. No one excepting Charlie May I mentioned before.

Q. That was during the last year? A. Yes.

By the Court:

Q. That was the time you mentioned when you were not out of work long? A. Yes.

Mr. Berkowitz: That's all.

Cross Examination by Mr. Nemser:

Q. Mr. McCarthy, I show you a junior member's contract dated March 4, 1930, and ask you if that is your signature? A. Yes.

Q. I also show you your application 9/3/29, and ask you if that bears your signature? A. That's right.

Mr. Nemser: I ask it be marked.

(Contract and application marked D-8 for Identification.)

Mr. Nemser: That's all.

GEORGE MULLER, being sworn:

DIRECT EXAMINATION BY MR. BERKOWITZ:

Q. Mr. Muller—Is it Miller or Mueller? A. Muller. They used to call me Miller.

Q. How long have you been in the moving picture business? A. Since 1912.

Q. Was you a member of Local 384 before March 4, 1930? A. Yes, sir.

Q. When was that? A. In 1915.

Q. Are you one of the charter members of Local 384 or did you come in after that? A. No, I didn't come in after. I was one of the members that came in first, but I don't know why I wasn't put on the charter.

Q. Now, during your twenty-five years or more of experience have you worked in a number of theatres in Hudson County? A. Oh, yes.

Q. Can you tell us without mentioning them whether you worked in a great number of theatres in Hudson County or just a few? A. Well, when I was first a member of 384 I had the Eureka Theatre on First Street, Hoboken.

BY THE COURT:

Q. That wasn't much of a theatre, was it? A. No.

Q. How much seating capacity did that have? A. Three hundred.

The Court: You are not questioning his competency are you, Mr. Nemser?

Mr. Nemser: No.

By Mr. Berkowitz:

Q. Have you worked steady as an operator from 1912 up to the present time or has there been a breach? A. There has been periods in between.

Q. That you have not worked as a moving picture operator? A. Yes.

Q. How long have you been working steady other than the period of time you worked at something else? A. From 1912 I worked as an operator in New York in the Opera House and I was called away from that job on account of my mother being sick, and the owner of the theatre at that time gave me a recommendation in case I could come back again I could get a new job.

Q. Mr. Muller, let me say this. Prior to your coming in, prior to March 4, 1930, how long had you worked as an operator? A. Before that?

Q. Yes. A. From 1915 to 1918.

Q. And in 1918 what did you do? A. I had to get out on account of some sickness.

Q. When did you come back in the operating field again? A. In 1927.

Q. You said you were a member of 384 prior to that? A. Yes.

Q. Did you make an application to 384 to be taken back into the field? A. I did.

Q. Did they take you back? A. No.

Q. What did they require you to do? A. I asked questions on that thing and never got no answer from them.

Q. What did they require you to do to become a member of Local 384?

The Court: What do you mean by *they?*

By Mr. Berkowitz:

Q. I mean the union. What did they require you to do, make another application to become a member? A. When I came back?

Q. Yes. A. I had to pay my back indebtedness of nineteen dollars and seventy-five cents.

Q. And did you make an application to become a member of Local 384 again? A. Yes.

Q. What happened with that application that you made to become a member? Were you taken in as a regular member? A. I was supposed to be.

The Court: I will strike that out.

By Mr. Berkowitz:

Q. You came in on March 4, 1930? A. Yes.

Q. And you signed one of the contracts of junior membership? A. Yes.

Q. You had paid back your indebtedness to the union. A. Yes.

Q. Did you have a withdrawal card at that time? A. No, I did not.

Q. When did you first learn that the initiation fee had been raised to the sum of three thousand dollars? A. I just can't recall the exact date.

Q. Well, a short time ago or a long time ago? A. I can explain that in a way. It was only a short while ago, I think about a month ago, when we were down before the executive board on the question of getting a day back which I had lost, and some of the members were there to ask about the applications. That's the time I learned it was three hundred.

The Court: Three hundred or three thousand.

The Witness: Three thousand.

By Mr. Berkowitz:

Q. How many senior members took your job or part of your time since March 4, 1930? A. Well, considerably, yes.

Q. Well, how many instances do you remember or you know of? A. The first instance not taking the job completely.

Q. What did they do? A. They took a day off.

Q. When was that, do you recall? A. Around 1930. I don't just recall the date.

Mr. Nemser: I ask that be stricken out unless he states the name of the party that bumped him off.

The Court: Yes.

The Witness: The one that came in was—I couldn't just recollect his name—Gulfo.

By Mr. Berkowitz:

Q. He took you off first? A. Yes.

Q. How long were you out of work? A. Two days.

The Court: That is 1930 you are talking about?

The Witness: Yes.

By Mr. Berkowitz:

Q. In what theatre were you working then? A. Strand Theatre.

Q. In Jersey City? A. Yes.

Q. When did that same thing happen to you again, if you know? A. He was there for about a month and it went along for two months and then I was taken two more days.

Q. By who? A. I can't recall his name—a German fellow.

Q. Would you know the name if you saw it? A. I can't recall his name at this time.

Q. Where were you working at that time? A. Strand Theatre.

Q. When was that? A. The beginning of 1931. Around that time.

Q. Did anybody else take your job after that? A. It was a continuation like that right along.

Mr. Nemser: I ask that be stricken out.

The Court: Yes.

By Mr. Berkowitz:

Q. After the German fellow took over your job when after that did somebody else take your job? A. I don't remember that. I will let that go by. Last year I was taken off the job completely.

Q. When was that, do you remember? A. That was this summer.

Q. Who took your job then? A. Joe Goodrich, isn't it?

The Court: You are asked who.

The Witness: I don't recall the name.

By Mr. Berkowitz:

Q. Was it Cantoli? A. Yes, that's the fellow—Joe Cantoli.

Q. And how long did he take your job for? A. Nine weeks.

Q. And how many days had you been working at that time? A. Two and a half days.

Q. And he took your two and a half days? A. No, I was working three days. Do you mean how much time I put in in the nine weeks?

Q. How long were you working at the time that Cantoli took your job? A. Three days.

Q. And after he took your job you had no job in the theatre? A. Yes.

Q. And how long are you working now at this time in the Strand Theatre? A. For about a year.

Q. And did you have any more time prior to that? A. No, only the two days and a half in the nine weeks.

Q. And did anybody else take your job after Cantoli? A. No.

Mr. Berkowitz: That's all.

Cross Examination by Mr. Nemser:

Q. I show you a member's contract dated March 4, 1930, Mr. Muller, and ask if that's your signature? A. Yes.

Q. And I show you an application which doesn't seem to bear your name at all. Is that your application or the one that you handed in? It doesn't seem to have your name on. A. Would you mind my explaining that?

Q. Is that your application? A. No.

Q. This one bears your sponsors names as Elisha Evins, Harvey Sapp, Tobias Abramowitz and Cantali, and the initiation fee three hundred dollars. Is that or isn't that your application? A. Now, I can't remember in 1927.

The Court: You are asked if that's your application.

The Witness: That is not my writing at all.

By Mr. Nemser:

Q. Are you sure you ever made an application? A. Yes. I have the duplicate application here which I was supposed to turn into the local.

Q. You are sure the signature on the contract is yours? A. Yes.

Mr. Nemser: I ask it be marked for identification.

(Contract marked D-9 for Identification.)

Q. The first time a senior ever took you off the job was Gulfo in 1930. A. Not Gulfo.

Q. Who? A. I don't know how to spell it.

Q. In 1930 while you were working in the Strand Theatre? A. Yes.

Q. For how long? A. Two days.

Q. You never protested about that to anybody? A. No.

Q. In 1931 you said another senior took you off the job? A. Yes.

Q. What was his name? A. I can't recall.

Q. You are sure it was a senior? A. Yes.

Q. What theatre? A. The Strand Theatre.

Q. How many days did he take? A. Two days.

Q. That means you lost two days? A. Yes.

Q. And you never protested to anybody? A. No.

Q. In 1933 Joe Cantoli took your job? A. Yes.

Q. How long? A. Three days.

Q. You never objected to that? A. Yes, I did.

Q. Who? A. The executive board.

BY THE COURT:

Q. Who did you speak to on the executive board? A. The full executive board.

BY MR. NEMSER:

Q. As a matter of fact you and Steiner and McCarthy were down before the executive board at one time? A. Yes.

Q. It was one week before this suit was started. You were explaining your case down there before the executive board. A. Yes.

Q. And they protested and you protested. A. Yes.

Q. And then this suit was started. A. Yes.

Mr. Nemser: That's all.

Mr. Berkowitz: That's our case.

CASE FOR THE DEFENDANTS.

HOWARD C. BOYD, being sworn:

DIRECT EXAMINATION BY MR. NEMSER:

Q. Mr. Boyd, you are a motion picture operator? A. Yes, sir.

Q. And have been for how long? A. Since 1925.

Q. How long have you been a member of this local? A. April 29, 1926.

Q. And do you recall what happened to the business in 1928? A. In what respect?

Q. In regard to the installation of sound. A. Yes, I recall that.

Q. Where were you employed at that time? A. In the Roosevelt Theatre. Prior to that I worked at sound in the Majestic Theatre.

Q. What was the first theatre in Hudson County that inducted sound? A. The National on Central Avenue.

Q. What was the next one? A. The Majestic, I believe.

Q. Was sound gradual or did it all occur at one time? A. First I would say gradual and then all of a sudden it burst out like a flame.

Q. When would you say practically every large theatre in Hudson County took to sound? A. I couldn't state the year.

The Court: That's your impression of the matter now, 1928.

The Witness: Approximately.

By Mr. Nemser:

Q. Would you say between 28 and 30? A. Yes.

Q. Up to 1928 how many members did the local have, do you remember? A. I think about eighty.

Q. Was there any difference as to the qualifications of members—juniors and seniors? A. No.

Q. What had you had prior—

Mr. Murray: I object to it. It is a matter of record.

The Court: What is a matter of record?

Mr. Murray: The constitution. There can't be any members except as created by the constitution.

The Court: Does the constitution provide for junior members?

Mr. Murray: Not before 1928.

Mr. Nemser: Not in 1928. There was one class of members at that time.

Q. Were there any apprentices in the local at that time? A. No.

Mr. Murray: I object. The constitution provides for that and the by-laws.

BY MR. NEMSER:

Q. At the induction of sound what effect did it have upon the membership of Local 384. Were they able to supply all of the theatres? A. No.

Q. What happened? A. Well, we secured men wherever we could secure them.

Q. Were they the permitmen? A. Yes.

Q. You had men working under permits. A. Yes.

Q. And they had made application for membership, isn't that so? A. Yes.

Q. And paid the whole or part of their fees. A. Yes.

Q. Do you know who some of those permitmen was? A. Yes, I know quite a few of them.

Q. Did you know Cameron, the complainant in this case, before he made his application for membership? A. No.

Q. Did you know McCarthy? A. I did.

Q. Where was he employed before he became a permitman? A. At the Stanley checking cars.

Q. How do you know that? A. I knew McCarthy for a number of years.

Q. Do you know what he was making there? A. No.

Mr. Murray: I object.

The Court: He said no.

BY MR. NEMSER:

Q. How about Barkowsky. Did you know him? A. No.

Q. How about Giardino. Did you know him? A. No.

Q. How about Steiner. Did you know him? A. Yes.

Q. How long did you know him? A. Quite a few years.

Q. What was he before he made application, do you know? A. I am just trying to recall what he was working at. Only from what he had told me.

Q. What did he tell you? A. He told me he had been in the grocery business. We had quite a talk about it because I myself for three years managed a store for the A. & P.

Q. Did he ever tell you he was in the real estate business? A. I don't recall that.

Q. Now, as sound theatres developed did the local take in more and more permitmen? A. Yes.

Q. And they paid, as I understand it, ten per cent of their weekly wages as they worked. A. Yes.

Q. That's all they paid. A. Yes.

Q. And they had these working cards or permits which has been marked for identification as D-5 for Identification, is that right? A. Yes, that's right.

The Court: Are you going to offer that in evidence?

Mr. Nemser: I will offer all my exhibits at one time.

Q. Now, the business agent between 28 and March 1930 was who? A. Elisha Evins.

Q. How were the permitmen assigned to the theatres, do you know? A. Evins had all the full powers at that time. He used to send them wherever they were needed.

Q. When did you first learn there was to be the formation of a junior local? A. I knew just about two or three meetings prior to its inauguration.

Q. You mean March 4, 1930? A. Yes.

Q. Where did you hear it discussed? A. Down in the meeting hall of the local.

Q. And were you present when the resolution which has been offered in evidence or marked D-4 for Identification, dated January 14, 1930, was first presented to the meeting? A. I must have been. I was quite active in attending meetings. I couldn't swear to it but I say I was. I didn't miss many meetings at that time.

Q. Were you present at the second meeting? A. The same answer.

Q. Were you in favor of it or opposed to it? A. I was opposed to it very much.

Q. Why? A. Because I—

Mr. Murray: How is it material?

The Court: How is it material? How could that bind these men who were junior members? I think I will rule it out.

By Mr. Nemser:

Q. As a result of what happened were you present at a meeting of the assemblage on March 4, 1930? A. I was.

Q. Tell us what happened so far as you can recall. A. I will start from the beginning. Walter Bemis was in the chair.

Q. Who was Walter Bemis? A. The president of the local at that time. Walter told these fellows the reason they had been called there that night was that he had a contract that he wanted to have read to them, and he told them that in the past month or two that here had been members coming in here from other jurisdiction. Some of those members were present also with the juniors that night. That is, they were members of other locals outside of this jurisdiction. And he explained to these fellows we were forming this junior body entirely for their protection. That if they become members of the International Alliance that no longer could these men come and take their jobs away from them. I know in fact it was Evins and not Bemis who read that junior contract.

Q. Did he read the whole thing? A. Paragraph by paragraph and stopped after each paragraph and asked if there was anybody who wanted to talk on it.

Q. Did he call upon anybody to talk on it? A. I don't recall whether he did or not, but there was nobody that talked on it.

Q. Go ahead. A. After he finished reading this entire contract he told that back in his office there was a notary public and that any of these fellows that so desired could go back and sign the agreement in the presence of a senior member. Not a senior member, but a member. I was the member who was designated to go back and witness the signatures.

Q. In looking through the forty-two junior members' contracts I believe your name is signed on all but two. A. Yes.

Q. Will you tell us how that came about? A. One contract is a fellow named Emil Schark.

Q. You didn't sign his as a witness. A. No.

Q. Why? A. Emil Schark lived with me for about five years. We were very chummy and personal friends.

Q. Who was the other? A. Howard Lawrence.

Q. Why didn't you sign his contract? A. He happens to be a nephew of mine and in that case I wanted another senior member to witness his contract.

Q. Now, this meeting of March 4, 1930, was not a regular meeting night of the local, was it? A. It was not.

Q. Did any of the juniors up to that time, or did any of the permitmen up to that time, ask any questions about the contract which Evins had read? A. There was nobody asking any questions about the contract, but there was much brought up by a fellow named Woods asking for by-laws.

Q. Was this before or after the contract was signed? A. That was after.

Q. We haven't got to that point. Up to that time nobody had signed the contract yet. Evins had read it and Evins called upon them to speak and nobody spoke. A. That's right.

Q. Was there anything said about voice or vote in the local? A. They were told right then and there that they would have no more rights than they had as permitmen only with the one benefit that it would be impossible for any outsider to come in and secure their positions.

Q. What happened after all the talk was over and the contract had been read? Were the contracts then signed? A. That is correct. They went into the business agent's office and in the presence of a notary public they came in one at a time. A couple of them came in and had their agreements signed and I refused to take them.

Q. You say they all went into the business agent's room? A. Yes, one at a time, or maybe two.

Q. And you were there. A. Yes.

Q. As each man came in did he have a draft of the contract with him? A. In his hand.

Q. What did you do? A. I took the contracts and I asked them did they read them and digest them. If there was anything in there that they didn't understand that now is the time to ask.

Q. Did any of them ask questions? A. One fellow.

Q. What was his name? A. Benjamin Hildebrant.

Q. Is he now a junior member? A. No.

Q. What happened to him? A. I don't know. One day he came down—

Q. Did he sign his contract? A. Yes, sir.

Q. He is no longer a member of the local. A. No.

Q. Did anybody else say anything that night? A. No.

Q. You say you tore up two contracts? A. I refused to accept them because I didn't see them sign them in my presence.

Q. Prior to the night of March 4, 1930 were these printed forms of contracts distributed, or did any of the permitmen have them? A. I don't think they were distributed, but these fellows had them.

Q. What makes you say that? A. I saw them.

Q. Where? A. In their possession.

Q. Before March 4, 1930? A. Was March 4, 1930 the night they were obligated?

Q. Yes. A. I saw them in their possession. Not everybody—but some.

Q. How many? A. That is hard to say.

Q. Did you have occasion before March 4, 1930 to discuss the proposed contract with any of these permitmen? A. Yes.

Q. What was the occasion of the discussion? How many did you discuss the printed forms of contract with before March 4, 1930? A. Whoever I came in contact with.

Q. How many would that be in number? A. I guess ten or fifteen.

Q. What was the general nature of your discussion? A. My purpose was—

Q. What did you tell these men? A. I told them that I had been in the International office with Evins—

The Court: Unless he brings out the name of the men he talked to.

By Mr. Nemser:

Q. Can you name some of them that signed contracts? A. I can name two.

Q. Which ones? A. Schark and Lawrence. Those I came in contact with every day.

Q. Were there any others besides those two? A. There were quite a few.

Q. Do you remember their names? A. No, I don't.

Q. What did you discuss with Schark and Lawrence? A. I pointed out to Schark and Lawrence the benefits they would attain by signing the contracts.

Q. Was there any information given to these men before they signed the contract about their status?

Mr. Murray: The question ought to be more specific.

BY MR. NEMSER:

Q. Were they told they would be apprentices? A. Those that I talked to I told them.

Q. Which ones did you contact and say their status would be apprentices? A. The only two I can say were those two I mentioned before, but there were others.

Q. Go ahead. The contracts were signed. Did the men all come back to the meeting hall? A. They never left the meeting hall.

Q. After they were signed did they come back? Was there a recess declared? A. They didn't leave the hall.

Q. After the recess was over what happened? A. They returned to their seats and they were obligated.

Q. As what? A. As junior members.

Q. Did you hear anybody ask for by-laws at that time? A. I certainly did.

Q. Who was it? A. Woods.

Q. Is he now a junior member? A. Yes.

Q. What did he ask for? A. He was asking for a copy of the by-laws. He was told by the president there was none in existence; since sound came in our business had been all turned up-side down, or words to that effect. That the by-laws that we had had were outlived, but that there was a committee appointed and this committee was writing to the different locals all through the United States trying to get a copy of the by-laws, and it was their intention if they did to pick out their best conditions.

Q. Was anything else that happened on the evening of March 4, 1930? A. There may have been. I don't just recall. Yes, I just recall now.

Q. What? A. There was four or five of us fellows present that got up and talked and defined unionism to these fellows.

Q. Was there any discussion on the evening of March 4, 1930 about the so-called juniors holding meetings? How they were going to hold meetings? A. They were told their meetings would be held as good and welfare under the direction of the executive board.

Q. Who told them that? A. The business agent or the board members.

Q. Were they told they would have a right to attend seniors meetings? A. They were told they would not have that right.

Q. Did any of them object to that? A. They did not. In fact they seemed very much pleased.

The Court: I will strike that last part out.

By Mr. Nemser:

Q. What did they do or say to indicate that? A. You mean that night?

Q. Yes. You said they seemed very much pleased. What did you see them do or hear them say? A. One of them took me out and bought me a meal and a few drinks.

Q. Did anybody else do that? A. I don't know. I was not with anybody else.

Q. Were you present at the banquet? A. Yes.

Q. Did you hear the talkers? A. Yes.

Q. Who were the juniors that talked?

Mr. Berkowitz: I object to that. It was all brought out by cross examination.

The Court: I will permit it to show there was no complaint.

BY MR. NEMSER:

Q. What junior members spoke that night, do you know? A. Woods and Harry Nyland.

Q. What was the substance of their remarks? A. I don't recall much. Harry Nyland, I think, presented a diamond pin to the business agent and one to the president, and he said it was a gift from the brothers in appreciation of what had been done for them in forming this local.

Q. What did Woods say? A. He said along the same lines.

Q. Did you talk to any of the juniors about this banquet before the night it was held? A. I did.

Q. Who? A. Peter Palesado.

Q. Now after the banquet—after April 7, 1930, when was the first time that you heard of any complaint or objection or protest by the junior members as to their status? A. The first time I heard them protest? I was a member of the executive board and there was a petition presented there.

Q. Do you recall when that was? A. No. It was a short time after Evins was out of office.

Q. I show you Exhibit C-10, dated December 31, 1931, and ask you if that's the petition you have reference to. A. I never read the petition. I had it read to me.

Q. Is this the petition you are referring to? A. If I read some of it.

Q. Glance through it. A. Yes, I would say this is the petition.

Q. And does the date on it help you fix the date? A. December 31, 1931.

Q. Is that the first time you knew of any objection or protest by the junior body as to their status? A. Yes.

Mr. Murray: What do you want to show?

Mr. Nemser: That these men are designated as apprentices by the registry cards.

Mr. Murray: From what date?

Mr. Nemser: From March 4, 1930.

The Court: Try and finish here.

BY MR. NEMSER:

Q. Now, Mr. Boyd, were you active in the affairs of the local after March 4, 1930? A. I was.

Q. Did you occupy any office? A. I did.

Q. What office? A. A member of the executive board.

Q. And were you also on that committee that revised the by-laws? A. Yes.

Q. Now, they revised the by-laws on May 12, 1931. A. Yes.

Q. When was the first time you ever heard of any protest or objection in regard to the fact the juniors had no right to participate in the making of those by-laws? A. I don't recall ever hearing anything like that.

Q. You heard it in this case, haven't you? A. That's all, what I just heard here. Before that I didn't hear anything.

Mr. Murray: I think this would be a good time to offer all the exhibits.

Mr. Nemser: The junior members' contract of Mr. Cameron is Exhibit C-1 and is a typical form of contract. For the purpose of the record I want to offer in evidence all forty-two contracts and applications so they can be commented upon in the summation.

The Court: Is that agreeable?

Mr. Murray: Yes.

Mr. Nemser: Suppose we agree on the contracts and applications.

Mr. Murray: I want to keep the record down in case of appeal.

Mr. Nemser: We will consider all the written contracts as C-1 and all the written applications as C-2. There are 42 contracts and 42 applications. Now, I offer in evidence D-1 for Identification, which is the banquet card or menu card showing who the junior members are and the junior committee.

(Menu card marked Exhibit D-1 in evidence.)

Mr. Nemser: I offer in evidence the two photographs of the banquet which are marked, respectively, D-2 and D-4 for Identification.

Mr. Murray: I object. They can't prove anything.

The Court: You won't have to print them. They have been testified to.

(Photographs marked Exhibits D-2 and D-3 in evidence.)

Mr. Nemser: I offer in evidence the working card marked D-5 for Identification.

(Card marked D-4 in evidence.)

Mr. Nemser: I offer in evidence the resolution dated January 14, 1930, creating the junior local, marked D-4 for Identification. That will be marked D-5 in evidence.

(Resolution marked Exhibit D-5 in evidence.)

Mr. Nemser: There were a number of sheets offered—C-1, 2, 3 and 4 for Identification. I suppose they are complainants' exhibits.

The Court: They are already marked.

Mr. Nemser: Complainants' exhibits for identification. I suppose they ought to go in

evidence. Suppose you mark them as defendants' exhibits—four sheets as one exhibit.

(Sheets marked Exhibit D-6 in evidence.)

Mr. Nemser: I offer this book in evidence.

The Court: Let it be marked and you can object.

Mr. Berkowitz: I do.

The Court: Let it be marked. The witness who made the comparison said those books came to him when he became secretary.

Mr. Berkowitz: I said he got the data some place.

The Court: It will be subject to your objection.

(Book marked Exhibit D-7 in evidence.)

Mr. Nemser: I offer in evidence the constitution of the International Alliance that became effective July 1, 1930, and particularly I desire to read into the record Section 12 of Article 3 on page 52 entitled "Date of Membership"—"The membership of any member of this Alliance shall commence from the date of his registration with the General Secretary-Treasurer. Per capita tax must be paid on all apprentices from date of original registration with the General Secretary-Treasurer".

(Constitution marked Exhibit D-8 in evidence.)

Mr. Nemser: I want to offer in evidence the last International constitution, effective August 1, 1932, for the sole purpose of showing the remedies by appeal in the organization.

The Court: Do you want to object?

Mr. Murray: No.

(Constitution marked Exhibit D-9 in evidence.)

Mr. Murray: Do I understand that is being introduced for the purpose of showing the system of appeals?

Mr. Nemser: That's all.

The Court: What section?

Mr. Nemser: Article 10 on page 59 and Section 7 on page 60.

The Court: Anything relating to appeals?

Mr. Nemser: Yes. I want to offer in evidence this minute book which has been referred to by counsel and produced at their request. I offer in evidence so much of the minutes of the regular meeting held on March 4, 1930, which reads as follows—"Resolution in regards to forming Junior Local 384 was presented by Brother Evins and received its first reading". I suppose this whole book should be marked.

The Court: It should be. Let it be marked and you can cull from it what you want to refer to.

(Minute book marked Exhibit D-10 in evidence.)

Mr. Nemser: Now, I desire to read from the minutes of the regular meeting held February 11, 1930—"Resolution creating a Junior Local received its final read, thus becoming legal". I desire to read from the minutes of March 11, 1930, as follows—"Brother Evins read the agreement to the body now prevailing which governs the junior local". Suppose you cross examine.

Mr. Berkowitz: No questions.

ALEXANDER ORNSTEIN, being sworn:

DIRECT EXAMINATION BY MR. NEMSER:

Q. By whom are you employed, Mr. Ornstein? A. By the International Alliance of Theatrical Stage Employees at the International Headquarters.

Q. Where is that located? A. 1440 Broadway, New York City.

Q. In what department particularly are you employed? A. I am employed to take care of the membership records of our various local unions as well as being Mr. Dempsey's secretary.

Q. Who is Mr. Dempsey? A. Mr. Dempsey is the general secretary and treasurer of the organization.

Q. Have you the so-called registry records of the so-called junior members of Local 384? A. I have.

Q. What do they consist of? A. The names of the apprentices.

Q. First of all, how many cards are in this batch? A. Forty-two.

Q. In whose handwriting are these cards? A. In mine with one exception.

Mr. Murray: What did you make up these cards from?

The Witness: From the monthly membership reports submitted by the secretary of Local 384.

Mr. Murray: How long have you been with the organization in your present capacity?

The Witness: Approximately four and a half years.

Mr. Murray: And this data on these cards are taken from the original membership reports submitted by an officer of the local to the International.

The Witness: That is correct.

Mr. Murray. Have you those reports with you?

The Witness: Yes.

Mr. Nemser: Let me see the original reports.

The Court: That is data taken from the original files of your association.

The Witness: Yes.

By Mr. Nemser:

Q. They are the originals, is that right? A. Yes.

Q. What's the first report that you have? A. In March, 1930. This is it.

Q. And it is from this data that I assume the permanent cards are made up. A. That is correct.

Q. In your office when you want to refer to a member, what do you refer to these records or any other records? A. Just these cards.

Q. You say there are forty-two cards? A. That is correct.

Q. Do those sheets contain the names of the members who came in after March 4, 1930? A. That is correct.

The Court: They amount to how many?

The Witness: Forty-two.

By Mr. Nemser:

Q. All listed as apprentices, is that right? A. Yes.

Mr. Nemser: I offer in evidence the forty-two registry cards to prove the standing of these men as members of the International Alliance.

Mr. Murray: What is its materiality?

Mr. Nemser: You can't be any kind of a member unless you register with the International Alliance and the per capita tax must be paid.

Mr. Murray: We don't dispute they are registered.

Mr. Nemser: On these cards they are registered in the International Alliance as apprentices.

Mr. Murray: I object.

The Court: I will receive it subject to your objection.

Mr. Murray: I object on the ground they are incompetent and immaterial.

The Court: I will accept them subject to your objection and when I hear his argument I shall determine whether they shall go definitely in evidence.

Mr. Nemser: Just mark the cards as one exhibit.

Mr. Murray: Before they are actually marked may I ask the witness this witness? Where do you find anything on the reports from which these cards were made up labeling these members apprentices as the card labels them?

The Witness: These reports state "Junior Department", and insofar as the International Alliance is concerned a junior member and an apprentice is one and the same thing.

The Court: Why do you say that?

The Witness: So far as the office records are concerned we consider them one and the same.

The Court: Counsel is going to argue there are no such thing as apprentices.

Mr. Murray: Where the word *apprentice* appears on the cards that takes the place of the words *junior department* on the reports as submitted by the secretary of the local to the International office, is that right?

The Witness: Whenever it is apprentice or junior member we mark on our cards apprentice.

Mr. Murray: If your honor please these cards don't show a thing except what is shown by the contracts and the substitution of the word *apprentice* for *junior department.*

The Court: It may be admissible to show how they are classified by the parent body. That is a matter of argument. Until I hear more about it I can't tell what is to be done with them.

Mr. Nemser: Now give them an exhibit number.

(Cards marked Exhibit D-11 in evidence.)

Mr. Nemser: I offer these monthly membership reports as one exhibit. (Reports marked Exhibit D-12 in evidence.)

By Mr. Nemser:

Q. Mr. Ornstein, there has been some testimony in this case that when the original applications by the so-called permitmen were taken over to the International Headquarters these stubs on the applications were taken off.

The Court: Evins testified to that.
Mr. Nemser: I think so.

Q. Now, for example take Cameron's application. A. Yes, the stub. The printed part.

Q. Has the International got the stub? A. I believe in most instances.

Q. How would the stuff differ from the application? A. The stub merely gives the name and the information of the man which is for our records.

The Court: Are they readily obtainable?
The Witness: Yes, I think so.
The Court: I think you had better produce them. I think Evins testified the application was all right except for the stub.

By Mr. Nemser:

Q. Are there any other records except the ones that you produced marked D-11, and the monthly reports, that makes any reference to the members or men whose names are listed on these cards? A. None whatsoever.

The Court: Excepting the stubs.

By Mr. Nemser:

Q. Are there any other locals in the country that have junior members?

Mr. Murray: I object.
The Court: Sustained.
Mr. Nemser: Cross examination.
Mr. Murray: No questions.

Howard C. Boyd—Recalled—Direct.
Howard C. Boyd—Recalled—Cross.

HOWARD C. BOYD, recalled:

DIRECT EXAMINATION BY MR. NEMSER:

Q. Mr. Boyd, do you know whether it was announced to the permitmen, or the juniors after they became juniors, that the initiation was to be raised to three thousand dollars? A. It was announced to them on the night they were made juniors.

Q. What was said? A. When they would become juniors—I don't recall if the initiation fee was three thousand or one thousand dollars, but whatever it was it was told to them that when they would become seniors they would have to pay the balance and have deducted from that what they had already paid in on their application as juniors.

Q. In other words, they would receive credit for what they paid as juniors? A. Some paid three hundred and some five hundred.

Q. Did anybody pay more than five hundred? A. Not to my recollection. And they were certainly told the amount. If it was three thousand dollars at that time they were told it was three thousand. I remember very clearly because I was the one that spoke of it that they would pay the difference. Having paid it already it would be deducted.

Q. Was the initiation fee ever mentioned at any of the junior meetings held after March 4, 1930, at which you attended? A. I was very unattentive to junior meetings.

Mr. Nemser: That is all.

CROSS EXAMINATION BY MR. MURRAY:

Q. I understand you can't tell us whether the initiation which was mentioned on March 4, 1930, was one thousand or three thousand, is that right? A. I don't recall.

Q. Now, when you were asked on direct examination to tell was there anything else that happened at that time why didn't you tell us what you just told us now about the initiation fee? A. If you noticed throughout I had to pause once in a while.

Q. And since you were on stand it came back to you? A. I was asked the question and I answered to the best of my ability.

Q. But you were asked before on your direct examination to state everything that was said and what hapuened on this night of March 4, 1930, of the assembly meeting, and you didn't say anything about initiation fee. I am asking you why didn't you tell us then? A. I didn't tell half of what occurred that time. I was stopped two or three times, and was stopped by you.

Q. You sat here in court most of the afternoon? A. Yes.

Q. And you heard the complainants one by one get on the witness stand and testify about the fact there was no mention made of initiation fee at this March 4th meeting? A. Yes.

Q. And in spite of that when you took the witness stand you couldn't tell us then what you have told us now? A. Oh, yes, I could.

Q. Why didn't you? A. The question wasn't asked of me.

Q. You were asked Mr. Boyd what else happened at that meeting and you said nothing about the initiation fee. A. When I started to give my story you got on the floor and objected.

Q. There was never any objection raised to that question.

The Court: He was asked, if I recall it, was there anything else that happened. He said

"I can't recall just now" and then as an afterthought he said "Yes", and he told us about another matter.

By Mr. Murray:

Q. Since you left the witness stand and came back now have you talked to anybody about it? A. I was sitting there.

Q. Were you spoken to about anything? A. I was turned over to you.

Q. Did anybody speak to you about the initiation fee? A. I didn't have to have any one prompt me.

By the Court:

Q. Was your attention called to it? A. No.

By Mr. Murray:

Q. How did Mr. Nemser know about it? A. I didn't speak to Mr. Nemser. Just answered him over the witness stand.

Q. Since you were on the stand the first time before the interruption and since then you haven't spoke with Mr. Nemser? A. No. He was here with you.

Mr. Murray: That's all.

Redirect Examination by Mr. Nemser:

Q. As a matter of fact was there anything that happened that night that was not repeated here? A. There were lots of things but to remember them word for word it is impossible.

Q. Did you indicate to the body on March 4, 1930, that you were actually opposed to the junior members contract? A. Not to the body.

Q. To who? A. To Mr. Evins and quite a few of the other members.

Q. And is that the reason why your name appears on all the contracts? A. I imagine so because Evins was the one that designated me to sign the contracts.

Q. Why did he designate you? A. The only reason—

The Court:

By Mr. Nemser:

Q. Why were you so careful when each man came in to sign his contract whether they understood it? A. From past abuse.

Q. What past abuse? A. Of taking men into the local. For three years they never got one day's work out of it. That was when we had too many men in the local. And at that time I didn't want to see it happen again. I was not sure that sound was here to stay. I knew the way we were working it couldn't stay.

Q. What do you mean? A. When sound first came out it was more or less a phonograph attached to the back of the machine. The sound and the film were two separate units.

Q. Different than it is today? A. Yes. They were always getting out of tune.

Q. Now it is synchronized? A. Yes.

Q. In other words it was canned music? A. Yes.

Q. Now it is on one film? A. Yes, and it doesn't get out of line and records have changed since then.

The Court: It is very interesting.

Mr. Nemser: That's all.

Charles May—Recalled—Direct.

CHARLES MAY, recalled:

DIRECT EXAMINATION BY MR. NEMSER:

Q. Mr. May, you were present at the assembly of the permitmen on March 4, 1930? A. I was.

Q. And you heard some of these junior members testify there was nothing said about initiation fee? A. I did. I heard them testify to that.

Q. What was said? A. After they were obligated—No, before they were obligated they were told the initiation fee to come into the local would be three thousand.

Q. Anybody object to it? A. Nobody outside of I believe it was Dulberger. He said: "Well, now, suppose we were made senior members tomorrow. I paid the sum of five hundred dollars on my application. What is going to happen to it?" It was explained to them right then that the money they had paid to be made junior members was to be applied against the difference of what the senior members initiation would be when they came in as senior members.

Q. Do you remember that night one man refused to sign the agreement? A. I don't know.

Q. Do you remember some months after March 4, 1930, when a number of the juniors were out of work they were told or notified to come up and get their money back and withdraw their applications? A. No.

Q. And didn't do it? A. No, they didn't do it. The chair advised them to that effect.

Q. Since the admission of the forty-two present juniors at sometime in 1930, I think the last one was June 9, 1930, have there been any other juniors obligated? A. No.

Q. Have there been any other applications for juniors? A. We wouldn't accept any other applications.

Q. Why not? A. Because we have more than enough in.

Mr. Nemser: That's all.

CROSS EXAMINATION BY MR. MURRAY:

Q. Why wasn't the amount of the initiation fee put in the contract which the junior members signed on March 4, 1930?

The Court: If you know. He is asking you why that was not put into the printed contract.

BY MR. MURRAY:

Q. Why wasn't the three thousand dollar initiation fee included in the contract? A. I don't know.

Q. Who would know that, do you know? A. Mr. Evins.

Mr. Murray: That's all.

REDIRECT EXAMINATION BY MR. NEMSER:

Q. Do you know as a matter of fact when the initiation fee was raised to five hundred dollars? A. I believe the final reading was January 24, 1930.

The Court: It has been testified by some one from these books as to the raising of the fee.

Mr. Berkowitz: Mr. May did from the books. That's so, isn't it?

New Jersey State Library

The Court: Is that so?

Mr. Nemser: Yes.

Mr. Stern: I have the petition.

The Court: I will not grant you leave to become parties until Mr. Murray has a chance to consider your application. I will make it filed and the record will show I am marking it filed subject to the statements which were made. Now the order will be submitted to the court at the argument. I think I will hear you gentlemen Friday morning next.

Mr. Murray: Can we make it twelve o'clock?

The Court: I will wait until such time as it will be convenient.

Mr. Stern: I want to produce Mr. Fargo, one of the petitioners on the application to intervene, to show that he is satisfied on his part that the contract as entered into between the junior members and the local should remain in full force and effect and be in force so far as he is concerned.

Mr. Murray: We will stipulate they will so testify if that's all the proof you want.

Mr. Stern; That's all.

The Court: You intend if the order is granted to argue towards sustaining the defendants in this cause rather than the complainants.

Mr. Stern: That is true your Honor.

The Court: All right, that's the case. I will hear the argument on January 12th.

January 12, 1934.

The Court (after argument of counsel): The prayer for relief in the bill of complaint and the amendments to that contain numerous paragraphs. Now, will you tell me if you will just what you are contending for in this hearing? I understood you to say the other day, and the record shows it, you are excluding from the consideration or purpose of this case a number of matters set out in the bill of complaint. Will you let me know definitely what you are contending for so I won't be considering matters which you are not relying upon at this time?

Mr. Murray: Referring to the particulars of the bill of complaint—

The Court: I have the amendment to the bill of complaint and the bill. You are condensing this whole matter down to a very narrow issue according to what you stated the other day.

Mr. Murray: For the purpose of this suit No. 2 is eliminated—the second prayer. No. 3, the prayer eliminated. 3-A eliminated and 4 is eliminated. 5 remains in. 6 remains in. 7 remains in. 8 remains in. 9 remains in. 10 remains in. 11 remains in. 12 remains in. 13 remains in. 14 remains in. 15 is out. 16 remains in and 17 is out.

The Court: The amendments are not to the prayer of the bill, merely to the paragraphs of the bill.

Mr. Murray: No, the prayer on the second page. The addition or amendment on page 58 stays in and the amendment prayer 18 as amended remains in. I think 19 goes out. 20 stays in and 21 stays in.

Mr. Stern: If your Honor please at this time I think it is proper to take up the application

I brought before your honor on Tuesday of this week. This application is on behalf of four junior members of this local. We understand that the bill filed on behalf of the complainants in this case is a class bill, and therefore any determination made in this action will affect the rights of the four petitioners on this application. We therefore at this time ask the court for leave to intervene either as parties complainants or parties defendants. The purpose of this is that they desire to have it stated on the record their position in this case, and that is this. They contend that when they entered into this contract they knew what they were doing, and at that time they were receiving certain benefits which they did not have at the time prior to the entering into of this contract because at that time they were known merely as permitmen. We therefore ask this court that they should be joined so they can clearly state their position to be that they desire that the contract as entered into between themselves and the local should be adopted and remain as is and declared valid as far as they are concerned. And they have one other thing in mind. Assuming for the purpose of argument that your Honor after considering the matter feels that the juniors in entering into the contract it was done by fraud. What will their position be? They will be in the original status of permitmen which they do not want, and that is why we ask the court's leave to be parties in interest.

The Court: I understand you have no objection to the proofs they want to offer and which they are practically stating on the record now.

Mr. Murray: No objection at all. I think they should be parties defendants. In view of

counsel's statement I wish to state now on the record that we do not claim that this contract was induced by fraud. We claim it is void for the reasons I have stated, first that the contract is contrary to public policy, and secondly that the by-laws to the extent that they confirm this contract are void, and that the by-laws insofar as they are part from the contract were not voted upon and were not properly adopted.

The Court: I understood you to say in argument you are not complaining of the fact that there is a monopoly.

Mr. Murray: I am complaining because of other reasons this contract is void. When I said I am not complaining of monopoly what I meant is we are not seeking to have the monopoly disturbed or acted upon at all. We are taking the view it is there and measuring the contract and these by-laws in the light of it.

The Court: All right.

Mr. Nemser: May I ask counsel whether his position is that the written contract is null and void and that the juniors are regular members?

The Court: He is particularly seeking to have two or three of the paragraphs of this contract exscinded, and if they are exscinded they may be content.

Mr. Nemser: In other words, is he contending the whole contract is void or only parts?

Mr. Murray: I am complaining about any distinction of any kind between juniors and seniors and we want them referred to as regular members; that this here distinction which has been set up by the 1931 constitution and by-laws between sections and sections is en-

tirely void and entirely unauthorized, and our rights are governed by and we are members under the 1923 constitution and by-laws as they stood at that time on March 4, 1930, excluding entirely the creation or attempted creation of a so-called junior department in the winter or a month or so before March 4, 1930.

The Court: Are you claiming the men became members at the time they filed their applications on or about March 4, 1930?

Mr. Murray: I am claiming that we became members on March 4, 1930 on the basis of the applications previously filed and under the constitution and by-laws of 1923 in force and unaltered on March 4, 1930.

The Court: What did you mean when you referred to certain sections?

Mr. Murray: I called attention to certain sections here which I indicated as being outstanding or more glaringly unreasonable than some of the others, and I referred to them.

Mr. Nemser: In other words, if I understand the position of counsel the written contracts are null and void and that therefore their rights on March 4, 1930 were not governed or determined or construed by reference to the written agreement at all.

The Court: Is that what you contend for?

Mr. Murray: If you refer to the contract—

The Court: Exhibit C 2?

Mr. Murray: The contract which they signed on March 4, 1930.

Mr. Nemser: Exhibit C 1.

Mr. Murray: We claim we are governed by the contract and constitution and by-laws of 1923.

The Court: You say you are governed by that contract?

Mr. Murray: By the contract governed by the constitution and by-laws when we became members in 1923, but not by C-2, or the by-laws of 1931.

Mr. Nemser: In other words, you were obligated under the 1923 constitution the same as if the written contract never existed.

Mr. Murray: That's right. We acquired a status at that time independent of this contract.

Exhibit C-1.

RULES GOVERNING
MEMBERSHIP, APPLICATION AND AGREEMENT

for

JUNIOR DEPARTMENT
Local 384, I. A. T. S. E. & M. P. M. O.
of United States and Canada

MEMBERSHIP
FEBRUARY 11, 1930

Section 1. Any male person of good character who is a practical moving picture machine operator, and has been a resident of Hudson County, N. J. for a period of eighteen months immediately preceding application to this Union, who can be vouched for by five Senior Members is eligible to Junior membership.

Section 2. Application for membership must be filed at a regular meeting. Applicants shall be voted on by secret ballot. If a majority of the total ballots cast be favorable, the applicant shall be declared elected. If a majority of the total ballots cast be unfavorable, the applicant shall be declared rejected, and the initial fee returned at once. Any person so rejected shall not be eligible to again make application for a period of twelve months.

Section 3. Any I. A. member from beyond the jurisdiction of this Union may be received to Junior membership upon presenting a bonified transfer card from his Union, subject to the same require-

ments as new members. No person shall be admitted to membership who comes from a place where a Union existed at the time of his leaving unless he can be vouched for by such Union.

Section 4. The initiation fee of all applicants to Junior membership shall be Five Hundred ($500.00) Dollars. One-half to accompany the application and the remainder to be paid when obligated.

Section 5. Applications being accepted shall be referred to the examining committee. This committee shall make a thorough investigation as to the character of the applicant, and shall give him a practical examination as to his qualifications as an operator, and report to the Union at its next regular meeting.

Section 6. The following named members shall be recognized as Senior members. They shall have and are hereby given seniority rights over all other members with reference to employment:

Abbott, Larry
Abramowitz, Toby
Armellino, Ralph
Anderson, Wm. C.
Arata, Edward
Arata, George
Baer, Hugo
Brown, Frank L.
Boyd, Howard
Bemis, Walter A.
Barber, Arthur S.
Boscarelli, Anthony
Butler, Thomas
Bordman, Edw. W.
Blake, Harry F.
Baril, Lucien R.
Cantoli, Joseph
DeTitta, Albert
Dawson, Pete J.
Dulberger, Harold
Daubener, C., Jr.
DeHart, Elwood E.
Evins, Elisha
Furkey, Clarence
Giles, John
Godfrey, Joseph
Gollop, Stanley
Gulfo, John

Exhibit C-1.

Gelsamine, Chas.
Hoppke, Fred
Heyden, Edw. J.
Hoppe, Charles
Hedberg, Carl W.
Huppert, William
Ingersoll, Chas. H.
Jamieson, James J.
Kolbenheyer, Walter
Kahl, William
Katz, Abraham
Koch, William
Luden, Wm. H.
Mandrake, F.
Maurus, F. X.
Meyers, Wm. H.
May, Charles
Mertens, Wm. J.
Martin, Edward
Midili, Anthony
Mobbs, Albert
Miller, John L.
Montemurro, Nicholas
McCauley, Thos. J.
McDermott, Vincent
Neathery, Thos. J.
Pedrin, John R.
Peterson, Thomas
Pagano, William A.
Pileggi, Frank
King, Leon A.
Romano, Joseph
Reck, Joseph
Sapp, Harvey
Stubel, Henry C.
Small, Charles
Silverstein, Robert
Steiner, Francis X.
Schwab, Edward
Schulze, Arthur R.
Spaloss, Frank
St. John, Charles
Tramutola, Joseph
Trezza, John
Tammen, Samuel
Ullrich, Anthony
Voorchees, R. W.
Ventimiglia, Egizio
Wohlhart, LeRoy
Wedemeyer, George
Westel, John
Young, Edwin

Section 1. No person shall ever at any time be admitted to Senior membership, except in the following manner:

A—Accepted to Junior membership in the regular form.

B—Serve as a Junior member until such time as he is obligated to Senior body.

C—Make application with the consent of executive board and be vouched for by five Senior members and paying balance on application fee that is in force at time of his making application into Senior body.

Exhibit C-1.

D—Be voted on, by secret ballot, at a regular meeting and receive a two-thirds vote of all Senior members present at such meeting.

E—Complying with all Constitutional requirements.

Section 8. Junior members shall meet every fourth Tuesday of each month, at midnight, said meeting to be conducted by the executive board of the Senior body. All Junior members are to pay Per-capita Tax to I. A. and Insurance, also all assessments. Dues of the Junior members to be 10% of salaries earned.

Section 9. Junior members will at all times be subject to removal from jobs when such jobs are desired by Senior members.

Section 10. An honorable withdrawal card will be issued by this Union to any Junior or Senior member in good standing, against whom no charges are pending, who desires to withdraw from the business and this Union. There shall be no fee for such card. Should he desire to return to active membership, he may do so upon payment of ten (10%) per cent of the initiation fee, and be voted on at a regular meeting, and receive a majority vote of all Senior members present; provided he has done nothing detrimental to the welfare of this Union or the International Alliance. Any Senior member withdrawing under this section and returning to membership shall assume the standing from which he withdrew. Junior members desiring to return to membership after withdrawal shall comply with Article Two, Section Seven, Paragraph B, of this Constitution.

Exhibit C-2.

Section 11. All members and persons becoming members agree to abide by the rules of this Union, without resort to a court of law, and in the event of expulsion agree to forfeit all property rights in the Union.

I the undersigned, having thoroughly read the above rules and regulations, pertaining to Junior Membership into Local No. 384, I. A. T. S. E., do hereby agree to follow, and keep within its rulings to the best of my ability.

Signed WILLIAM CAMERON
Witness HOWARD C. BOYD

(Seal)

Subscribed and sworn before me the 4 day of March, 1930.

PATRICK J. DOWNES
Notary Public

Exps 8-22-32

(Seal)

Exhibit C-2.

APPLICATION BLANK OF LOCAL UNION NO. 384 OF THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA.

I have the honor to make application for membership in Local No..... of the International Alliance of Theatrical Stage Employes and Moving Picture Machine Operators of United States and Canada, basing my application on the following facts, which I affirm to be true:

Exhibit C-2.

I, WILLIAM CAMERON was born in SCOTLAND age 26 years, now residing at 3 Edna Place, have been a resident of Hudson County for 8 years. I am by occupation a ....., and have worked at the following theatres: Moving picture Operator. Embassy Bayonne a total of 8 months.

Have you ever applied for membership in any Local of this Alliance?.....

If elected to membership, I agree not to engage with any travelling theatrical attraction in any mechanical capacity for a period of two years.

Signature of Applicant WILLIAM CAMERON

Dated at June 15 1929.

Initiation Fee: $300.00 Amount Paid $100.00 Balance Due..... Date of Previous Application, if any.....Made to Local No.....

The undersigned vouch for and recommend the above named applicant for membership.

ELISHA EVINS WALTER A. BEMIS
HAROLD L. DULBERGER EDWARD E. MARTIN

All members in good standing of Local No.....

(Stamped across face)

JR. DEPT

Exhibit C-2.

(On back)

00010

APPLICATION OF

Mr. WILLIAM CAMERON

Presented at a meeting held....., 19.....
The Board of Examination having examined within named applicant and found him.....per cent. qualified for membership as.....
respectfully report.....favorable on admission.

.....

.....

.....

Board of Examiners.

Balloted at a meeting held.....
and.....notified.....19....

(Stamped on Back)

Endorsed by the
I. A. T. S. E. & M. P. M. O.
of U. S. & C.

Feb. 18 1930

R. J. GREENE
General Secretary-Treasurer

Exhibit C-4.

Revised Edition *Effective Oct. 1st, 1923*

CONSTITUTION

and

BY-LAWS

of the

MOVING PICTURE
MACHINE
OPERATORS
LOCAL UNION No. 384

of

HUDSON COUNTY, N. J.

I. A. T. S. E. & M. P. M, O:
of The UNITED STATES & CANADA

PREAMBLE

We, The Moving Picture Machine Operators of the Theatres and Amusement Places of Hudson County, N. J., deam it eminently right that we should organize for the development and improvement of our working conditions, asking for a fair and just compensation commensurate with the services rendered, so that equity may be maintained and the welfare of our organization promoted, accepting any wise, honorable and conservative mediator as a proper adjustment of all difficulties that may arise.

Exhibit C-3.

CONSTITUTION

Article 1.

Name and Objects.

Sec. 1. The name of this organization shall be "The International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Local Union No. 384, of Hudson County, New Jersey."

Sec. 2. The Object of this Union shall be the attainment and maintenance of a fair rate of wages and proper working conditions for its members, and to assure employment in the working places under its jurisdictional control, of competent persons, members of this union.

Article 2.

Membership

Sec. 1. Any male operator over Twenty-One years of age, and of good character who, is a practical man with at lease six months experience, who can be vouched for by four members of this union is eligible to become a member by making proper application and complying with the constitutional requirements of this union.

Sec. 2. Applications may be filed at any regular meeting and must be accompanied by at least One-Fourth of the Initiation Fee.

Exhibit C-3.

Sec. 3. The application upon being read shall be referred to an examining committee of five members appointed by the President and Vice President, who shall make a thorough investigation as to the character of the applicant, and shall give him a practical examination as to his qualifications as an operator, and report back to this union at its next regular meeting. If the report of the examining committee is favorable upon the applicant the union shall proceed to vote. (Ballot-Box)

If the majority votes are in favor of the applicant, he shall be declared elected, and upon the payment of the initiation fee "in full" shall be initiated and take the obligation of this union. If more than One-half of the total ballot cast be unfavorable, the applicant shall be declared rejected and shall not be eligible to again be balloted upon until Three Months have elapsed.

Sec. 4. The Initiation-Fee of this Union shall be $200.00 (Two Hundred Dollars.)

ARTICLE 3.

Officers of this Union.

Sec. 1. The Officers of this Union shall be President, Vice-President, Recording-Corresponding Secretary, Financial Secretary-Treasurer, Sergeant at Arms, One Business-Agent, a Board of Three Trustees and an Executive-Board of Nine Members, to be elected for One Year.

Sec. 2. The Executive Board shall consist of President, Vice-President, Recording-Correspond-

ing Secretary, Financial Secretary Treasurer, Sergeant at Arms, the Business-Agent and Three Members to be elected.

ARTICLE 4.

Nominations and Elections.

Sec. 1. Only Members who have been in continuous good standing for one year shall be eligible to hold office in this Union. Any member who is an Exhibitor or a Manager shall not be eligible to hold office.

Sec. 2. No member of this Union absent from the meeting at the time of nomination shall be eligible as a candidate to any office unless his written acceptance of nomination has previously been filed with the Secretary.

Sec. 3. Nomination shall take place at the first regular meeting in June.

Sec. 4. Election shall be held at the last regular meeting in June.

Sec. 5. Election shall be conducted under a printed ballot system with the names of the candidates who have excepted nominations printed thereon.

Sec. 6. Election of Delegates to Conventions of the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators, or any other conventions may be held at any regular meeting. All members having been duly notified of such election to take place.

Exhibit C-3.

Sec. 7. The President shall appoint two Inspectors and one Teller (Who shall NOT be candidates at this election,) who's duty shall be to receive the ballots and keep a true and faithful record of the number of votes deposited. After counting the ballots they shall make a statement, setting forth the whole number of votes received by each candidate.

They shall certify to the correctness of the same by their signatures and place same on file with the Recording Secretary, and the candidates receiving the highest number of votes shall be declared elected.

Sec. 8. The officers elect shall be installed at the first reguler meeting succeeding the election and shall continue in office for a term of one year or until the election of their successors.

Sec. 9. Central Labor Union of Hudson County, N. J., and the New Jersey State Federation of Labor Delegates to be an elective office.

Sec. 10. Theatrical Federal of Hudson County, N. J., or any other meetings where delegates are needed, are to be appointed by the President of this Union.

ARTICLE 5.

Duties of Officers.

SEC. 1. THE PRESIDENT: It shall be the duty of the President to preside at all meetings of this Union, to preserve order therein and enforce the observance of the law and see that all officers per-

form their respective duties. The President shall have the power to call a meeting of the Executive Board whenever required. He shall at each meeting inspect the bank-book of this Union and the receipts of the Financial Secretary-Treas. from the previous meeting, and announce whether same is correct. He shall not make or second any motions, he shall state the question proposed for consideration and whenever an equal division occurs he shall have the deciding vote, except in election of officers. He shall not take part in any debate while in the chair. The President shall have the power to fine any member who disturbs the meeting —$0.50. He shall have the power to cause the removal of any member from the meeting room whose conduct disturbs the meeting. Any member refusing to leave the meeting upon order of the President may be fined not less than $1.00 nor more than $5.00 by the chair.

Sec. 2. THE VICE-PRESIDENT: It shall be the duty of the Vice President to preside in the absence of the President, and to serve as Chairman of the Executive Board.

Sec. 3. RECORDING CORRESPONDING SECRETARY: It is the duty of the Recording-Corresponding Secretary to attend all meetings of this Local and of the Executive-Board to record the proceedings of all meetings, general or special, to keep correct minutes of all meetings and business transacted, or that may be assigned to him. He shall also keep a book to be known as the Amendment-B Book and record therein all amendments to the Constitution and By-Laws, etc.

He shall answer all communications addressed to this Union as directed by the meeting. He shall

officially notify all persons, elected members of this Union for such election; whenever a committee has been appointed he shall notify each member thereon and inform them of the matter or question referred to them.

He shall also notify all members of special meetings, he shall take proper care of all books, papers, resolutions and other documents pertaining to his office and same shall not be taken from him except by the order of the Local. Any member in good standing shall have the privilege to examine his books at any regular meeting. Upon the installation of his successor he shall transfer to him all books, papers, etc., belonging to this Local. He shall keep a correct list of the names and addresses of all members of this Union.

Sec. 4. FINANCIAL SECRETARY-TREASURER: It shall be the duty of the Financial Secretary-Treasurer to keep a book wherein each member's name and address, in such order showing when he was admitted to this Local and his financial standing with the Union. He shall receive all assessments, dues, fines, initiation fees and all other monies due this Union. He is to report to the President at each regular meeting the names of all delinquent members, together with an itemized statement of the receipts. He shall notify by registered mail any member in arrears, informing him of the date upon which he may be suspended. He shall issue a stub-receipt for all monies received by him, with the exception of dues, preserving the stubs properly filled out for the inspection of the Board of Trustees.

Sec. 5. The Financial Secretary-Treasurer shall be answerable for all monies received and shall im-

mediately deposit same in the bank or banks as designated by this Union. All monies to be deposited in the name of the Union and subject only to the order thereof as after herein designated. He shall tender a quarterly report at the first meeting in June, Sept., December and March of each year, showing the amounts of receipts and disbursement and the amount of money on hand. He shall present to the President for his inspection at each meeting the bank-book. He shall be bonded to the sum of $1000.00 (One Thousand Dollars) with some reliable surety Company, same to be approved of by this Union and the Premium to be paid by this Union.

Sec. 6. THE BUSINESS AGENT: The Business Agent shall be the representative of this Union in all transactions with the employers. It shall be the duty of the Business Agent to investigate all complaints and to act in conjunction with the executive board. He shall have the power to call on any member of this Union in good standing to assist him, and use all honorable means to procure employment for the members of this Union in all places under the jurisdiction of this Union. He shall submit a WRITTEN REPORT at each regular meeting. He shall keep a correct list of all UNION and NON-UNION HOUSES together with the name of operators employed in same.

All delinquent members shall be replaced by members in good standing by him.

He is to consult with the President of this Union in any case of importance before closing any such deal with Owners, Managers or Operators.

He is to bring ALL BUISNESS up before the executive board or regular meetings. The Business

Exhibit C-3.

Agent is to receive no salary outside his allowance of $24.00 per year unless he is taken from his job as an operator, then he is to receive the highest salary paid an operator. He is to receive expenses, such as carfare, business cards and is to have a telephone.

Sec. 7. THE BOARD OF TRUSTEES: The Board of Trustees shall have charge of and supervision of all property belonging to this Union, and shall audit all books and accounts at least every three months, and shall make a detailed report to the Union. They shall see that all officers deliver all books and other property of this Local to their successors.

Sec. 8. SERGEANT-AT ARMS: It shall be the duty of the Sergeant-at-Arms to be present at all meetings, attend the door and leave no person enter who does not show a valid paidup membership card, or any other member perceptible under the influence of liquor. He shall under the direction of the President enforce compliance with the rules and regulations of this Union. He shall conduct all candidates during the initiation ceremonies and have charge of the door at Executive Board Meetings.

Sec. 9. THE EXECUTIVE BOARD: The Executive Board shall have full supervision and authority over the affairs of this Union in the interval between meetings.

Sec. 10. A majority of members shall constitute a quorum for the legal transaction of all business.

Exhibit C-3.

Sec. 11. In disputes which may arise between Employers and Members of this Union, it shall be the duty of the Executive Board when requested by the Business Agent, to investigate and endeavor to adjust same.

Sec. 12. The Executive Board shall act as the Tribunal for the consideration and disposition of all charges and appeals, but shall have no jurisdiction to act in the event of the impeachment of officers of the Union.

Sec. 13. Decisions of the Executive Board shall be legal and binding unless changed by this Union in meeting assembled. But a majority vote shall sustain the Executive Boards decisions.

ARTICLE 6.

Vacancies in Offices.

Sec. 1. Vacancies in Offices may be filled at any regular meeting, all members having been properly notified of such intentions.

Sec. 2. Should any officer absent himself from three successive meetings without a reasonable excuse, his office shall be declared vacant.

ARTICLE 7.

Dues, Fines and Assessments

Sec. 1. The dues of this Union shall be paid by its members as follows, all dues to be paid ONE month in advance and same not to be less than

prescribed by the International Office and this Union, all members are to be notified to attend meetings if change in dues is to be considered.

Sec. 2. Assessments may be levied at any regular meeting, provided that such intentions have been served upon the membership.

Sec. 3. All fines and assessments, etc., shall be charged against the members BEFORE dues. Members notified by registered mail to pay their dues must pay twenty-five cents to cover cost, etc.

Sec. 4. And member three months in arrears will be suspended from membership and can be reinstated only at a payment of $1.00 and all back indebtedness. Any member staying suspended for a period of six months can be admitted as a NEW MEMBER ONLY.

Sec. 5. Any member of this Union accepting or holding a position as Manager or Assistant Manager shall not be allowed voice or vote in this Union but the local may permit him to retain his membership if it sees fit.

Sec. 6. Assistant Managers belonging to this Local are not permitted to attend meetings unless notified to do so.

ARTICLE 8.

Salaries of Officers

Sec. 1. The salaries of officers shall be paid monthly as follows, President, $24.00 per year and to pay I. A. Assessments only.

Exhibit C-3.

Vice-President, $12.00 per year and to pay I. A. Assessments only.

Financial Secretary-Treasurer, $48.00 per year and to pay I. A. Assessments only.

Business Agent, $24.00 per year and to pay I. A. Assessments only. When in the field or taken off his job as an operator for any purpose, he is to receive the highest paid salary of an operator. He is further to receive all expenses such as carfare, etc., and he is to have a telephone and Business Cards.

The Recording Corresponding Secretary, $24.00 per year and is to pay I. A. Assessments only.

The Board of Trustees: Each member of the Board is to receive $1.00 whenever they have a meeting.

Delegates to conventions shall receive per day not less than their salary as operators, first class transportation and expenses the same being paid by the local, but when attending I. A. Convention expenses and transportation will be paid by the I. A. office instead of the local.

Elected or appointed members to the Executive Board are to receive $1.00 per meeting to cover their expenses.

Sec. 2. The President and Financial Sec'ty are authorized to O. K. all bills and sign all checks for this Union. The President is to have charge of the Local Seal. All monies or donations to be paid out with the exception of the bills presented at regular meetings must be referred to the Executive Board before being made.

Exhibit C-3.

ARTICLE 9.

Accusations and Trials

Sec. 1. All accusations and charges against any member shall be in writing and be presented at a regular meeting of this Union, when it shall be decided if the charges are cognizable under the laws of this Union. If so declared, the charges shall be referred to the Executive Board to inquire into the merits of the case and report their findings at the next regular meeting. Every facility shall be provided to enable the accused, as well as the parties interested to present the case.

ARTICLE 10.

Impeachment of Officers

Sec. 1. Causes: Any elected officer of this Union may be impeached for neglect of duty, violation of office or for infringements of the constitution and by-laws of this Union or the laws of the International Alliance.

Sec. 2. Form of charges: Impeachment charges must be in writing and presented over the signature of the complainant, also he must state clearly against whom the complaint is directed, the offense, time, place and nature of the violation, together with notation of the laws alleged to have been disregarded.

Sec. 3. To Whom Presented: The complainant shall present impeachment charges direct to a reg-

ular meeting of this Union under the consideration of new business.

Sec. 4. Trial Committee: It shall be the duty at the introducing of the impeachment charges to move their cognizance and in the event of a majority of the members present voting to entertain the same, the chairman shall proceed to the acceptance of ten nominations for membership to the trial committee, none of whom shall include either the defendant or complainant or any of their witnesses. When the ten shall have been duly nominated, their names shall be written on a piece of paper, each of which shall then be placed in a plain unmarked envelope and sealed. The ten envelopes containing the aforementioned slips of paper shall then be shuffled by the President unless he is mentioned in the charges, in which event the Vice President shall perform this duty and when it has been completed the Sergeant at Arms shall draw from the lot one envelope at a time until five in all have been taken from the ten. The five shall then be opened by the same officer and announce the names in the order drawn, The first announced to be the chairman of the Trial Committee, the four remaining to fill out the membership of said committee. Each side shall be privileged to five challenges.

The duty of the Trial Committee shall be first, to notify the accused of the contents of the charges, second, to sit trial-date, third, to instruct the presence of the complainant and the defendant at the trial, four, to command the attendance of witnesses, fifth, to afford both the prosecution and the defense every proper opportunity to present their evidence, and sixth, to permit either or both of them to select any member in good standing to plead their cause. A majority vote of the committee shall

decide the guilt or innocence of the accused. The Trial Committee however shall have NOT the power to impose a penalty, but shall report to the regular meeting its verdict. The chairman of the committee shall make a report of the same and shall then proceed to submit for a vote of this Union at such meeting the extreme penalty provided, and if this be not concurred in by the majority of members present, he shall move the next most severe penalty and continue in this wise until the majority have voted in favor to accept the imposition of a particular penalty.

ARTICLE 11.

Amendments

Sec. 1. Amendments must be in writing. A proposed amendment to, or alteration to this constitution must be presented in writing at a regular meeting of this Union.

Sec. 2. Two readings: No proposed amendment or alteration of this constitution shall be voted upon by this Union until it shall first have been read at two consecutive regular meetings.

Sec. 3. Majority vote of the members present at the regular meeting must vote in favor of any proposed amendment or alteration before the same shall be declared adopted and become part of this constitution.

ARTICLE 12.

Permanency of the Union

Sec. 1. This Union shall not have the power to dissolve if there be 9 (NINE) dissenting members.

Exhibit C-3.

BY-LAWS.

Article 1.

Sec. 1. Meetings: Regular meetings are to be held twice every month at such places, days and time as designated by this local from time to time. All members are expected to attend regular meetings of this Union. Executive Board meetings are to be held at least once every month at such time and place as called for. Any member having business to bring up before the Executive Board may attend such meetings. Members must attend at least each quarterly meeting or be fined $1.00.

Sec. 2. Withdrawal and transfer cards: A withdrawal card will be issued to any member in good standing who desires to withdraw from membership of this Union. at a payment of $1.00. Any member withdrawing from this Local who wishes to be reinstated will be admitted to full membership at the payment of $1.00 and three months dues providing that during the time of withdrawal or absence from the Local he has done nothing detrimental to this Union or organized labor in general.

Sec. 3. Transfer Cards: Transfer cards will be issued to any member in good standing at the payment of $1.00, he is to pay all dues and assessments to this local until he is accepted to membership of the organization to which he seeks admission. Pending final disposition of such transfer he shall continue on the books of this Local as a member in good standing and shall enjoy all the privileges accorded such member. If for any reason such transfer card is returned within ninety (90) days from

date of issue, the member shall be reinstated to membership without any payment of initiation fee or reinstatement fee. Fees on transfer cards from sister locals are to be as this local may see fit. But, such transfer cards must be either accepted or rejected within sixty (60) days) from date of issue.

Sec. 4. Special meetings can be called by the request of fifteen members to the President in writing. No other business shall be transacted at such meetings than that specified in the request. Notifications shall be mailed to all members.

Sec. 5. Twelve financial members shall constitute a quorum for the transaction of all business.

Sec. 6. Any member informing a NON-MEMBER of this union of any local business shall be fined not less than $25.00—A like penalty shall be imposed upon any member failing to make a report of any such violation to this union.

Sec. 7. No member of this Union shall be permitted to accept a steady position as an operator or make any changes of positions without first consulting the proper officials. The penalty for violating this section shall be a fine of $10.00.

Sec. 8. Upon failure of any member to keep this office properly advised as to the correctness of his address shall be fined 0.50 (fifty cents).

Sec. 9. A penalty of $2.00 shall be imposed upon any member of a committee who fails to act after having accepted such appointment.

Exhibit C-3.

Sec. 10. Members reporting to work in an intoxicated condition may be dealt with as this local sees fit, in no case shall the penalty be less than $10.00.

Sec. 11. On the death of a member in good standing this Union shall pay the sum of $50.00 to the beneficiary named by the deceased in writing. If said member dies intestate the amount afore mentioned shall go to his heirs at law.

Sec. 12. Only members who have been in good standing for one year, immediately preceding death, shall be eligible to participate in the burial fund. Payment shall be made only in case of death from natural causes or accidents.

Sec. 13. A floral piece shall be provided the cost of which shall not exceed $10.00. One conveyance shall be provided for the members selected by the President to attend. They shall be allowed $5.00 for expenses.

Sec. 14. The death benefit shall be paid out of a separate fund which shall be known as the Contingency Fund and which shall not be used for any other purpose. A balance of $300.00 shall be carried in this fund at all times. Should the amount fall below the afore mentioned sum, the deficiency shall be made up by a general assessment on the membership.

Sec. 15. Roberts rules of order shall be the authority by which the meetings of this Union shall be conducted, except as herein provided.

Exhibit C-3.

AMENDMENT TO BY-LAWS

Sec. 1. No part of these By-Laws shall be repealed, altered, annulled or amended unless all members of this Union shall have been notified to this effect at least one month prior and then only by a majority vote present.

Sec. 2. No member shall be allowed to work more than two weeks without a signed contract under a penalty of a fine of $10.00 for each offense.

Sec. 3. Members shall notify this Union of any change in policies or working conditions of theatres, any member failing to do so shall be fined $5.00.

Sec. 4. Operators, members of this Union must be on the job at least fifteen minutes before starting time. Any member reported for violating this rule is subject to a fine at the option of this Union.

Sec. 5. Operators must not allow Reel-boys to operate any of their apperatus in their charge. The penalty for this offense shall be as follows: First offense:—$5.00 fine, Second offense:—$10.00 fine, Third offense: $25.00 fine. After this, members violating this rule will be dealt with at the option of this Union.

Sec. 6. Officers saleries to be paid monthly as earned.

Sec. 7. Majority vote will sustain any transaction of business of this Union at regular, special or executive board meetings.

Exhibit C-3.

Sec. 8. Any manager or owner of a theatre asking for a certain operator of this union can employ him if it is possible for this Union to gratify his request.

Sec. 9. A roll call of all members shall take place at every meeting of this Union after the meeting is called to order and no member shall be permitted to leave before getting permission to do so from the President or Vice President.

Sec. 10. Any delegate elected or appointed with the exception of the Business Agent, for work throughout Hudson County, will not receive salary or expenses for attending delegate meetings unless having been appointed or notified by the President of this Union to attend such meetings.

Sec. 11. Any trouble that may arise between theatre owners or the manager and the operator, the president and the Business Agent are to be notified at once, if very urgent the President and the Business Agent will have the power to act, otherwise it is to be brought up on a regular or executive board meeting.

Sec. 12. Operators intending to leave or change positions must notify the Business Agent and the local, and the local is to give the manager at least two weeks notice in writing or through the Business Agent.

Sec. 13. Managers desiring to make a change of operator must notify the local at least two weeks ahead of time in writing. Operators are not permitted to accept notices, verbal or in writing.

Exhibit C-3.

No member of this local shall be allowed to go after a job where a member of good standing is working, unless this local has received a complaint or notice from the manager of said job. When this local is called upon by a sister local to withdraw a member from a theatre, notice shall not be given until all crafts working in such theatre have given notice to withdraw their men.

All contracts must be submitted to the executive board for endorsement before being signed by theatres.

Sec. 14. Operators are not allowed to work more than six days per week. Members holding positions in seven day houses will be relieved one day out of seven providing the Union has a man to put in his place. If the local is short of men the operator working the house will be required to work and fill in the seventh day and if failing to do so will be called before the executive board to explain his not doing so.

Sec. 15. Relief operators must notify the Union 48 hours ahead of time if they cannot work their job. Members failing to comply with this section will be subject to a fine of $5.00.

Sec. 16. Any member who shall assist or teach non-union men, bosses or boys known as rewind boys to operate without the consent of this union shall be fined $25.00 for each offense.

Sec. 17. It shall be the duty of every member of this union selecting or recommending men for work to give at all times preference to members in good standing of this union. Any member neglecting to

comply with this section shall be fined $50.00 (Fifty Dollars.)

Sec. 18. The penalty of expulsion from this union or such penalties as this union may direct, may be inflicted upon a member of this union who shall have been proven guilty of the following offenses.

First:—Flagrant and wilful violation of oath of obligation of the local and the I. A. T. S. E.

Second:—Deliberate ratting or enticing others to deliberately ratting.

Third:—Deliberate refusal to obey the mandates of this union or the mandatory orders of the executive board.

Fourth:—Deliberate refusal to abide by the Constitution and By-Laws of this union or the International Alliance.

Fifth:—Unlawful appropriation of monies or other properties of this union to its own use or defalcation of the funds of this union.

Sixth:—Habitually breaking contracts, verbal or written, made with employers to perform work which is under the jurisdiction of this union without giving said employers due and sufficient notice. Three offenses of this nature committed within twelve consecutive months to be considered habitual. Any member of this union who shall be proven guilty of any of the aforegoing offenses for which the penalty may be expulsion, shall be forever debarred from holding any office, or serving on any committee of this union and this clause shall not be amended, suspended or nullified by this local

at any time or circumstances, except by the unanimous consent of the whole body, which shall be declared by a standing vote. No meeting shall be called in reference to this section except by a notification to all members stating the nature of the business to be transacted.

Sec. 19. Any member of this union who may make charges against a member of this union, shall pay all expenses of the trial should the charge or charges be not proven correct.

Sec. 20. All members when applying for work must show their membership card when called for, and it shall be the duty of every operator to make demand under a penalty of $1.00 fine for each and every omission, and any member failing to produce such card when called for, unless he is vouched for satisfactorily, shall not be permitted to work.

Sec. 21. When a member of this union is discharged for incompetency and if for any reason it is brought to the attention of this union that he was discharged for this cause, the manager who discharged said member shall be requested to prefer charges against the offending member, and upon presenting said charges written to this union the following action shall be taken;—A committee of not less than three members nor more than five members shall be appointed, who shall investigate thoroughly and in what particular the accused was deficient.

First:—Lacking knowledge of mechanism.

Second:—Lacking knowledge of trimming and handling lamp.

Exhibit C-3.

Third:—Lacking knowledge of any particular make of machine.

Fourth:—Lacking knowledge of wiring or appliances that should be part of every members work.

Fifth:—General incompetency.

Sixth:—Negligence.

The committee shall proceed as follows: First finding the defendant incompetent on mechanism, he shall be ordered to work under a brother member who is known to be competent for a period of not less than two days nor more than five days as an assistant without pay.

The same applies to incompetency in handling of lamp or any particular make of machine. For lacking knowledge of wiring or appliances he shall take a course of instruction from a committee appointed for that purpose.

If general incompetency is the case the brother shall be ordered to work as an assistant without pay with some brother member known to be competent for not less than thirty days nor more than sixty days. He may have the right to have another examination, (in case of extreme penalty) after 45 days have elapsed.

Negligence shall be considered incompetency, and shall be punished as follows,—

First Offense—A fine of not less than $5.00 nor more than $10.00.

Second Offense—Not less than $10.00 nor more than $15.00.

Exhibit C-3.

Third Offense—Not less than $15.00 nor more than $25.00.

Fourth Offense—Unconditional dismissal.

Any member disciplined and punished under afore mentioned sections is to stay suspended until such time that he has complied with these requirements in full. The international office shall be notified whenever such steps have been taken in order to absolve this union from any responsibility for the said suspended member.

Sec. 22. Any person who will so far forget his duty to this union and will vouch for any member not in good standing, or non-member will be fined, suspended or expelled at the option of this union. No member shall be allowed to work in any place that is declared on strike or lockout.

Sec. 23. Any member working or knowing of another member working for less than the regular scale of wages and failing to report same to the local shall be dealt with as specified in section 24.

Sec. 24. No member shall donate his services for any benefit whatever except it be for some benefactor of this local union or in case of a great public calamity, and then only when it first has been referred to the executive board who shall have full power to act thereon and all members shall respect their decision.

Sec. 25. Any member of this local who in trying to secure employment for himself or any other member, vilifies the character or ability of a brother member shall for the first offense be fined $5.00

(not less,) and for the second offense such discipline as this local may find necessary even to suspension and expulsion.

Sec. 26. Any delinquent members taken off their job by the Business Agent cannot go back on their job before being reinstated at the next regular meeting.

COMMITTEE ON BY-LAWS

THOMAS J. NEATHERY, Chairmon
E. J. HEYDEN, Secretary
WALTER A. BEMIS
W. H. MEYER
Local, 384 of Hudson County, N. J.
I. A. T. S. E. and M. P. M. O.
of the United States and Canada.

Exhibit C-4.

1931 Constitution and By-Laws of Local 384, attached to cover of State of Case.

Exhibit C-5.

AMENDMENTS TAKEN FROM AMENDMENT BOOK EXHIBIT C-5.

RESOLUTION NO. 1.

Whereas, Section 15, Article 1 of our Local By-Laws are found to be defective and unworkable, and

Whereas, to give the members whose names may appear on the relief and unemployment roster an equal chance of securing positions,

Be it Resolved, That Section 15 of Article 1 of our Local By-Laws stand amended and read as follows:

A. This local shall at all times distribute positions to the Senior members from a list to be known as the relief and unemployment roster. This list shall be kept under the supervision of the Business Agent and the Executive Board of Local 384 and shall at all times be open for inspection by any Senior member.

B. All Senior members who have lost their positions through closing of a theatre they were employed in, shall place their names on the bottom of the list. In case of reopening of the theatre they shall be given first preference to go back on such jobs regardless of what position they may hold or what place on the list, at the time of reopening of such a theatre.

C. All Senior members who have lost their positions through General Labor trouble, but through

no fault of their own, shall be governed as per clause A of this section.

D. All Senior members who may lose their position through negligence, neglect of duty, incompetency, insubordination or through any fault of their own, shall place their names on the bottom of the list.

E. In the event of a steady position opening, the relief man longest employed in that theatre shall have first preference to take the steady position regardless of what position he may hold on the list, should he refuse to accept, he shall place his name on the bottom of the list and first choice shall revert to the first man on top of the list.

In the event that a member whose name appears on the list refuses any six (6) day position offered him, his name shall automatically revert to the bottom of the list.

Submitted by Committee on Resolution.

Signed ALBERT DE TITTA
TOBY ABRAMOWITZ
THOMAS NEATHERY

Presented at meeting Oct. 12th, 1931.
Adopted at meeting Nov. 23rd, 1931.

RESOLUTION No. 2

Whereas, Section 15, Article 1 of our Local By-Laws dealing with distributing positions, contains a clause which reads that Junior members shall be

kept on a list similar to the one of the Senior membership, and

Whereas, a change is made as to the distributing of positions to the Senior members, be it

Resolved, That the part of Section 15, Article 1 regarding Junior members employment shall read as follows: All positions and changes of positions in the Junior membership shall be made by the Business Agent, but must have the sanction of the Executive Board.

Proposed and recommended for adoption by Committee on Resolution.

Signed ALBERT DE TITTA
TOBY ABRAMOWITZ
THOMAS NEATHERY

Presented at meeting Oct. 12th, 1931.
Adopted at meeting Nov. 23, 1931.

RESOLUTION NO. 3

We the undersigned recommend that the following resolution be added to our constitution and by-laws:

Be it resolved that: Any and all members of the Senior body holding membership in good standing prior to January 1st, 1930, shall have priority and seniority rights over all persons who shall be taken into membership in the Senior body after the above mentioned date.

Be it further resolved that the above mentioned rights and privileges shall protect any person be-

coming a member of the Senior Body according to the date of his obligation in the Senior body. Namely he shall have seniority rights over all persons becoming members after him.

Respectfully,

E. S. SCHWAB
T. J. NEATHERY
LEON A. RING

Presented Aug. 8, 1932
Passed 1st Read. Sept. 12, 1932

Endorsed by I. A. Sept. 19, 1932
Passed final Reading Sept. 26, 1932

RESOLUTION NO. 4

Jersey City, Jan. 23, 1933

We the undersigned: Submit this Resolution:

To Revise Art. 1, Sec. 5 of our local By-Laws and Amendments.

Be It Resolved, that the Seniority Rights of all Senior Members of Local 384 of the I. A. T. S. E. and M. P. M. O. of the U. S. and Canada shall hereafter be based on the length of time a senior member has been paying all dues and assessments into this local.

The Secretary shall prepare a list on which the names of all Senior members shall appear in accordance with the total amount of time each senior member has paid all dues and assessments into this local, and time a member was on a withdrawal card shall be deducted, and he shall so place each

senior member in numerical order on such list; thereby establishing Seniority Rights and he shall keep this list up-to-date by the records of this local. Furthermore, all employment and openings, either steady or relief, shall be offered to senior members in accordance with their Seniority Rights, except in cases where theatres may temporarily close, and at the reopening of those theatres the men who came out of them shall have the preference of going back to their former positions.

No member shall be allowed to either claim or solicit another Senior member's position, unless such position has been or will be officially declared open by this union.

The Business Agent must assign the members of this union to positions in accordance to their Seniority rights, and he must secure a signature from those members whom are asked, whether they accept or reject the position in question, and he shall fill immediately to his best judgment all calls from members who may be taken ill, or may take a temporary vacation, but if such positions become permanent they shall be filled through the Seniority Rights of Senior Members of this local.

In cases where two or more members have been initiated on the same date, or in such cases where two or more members having the equal amount of active time in this local, it shall be decided by "Lot" as to what position their names shall appear on the seniority routine, namely: The names of members with equal amount of active time in this local shall be placed into a "hat" at a regular or special meeting by the Secretary-Treasurer and the Chairman presiding at such meeting shall draw from the hat one name of a member of this local at a time and they shall be placed on the seniority routine in the same numerical order as they were drawn from the hat.

Exhibit C-5.

Any changes to this resolution shall require a two-thirds majority vote of Senior members voting, and shall be a notification meeting.

Submitted by a committee in good standing, appointed at a regular meeting held Aug. 8, 1932.

ALBERT MOBBS
JOHN GALFO
T. J. NEATHERY
ABRAHAM KATZ
ARTHUR S. BARBER

Presented Jan. 23, 1933 and laid on table indefinitely.

Taken from table Sept. 25, 1933
Passed first reading Sept. 25, 1933
Passed final reading Oct. 13, 1933
Endorsed by I. A., Nov. 28, 1933.

Exhibit C-6.

Assembly of permit-men for the purpose of forming the junior local held March 4, 1930, Tuesday midnight, at our new meeting hall. Called to order at 12.45.

Meeting started with the calling of the roll, and as each members name was called, they were each handed a copy of the agreements as required by the senior local. Said copy to be signed by each individual member, before being eligible to become a member of the junior local.

Bro. Evans read every section of the agreement to all those present, and after he had finished reading all articles, the chairman asked all those present if they understood every article as read and explained by bro. Evans, to which they voiced no objection.

Bro. Evans requested that prospective bro. Mr. Woods make a motion that the prospective Junior local accept the agreement in its entirety. Motion was made by Mr. Woods and seconded by Mr. Harry Nyland that the prospective Junior Local accept the agreement in its entirety. The above mentioned motion was unanimously carried.

Each prospective member was then called into the office to sign the agreement before a Notary Public and a member of Local 384 to be present as a witness.

Motion made by Bro. Evans, seconded by Bro. Cantoli that the secretary cast a ballot to carry the motion to obligate all prospective members to Junior Local.—carried.

Exhibit C-6.

The chairman then read the oath of obligation to all the prospective members present, thereby admitting them to membership of Junior Local 384.

Bro. Boyd, Neathery, Dulberger, Steiner, Furkey, Boscarelli, Peterson and Evans spoke on Good and Welfare.

Meeting adjourned 2:45.

WALTER A. BEMIS, President.

FRANK MANDRAKE, Secretary.

EXHIBIT C 7

Date	Particulars	Amount	Signature of Secretary

JUNIOR DEPT

JUNIOR DEPT
William Cameron

Moving Picture Machine Operator's Membership Card **No. 16090**

Issued to Bro. WILLIAM CAMERON

By HUDSON COUNTY, N. J.

CITY STATE

Local Union No. 384 of the International Alliance of Theatrical Stage Employes and Moving Picture Machine Operators of United States and Canada, Affiliated with the American Federation of Labor

Member's Signature

F. Reyden — *President*

Charles May — *Secretary*

44

Void After July 31, 1932

SEASON 1931-1932 24

APPRENTICE

FIRST QUARTER — Aug. Sept. Oct. — L.A.T.S.E. and M.P. M.O. of U.S. and C. PER CAPITA AND CONTENTION FUND. 1931-1932	SECOND QUARTER — Nov. Dec. Jan. — L.A.T.S.E. and M.P. M.O. of U.S. and C. PER CAPITA AND CONTENTION FUND. 1931-1932	*See That Stamp, Is Affixed For Each Quarter*
THIRD QUARTER — L.A.T.S.E. and M.P. M.O. of U.S. and C. PER CAPITA AND CONTENTION FUND. 1931-1932	FOURTH QUARTER — May June July — L.A.T.S.E. and M.P. M.O. of U.S. and C. PER CAPITA AND CONTENTION FUND. 1931-1932	

Initiated MAR 4 1930

If accepted by transfer give date of original initiation

Dues Paid to Local Union No. 384

Date	Amount	Sig. of Fin. Sec'y
8/10/31	6 —	Charles May
11/9/31	6 —	Charles May
2/8/32	6 —	Charles May
5/9/32	6 —	Charles May

CONTRACT.

Exhibit C-8.

This Agreement made this 2 day of September by and between Strand Theatre, Union City, N. J., hereinafter referred to as party of first part, and moving Picture Machine Operators' Union Local No. 384 of The International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, an unincorporated association consisting of seven (7) or more persons hereinafter referred to as the party of the second part, by and through W. H. Bemis its President, and Elisha Evins its Business Agent.

This is the Official and Only Contract Recognized by

(Insignia)

LOCAL No. 384
International
Alliance of Theatrical
Stage Employees
and Moving Picture
Machine Operators
of the
United States and
Canada.

WHEREAS the party of the first part is engaged in the business of operating motion picture theatre or theatres in Hudson County and jurisdiction of

WHEREAS the party of the first part requires and needs, in the conduct of the said business, competent motion picture machine operators and is desirous of entering into a contract with respect to the employment of such motion picture machine operators and the supplying and furnishing of such motion picture machine operators to the party of the first part, and

WHEREAS the party of the second part is a labor union and association of motion picture machine operators, organized for the mutual benefit of and to promote the general efficiency of its members as operators of motion picture machine, and of securing for its members in good standing satisfactory employment as motion picture machine operators.

Exhibit C-8.

NOW, THEREFORE, in consideration of the premises and of the sum of One Dollar ($1.00) to each party in hand paid by the other party hereto, the receipt whereof is hereby acknowledged, and in return consideration of the mutual promises hereinafter contained,

THIS AGREEMENT WITNESSETH:

FIRST: The said party of the second part hereby agrees to supply and furnish to the said party of the first part, during the term of this agreement, all such competent motion picture machine operators as the said party of the first part may need and require in the operation of moving picture theatre or theatres owned, controlled, leased or managed by the party of the first part in the County of Hudson.

SECOND: The party of the first part hereby covenants and agrees that, during the term of this agreement or any extension thereof, the party of the first part will not engage or employ any motion picture machine operator or operators other than operators supplied by party of the second part.

It is expressly agreed by and between the parties hereto, that, in case of a breach by the party of the first part of any of the terms of this paragraph, then the said party of the first part shall, without proof of actual damage or the amount thereof, pay to the party of the second part the sum of

Dollars ($) as compensation for injury to the said party of the second part by reason of said breach; and the sum of *Two Hundred and Fifty Dollars* ($250.00) is hereby expressly agreed upon as liquidated damages and compensation and not as a penalty.

The foregoing provision for such liquidation damages and compensation is made in view of the

fact that the party of the second part is a labor union and unincorporated association, organized for the mutual benefit of and designated to promote the general efficiency of its members as operators of moving picture machines and it would be impossible to determine, ascertain or estimate the entire or exact amount of loss, damage and injury which the said party of the second part would suffer and sustain by reason of a breach on the part of the party of the first part.

It is further mutually agreed by and between the parties hereto, that there is no adequate remedy at law for breach by the party of the first part of any of the terms of this paragraph of this agreement, and that the party of the second part, in the event of any such breach by the party of the first part, shall be entitled to equitable relief by way of injunction or otherwise.

It is further stipulated and agreed between the parties hereto that neither the foregoing provisions for stipulated damages and compensation to the party of the second part, nor the payment of the sum aforesaid as liquidated damages and compensation to the party of the second part, shall be held to debar the party of the second part from enforcing this agreement by injunction or otherwise.

THIRD: During the term of this contract, the party of the first part agrees that the property accredited officials of the party of the second part may have access, at all reasonable times, to the operating rooms of the theatre or theatres of the party of the first part.

FOURTH: The party of the first part shall not discharge any member of the party of the second part whose salary is payable weekly, unless the

party of the first part shall, two weeks prior to such discharge, give to the party of the second part notice in writing of such intention to so discharge such employee; except that any employee may be discharged at any time by paying to him, in advance, two (2) weeks salary and except that the party of the first part may at any time, without notice, discharge any employee for dishonesty, for refusal to perform his duties as a motion picture machine operator, and except that the party of the first part may also, without notice, at any time within the first week of any employee's employment, discharge such employee for incompetency.

FIFTH: Upon receiving notice, as provided in paragraph FOURTH hereof, the party of the second part shall, upon written request by the party of the first part, supply to the said party of the first part a motion picture machine operator to take place of the operator discharged, pursuant to said notice, and, in the event of a discharge of any member of the party of the second part for dishonesty, refusal to perform his duties, for incompetency, the party of the second part will immediately, after receiving a written request therefor, from the party of the first part, supply an operator or operators in place of the person or persons so discharged.

SIXTH: The party of the first part shall have the right to make rules and regulations as may be deemed necessary by said party for the conduct and management of the performances and working conditions; and the party of the second part agrees that its members shall obey all rules, regulations and directions of the party of the first part, or of any authorized representative of the party of the first part, in so far as such rules, regulations and

Exhibit C-8.

directions do not conflict with the terms of this contract, or with the by-laws and working rules of the party of the second part now in force, or with the rules and regulations of the *International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada.*

SEVENTH: As the party of the second part is a member of the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, nothing in this contract shall ever be construed to interfere with any obligation or duty which the party of the second part owes or shall owe to said International Alliance by reason of the fact that the second party is Local No. 384 of said International Alliance of Theatrical Stage Employees and Moving Picture Operators of the United States and Canada.

EIGHTH: If any operator employed hereunder shall negligently damage, break or destroy any motion picture apparatus under his control while he is employed and engaged hereunder, then, and in that event, the party of the second part agrees to replace any part or portion of said motion picture apparatus so damaged or destroyed by such member; or, at the option of the party of the second part, it is agreed that the party of the second part may pay a sum which will reasonably compensate the party of the first part for the replacement of, or repair to, said motion picture apparatus so damaged. Provided, however, that the party of the second part shall not assume any liability under this clause unless it, through its duly authorized representative, has upon the written request of the first part, first approved the motion picture apparatus so damaged, broken or destroyed.

Exhibit C-8.

NINTH: The working week of each member of the party of the second part employed by the party of the first part, pursuant to and under his agreement, shall consist of and constitute six (6) days; and a working day shall consist of consecutive hours to be designated and arranged from time to time by the party of the second part.

Classification	*Per Hour*	*Per Day*	*Per Week*	*Seats*
DeLuxe Class	.....	.....	.....	DeLuxe
A "	.....	.....	.....	1500 to 2499
B "	.....	.....	.....	800 to 1499
C "	1.65	11.50	69.30	400 to 799
D "	.....	.....	.....	1 to 399

CONDITIONS

EXTRA SHOW:

Any theatre operating an extra show, before or after theatre hours, shall pay the Motion Picture Projectionist one full days pay, as per classification.

SCREENING:
REHEARSALS:

One rehearsal gratis (FEATURE PICTURE ONLY), all other rehearsal to pay pro-rata as per scale of classification of theatre.

METHOD OF RECEIVING SALARY:

This Local 384, will not permit Motion Picture Projectionists to receive salaries or overtime by check.

DUTIES:

No Motion Picture Projectionists will be permitted to perform any duties outside of the projection

booth or carrying of film to or from the projection booth and shall confine himself to operation and projection work only.

Theatres opening for the minimum part of one week, shall pay double time under their classification.

Theatres operating nights only shall pay the regular scale of the next highest classification with a minimum of four hours per night.

All work outside of theatres per show not to exceed three hours, $10.00.

Schools, one show, $10.00; two shows, $15.00.

The President and Business Agent of this Local No. 384, shall have access to the projection room at all times.

New theatres opening and theatres changing policy shall refer to the Executive Board of this Local No. 384, for proper classification.

This contract shall become void in the case of labor trouble in theatres covered by same.

Any condition not covered by this contract shall be referred to the Executive Board of this Local No. 384, for proper classification.

Labor Day, 1931, an additional 5% increase is to be added as per agreement.

This Contract to be in force and binding from the 2 day of September, 1929 to the day of Labor Day, 1932.

Signed AMDES NICOLETT
Party of the first part

ELISHA EVINS
WALTER A. BEMIS
Party of the second part

(Local Seal)

Exhibit C-8.

CONTRACT

THIS AGREEMENT made this first day of September, 1931, by and between the STRAND THEATRE, UNION CITY, N. J. hereinafter referred to as the party of the first part and, MOVING PICTURE MACHINE OPERATORS UNION LOCAL, 384, of HUDSON COUNTY, N. J. of the INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, and hereinafter referred to as the party of the second part, by and through, Edward J. Heyden its President and, Anthony Boscarelli its Business Agent.

THIS AGREEMENT WITNESSETH:

In consideration of the premises and the sum of ONE DOLLAR (1.00) to each party in hand paid by the other party hereto, the receipt whereof is hereby acknowledged and, in further consideration of the promises hereinafter contained,

The said party of the second part hereby agrees to supply and furnish to the said party of the first part, during the term of this agreement or any extension thereof, all such competent moving picture machine operators as the party of the first part may need and require in the operation of moving picture theatres owned, controlled, leased or managed by the party of the first part in the county of Hudson in the State of New Jersey.

The party of the first part hereby covenants and agrees that, during the term of this agreement or any extension thereof, the party of the first part will not engage or employ any moving picture machine operators other than operators who are members in good standing of the party of the second part.

Exhibit C-8.

It is expressly agreed by and between the parties hereto, that, the employment and payment of all members of the party of the second part, employed pursuant to the terms hereof, shall be regulated by the wage-schedule and conditions of the party of the second part which wage-schedule and conditions is hereby referred to and made part hereof the same as if fully set forth and set out in detail and as specified in a wage-schedule and conditions and annexed hereto.

All of the provisions, conditions and stipulations of this contract shall bind and endure to the benefit of the assigns and transferees of this agreement for a term of two (2) years, commencing, September, 1, 1931, and ending, September, 1, 1933.

As the party of the second part is a member of the I. A. T. S. E. & M. P. M. O. of the United States and Canada, nothing in this agreement shall ever be construed to interfere with any obligations that the party of the second part owed such I. A. T. S. E. & M. P. M. O. of the United States and Canada by reason of prior obligations.

(Seal)

STRAND THEATRE of UNION CITY, NEW JERSEY to employ two operators in the projection room at all times Scheduled Show Hours from 2 p. m. to 5 p. m. for five days per week. Saturdays and Sundays continuous from 2 p. m. to 11 p. m.

All extra time outside above scheduled hours to be paid at the rate of $1.25 per hour, per man.

Total cost of booth for two men at six days per week including two continuous days, $100.00 (ONE HUNDRED DOLLARS)

Manager of theatre to relief each operator one day (seventh day) per week.

Exhibit C-8.

Setting-up or taking down of machine shall require two men, sound-testing shall also require two men, and be paid for pro rata as per above classification.

Any other repair work shall require only one operator to be present.

Either party shall require two weeks notice in writing prior to a discharge of any operator under the conditions of this contract.

All new men to be furnished by the party of the second part and in accordance with the unemployment Roster of Local 384, and the sanction of the Executive Board of Local, 384.

In witness whereof: The Moving Picture Machine Operators Union Local, 384, of Hudson County, N. J. of the I. A. T. S. E. & M. P. M. O. of the United States and Canada, party of the second part, has caused these present to be signed by,

E. Heyden Its President

and,

Anthony Boscarelli Its Business Agent
party of the second part

and,

Union City Theatrical Corp.
G. Nicolett, Pres Company
Manager
Owner
of the Strand Theatre Union City, N. J.
Party of the First Part

(Seal)

Exhibit C-9.

List of juniors' names, amount of initiation fees and dates of applications.

Junior Members	*Date of Application*	*Amount of Initiation Fee*
Abramowitz	June 5, 1929	$300.
Boscarelli	July 14, 1928	200.
Barkowski	Aug. 12, 1929	300.
Brogan	Oct. 29, 1929	500.
Cameron	June 15, 1929	300.
Cancalosi, Theo.	no date	200.
Cancalosi, Jos.	Nov. 12, 1929	500.
Cross	Aug. 7, 1929	300.
Davidson	July 26, 1929	300.
Davies	Nov. , 1929	500.
DeMea	Feb. 10, 1930	500.
Dulberger I.	Apr. 3, 1929	300.
Fargo	Sept. 10, 1929	300.
Giardina	no date	500.
Gold	Nov. 12, 1929	500.
Greulich	July 2, 1929	300.
Hentschell	Sept. 7, 1929	300.
Lawrence	Mar. 4, 1930	500.
Mobbs	Aug. 7, 1929	300.
Mullens	June 15, 1929	300.
Muller	Mar. 16, 1929	300.
Morris	Aug. 13, 1929	300.
McCarthy	Sept. 3, 1929	300.
McMahon	Dec. 10, 1929	500.
Nyland	Mar. 16, 1929	300.
Pagano	Mar. 1, 1930	500.
Palesado	Aug. 12, 1929	300.
Saponar	Apr. 22, 1929	300.
Schaller	Oct. 9, 1929	500.
Schark	July 20, 1929	300.

Exhibit C-9.

Schellmann, J.	Jan. 14, 1930	500.
Schapiro	July 2, 1929	300.
Schwartz, Wm.	May , 1929	300.
Schwartz, Al.	Apr. 29, 1929	300.
Siberry	Sept. 11, 1929	300.
Spano	Mar. 10, 1930	500.
Steiner, Erwin	Nov. 12, 1929	500.
Steiner, Jos.	no date	500.
Toohey	Sept. 10, 1929	300.
Udiljak	Aug. 12, 1929	300.
Woods	July 8, 1929	300.
	TOTAL	$14,900.

We must admit receiving same, inasmuch as our auditors have checked this.

Exhibit C-10.

December 31st, 1931.

Moving Picture Machine Operators' Union,
Local No. 384.

Dear Sirs and Brothers:

On or about February 11th, 1930, the undersigned became Junior members of your body, pursuant to a certain control entered into said date, a copy of which is annexed hereto.

At the time that the said contract was entered into we agreed to be bound by the terms of the said contract, as well as by the terms of the Constitution and By-laws, then in existence, of your body.

The aforementioned contract, as well as the Constitution in question, granted to us the full rights of members of the Local, excepting as limited by the terms of the said contract of February 11th, 1930. Particularly in this contract, Section 9, grants a privilege to Seniors as to jobs, and Section 8 grants the Local dues in an amount equal to 10% of the salaries which we earn. Section 8 also refers to the fact that Junior members shall meet every fourth Tuesday of each month, at midnight; said meeting to be conducted by the executive board of the Senior body. Aside from the particular provisions mentioned, there are minor details set forth in the contract which affect our rights.

It is the contention of the undersigned that the contract of February 11th, 1930, pursuant to which we were obligated as Junior members of our Local, received our working cards in accordance therewith, and received due membership in the International Alliance, gives us the full rights of member-

ship in our Local, subject to the limitations enumerated in our contract of February 11th, 1930.

It is our further contention that the following provisions in the present Constitution and By-laws of our Local were enacted illegally, in that they enlarge upon the limitations set forth in our contract of February 11th, 1930, and in that we were deprived of the right to vote in connection with the enactment of the provisions in question.

ARTICLE II

Section 1—the reference to "apprentices of Local 384".

Section 3—the reference to "apprentice body of Local 384".

Section 9—the reference to "apprentice".

RULES AND AGREEMENT OF JUNIOR MEMBERS

Section 6, subdivision 1—reference to "apprentice".

Section 7—failure to include therein that portion of Section 8 of the contract of February 11th, 1930, which reads as follows:

> "Junior members shall meet every fourth Tuesday of each month, at midnight."

Include the following: "Section 16. Excepting as hereinbefore expressly limited, Juniors and Seniors shall have equal rights as members of this Local."

Exhibit C-10.

ARTICLE III

Section 4—strike out "only Senior members" include the word "members".

Section 13—strike out "from the Senior membership" and include "membership".

BY-LAWS

ARTICLE I, Section 1—strike out the following from the second paragraph of the said section:

> "Meetings of the Junior body shall be held whenever called for by the President, at the decision of the executive board"

and substitute therefor:

> "Junior members shall meet every fourth Tuesday of each month, at midnight, said meetings to be conducted by the executive board of the Senior body."

Section 16—strike out.

> "No member of this Local shall be permitted to give positions to junior members"

Section 30—strike out

> "They shall have no vote on anything pertaining to the business of this Local".

Add in:

> "Section 31. No measures may be enacted unless by and with the approval of the Juniors

and Seniors at their respective meetings, the same rules of procedure and voting shall be required before any measures may be enacted either at Senior or Junior meetings".

We respectfully request that there be given to us a copy of any amendments to the Constitution and By-laws that may have been enacted and not included in the present printed copy of the Constitution and By-laws, so that we may examine them for the purposes of determining our rights in connection therewith.

We again urge that our contention as to the illegality of the provisions cited and the failure to include the provisions mentioned is a violation of our rights under our contract with this Union, and is in violation of our rights as Junior members, accorded to us by reason of our becoming obligated to the Union and receiving thereby our working cards as members of this Local and our membership in the International Alliance.

We respectfully ask that the Union assembled pass upon our request, so that if this petition is denied that we may submit it to the International Alliance.

Our attention has been called to the fact that charges may be preferred against us by reason of our presenting this petition to our Local. We call your attention to the fact that what we are doing in no way violates the Constitution and By-laws; that the submission of this petition by us to you in no way violates the Constitution and By-laws of our Local, and we believe that you will not make

cognizable any charges which may be preferred against us by reason of the action we now take.

Fraternally yours,

Ralph De Mea	Theodore Cancalosi
William Cameron	William Schwartz
T. J. McCarthy	John Spano
Jos. Cancalosi	William Brogan
John E. Wood	Frank Giardina
Ira Dulberger	Vincent Saponar
Al Schwarz	Harry Shapiro
Harry C. Gold	Frank Barkowski

Attached to this petition is a copy of the contract which appears in this State of Case as Exhibit C-1.

Exhibit C-11.

Application Blank of Local Union No. 384 of the International Alliance of Theatrical Stage Employes and Moving Picture Machine Operators of the United States and Canada.

I have the honor to make application for membership in Local No. .... of the International Alliance of Theatrical Stage Employes and Moving Picture Machine Operators of United States and Canada, basing my application on the following facts, which I affirm to be true:

I, George Muller, was born in New York City, age 45 years, now residing at Little Ferry, N. J., have been a resident of Hudson and Bergen County, N. J., for 25 years. I am by occupation a Moving Picture Operator and have worked at the following theatres: at about 10 Theatres in Hudson County, N. J., a total of 10 years.

Have you ever applied for membership in any Local of this Alliance? Yes.

If elected to membership, I agree not to engage with any traveling theatrical attraction in any mechanical capacity for a period of two years.

Signature of Applicant.....

Dated at 3/16 1929.

Initiation Fee: $300.00 Amount Paid.....

Balance Due.....

Date of Previous Application, if any.....

.....Made to Local No. 384.

The undersigned vouch for and recommend the above named applicant for membership.

Elisha Evins
Harvey Sapp
Toby Abramowitz
Nick Canti

Exhibit C-11.

All members in good standing of
Local No. 384

(On Back)

00003

APPLICATION

Mr. George Muller. Presented at a meeting held .....,19....

The Board of Examination having examined within named applicant and found him.....per cent. qualified for membership as ..... respectfully report.....favorable on admission .....

.....

.....

BOARD OF EXAMINERS.

Balloted at a meeting held.....

and..... notified..... 19....

Endorsed by the
I. A. T. S. E. & M. P. M. O.
OF U. S. & C.
Feb. 18, 1930

R. J. GREEN
General Secretary-Treasurer

EXHIBIT C 12

Date	Particulars	Amount	Signature of Secretary

Moving Picture Machine Operator's Membership Card № 29495

Issued to Bro. JOSEPH STEINER, JR.

By HUDSON COUNTY, N. J

CITY STATE

Local Union No. 384 of the International Alliance of Theatrical Stage Employes and Moving Picture Machine Operators of United States and Canada, Affiliated with the American Federation of Labor

Joseph Steiner Jr.
Member's Signature

Frank Wendrich Charles May
President *Secretary*

44 *Void After July 31, 1934*

SEASON 1933-1934

See That Stamp Is Affixed For Each Quarter

FIRST QUARTER
AUG. SEPT. OCT.
I.A.T.S.E. and M.P. M.O. of U.S. and C. PER CAPITA AND CONVENTION FUND 1933-1934

SECOND QUARTER
I.A.T.S.E. and M.P. M.O. of U.S. and C. PER CAPITA AND CONVENTION FUND 1933-1934

THIRD QUARTER
FEB. MAR. APR.
I.A.T.S.E. and M.P. M.O. of U.S. and C. PER CAPITA AND CONVENTION FUND 1933-1934

FOURTH QUARTER
MAY JUNE JULY
PLACE STAMP HERE

Initiated March 4 1930

If accepted by transfer give date of original initiation

JUNIOR

Dues Paid to Local Union No. 384

Date	Amount		Sig. of Fin. Sec'y
7/24/33	6	=	Charles May
11/13/33	6	=	Charles May
2/12/34	6	=	Charles May

EXHIBIT C 13

Date	Particulars	Amount		Signature of Secretary

Moving Picture Machine Operator's Membership Card No. 29462

Member's Signature

Issued to Bro. FRANK MANDRAKE

By HUDSON COUNTY, N. J.
CITY STATE

Local Union No. 384 of the International Alliance of Theatrical Stage Employes and Moving Picture Machine Operators of United States and Canada, Affiliated with the American Federation of Labor

J. Mandrake — *President*

Charles May — *Secretary*

Void After July 31, 1934

SEASON 1933-1934

QUARTER		QUARTER	
SECOND Nov. Dec. Jan.		FIRST Aug., Sept., Oct.	
QUARTER		QUARTER	
FOURTH May June July		THIRD Feb. Mar. Apr.	

See That Stamp Is Affixed For Each Quarter

Initiated April 15 1916

If accepted by transfer give date of original initiation

Dues Paid to Local Union No.

Date	Amount		Sig. of Fin. Sec'y
8/14/33	20	=	Charles May
11/13/33	20	=	Charles May
4/5/34	20	=	Charles May
4/16/34	20	=	Charles May

Exhibit C-5.
(for Identification)

LIST OF HUDSON COUNTY THEATRES EMPLOYING MEMBERS OF THE DEFENDANT UNION.

Name		*No. of Men Employed*	
Apollo	(J. C.)	5	
Broadway	(Woodcliff)	2	
Cameo	(J. C.)	3	
Capital	(J. C.)	5	
Central	(J. C.)	4	
DeWitt	(Bayonne)	4	
Embassy	(Woodcliff)	5	
Embassy	(Bayonne)	2	
Fabian	(Hoboken)	5	
Fulton	(J. C.)	3	
Lincoln	(Union City)	3	
Loew's	(Jersey City)	5	
Lyceum	(Bayonne)	2	
Majestic	(J. C.)	6	
Mayfair	(W. N. Y.)	3	
Monticello	(J. C.)	4	
Opera House	(Bayonne)		
Orient	(J. C.)	3	
Orpheum	(J. C.)	3	
Palace	(J. C.)	5	
Plaza	(Bayonne)	3	
Ritz	(J. C.)	3	
Roosevelt	(U. C.)	3	
Stanley	(J. C.)	5	
State	(J. C.)	5	
State	(U. C.)		closed
Strand	(U. C.)	2	
Strand	(Bayonne)		closed
Strand	(J. C.)	5	
Summit	(U. C.)	2	
Tivoli	(J. C.)	4	
U. S.	(Hoboken)	3	
Regent	(Kearny)	3	
Lincoln	(Kearny)	2	
Hudson	(Kearny)	3	

Exhibit C-5.

Name		*No. of Men Employed*	
National	(J. C.)		closed
Capitol	(U. C.)	5	
Academy of Music	(J. C.)		closed
Plaza	(J. C.)		closed
Liberty	(J. C.)		closed
Rialto	(J. C.)	4	
National	(J. C.)		closed

LIST OF HUDSON COUNTY THEATRES NOT EMPLOYING MEMBERS OF THE DEFENDANT UNION AT THIS TIME.

City	(U. C.)
Columbia	(W. N. Y.)
Palace	(Hoboken)
Pastime	(U. C.)
Rialto	(W. N. Y.)
Rivoli	(W. N. Y.)
Rivoli	(Hoboken)
Temple	(U. C.)
Transfer	(N. B.)
Bishop	(Hoboken)
Community	(Secaucus)

Exhibit D-1.
(for Identification)

TESTIMONIAL BANQUET

dedicated to the

SENIOR MEMBERS

by

JUNIOR MEMBERS

Local 384, I. A. T. S. E.

Tuesday, April 22nd, 1930
At
Union City Elks Club
Union City, N. J.

OFFICERS

WALTER A. BEMIS, President
HAROLD L. DULBERGER, Vice-President
WILLIAM H. MEYER, Sec'ty-Treas.
FRANK MANDRAKE, Rec. Sec'ty
ELISHA EVINS, Business Representative
GEORGE WEDEMEYER, Sergt.-at-Arms

EXECUTIVE BOARD

THOMAS NEATHERY
JOSEPH CANTOLI
ANTHONY BOSCARELLI

Exhibit D-1.

Best
Wishes
For
Continuous
Prosperity

THE COMMITTEE
JOHN E. WOOD, Chairman
VINCENT M. SAPANOR
HARRY NYLAND
PETER M. CROSS
THEODORE CANCALOSI
PETER PALESADO

MEMBERS OF THE
JUNIOR DEPARTMENT, LOCAL 384
I. A. T. S. E. & M. P. M. O.
United States and Canada

W. Abramowitz
R. Boscarelli
F. Barkowski
J. Barry
T. Cancalosi
J. Cancalosi
W. Cameron
P. Gross
I. Dulberger
W. Davidson
W. Broggan
N. Fargo
J. Greulich
H. Gold
W. Henachell
H. Lawrence
L. Morris
G. Muller
J. Mullen
A. Mobbs
A. McMahon
T. McCarthy
H. Nyland
P. Palisado
L. Pagano
R. Schellman
E. Schark
V. Saponar
H. Shapiro
E. Steiner
A. Schwartz
W. Schwartz
G. Thrower
J. Steiner, Jr.
J. Udeljak
G. Sibery
J. Wood

Exhibit D-4.

WORKING CARD

MOVING PICTURE OPERATORS
LOCAL 384

Issued to .....

Working at .....

.....

Business Agent

(On Back)

Month of ..... 193....

Week of..... .....

Week of..... .....

Week of..... .....

Week of..... .....

Week of..... .....

Void unless issued by Business Agent.

The bearer agrees to abide by all Laws Governing Local 384

Hudson County, N. J.

Exhibit D-5.

INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA.

Local No. 384 of Hudson County, N. J.

Affiliated with American Federation of Labor, C. L. U. of Hudson County, N. J., and New Jersey Federation of Labor.

Jan. 14, 1930.

We the undersigned do hereby present the following resolution.

RESOLVED.

That a JUNIOR LOCAL 384, be created within the jurisdiction of LOCAL 384, I. A. T. S. E. and M. P. M. O.

Said local to be governed by the SENIOR LOCAL, at all times.

SIGNED BY THE FOLLOWING MEMBERS IN GOOD STANDING.

ELISHA EVINS
GEO. WEDEMEYER
PETE DAWSON
LARRY ABBOTT
JOSEPH ROMANO
ALBERT MOBBS
FRANK PILEGGI
T. J. NEATHERY
CHARLES MAY
ALBERT DE TITTA

Exhibits D-8 and D-9.

EXCERPTS TAKEN FROM CONSTITUTION AND BY-LAWS OF THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA.

BY-LAWS.

ARTICLE TWO.

Local Unions.

Section 1. Home Rule.

"Home Rule" is granted to all affiliated locals of this Alliance, and this shall be construed as authority conferred upon each local union to exercise full control over its own affairs; provided, however, that in the conduct of such business no action shall be taken that will conflict with any portion of the Constitution and By-Laws of the International Alliance.

ARTICLE THREE.

Sec. 12. Date of Membership.

The membership of any member of this Alliance shall commence from the date of his registration with the General Secretary-Treasurer.

Per capita tax must be paid on all apprentices from date of original registration with the General Secretary-Treasurer.

Exhibits D-8 and D-9.

ARTICLE NINE.

Charges.

Section 1. Addressed to President.

All accusations or charges directed against any affiliated local union or member of this Alliance for violation of this Constitution and By-Laws shall be addressed to the International President.

Sec. 2. Must Be in Writing.

Accusations or charges must be presented in writing over the signature of the complainant.

Sec. 3. Form.

Accusations or charges shall cite clearly in the form of a sworn affidavit the offense charged, against whom filed, time, place and nature of the violation, together with notation of the section or sections of the Constitution and By-Laws alleged to have been violated.

Sec. 4. Cognizance of Charges.

Upon receipt of charges properly formulated and submitted the President shall decide whether or not they are cognizable. If it is so decided the President shall immediately cause notification to be sent to the accused.

Sec. 5. Accused Must Answer.

The accused shall be obliged to enter defense in writing within ten (10) days of receipt of notifica-

tion of charges filed, or, in default, shall be adjudged guilty as charged.

Sec. 6. Charges Not Proved.

Any member or Local preferring against any other member or local of this Alliance malicious charges which are not founded on facts or laws of this Alliance may be fined the sum of Twenty-five dollars ($25.00) at the option of the International President.

Sec. 7. Enforcement of Decisions.

Rulings of any proper tribunal of this Alliance shall be enforced pending disposal of appeals. This shall be construed:

1st. To compel observance of decision of any affiliated local union pending reversal by the President of this Alliance, except in case of reprimand, when penalty shall not be imposed until appeal be disposed of.

2nd. To oblige compliance with decision of the President of this Alliance until reversed by the General Executive Board.

3rd. To compel obedience to ruling of the General Executive Board until reversed by this Alliance in convention assembled.

Sec. 8. Penalties for Violations.

Any members violating any law of this Constitution and By-Laws wherein no specific penalty is provided shall be liable to a fine of not less than Fifty dollars ($50.00).

Exhibits D-8 and D-9.

ARTICLE TEN.

Appeals.

Section 1. Time Allowed for Filing.

Appeals from a lower to a higher tribunal of this Alliance shall be cognizable only if filed within thirty (30) days after receipt of decision by the accused.

Sec. 2. Must Be in Writing.

All appeals must be submitted in writing and no verbal plea shall be entertained. A member filing an appeal against the action of his local union shall be required to file a copy of such appeal with the local union.

Sec. 3. Form.

All appeals shall contain a clear and concise review of the case from inception to date of appeal, including reference to the section or sections of the Constitution and By-Laws not properly interpreted by preceding tribunals, together with notation of those facts which are considered to entitle appellant to reversal of ruling.

Sec. 4. Signature of Appellant.

All appeals must be personally signed by the appellant and must set forth the name and number of the local of which he is a member.

Sec. 5. Order of Appeal.

The order of appeal shall be:

(1) To the local union from its own or its officers' decision;

(2) From decision of local union to the International President of this Alliance;

(3) From the decision of the International President to the General Executive Board;

(4) From the ruling of the General Executive Board to this Alliance in convention assembled, and the latter body shall be the tribunal of ultimate judgment.

Sec. 6. Appeal From President's Decision.

In event of appeal being taken from the decision of the International President of this Alliance to the General Executive Board, it shall be the duty of the President to submit a written statement to the General Executive Board setting forth reasons in support of his ruling.

Sec. 7. Appeal From Executive Board.

If appeal be entered against decision of the General Executive Board, it shall be the duty of the General Secretary-Treasurer, upon receipt of notice from appellant, immediately to inform all interested parties that the case is docketed for consideration by the Alliance in convention assembled.

Part of Minutes Taken From Exhibit D-10.

Regular meeting held Tuesday Evening Dec. 10th, 1929.

Called to order at 1-20

All officers present. Members present 55

Regular minutes of meeting follow and

Resolution increasing initiation fee from $1000 to $3000 presented by Bro. Evans received its first reading and was passed.

Meeting adjourned 3- A. M.

FRANK MANDRAKE
Rec. Secretary

Pres.
WALTER A. BEMIS

Regular meeting held Tuesday Night Jan. 14th, 1930.

Called to order at 1-A. M. All officers present. Members present 57.

Regular minutes of meeting follow and

Resolution increasing the initiation fee from $1000 to $3000 received its final reading thereby becoming legal.

Resolution in regards to forming Junior Local #384 was presented Bro. Evans and received its first reading.

Adjourned 3-30

FRANK MANDRAKE
Rec. Secretary

Pres.
WALTER A. BEMIS

Part of Minutes Taken From Exhibit D-10.

Regular meeting held Tuesday Night Feb. 11th, 1930.

Called to order at 12-45. All officers present. Number of members present 40.

Regular minutes of meeting follow and

Executive board reported progress on the formation of Junior Local.

Motion by Evans seconded by Steiner that Boyd attend the next executive board meeting and express his views on Junior local. carried.

Bro. Boscarelli spoke of incorporating in resolution a statement specifying a standing membership of 80 members at all times in our senior local. Same was left in the hands of the executive board for further discussion.

Resolution creating a junior local, received its final reading therefore becoming legal.

Meeting adjourned 3-30

FRANK MANDRAKE
Rec. Secretary

WALTER A. BEMIS
Pres.

Part of Minutes Taken From Exhibit D-10.

Regular executive board meeting held Dec 16, 1930

Brother Barber absent. called to order 12-45

Neal Fargo a junior member was called before the board and asked why he had passed certain remarks concerning working conditions in the junior local. He apologized for making these remarks and appealed to the executive for additional work as his present earnings were not sufficient for him to get long. He was told that he would be given work when it is possible.

Meeting adjourned 2-45

FRANK MANDRAKE
Secretary

WALTER A. BEMIS
President

Exhibit D-11.

Name—Abramowitz, Wm. (Appren.) Local No. 384.

City of—Hudson County, State of N. J.

Date of original initiation in I. A.—Mar. 4, 1930.

Date of admission to present local—

Admitted by deposit of { Transfer Card— / Withdrawal Card—

Transfer Card—
Withdrawal Card—

Remarks—

Exhibit D-12.

JUNIOR DEPT.
(Rubber Stamp)

Send in This Original

MONTHLY REPORT

This report must be properly filled in and forwarded to the General Secretary-Treasurer not later than the last day of each month.

City—Hudson County. State—New Jersey. Local No. 384. This report is furnished for the month of March, 1930.

Number of members last reported—80. Number of members now in good standing—118.

Exhibit D-12.

MEMBERS RECEIVED SINCE LAST REPORT

	Date	Name	Card No.
	Mar. 4/30	William Abramowitz	32701
	" " "	Robert A. Boscarelli	32702
	" " "	John A. Barry	32703
	" " "	William T. Brogan	32704
10	" " "	Frank Barkowski	32705
	" " "	Theodore Cancalosi	32706
	" " "	Joseph J. Cancalosi	32707
	" " "	Peter M. Cross	32708
	" " "	William Cameron	32709
	" " "	Ira Dulberger	32710
	" " "	William Davidson	32711
	" " "	Neal Fargo	32712
	" " "	Harry C. Gold	32713
20	" " "	Joseph A. Greulich	32714
	" " "	Howard C. Lawrence	32715
	" " "	Arthur H. Mobbs	32716
	" " "	James Mullen	32717
	" " "	Thomas J. McCarthy	32718
	" " "	Arthur McMahon	32719
	" " "	George Muller	32720
	" " "	Lee Edgar Morris	32721
	" " "	Harry F. Nyland	32722
	" " "	Pete Palesado	32723
30	" " "	Alfred Schwartz	32724
	" " "	William Schwartz	32725
	" " "	Rolf H. Schellmann	32726
	" " "	Erick Schark	32727
	" " "	Alfred P. Schaller	32728
	" " "	Harry Shapiro	32729
	" " "	Vincent Saponar	32731
	" " "	Joseph Steiner, Jr.	32732
	" " "	Erwin Steiner	32733
40	" " "	Gillespie G. Thrower	32730

Exhibit D-12.

Date	Name	Card No.
" " "	James Toohey	32734
" " "	Joseph B. Udiljak	32735
" " "	John E. Wood	32736
" " "	Walter F. Hentschel	32737
" 25/30	George Siberry	32738

NOTE—The cards of all suspended, expelled, as well as withdrawal members must be immediately returned to the General Secretary-Treasurer. In cases where this is impossible, the name of the member, as well as membership card number, must be forwarded, giving cause of suspension or expulsion.

SPECIAL NOTICE—Any local failing to return a report properly filled in to the General Secretary-Treasurer each and every month will be subject to a fine of not less than Ten Dollars ($10.00) for each failure.

FRANK MANDRAKE,
[Local seal here] Secretary, Local 384.

JUNIOR DEPT.
(Rubber Stamp)

This report must be properly filled in and forwarded to the General Secretary-Treasurer not later than the last day of each month.

City—Hudson County. State—New Jersey. Local No. 384. This report is furnished for the month of April, 1930.

Number of members last reported—118. Number of members now in good standing—121.

Exhibit D-12.

MEMBERS RECEIVED SINCE LAST REPORT

Date	Name	Card No.
Apr. 8/30	Samuel Perlman	32739
" " "	John Spano	32740
" " "	Frank Giardina	32741

NOTE—The cards of all suspended, expelled, as well as withdrawal members must be immediately returned to the General Secretary-Treasurer. In cases where this is impossible, the name of the member, as well as membership card number, must be forwarded, giving cause of suspension or expulsion.

SPECIAL NOTICE—Any local failing to return a report properly filled in to the General Secretary-Treasurer each and every month will be subject to a fine of not less than Ten Dollars ($10.00) for each failure.

[Local seal here]

FRANK MANDRAKE,
Secretary, Local 384.

JUNIOR DEPT.
(Rubber Stamp)

Stipulation as to State of Case.

It has been stipulated and agreed by and between Wallace P. Berkowitz, Solicitor of complainants-appellants, and Saul Nemser, Solicitor of defendants-appellees, that the following arrangements have been agreed upon in order to simplify and keep the record free from superfluous and unnecessary data.

1. That the complainants, Joseph Steiner, Jr., Thomas J. McCarthy, George Muller and Vincent Sapanor were admitted as parties complainant by order of the Court in addition to those who are mentioned in the bill of complaint.

2. That the provisions of the International constitution and by-laws as adopted July 1, 1930, and marked Exhibit D-8, and the provisions of the International constitution and by-laws adopted August 1, 1932 and marked Exhibit D-9, as set forth under Exhibits D-8 and D-9 in the State of the Case, are the same and are the only provisions that have any bearing on the issues involved in this controversy.

3. That Section 1, Article 2 of the By-laws of The International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of The United States and Canada, under Exhibits D-8 and D-9, is the only provision referring to Home Rule.

4. That under Exhibits D-8 and D-9 which appear in the State of the Case, Article 3, Section 12, under the International by-laws is the only section that directly or indirectly mentions "apprentice", and that nowhere in the By-laws hereinbefore re-

ferred to is there a provision which provides for "junior" membership.

5. That under Exhibits D-8 and D-9 as appear in the State of the Case, Article 9, Sections 1 to 8 inclusive, and Article 10, Sections 1 to 7 inclusive of the International By-laws are the only provisions which apply to this controvery as to charges and appeals within the organization.

6. That all applications to become members of Local 384 are the same as Exhibit C-2 except as to the name, date and amount of initiation; which names, dates and initiation fees are set forth particularly in Exhibit C-9.

7. That the contracts signed by the complainants are all the same as Exhibit C-1 with the exception of the names.

8. That the amendments to Exhibit C-4 which is the 1931 constitution and by-laws and which appear as Exhibit C-5 in the State of the Case, are the only amendments that have any bearing on or pertain to the controversy.

9. That Exhibit C-11 which is the application of George Muller to become a member of Local 384, shall not be included in the State of the Case, as it is the same as Exhibit C-2 except as to name, date and amount of initiation fee.

10. That Exhibit D-11, which is an index card from the International Office, is the same as to form for all members of the so-called "junior" department, except as to names and dates.

34th Edition

Constitution and By-Laws

Effective Aug. 1, 1932

Exhibit D-9

INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA

INTERNATIONAL ALLIANCE

of

THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS

of the United States

and Canada

CONSTITUTION AND BY-LAWS

Hudson County, New Jersey

Local 384

Affiliated with the American Federation of Labor, New Jersey State Federation of Labor, and the Central Labor Union of New Jersey.

Constitution and By-Laws

of the

International Alliance of Theatrical Stage Employes and Moving Picture Machine Operators of the United States and Canada

Organized July 17, 1893; chartered by the American Federation of Labor, July, 1894; chartered as an International Union, October 1, 1902.

Revised and Adopted by the Thirty-first Convention, Memorial Hall, Columbus, Ohio, June 6th, 1932. Issued from the General Office, 1450 Broadway, New York, N. Y., to become effective August 1st, 1932.

OFFICERS:

WILLIAM C. ELLIOTT, *President,* 1450 Broadway, New York, N. Y.; JOHN P. NICK, *1st Vice-President,* 311 Odeon Theatre Bldg., St. Louis, Mo.; WILLIAM P. COVERT, *2nd Vice-President,* 257 Brock Avenue, Toronto, Ontario, Canada; WILLIAM J. HARRER, *3rd Vice-President,* 2314 Bryn Mawr Avenue, Ardmore, Pa.; JOSEPH C. CAMPBELL, *4th Vice-President,* 1828 Linwood Blvd., Oklahoma City, Okla.; WILLIAM T. MADIGAN, *5th Vice-President,* 4948 30th Avenue, S., Minneapolis, Minn.; FLOYD M. BILLINGSLEY, *6th Vice-President,* Apt. 7, 659 Scott Street, San Francisco, Calif.; HARLAND HOLMDEN, *7th Vice-President,* 19454 North Sagamore Road, Fairview Village, Cleveland, Ohio; FRED J. DEMPSEY, *General Secretary-Treasurer,* 1450 Broadway, New York, N. Y.

Board of Trustees:

WILLIAM C. SCANLAN, 574 Eastern Avenue, Lynn, Mass.; JOHN MCCARROLL, 103 South Poplar Street, Merchantville, N. J.; R. E. MORRIS, 109 South Hamilton Street, Mobile, Ala.

Address of General Office:

Suite 2008, 1450 Broadway, New York, N. Y.

Telephone:

PEnnsylvania 6-0943—0944.

PREAMBLE

We, the workers identified with the theatrical and moving picture industries of the United States and the Dominion of Canada, in order to improve our condition, to insure the maintenance of a fair rate of wages for services competently rendered, to assure the employment of our members in these industries and that equity may be maintained, do signify willingness in all difficulties to accept wise, honorable and conservative mediation, and, to secure to ourselves and posterity the benefits of such unity, do adopt and establish this constitution.

CONSTITUTION

ARTICLE ONE.

Section 1. Name.

The name of this organization shall be, *International Alliance of Theatrical Stage Employes and Moving Picture Machine Operators of the United States and Canada.*

Sec. 2. Membership.

The membership of this Alliance shall comprise such local unions as shall hold charter; as shall acknowledge its jurisdiction, and as shall keep valid their respective memberships as required by the laws legally enacted from time to time for the government of this body and its affiliated local unions.

Sec. 3. Headquarters.

Out of the general funds of this Alliance shall be maintained in the City of New York suitable offices in which shall be housed the International President and General Secretary-Treasurer, together with their respective working staffs. The said offices shall not be removed from the City of New York except by majority vote of the delegates in convention assembled and confirmed by will of the majority of the membership of the affiliated local unions expressed in referendum vote.

ARTICLE TWO.

Conventions.

Section 1. Regular.

This Alliance shall meet in convention regularly once every two years on the first Monday in June, at such place as may have been chosen by the General Executive Board.

Sec. 2. Special.

The International President shall, upon the request of one-third of the affiliated locals, order a referendum vote, and if two-thirds of

the locals vote to call such a convention it shall be mandatory upon the part of the International President to call same within sixty days.

The Executive Board shall have the power to call a special convention at any time an emergency arises.

The date and meeting place of such special convention shall be named by the General Executive Board, but it is mandatory that they be convened not later than sixty (60) days subsequent to filing of the two-thirds vote necessary to legally effect such action.

Sec. 3. Basis of Local Representation.

Each affiliated local shall be entitled to one delegate for its charter, and one additional delegate for every one hundred members or major portion thereof, based upon the average membership upon which per capita tax has been paid for the period between Conventions.

Sec. 4. Quorum.

Delegates from a majority of the locals represented shall constitute a quorum.

Sec. 5. Financial Qualification.

Representation or vote in any convention of this Alliance shall be denied to any affiliated local which has failed to pay in full to the General Secretary-Treasurer all indebtedness due up to and including the fiscal quarter during which the convention may be convened.

Sec. 6. Credential Certificates.

There shall be issued to each and every affiliated local union one original and one duplicate credential certificate for each delegate.

Immediately following the election of delegates it shall be the duty of the Secretary of the local union properly to execute both the original and duplicate certificate, secure thereto the signature of the President of the local, affix his own signature and the seal of his local and deliver to delegates elected the original certificates and at once mail to the International President of this Alliance the duplicate thereof.

ARTICLE THREE.

Delegates.

Section 1. Eligibility.

Any member in good standing may be

elected by his local union as a delegate to any convention of the Alliance, but no member of the General Executive Board of this Alliance shall, during his term of office, be permitted to represent any local union, but he shall have voice, although no vote, on all questions which may come before that body, and shall also be eligible for nomination and re-election.

Sec. 2. Present Credentials.

Upon arrival in convention city, delegates will immediately file their originals of the credentials in the office of the Secretary of the Convention at the established convention headquarters.

Sec. 3. Credential Committee.

The General Executive Board of this Alliance shall act as the Credential Committee at all conventions.

Sec. 4. Accredited Delegates.

Delegates whose credentials are accepted by the Credential Committee shall then present same to the Registry Clerk and receive from the said clerk identification card issued in his name and with voting stub attached attesting the number of votes which he shall be entitled to cast upon the floor of the convention and in the polling booth upon election day.

Sec. 5. Disputed Delegates.

Any delegates whose credentials are not accepted by the Credential Committee shall not be accorded seat in the convention, nor voice nor vote in the proceedings, until point at issue is heard by the convention and he is seated by vote of that assemblage. He shall, however, be permitted to appear and speak on his own behalf.

Sec. 6. Alternate Delegates.

The same sections that apply to regularly elected delegates shall be applied to alternates.

Sec. 7. May Represent But One Local.

No delegates shall be permitted to represent more than one affiliated local union in any convention of this Alliance.

Sec. 8. Delegates' Compensation.

Each accredited delegate from every affiliated local union entitled to representation

in the convention shall be entitled to collect first-class transportation from home station to city of convention and return subject to such rates as the General Office negotiates with the railroad representatives of the United States and Canada, the amount due to be computed by the most direct route, and further, each duly accredited delegate shall be entitled to collect at the rate of $10.00 per day during his service as a delegate. The payment to be made for the time consumed in traveling from home city to convention, attendance at the convention and return to their home city, but the time allowed shall be restricted to that required to assure the arrival of the delegate in the city of convention not sooner than twenty-four hours previous to the official call to order, and on departure of delegate from convention city not later than twelve hours after the official adjournment of the convention, and any delegate to an I. A. Convention who files a voucher with intent to defraud the International Alliance shall be fined not less than $100.00.

Sec. 8-A. Time for Filing.

All delegates shall be required to file their expense account within forty-eight (48) hours from the opening time of the Convention. Any delegate failing to comply with this section will be subject to a fine of Five Dollars ($5.00).

Sec. 9. Union Label.

Delegates to convention shall be required to have a total of five union labels on clothing and wearing apparel.

Sec. 10. Resolutions.

All resolutions must be submitted in typewritten form, and to enable compliance with their requirement, the General Secretary-Treasurer shall furnish proper stenographic service.

ARTICLE FOUR.

Officers.

Section 1. Elected Officers.

There shall be elected to office in the manner provided in Article Five of this constitution the following officers of this Alliance, viz,:

President.

Seven (7) Vice-Presidents, one of whom must

be a member of an affiliated Canadian Local Union and a resident of the Dominion of Canada.

General Secretary-Treasurer.

Delegates to American Federation of Labor.

Delegates to the Dominion Trades and Labor Congress.

Board of Trustees to consist of three members.

Sec. 2. Appointed Officers.

The appointed shall be:

Assistant President.

Manager of Adjustment and Claim Departments.

International Representatives in such numbers as the President shall deem necessary, one of whom shall be a member of a studio Local.

Delegates to such trades assemblages other than those above provided for in which the Alliance may be entitled to representation and wherein the President may deem it expedient to be represented from time to time.

Sec. 3. Tenure of Office.

Elected officers shall be elected at the convention and shall continue in office until the election and installation of successor, acceptance of resignation, or removal by impeachment.

Appointees shall continue in office until removed by the President, or acceptance of resignation by that officer.

ARTICLE FIVE.

Nominations and Elections.

Section 1. Eligible to Office.

None but duly accredited delegates to the convention shall be eligible to election to any office in this Alliance with the exception of those prohibited from acting as local union representatives by reason of their being present in the convention as members of the General Executive Board and the Board of Trustees of this Alliance.

Sec. 2. Absentees Not Eligible.

No regularly accredited delegates or member of the General Executive Board shall be nominated to office while absent from the convention unless his written consent to be a candidate shall first be presented and filed with the Registry Clerk.

Sec. 3. Nomination of Candidates.

Nomination to office shall take place not later than the Thursday morning following the opening of the convention.

Sec. 4. Election Day.

Elections shall be held not later than the first Friday following the opening of the convention, and the polls shall be open from 10:30 A. M. to 2 P. M.

Sec. 5. Election Board.

The election board shall consist of two judges and four tellers to be appointed by the President not later than the afternoon preceding election day.

The duties of this board shall be as set forth in Article Six of this constitution.

Sec. 6. Ballots.

The President shall cause to be printed and delivered to the Judges of Election on election morning, before the opening of the polls, a sufficient number of Australian Ballot Forms to properly record the vote.

The heading of the ballot shall be "Official Ballot," and immediately beneath, "International Alliance of Theatrical Stage Employes and Moving Picture Machine Operators of the United States and Canada." Below the title of the Alliance shall appear the number of the convention, city in which election is held, and date of said election.

Beneath the heading of the office for which the respective nominees are standing for election shall be listed the names of those to be voted for, in alphabetical order.

Each ballot shall have perforated numbered stub attached, the ballots to be numbered in sequence from "one" (1) up.

Sec. 7. Polling Places.

The polling places shall be situated in the rear of the convention hall or in the antechamber, and shall be divided into election precincts to comprise of Precinct No. 1 and Precinct No. 2. Precinct No. 1 shall comprise of all the locals within the boundaries of Districts 1, 2, 3, 4, 5 and 6. Precinct No. 2 shall comprise

of all the locals within the boundaries of Districts 7, 8, 9, 10, 11, 12 and 14.

Sec. 8. Ballot Boxes.

The ballot boxes shall be of sufficient size to contain the entire vote of the delegates and shall be fitted with lock and seal.

Immediately preceding the opening of the polls, and in the presence of the Election Board, the President shall lock and seal the ballot boxes, which shall not be opened for any purpose until the polls are declared closed by the President.

Sec. 9. Voting Stub Boxes.

There shall be provided locked and sealed boxes for the reception of Voting Stubs, into which shall be placed the numbered stubs detached from the Official Ballots.

Sec. 10. Voting Procedure.

When the polls are declared open by the President, the delegate shall present to the Election Board his identification card, the stub of which shall be detached, and in exchange receive one ballot for each vote called for thereon.

He shall then enter the voting booth alone and signify the candidates for whom he is balloting by placing an "X" in front of their names.

After properly marking his ballot, delegate shall so fold it as to conceal his vote, and shall leave the booth and deliver the ballot to the Judge of Elections.

The delegate shall see that the ballot stub is detached and deposited in the voting stub box, and that the ballot proper is then deposited in the ballot box.

Any delegate who, through misfortune, is unable to properly mark his ballot may call upon a member of the Election Board to assist him.

ARTICLE SIX.

Duties of Election Board.

Section 1. Conduct of Polls.

The Judges of Elections shall be in charge of the proper conduct of the election and

the tellers named shall, under their direction, assist in every way possible.

Sec. 2. Ballots and Supplies.

It shall be the duty of the Judges of Elections to procure the necessary ballots, ballot boxes, ballot stub boxes, tally sheets and official recapitulation sheets. They shall also see to it that the polling places are properly situated and suitably equipped with voting booths.

Sec. 3. Number of Ballots to Delegates.

The Judges of Elections shall cause to be detached from the identification cards the voting stubs thereon, and to be delivered to the respective delegates one ballot for each vote called for thereon.

Sec. 4. Tally Voting Stubs.

The Judges of Elections shall cause the voting stubs detached from the identification cards to be filed in numerical order and tally kept of the total of votes aggregated by said stubs.

Sec. 5. Deposit Voted Ballots and Ballot Stubs.

The Judges of Election shall receive from the delegate the voted ballot, detach therefrom the stub, deposit the said numbered stub in the box reserved for the purpose, and immediately deposit the ballot proper in the ballot box.

Sec. 6. Ballot Stubs Shall First Be Counted.

Upon the polls being declared closed, they shall cause the boxes of ballot stubs first to be opened and counted. This total must balance or agree with the number of votes totalled from stubs detached from the identification cards.

Sec. 7. Voted Ballots Tallied.

Next, the ballot boxes shall be opened and the number of ballots counted, and if total be in agreement with the tally of the stubs detached from the identification cards and taken from the ballot stub boxes, the Election Board shall then proceed to the official count of votes cast for the different candidates.

Sec. 8. Official Tally Sheets.

The tally of votes cast for the candidates for the various offices shall be made on the official tally sheets provided.

Sec. 9. Recapitulation Sheets.

When tally sheets are in balance, there shall be properly filed in a recapitulation sheet, on which shall appear the names of the offices, the candidates standing for election to same, the number of votes received by each, the number of void ballots, total number of ballots voted, total accounted for (and all must be accounted for), and certification of the correctness of said record, bearing the signature of each member of the Election Board.

Sec. 10. Ballots and Records Shall Be Delivered to President.

All blank ballots, voted ballots, card stubs, ballot stubs, tally sheets and recapitulation sheets shall remain in the possession of the election board until after the installation and then delivered to the International President.

ARTICLE SEVEN.

The President.

Section 1. Salary and Allowances.

The President shall receive a salary of $20,000.00 per annum, payable weekly as due, and in addition the President shall be allowed, when absent from home in line of official duty, first-class transportation, $8.00 per day hotel expenses, plus $8.00 per diem.

Sec. 2. Power to Appoint.

The President shall have authority to appoint an Assistant President, a Manager of the Adjustment and Claim Departments, and as many International Representatives as he may deem necessary.

Sec. 3. Conduct Meetings.

The President shall preside at all meetings of this Alliance in convention assem-

bled and at all meetings of the General Executive Board.

He shall at all times conduct these meetings in accordance with this Constitution and By-Laws and with parliamentary procedure as set forth in Roberts' Rules of Order.

Sec. 4. Decisions.

The President shall interpret the law and render all decisions either personally or by his proxy, the Assistant President.

In absence of specific law to cover a given condition, the President shall decide the matter in a spirit of fairness and equity, and such ruling shall be enforced.

Decisions of the President shall be deemed legal and effective until altered, amended or reversed by either the General Executive Board or this Alliance in convention assembled.

Sec. 5. Report of Work.

The President shall cause to be kept a true and correct record of the business of his administration, and at the conclusion of his term he shall submit to the convention detailed printed report, which shall be distributed to the delegates at the convention not later than the Wednesday morning following the opening of the session.

Sec. 6. Auditing of Accounts.

The President shall cause to be audited by certified public accountant the books of account of the General Secretary-Treasurer, and shall receive from said accountant detailed audit statement dated not later than the last day of the month preceding the opening of the convention, and this report he shall have submitted to the assembled delegates for their consideration and action.

The cost of such audit shall be paid out of the general funds of this Alliance by the General Secretary-Treasurer.

Sec. 7. Calling Meetings.

The President shall have the power to call meetings of the General Executive Board whenever he shall deem it necessary or advisable.

Sec. 8. Delegate to the A. F. of L.

The International President shall, by virtue of his office, act as one of the delegates to the conventions of the American Federation of Labor.

Sec. 9. Invitations to Be Accepted.

The President shall have the right to accept invitations to attend, either in person or by appointed proxy, such conventions as may be of importance to this Alliance.

Sec. 10. Demand Books.

The International President shall have the power to authorize any members of the Executive Board or International Representative to examine all books, papers, etc., of any affiliated local whenever he may deem it necessary; provided, however, the examination is made in the presence of a committee appointed by the local.

Sec. 11. Emergency Cases.

In case of any emergency the International President shall have the power to suspend any law or laws of the Alliance or of any local union, provided he obtains the unanimous consent of the members of the General Executive Board.

Sec. 12. Unfair Attractions.

The International President, with the consent of the General Executive Board, shall have the power to order all members of this Alliance to refrain from rendering service to or with any attraction wherein any former employer who is indebted to any member of the International Alliance for services rendered is interested as an actor, manager or owner, until all indebtedness is satisfactorily adjusted.

Sec. 13. Special Contracts.

The President shall be empowered whenever he shall deem it for the best interests of this Alliance so to do, to issue special contracts for traveling attractions.

ARTICLE EIGHT.

Assistant President.

Section 1. Duties.

The duties of the Assistant President shall consist of the proper, faithful and efficient discharge of the details assigned him by the President, to which officer he shall hold himself answerable.

Sec. 2. Salary and Allowances.

The Assistant President shall receive a salary of $150.00 per week, payable weekly as due. In addition, when absent from the General Office in line of official duty instructed by the President, he shall be entitled to first-class transportation, $8.00 per day hotel expenses, plus $8.00 per diem.

ARTICLE NINE.

Vice-Presidents.

Section 1. Duties.

In the absence of the President, the Vice-Presidents shall, in order of seniority, preside at the convention. If the President and seven Vice-Presidents be not present, the General Secretary-Treasurer shall so announce to the convention and that body shall proceed to the selection of a president pro tem.

Other duties of these officers are set forth under the caption of "General Executive Board."

Sec. 2. Salary.

Vice-Presidents shall receive an annual salary of $1,000.00, payable in advance semi-annually in two equal installments. When absent from home city on executive duty by order of the President, Vice-President shall receive a weekly salary of $110.00 per week and $12.00 per day hotel allowance and first-class transportation.

ARTICLE TEN.

General Secretary-Treasurer.

Section 1. Routine Duties.

He shall keep the books of account in

such manner at all times to reflect the true financial relationship between the affiliated local unions and the International Alliance.

He shall acknowledge all moneys received by him.

He shall promptly answer all correspondence addressed to his office by affiliated locals or members thereof, and shall carefully file in systematic manner all communications and documents received, as well as copies of replies thereto.

He shall forward to the affiliated local unions printed forms upon which the secretaries of the locals shall report the admission of new members, suspensions and expulsions of members and reinstatement of suspended or expelled members of their organizations.

He shall send a complete list of corresponding secretaries of affiliated locals of the Alliance to every local represented therein.

He shall keep or cause to be kept a true and correct record of the business of his administration, and at the conclusion of his term he shall submit to the convention detailed printed report, which report shall be distributed to the delegates at the convention not later than the Wednesday morning following the opening of the session.

Thirty days before any local union shall be three months in arrears, he shall notify such local union, calling attention to the law and the penalty provided therein for arrearage.

He shall be the custodian of the official records of the International Alliance, including all books of account, blank charters, seal, etc.

He shall not absent himself from his office unless specifically so ordered by the President.

He shall balance and close the books of account of this Alliance as of the last day of the month preceding the date of the convention, and put his records into proper condition for audit by certified public accountant.

Sec. 2. Salary and Allowances.

The General Secretary-Treasurer shall receive a salary of $20,000 per annum, payable weekly when due, and in addition when absent from the General Office in line of official duty, authorized by the President, he shall receive first-class transportation, $8.00 per day hotel expense, plus $8.00 per diem.

Sec. 3. Bonding.

Within thirty (30) days after his election to office, the General Secretary-Treasurer shall procure in a responsible surety company a bond of not less than fifty thousand dollars ($50,000.00), or of such increased amount as may be named by the General Executive Board, and said bond shall be delivered into the custody of the President, the cost thereof being defrayed from the treasury of the Alliance.

Sec. 4. Proceedings Shall Be Reported.

It shall be the duty of the General Secretary-Treasurer to cause to be accurately reported the business transacted by the convention and at all meetings of the General Executive Board during his term of office.

Sec. 5. Printing of Proceedings.

He shall have accurately and neatly compiled a printed record of the proceedings of the convention and of the meetings of the General Executive Board, in sufficient numbers to distribute one copy to each and every member of all affiliated local unions of this Alliance, and this he shall do just as speedily as possible.

Sec. 6. Road Cards.

The General Secretary-Treasurer shall, on application, issue to all locals official road cards for use of their traveling members, excepting such local unions as may be indebted to this Alliance for an amount aggregating one quarter's per capita tax.

Sec. 7. Report Cards.

The General Secretary-Treasurer shall, upon request, issue to all local unions sufficient report cards to enable stewards of the various theatres to return to the General Office report of all traveling attractions playing their house.

Sec. 8. Expense Blanks.

The General Secretary-Treasurer shall cause to be compiled and printed suitable form of expense account slips, which he shall furnish to all members of the General Executive Board, International Representatives and Special Deputies engaged in line of executive duty, in order to enable them to render accurate account of their various items of expense.

Sec. 9. Accident Record.

The General Secretary-Treasurer shall compile and keep up to date a list of accidents to our members, which shall be furnished him by the respective affiliated local unions, and this list shall be accessible to such locals or districts as may desire this information.

Sec. 10. Delegate to the A. F. of L.

The General Secretary-Treasurer shall, by virtue of his office, act as one of the delegates to the conventions of the American Federation of Labor.

ARTICLE ELEVEN.

Manager of Adjustment and Claim Departments.

Section 1. Duties.

The duties of the Manager of Adjustment and Claim Departments shall consist of the proper, faithful and efficient discharge of the details assigned him by the President, to which officer he shall hold himself answerable.

Sec. 2. Salary and Allowances.

The Manager of the Adjustment and Claim Departments shall receive a weekly salary of $150.00 per week, payable weekly when due, and in addition when absent from the General Office in line of official duty authorized by the President, he shall receive first-class transportation, $8.00 per day hotel expense, plus $8.00 per diem.

ARTICLE TWELVE.

Board of Trustees.

Section 1. Duties.

The duties of the Board of Trustees shall be to audit the books of the General Secretary-Treasurer, in addition to the audit of the Certified Public Accountant. Said audit to be made semi-annually. They shall be empowered to employ such assistants as they may deem necessary and shall cause to be mailed to each affiliated local union a corrected report of their findings.

Sec. 2. Salary and Allowances.

When absent from home city in line of official duty authorized by the President, they

shall receive $110.00 per week, $12.00 per day hotel expense and first-class transportation.

ARTICLE THIRTEEN.

International Representatives.

Section 1. Duties.

The duties of the International Representatives shall consist of their prompt and efficient execution of instructions issued by the President.

Sec. 2. Salary and Allowances.

The salary of an International Representative shall be $110.00 per week; in addition when absent from home in line of authorized official duty he shall be allowed first-class transportation, plus $12.00 per day hotel expense.

ARTICLE FOURTEEN.

General Executive Board.

Section 1. Members.

The General Executive Board shall consist of the President, seven Vice-Presidents, and the General Secretary-Treasurer.

Sec. 2. Executive Powers.

They shall have entire supervision and authority over the Alliance except during such time as the Alliance is assembled in convention.

Sec. 3. Legislative Powers.

If it be found that any portion of this Constitution and By-Laws is in conflict with any other portion or that its enforcement is detrimental to the welfare and progress of this Alliance, or if it is necessary to adopt any new legislation, the General Executive Board shall cite such portion, appending to the citation a corrected bill. The bill shall be submitted to all affiliated local unions, and a majority vote returned by the local unions to the General Secretary-Treasurer shall determine the adoption or rejection of such altered portion.

Sec. 4. Filling Vacancies.

Should the President or General Secretary-Treasurer of this Alliance resign or die during a term of office or be removed, under impeachment, by the General Executive Board, the remaining members of that Board shall proceed to elect from among their own number one who shall enter upon the duties of the vacant office. Any vacancy occurring among the Vice-Presidents of this Alliance shall be cared for by election from among the duly elected delegates to the last convention of one to fill such vacated office. Those so elected shall continue in office until the election and installation of their successors.

Sec. 5. Moral and Financial Support.

The granting of the moral and financial support of this Alliance shall be a discretionary power vested in the General Executive Board.

Sec. 6. Credential Committee.

The General Executive Board shall act as the Credential Committee.

Sec. 7. Emergency Powers.

Should any organization in the theatrical field become engaged in a dispute tending to involve this Alliance or be productive of request for the support of our organization, decision in the premises shall be left to the General Executive Board with full power to act.

Sec. 8. Meetings.

It shall be the duty of the General Executive Board to meet one week prior to the opening of the convention.

Such meeting shall convene in the city in which the convention is to be held. This meeting shall hear no grievances, charges or appeals after 6:00 P. M. of the Monday of the convention week.

The General Executive Board shall convene at the call of the President on such date and at such place as he may designate. When it be the will of the majority of the General Executive Board to assemble, they shall so do at such time

and such place as may be determined among the majority of the members thereof.

Sec. 9. Report of Meetings.

The General Executive Board shall examine, correct and approve the minutes of its meetings and the record of proceedings of the convention before same are printed.

Sec. 10. Attendance Pay.

Inasmuch as members of the General Executive Board of this Alliance are prohibited by Article 3, Section 1, of this Constitution from accepting credentials as local representatives to the convention, they shall receive from this Alliance first-class transportation to and from the convention and during their attendance at same shall also receive the same compensation as while on executive duty.

ARTICLE FIFTEEN.

District Conventions.

Section 1.

The jurisdiction of the International Alliance of Theatrical Stage Employes and Moving Picture Machine Operators of the United States and Canada is divided into districts.

Sec. 2. Districts.

District No. 1.—Montana, Idaho, Oregon, Washington and British Columbia.

District No. 2.—California, Nevada, Arizona, New Mexico and Utah.

District No. 3.—Maine, New Hampshire, Vermont, Massachusetts, Rhode Island and Connecticut.

District No. 4—Pennsylvania, Delaware, Maryland, Virginia, West Virginia and District of Columbia.

District No. 5.—Wyoming, South Dakota and Colorado.

District No. 6—Oklahoma, Texas, Arkansas.

District No. 7.—Tennessee, Alabama, Georgia, Florida, North and South Carolina, Mississippi and Louisiana.

District No. 8.—Michigan, Indiana, Ohio and Kentucky.

District No. 9.—Wisconsin, Iowa, Illinois, Missouri, Minnesota, North Dakota, Nebraska, Kansas.

District No. 10.—New York.

District No. 11.—Ontario, Quebec, Prince Edward Island, Nova Scotia and New Brunswick.

District No. 12.—Manitoba, Saskatchewan and Alberta.

District No. 14.—New Jersey.

Sec. 3. Conventions.

Any affiliated local of this Alliance desiring to have district convention called shall have the right to communicate with the sister locals within the same district, stating this wish, suggesting place and date of such meeting and asking that vote of the respective locals be returned with reasonable promptness.

If a majority of the locals return favorable vote upon the question, the initiating local shall then communicate the desire of the majority to the International President.

The International President shall then confirm the vote of the local unions, ascertain if the place and date named be agreeable to the majority, and if so, issue an official call for such convention, which is to consist of one representative from each local.

The President shall select an officer or member of the International Alliance to act as Presiding Officer, who shall have no voice nor vote upon any question that may come before the assemblage.

A district convention once called in this manner shall at the initial convention decide whether or not it shall be permanent, and in all cases a two-thirds majority vote of delegates present shall be necessary to decide in the affirmative.

Sec. 4. District Secretary-Treasurer.

At the opening of a district convention the delegates shall immediately proceed to elect a secretary-treasurer, whose duty it shall be to keep accurate records of the business transacted. As soon as possible after the close of the session the secretary-treasurer shall transcribe such reports and deliver copy of the transcript to the presiding officer, receiving from him an acknowledgment therefor.

Sec. 5. Proceedings of Convention.

It shall be the duty of the presiding officer of the district convention at once to forward copy of the proceedings delivered into his care by the district secretary-treasurer to the General Office of the International Alliance, which office shall submit them to the next meeting of the General Executive Board for consideration.

Immediately the proceedings have been approved by the majority of the members of the General Executive Board, the General Secretary-Treasurer of this Alliance shall notify the secretary-treasurer of the district, who shall at once notify the respective locals concerned.

Sec. 6. Legislation Legal and Binding.

Legislation enacted by the district convention and State associations shall, after approval by the General Executive Board of this Alliance, be legal and binding upon the affiliated locals within the district until repealed by the convention of the International Alliance, a subsequent district convention, or State association meeting.

Sec. 7. Necessary Funds.

The funds necessary to promote and conduct district conventions shall be raised from among the locals within the district on a membership pro rata basis.

Sec. 8. District Delegates.

Delegates shall be required to possess five union labels on their clothing or wearing apparel.

ARTICLE SIXTEEN.

Charters.

Section 1. Validity of Charters.

This Alliance shall recognize as valid all charters of affiliation issued pursuant to this Constitution and By-Laws, properly signed by the President and General Secretary-Treasurer of this Alliance and bearing the official seal of this organization, until such time as legally revoked by the said Alliance.

Sec. 2. Power to Grant Charters.

The power to grant charters of affiliation shall be vested in regular conventions and in the President of this Alliance.

Sec. 3. To Whom Granted.

Charters may be issued to seven or more competent applicants.

Sec. 4. Application for Charter.

Application for charter shall be made to this Alliance upon the official blank furnished by the General Office for this purpose, said application blank to be returned bearing the name of each prospective member, together with statement of his age and number of years of experience.

Sec. 5. Charter Fee.

The charter fee shall be one hundred dollars ($100.00) and the President of this Alliance shall have the power to stipulate terms of payment.

Sec. 6. Investigation of Applications.

All applications for charters shall be referred to the President of this Alliance, who shall appoint an officer or member of this organization to investigate and report to him as to the competency and eligibility of the applicants.

Sec. 7. Rejection of Application.

If application for charter be rejected this Alliance shall return without delay to the payee the amount of fee deposited.

Sec. 8. Revocation of Charter.

Charter of any affiliated local union shall be revoked whenever the resident membership falls below seven (7) members.

At the discretion of the International President the charter of any affiliated local union may be suspended whenever its total indebtedness to the International Alliance shall equal or exceed three months' per capita tax.

This Alliance further reserves the right to revoke charters, either in convention assembled

or by power so to do conveyed to its President, for disobedience of its mandates.

Charter of any affiliated local union shall be revoked if at any time the local fails for a period of three months to hold regular meetings.

Sec. 9. Surrender of Charter.

This Alliance shall not recognize the right of any affiliated local to surrender charter so long as there be at least seven (7) members in good standing desirous of retaining the same.

Sec. 10. Rights Conferred by Charter.

The rights conferred by charters issued by this Alliance shall be recognized as those granted the different affiliated local unions by virtue of the Constitution and By-Laws of this organization.

ARTICLE SEVENTEEN.

Jurisdiction of Charters.

Section 1. Geographical.

This Alliance shall recognize the geographical jurisdiction of a local union to be that territory extending in any direction half way to the next nearest local union.

Sec. 2. Working Jurisdiction.

The working jurisdiction of members of affiliated local unions shall be construed to be that defined by the charter issued to the particular affiliated organization.

Sec. 3. Stage Employes.

Full and direct stage employes' charters shall be construed as granting jurisdiction over stage carpenters, property men, stage electricians, and all other stage employes; subject, however, to such other classes of charter as have been subsequently issued by this Alliance.

Sec. 4. Moving Picture Machine Operators.

Full and direct charter issued to distinct moving picture machine operators' locals shall be defined as granting jurisdiction to the members of such locals over all operating rooms, apparatus and connections appertaining thereto in locations where moving pictures are exhib-

ited, and also confers the right to operate all spot lights in conjunction with moving picture shows, when such spot lights be located within the booth, and further confers the right to operate all stereopticons, within moving picture booths, in all cities. This jurisdiction shall not apply to the operations of stereopticons, outside the booth, in connection with a show as a stage effect.

No member of such local charters shall be permitted to operate any stage lights, scenery or curtains from the front of the theatre, operated by remote control or otherwise, where such operation shall displace a stage employe.

Sec. 5. Mixed Charters.

Charters of this class shall accord to the holders thereof the right to accept into membership any person qualified to hold any of the various positions on the stage or in the booth covered by the jurisdiction of the International Alliance. Members of such locals are permitted to accept any position in the jurisdiction of the local unions, either on the stage or in the booth, and are also permitted to go on tour in either capacity.

ARTICLE EIGHTEEN.

Revenue.

Section 1. General.

The general revenue of this Alliance shall be derived from the sale of "quarterly receipt stamps" to the affiliated local unions. The selling price of these stamps shall be three dollars ($3.00) each, and every affiliated local union shall be required to purchase at the rate of not less than one stamp per quarter for each and every member carried on its membership roster.

Sec. 2. Assessments.

Whenever the income derived from the sale of "quarterly receipt stamps" is insufficient to cover the legitimate expenditures of the Alliance, it shall be the duty of the General Executive Board to overcome such deficit by levying such assessments from time to time as the majority of its membership may deem necessary.

Sec. 3. Use of Funds.

The funds of this Alliance shall not be used for other than the legitimate purpose of this

organization. Sixty cents of the total received from the sale of each quarterly receipt stamp shall be credited to the Convention Transportation and Per Diem Fund, to be used to defray the transportation and payment of per diem of properly accredited delegates to and from conventions, and after defraying the expenses of the transportation and per diem of the accredited delegates all surplus money shall revert to the General Fund.

Sec. 4. General Fund.

Two dollars and forty cents ($2.40) of the total received from the sale of each "quarterly receipt stamp" shall be credited to the General Fund of the Alliance, to be used to defray its proper operating expenses.

Sec. 5. Fines.

All fines collected as penalties for violation of any portion of this Constitution and By-Laws shall revert to the General Fund.

Sec. 6. Per Capita of Member.

Any local taking into membership any member during the quarter shall pay full per capita tax of the entire quarter on such member.

ARTICLE NINETEEN.

Impeachment of Officers.

Section 1. Causes for Impeachment.

Any officer may be impeached for a violation of his office or for an infringement of the Constitution and By-Laws of this Alliance.

Sec. 2. Charges Must Be in Writing.

Impeachment charges must be presented in writing over the signature of the complainant.

Sec. 3. Form.

Impeachment charges shall cite clearly against whom a complaint is directed, the offense alleged and the time, place and nature of the violation, together with notation of the section or sections of the Constitution and By-Laws of this Alliance alleged to have been violated.

Sec. 4. Impeachment Tribunals.

Impeachment charges shall be addressed to the General Executive Board of this

Alliance, which body, with the exception of such members thereof as may be mentioned in said complaint, shall act as the trial body; provided, however, that those so empowered to act constitute at least a majority of the General Executive Board.

In the event of a majority of the General Executive Board being named in the impeachment charges. it shall become necessary for at least a majority of the affiliated local unions of this Alliance to assemble in convention for the purpose of trying the accused.

Sec. 5. Accused Temporarily Suspended.

When impeachment charges have been accepted by the majority of the members of the General Executive Board as cognizable, it shall become the duty of that body to suspend the accused temporarily from office, withhold further payment of salary pending outcome of trial, and make suitable provision for the efficient discharge of the duties formerly cared for by the officer in question.

Sec. 6. Power to Penalize.

When sitting as the trial body for the consideration of impeachment charges, the General Executive Board shall conduct a thorough inquiry into the merits of the case and accord to the complainant and accused alike a full and impartial hearing. If the accused is found guilty as charged, it shall then become the duty of the said Board to declare the office of the accused vacant and at once to proceed to the selection, from among the delegates to the last convention, of one to act in the vacated capacity until the election and installation of successor as provided for in the Constitution and By-Laws of this Alliance.

Sec. 7. Appeal from Impeachment Penalty.

Any officer or officers who shall have been adjudged guilty and penalized by the General Executive Board shall enjoy the right of appeal to this Alliance in convention assembled, but decision of the said Board shall be complied with until reversed by convention, and ruling of the latter tribunal in the premises shall be final and irrevocable.

ARTICLE TWENTY.

Section 1. Misappropriation.

Any officer or member of this Alliance who shall misappropriate the funds or property of the International Alliance or of any affiliated local union thereof shall be fined one hundred dollars ($100.00) and be liable to expulsion.

When the offender has been expelled it shall be the duty of the General Secretary-Treasurer to notify all local unions at once of such defalcation and of the name of the offender, and to keep permanently a copy of the notice so issued.

ARTICLE TWENTY-ONE.

Section 1. Home Rule.

In order to repeal the principles of home rule which have been endorsed by this Alliance, it shall require a two-thirds vote of the delegates present at any one convention.

ARTICLE TWENTY-TWO.

Section 1. Amendments.

No alteration or amendment to this Constitution or By-Laws shall be made unless it be proposed in typewritten form, submitted to this Alliance in convention assembled, and enacted into law by receiving at least a majority of the votes of all delegates present in favor of such alteration or amendment.

ARTICLE TWENTY-THREE.

Permanency.

This Alliance shall not dissolve while there are seven dissenting affiliated local unions, nor shall this Article of the Constitution be subject to any alteration or amendment whatsoever.

BY-LAWS

ARTICLE ONE.

Traveling Members.

Section 1. Road and Local Cards.

No member of this Alliance shall be permitted to accept position with a traveling theatrical attraction in any department over which this organization has jurisdiction, unless he be in possession of official road card issued by this Alliance, fully paid up for the current fiscal year, together with local working card containing receipt stamps for the same period. Failure to produce the aforesaid cards upon demand of any local or International officer shall subject offender to fine of not less than Twenty-five dollars ($25.00) for the first offense and Fifty dollars ($50.00) for the second offense.

Sec. 2-a. Employment Privileges.

No traveling member of this Alliance shall be permitted to accept position to go on tour with a traveling attraction in any department over which the local union of which he is a member does not exercise jurisdictional control, under penalty of fine of One hundred dollars ($100.00) for each offense.

Sec. 2-b. Employment with Burlesque.

No member shall apply for road positions with Burlesque attractions to other than the General Office under penalty of expulsion.

Sec. 3. Employment Agencies.

No member of this Alliance shall pay any fee, regardless of the method of such payment, in return for engagement with a traveling attraction, to any employment agency, booking agency, individual or individuals. Such payment shall constitute working below the established scale of wages and offenders shall be subject to expulsion.

Sec. 4. Delinquent Employers.

No member of this Alliance shall accept a position made vacant by refusal of a

brother member to perform further service on account of failure of his employer to pay salary due. Violation of this section shall subject offender to fine of not less than One hundred dollars ($100.00), out of which money the injured member shall be compensated.

Sec. 5. Companies Indebted to Members.

Any member who, without permission of the President, knowingly accepts a position with any attraction that is indebted to a member of this Alliance shall be subject to a fine of not less than One hundred dollars ($100.00).

Sec. 6. Services Denied.

Any member of this Alliance who is asked to accept or continue to occupy a position when such acceptance or continuance would constitute a violation of the laws or wage schedules of this organization shall immediately send complete information thereof to the General Office. Upon being satisfied that the information is correct, the General Office shall deny to the employer concerned the right to employ members except by direct application to the President's Office. Failure on the part of any member immediately to report any such proposal shall subject him to a fine of not less than Fifty dollars ($50.00) for each violation.

Sec. 7. Under Scale.

No member shall accept position with a traveling attraction if the vacancy has been occasioned by refusal of former incumbent to accept less than the regular scale of wages. The acceptance of such a position shall be construed as working below the established scale of wages and shall be dealt with as provided by this Constitution and By-Laws.

Sec. 8. Permission Must Be Obtained.

Members of this Alliance are prohibited from accepting positions with traveling attractions without first securing permission and also ascertaining from the General Office that prospective employers are in good standing. Any member who fails to make such inquiry to the General Office before signing contract shall be subject to fine of not less than Fifty dollars ($50.00) for each offense.

Sec. 9. Contract.

Any member of this Alliance accepting position to go on tour with a traveling attraction in any department over which this organization has jurisdiction shall execute with the employer the official contract.

Sec. 10. Schedule of Prices.

This Alliance shall adopt a schedule of prices for the government of traveling members.

Sec. 11. Wages of Traveling Members.

Any traveling member of this Alliance accepting position with a traveling attraction must have contract providing for not less than the prevailing scale of wages.

Any member of this Alliance accepting position as a traveling mechanic at less than the prevailing scale of wages shall be subject to expulsion.

Sec. 12. Failure to Produce Contract.

Any member of this Alliance engaged with a traveling attraction in any department over which this organization has jurisdiction and who refuses to exhibit copy of official contract upon demand of any local or International officer shall be fined not less than Twenty-five dollars ($25.00) for each offense.

Sec. 13. Traveling Without Contract.

Any member of this Alliance en tour without official contract in the employ of a traveling attraction in any department over which this organization properly exercises jurisdiction shall be fined One hundred dollars ($100.00) for each offense.

Sec. 14. File Contract.

It is mandatory that traveling members of this Alliance, upon securing signed contracts covering employment with a traveling attraction, must immediately file copy of such contract with the General Office, under penalty of fine of not less than Twenty-five dollars ($25.00) for each offense.

Sec. 15. Christmas and Holy Week.

Any traveling member who shall enter into a contract to work the week before Christmas or Holy Week for half salary shall be fined not less than Fifty dollars ($50.00) for the first offense and shall be expelled for the second offense. In the application of this section the week before Christmas shall be construed as that week ending on the Saturday night preceding Christmas Day. Holy Week shall be understood to be the week ending on the Saturday night immediately preceding Easter Sunday.

Sec. 16. Production Contract Scale.

The schedule of wages for members traveling under the six weeks' tryout period, as stipulated in Section 17 of this Article, shall not be less than Fifteen dollars ($15.00) per week over and above the established scale covering the straight road contract.

Sec. 17. Production Contract.

Members engaging to accompany attractions en tour for try-out purposes must secure official contract providing for scale of wages not less than as set forth in Section 16. This contract shall be operative for a period not exceeding six weeks, unless previously cancelled by the employer on account of the production being presented in the city mentioned in Section 19 of this Article or being withdrawn from public presentation and definitely closed. Such contracts must be plainly marked either by rubber stamp or in writing across their faces with the words "Production Contract." The number of men to be engaged under such contract is not to exceed nine, viz.: Three in the Carpenter, four in the Electrical and two in the Property Departments.

Sec. 18. Try-Outs.

This Alliance shall permit any new theatrical production, regardless of where manufactured, to engage for try-out purposes members of this organization at a rate of wages not less than that stipulated in Section 16 to handle such production while en tour for a period not exceeding six weeks, provided that during that time the attraction shall not play in New York.

Sec. 19. Metropolitan Run.

This Alliance shall permit a new production en tour for try-out purposes to come into New York for a run to be handled without the services of members of this organization under traveling contract. The attraction shall further be permitted to move from one theatre to another within the same city, provided that no lay-off intervenes between the closing and reopening of the production except that necessary for the transfer of scenery, properties, electrical effects and other equipment to the new location. However, this is not to be construed as permitting the removal of such attractions from the Borough of Manhattan, or to what is known as the subway circuit in New York City.

Sec. 20. Termination of Metropolitan Run.

The metropolitan run hereinbefore referred to shall be considered at an end when the attraction shall close its engagement and again go en tour, or when it shall lay off (which is construed to mean interruption of its regular performance schedule, except as provided for in Section 19 of this Article), and again resume, even though it be not removed from the same city, and in either event it shall then become necessary to employ the required mechanical help under regular road contract.

Sec. 21. Moving Picture Production.

Any Moving Picture production, carrying scenery, electrical effects, properties or Moving Picture equipment, must employ members of this Alliance in their proper capacity.

Sec. 22. Moving Picture Machine Operators en Tour.

A. Moving Picture machine operators shall be subject to the requirements of all road credential and road contract sections of this Constitution and By-Laws in seeking and accepting positions with traveling attractions.

B. No Moving Picture machine operator en tour with a traveling production shall be required to operate a moving picture machine for more than six hours a day unless he be paid not less than Two dollars and fifty cents ($2.50) per hour or fraction of an hour for all such overtime.

C. Upon entering city where license is required, the Moving Picture machine operator shall proceed to obtain such license, the fee for which shall be paid by the employer, and the time consumed in securing such license shall be construed as services rendered and shall be paid for accordingly.

D. All Moving Picture Productions carrying machines shall be required to employ a member of this Alliance under official contract for each machine carried.

E. Moving Picture Productions carrying one operator and one machine and procuring an extra machine in any city that is played shall be required to engage a local man to assist the road man, the local man to receive the road scale and overtime scale as set forth in paragraph "B."

Sec. 23. Advance Money.

Any member who, after drawing advance money from any traveling attraction, refuses to join that attraction shall be obliged to refund the amount involved and shall be subject to a fine of not less than One hundred dollars ($100.00).

Sec. 24. Notice Clause.

Any member of this Alliance employed by a traveling attraction who shall leave his position without furnishing notice required by contract shall be suspended from membership pending payment of amount necessary to reimburse said company for railroad fare and expenses incurred in filling the vacancy thus created, plus fine of One hundred dollars ($100.00) for each offense. This section shall not be construed as prohibiting members from ceasing to render service without notice if employer fails to pay salary in full when due, or from abrogating contract without notice pursuant to requirements of this Constitution and By-Laws or under instructions of this Alliance.

Sec. 25. Dishonesty and Drunkenness.

Any member with traveling attraction may be summarily dismissed upon being proved guilty of dishonesty or of drunkenness, and shall thereupon be liable to a fine of not less than One hundred dollars ($100.00) for each offense.

Sec. 26. Help Required.

Members engaged as heads of departments en tour with a traveling attraction shall, upon entering the first road stand, receive from local representative the report card in triplicate, whereon they shall designate in ink in the spaces provided the number of local men required to take in, work and put out their respective departments. The original they shall return to local representative as an indication of the number of men which he shall furnish, and the duplicate shall be retained by the carpenter of the traveling attraction. to be delivered into the keeping of the local representative at the next stand. By this means the carpenter shall always carry with him from one stand to the next a duplicate card. The triplicate shall be forwarded by the carpenter of the traveling attraction to the permanent mail address of the next stand possible of delivery of said card prior to arrival of attraction, the necessary postage being furnished by the local. It is mandatory that the members of traveling crews shall render no service whatsoever in connection with their attraction until the number of men called for by the report card has been furnished by the local. Failure to observe the requirements of this section shall subject the offender to a fine of not less than Twenty-five dollars ($25.00) for each offense.

Sec. 27-a. Altering Number of Men on Report Card.

For the purpose of preventing discrimination, members engaged as heads of departments with theatrical traveling attractions shall be prohibited under penalty of fine of not less than Twenty-five dollars ($25.00) for each offense from altering or reducing the number of local men called for at their various stands, unless their production be permanently cut down, scenery bagged or counterweights or mechanical devices used which would eliminate certain help otherwise required.

Sec. 27-b. Same Number of Men Shall Be Retained.

Under no circumstances shall the number of members to be used in cities be less than

that required by the attraction while en tour, unless sufficient equipment is eliminated to warrant any reduction desired.

Sec. 28. Short-Crewed.

This Alliance insists that all departments carried by any production en tour must at all times be covered by the employment of members of this Alliance under official contract, and shall consider any member en tour with attraction where such requirement is not fully complied with as working short-crewed. The penalty for violation of this section shall be a fine of not less than One hundred dollars ($100.00) for each offense.

Sec. 29. Working with Non-Members.

Any member of this Alliance who goes or remains en tour with a traveling attraction which has also in its employ a non-member caring for duties over which this organization properly exercises jurisdiction shall be fined not less than One hundred dollars ($100.00) for each offense.

Sec. 30. Working Out of Department.

Any member on tour with a traveling attraction who is found guilty of working in any department over which this Alliance exercises jurisdiction, other than the one in which he is engaged under official contract, shall be fined not less than One hundred dollars ($100.00) for the first offense. For the second violation his working card shall be revoked and he shall not be reinstated to membership again for a period of one year, and then only upon the payment of fine of not less than Two hundred dollars ($200.00).

Sec. 31. Official Road Call.

No member of this Alliance in the employ of a traveling attraction shall refuse to render services to his employer because of any strike or lockout which may obtain in any theatre or place of amusement, unless presented with the official road call issued by this Alliance and bearing the signature of the President or Assistant President, as well as the seal of the Alliance, under penalty of being adjudged guilty of having violated the notice clause

of the official contract, and of being penalized as provided in Section 24 of this Article.

Sec. 32. Compensation for Answering Official Road Call.

Any member who, while on tour with an attraction, answers the official road call, shall sign a form supplied by the General Office and presented to him by the local business agent, specifying the amount of time lost and the circumstances under which he obeyed the call, and upon presentation of this form to the General Secretary-Treasurer shall be compensated by this Alliance for the time lost, at the rate of one-half of the daily minimum road scale for the department in which the member is employed.

Sec. 33. Discharged Account of Road Call.

Any member who shall be discharged from his position with any traveling attraction on account of his answering the official road call shall be protected by the local calling him out, and shall be returned to his home at the expense of such local union, which local shall be reimbursed by the General Office.

Sec. 34. Unfair Attractions.

Should any company discharge a member of the Alliance for refusing to work in an unfair theatre or place of amusement wherein the road call is in effect, the International President shall order all locals to refuse to work with said company until all differences are satisfactorily adjusted.

Sec. 35. Refusal to Obey Road Call.

This Alliance shall cause to be immediately expelled from membership any member who, whether as a mechanic, actor, manager or otherwise, after having been properly presented with the official road call, shall enter any theatre or place of amusement against which the said official road call may be operative without the sanction of this Alliance.

Sec. 36. Men Not on Payroll.

The carrying of men not on the payroll of the company by the head of any department is strictly prohibited by this Alliance and offenders against this section shall be subject

to fine of not less than One hundred dollars ($100.00) for each violation.

Sec. 37. Loading Baggage.

Traveling mechanics shall engage members of the local union to load and unload baggage cars containing theatrical property.

Sec. 38. Grievance.

Any traveling member having a grievance shall report it to the local in the city in which he may be at the time and the said local union shall enjoy full authority to investigate and adjust the difficulty; shall pay expense incurred and in turn be reimbursed by the local union of which the aggrieved party is a member

Sec. 39. Storehouse Labor.

Any member of this Alliance employed in the taking in or putting out of scenery, properties or other theatrical effects from any storehouse shall be paid for such labor one-sixth of the weekly contract price stipulated in agreement for each day of not more than eight hours so employed.

Sec. 40. Dues.

Any member paying to the secretary of a sister local dues or other money to be forwarded to the local of which he is a member shall be required to pay the cost of money order and registration to insure the safe transmission of such funds.

Sec. 41. Communicate With Local.

Any traveling member who fails to communicate with his home local at least once every thirty (30) days, giving his address for at least sixty (60) days in advance, or as far ahead as possible, shall be fined not less than Ten dollars ($10.00) for each and every offense.

Sec. 42. Insolvent Locals.

Traveling members of this Alliance belonging to affiliated local unions which have become insolvent and ineligible to road privilege shall have the right to make application to the

General Secretary-Treasurer, provided such request be made within ninety (90) days from the date of local's delinquency, for permission to retain their traveling membership upon payment to that officer of Two dollars and forty cents ($2.40) per month, plus such assessments as may be levied by this Alliance. Such dues shall be payable yearly in advance, not later than August 1st.

Sec. 43. Needy Members.

Members of this Alliance are accorded the right to appeal to the nearest local union when in need of financial assistance, and it shall be the duty of such local immediately to communicate with the local of which the appellant may be a member and, upon receipt of authority so to do, to advance to such member a loan, which shall be charged to and collected from the local union approving the advance of said amount; but no local union shall be obliged to advance money to any member without such approval and no local shall be forced to repay any loan which it did not authorize.

Sec. 44. Compensation for Extra Performances.

Any traveling attraction giving in excess of two performances a day, with the exception of vaudeville acts, shall compensate all traveling members at the rate of one-sixth of one week's salary for each extra performance given. At no time shall a midnight performance be so construed as to be considered one of the two performances per day allowed under the provisions of this section, but shall be compensated for at all times.

Sec. 45. Vaudeville Acts.

Where extra performances other than the number established as the regular weekly policy of the theatre are given the traveling members with acts working same shall be compensated as provided for in Section 44. At no time shall a midnight performance be considered as part of the regular policy of any theatre, but shall also be compensated for as provided by Article One, Section 44.

ARTICLE TWO.

Local Unions.

Section 1. Home Rule.

"Home Rule" is granted to all affiliated locals of this Alliance, and this shall be construed as authority conferred upon each local union to exercise full control over its own affairs; provided, however, that in the conduct of such business no action shall be taken that will conflict with any portion of the Constitution and By-Laws of the International Alliance.

Sec. 2. Title and Number.

This Alliance shall insist that all affiliated local unions adopt the following title: International Alliance of Theatrical Stage Employes and Moving Picture Machine Operators of the United States and Canada, Local No..... No local shall be permitted the use of any other number upon their stationery, forms, documents, etc., than that appearing upon their charter.

Any local that violates this section shall be subject to a fine of not less than One hundred dollars ($100.00) and, for continued violation, to revocation of charter.

Sec. 3. Jurisdictional Agreements.

In cities where there are two or more affiliated locals of this Alliance they may enter into local agreement relative to jurisdictional rights; such agreement, if it carries no termination date, may be cancelled only after proper notification in writing has been served by either party upon the other.

Sec. 4. Merging of Cities.

In the event of two large metropolitan cities being merged by law into one municipality and charters being active in both, this Alliance shall recognize the right of either local affected to continue to operate as an individual organization.

Sec. 5. Building Prices.

The prices to be charged for building scenery, properties and stage lighting effects shall be considered as coming within the meaning and scope of Section 1 of this Article.

Sec. 6. Address, Mail.

Each affiliated local shall file with the General Secretary-Treasurer the name and permanent mail address of its corresponding secretary, president and business agent, preferably a home address, but under no circumstances in care of any theatre or place of amusement. The secretary shall immediately notify the General Office of any change in his address. Failure to comply with these requirements shall subject the offender to a fine of not less than Twenty-five dollars ($25.00) for each offense.

Sec. 7. Answering Communications.

Local unions of this Alliance shall immediately answer all communications received by them from the General Office, their members or any sister local, under penalty of Twenty-five dollars ($25.00) fine for each violation of this requirement.

Sec. 8. State and Central Body Affiliation.

All local unions shall secure and maintain affiliation with their respective state, provincial and central bodies of the American Federation of Labor or the Dominion Trades and Labor Congress, and any local that refuses to affiliate as above or withdraws from such bodies, except by permission of the International President, shall be subject to a fine of Fifty dollars ($50.00).

Sec. 9. Trade Schools and Advertising.

Any local union of this Alliance that permits its name to be used for advertising purposes or for the advancement or promotion of any trade school of any craft shall be subject to such penalty as may be fixed by the General Executive Board.

Sec. 10. Monthly Dues.

It shall be compulsory for every affiliated local union to collect from each individual member thereof monthly dues of not less than One dollar and eighty-five cents ($1.85).

Any local Secretary accepting dues from a member and not affixing proper number of stamps as receipt for same shall be fined not less than Twenty-five dollars ($25.00) for each offense.

Sec. 11. Additional Revenue.

No local union of this Alliance shall be allowed to charge members of affiliated sister local unions for the privilege of working within its jurisdiction, but any local which obliges its own individual members to contribute a given percentage of their earnings, over and above the monthly dues, shall be permitted to collect from the members of affiliated sister local unions working within its jurisdiction the same percentage.

Sec. 12. Suspension of Local.

If any local union is declared suspended by reason of any violation of the International Alliance laws, or suspends active operation of its own accord, all moneys, books, seal and other property must be forwarded to the General Secretary-Treasurer of the International Alliance, who will give a receipt therefor to the local or to the parties turning over such properties and moneys.

All officers of such local union shall be held responsible for the faithful transmission of all property in their respective hands to the General Secretary-Treasurer of this Alliance.

For non-compliance with these requirements the officers shall be refused all cards of admission to any union until all such property, or value thereof, is restored into the hands of the General Secretary-Treasurer; and, if possible, the latter officer shall procure the punishment at law of the guilty persons for illegally withholding any property of the International Alliance. The President of this Alliance may, if he thinks proper, impose a fine of not less than Five dollars ($5.00), payable to the International Alliance, against each officer of local unions violating this section, in addition to the penalties above described.

Provided, however, that no local officer shall be held responsible for a period longer than his term of office.

Sec. 13. Delinquent Local Unions.

Affiliated local unions shall be subject to suspension of charter whenever they become financially delinquent in the sum equivalent to three months' per capita tax, and it shall be the

duty of the General Secretary-Treasurer to notify such delinquents at least thirty days in advance of his submitting same for consideration and action of the General Executive Board.

Sec. 14. Engaging Heads of Departments.

All heads of departments in theatres shall be engaged by the owner or manager or by his duly appointed proxy. Under no circumstances shall the propertyman or electrician be considered as assistant to the carpenter.

Sec. 15. Contracts, Local.

All affiliated local unions shall enter into written contracts with local managers and other employers covering conditions of employment of their members.

Such agreements shall specify the first day of September as the date of expiration, and shall not cover a period longer than two years, unless provision is made for a graduated increase of wages and improvement of working conditions each year.

Any local contract shall contain the following clause: "As the party of the second part is a member of the International Alliance of Theatrical Stage Employes and Moving Picture Machine Operators of the United States and Canada, nothing in this contract shall ever be construed to interfere with any obligation the party of the second part owes to such International Alliance by reason of a prior obligation."

Copies of such agreements must be filed with the General Office of this Alliance. All locals desiring endorsement by the General Office of their contracts must forward two copies thereof, together with a copy of the contract currently in effect.

Sec. 16. Quarterly Membership Reports.

It shall be mandatory that on the first day of each quarter the local forward to the General Office the report of their membership on the quarterly membership report blanks furnished for that purpose by this Office, on which all changes in membership since the last report filed, must be properly recorded.

Locals failing to comply with this law will be fined three dollars for each offense. As a

check-up on the dates the reports were sent out by the local secretary, the postoffice date stamp of the envelope will be taken.

Sec. 17. Road Cards.

No local union that is indebted to the Alliance for an amount equal to one quarter's per capita tax shall be permitted to issue traveling cards to its members, under penalty of being adjudged guilty of granting illegal permission to travel and being dealt with as provided for in Section 18 of this Article.

Sec. 18. Illegal Permission to Travel.

Any local union issuing official road card or permit to travel in any capacity covered by the jurisdiction of this Alliance to a non-member, apprentice or anyone not entitled thereto shall be fined not less than One hundred dollars ($100.00) for each offense.

Sec. 19. Employment of Members.

Affiliated locals are required to insist that all positions within their jurisdiction be filled by their own members. In the event of the local membership being unable to care for all vacancies, preference must be given to members of sister locals affiliated with this Alliance. Not until the available members of the resident and out-of-town locals have been employed shall the engagement of non-members be permitted. Any local failing to comply with the requirements of this section shall be fined not less than Fifty dollars ($50.00) for each offense.

Sec. 20. Jurisdictional Violation.

Any affiliated local union which refuses to order its member or members to withdraw from the jurisdiction of a sister local when ordered to do so by the President of this Alliance shall suffer suspension of charter for a period of not less than five (5) years and shall not be readmitted to this Alliance unless so decided by a two-thirds vote of the delegates in convention assembled.

Sec. 21. New Members.

(A) No affiliated local shall be permitted to accept into membership (except on transfer card) any applicant who has not been a bona fide resident of its jurisdiction for a period of at least eighteen months, or who has

failed to pass satisfactory examination as to his competency and qualifications. For violation of this section the penalty shall be a fine equal to twice the initiation fee charged; provided, however, that in no case such fine shall be less than Fifty dollars ($50.00). Membership cards issued contrary to the requirements hereinbefore set forth shall be cancelled forthwith.

(B) Any member of an affiliated local who endorses the application of one not eligible for membership shall be liable to fine of not less than Fifty dollars ($50.00).

Sec. 22. Balloting on Applicants.

No affiliated local shall be permitted to have any law which requires more than a two-thirds majority vote of the members present at any regular meeting to admit an applicant to membership.

Sec. 23. Approval of Membership Application.

No affiliated local shall be permitted to accept into membership any applicant whose application has not first been approved by the General Secretary-Treasurer. Neglect of this requirement shall subject the offending local to a fine of not less than Twenty-five dollars ($25.00) for each offense.

Sec. 24. Transfer Cards.

Local unions shall be obliged to issue upon request to any member in good standing an honorable transfer card to enable him to gain admission to a sister local. If for any reason such transfer card is returned within ninety (90) days of date of issue, the member shall be reinstated to membership without payment of initiation or reinstatement fee. Violation of this section shall subject the offending local to revocation of charter.

Sec. 25. Withdrawal Cards.

No local union shall refuse to issue to any fully paid-up member who is not under charges an honorable withdrawal card upon request. The penalty for violation of this section shall be revocation of charter.

Sec. 26. Roster of Membership.

Any affiliated local failing to forward a complete roster of its members to the General Secretary-Treasurer upon request shall be subject to a fine of Twenty-five dollars ($25.00) for each violation of this section.

Sec. 27. Accident Reports.

All locals shall immediately notify the General Office of any and all accidents to members of the Alliance while working at the craft within their jurisdiction; any local failing to comply with this law shall be subject to a fine of not less than Ten dollars ($10.00).

Sec. 28. Furnish Men Called For.

Affiliated locals shall furnish to heads of traveling attractions the number of men called for on report cards, and failure so to do shall result in a fine of Twenty-five dollars ($25.00) for each offense.

Sec. 29. Failing to Employ Men Called.

Local unions, after requiring members to report for duty, shall not dismiss them without payment for time lost, under penalty of Twenty-five dollars ($25.00) fine for each offense.

Sec. 30. Failure to File Report Cards.

Any local union failing to forward to the General Office, immediately after opening of engagement of any traveling attraction, report cards properly filled out in ink and signed by both local representative and traveling members, shall be subject to fine of Fifty dollars ($50.00) for each offense.

Sec. 31. Examine Cards and Contracts.

It shall be the duty of each local representative to examine the traveling cards and contracts of all members employed by traveling attractions playing his jurisdiction. A fine of not less than Ten dollars ($10.00) shall be imposed for each failure to comply with this requirement.

Sec. 32. Handling of Equipment by Non-Members Prohibited.

No person shall be allowed to handle

or direct the placing of scenery, properties, electrical effects or projecting apparatus where such action will displace a member of this Alliance.

Sec. 33. Electrical Apparatus.

All electrical apparatus carried by and used in any production during the presentation of such production shall be handled and operated by members of this Alliance.

Sec. 34. Assisting Road Crew.

The local crew shall give the road crew every possible assistance to insure the careful and efficient staging of their attraction and, after the last performance, to take out and prepare the show for shipment. Failure to comply with the requirement shall subject offender to fine of not less than Twenty-five dollars ($25.00).

Sec. 35. Short-Crewed Attractions.

Local unions shall insist that all departments carried by any traveling attraction must be cared for by the employment of members of this Alliance under official contract. Any local permitting an attraction to play its jurisdiction short-crewed shall be subject to a fine of not less than One hundred dollars ($100.00) for each offense.

Sec. 36. Filling Vacancy in Traveling Attractions.

If any traveling attraction needs the services of a traveling member under contract and a local is unable or not qualified to furnish such a man, the local shall immediately wire the General Office, stating this fact and giving the name and route of the attraction. The local may then temporarily place a member at the road scale while the attraction is in its jurisdiction.

Any local violating this section shall be subject to a fine of not less than Fifty dollars ($50.00).

Sec. 37. Blacklisting.

Any conspiracy, connivance or understanding on the part of any employers to bar any member of this Alliance from procuring employment shall be construed as blacklisting. Any

members of this Alliance who are victims of such practice shall immediately notify their local. If the local union, upon investigation, finds the charges justified, it shall at once forward authentic proof and full particulars to the General Office, whereupon that office shall promptly take such action as will most speedily suppress this practice. Any local failing to carry out the requirements of this section shall be fined One hundred dollars ($100.00).

Sec. 38. Unfair Theatres and Places of Amusement.

When a theatre or place of amusement has been placed on the unfair list, all theatres, places of amusement, studios, shops or traveling attractions operated by the unfair owners or management, wherever located, may also be declared unfair by the General Executive Board of the International Alliance. No contracts entered into between any local and any manager or syndicate will prevent the operation of this law.

Sec. 39. Managers, Members Becoming.

Any member accepting a position as manager in any place of amusement shall not be allowed voice or vote in any local union while holding such a position; but the local of which he is a member may, at its own discretion, permit him to retain his membership.

Sec. 40. Withdrawal Card, Acceptance Refused.

Affiliated local unions shall refuse to admit to membership such holders of honorable withdrawal cards as have committed acts detrimental to this Alliance after date of issue of said card.

Sec. 41. Reinstatement of Members Who Have Been Suspended.

No local shall have any law requiring a member who has been suspended for nonpayment of dues to be balloted upon for reinstatement, unless such suspension has exceeded six months. No local union shall be permitted to reinstate to membership any one who has been suspended, expelled or who has withdrawn from membership, without first submitting the name of the former member, with the cause of loss of membership, to the General Secretary-Treasurer for investigation and approval on the same.

Sec. 42. Communications.

It shall be mandatory that local secretary read to the local union all communications from the General Office not later than the first regular meeting after receipt of same.

Sec. 43. Local Constitution and By-Laws; Proposed Amendments.

Constitution and By-Laws, or proposed amendments thereto, must be submitted to the General Office for approval prior to adoption. Any local failing to comply with this section will be subject to a fine of Twenty-five dollars ($25.00).

ARTICLE THREE.

Local Members.

Section 1. Application for Local Membership.

Any applicant for membership in any affiliated local union shall be subject to the requirements imposed by the Constitution and By-Laws of this Alliance as regards 18 months' residence and other qualifications, and must have been a member in good standing of whatever other craft he has followed previous to date of his application, provided there has been a local of such craft in his city.

Sec. 2. Transfer to Newly Chartered Local.

When a new charter is issued by this Alliance, all members of sister local unions employed within the jurisdiction of such charter must, within a period of ninety (90) days, transfer from their own local and take out membership cards in the new organization, but shall not be obliged to pay initiation fee in excess of Five dollars ($5.00). Failure to avail themselves of this right shall oblige their withdrawing from such jurisdiction upon demand of the new local.

Sec. 3. Transfer to Established Local.

Any member desiring to transfer to another local of this Alliance shall first obtain transfer card from the local of which he is a member, and deposit it with the local with which he wishes to affiliate, which local shall, within sixty (60) days, either accept such applicant or reject and return the transfer card.

"When a member transfers from one local to another and has paid his dues to his original

local beyond the date of his acceptance into the sister local, he shall be entitled to receive a refund on all moneys paid him into his original local for dues beyond date of his acceptance into the sister local."

"The original local of the transferred member shall be given from the International Office unused stamps to replace those affixed within the member's book for dues paid, and for which the refund had been made."

"A member transferring from one local to another begins the payment of his dues into the sister local with the month of his acceptance into the local via transfer."

"The original due book issued to the member must be forwarded to the International Office, and in turn proper adjustment will be made."

Sec. 4. Privileges Not Suspended During Transfer.

Any member taking transfer card from one established affiliated local to a sister local of this Alliance shall continue to pay all dues and assessments to the local issuing the transfer until he is accepted into membership in the organization to which he seeks admission. Pending final disposition of such transfer he shall be continued on the books of the local from which he obtained the transfer as a member in good standing thereof and shall enjoy all the rights and privileges accorded such members.

Sec. 5. Rejection of Transfer.

If transfer card be rejected, except as provided for in Section 2 of this Article, members shall, within ninety (90) days of its date of issue, re-deposit the card with the local which issued it and thus re-establish affiliation. Failure so to do shall result in his loss of membership and oblige his seeking admission as a new member.

Sec. 6. Road Privileges.

No member shall be entitled to traveling card until he has been a member in good standing for a period of at least two (2) years, and this only pursuant to jurisdictional rights enjoyed by the local of which he may be a member.

Sec. 7. Road Privileges Not Affected by Transfer.

In the case of a member who transfers from one local to another, the time served in the former local shall count towards the rights and privileges of the road, regardless of the date on which charter was issued to the local to which he is transferred.

Sec. 8. Jurisdictional Rights.

All members of this Alliance operating under local working cards must confine their work strictly to that territory over which their particular local enjoys jurisdiction, unless permission to work in the jurisdiction of a sister body be first secured in writing from the local enjoying such jurisdiction. Violation of this section shall incur a fine of not less than One hundred dollars ($100.00) for the first offense and expulsion for the second violation.

Any member of the Alliance working in the jurisdiction of any local other than the one of which he is a member shall be subject to the rules, laws and penalties of the local under whose jurisdiction he is employed.

Sec. 9. Working Card Must Be Deposited.

Any member entering the jurisdiction of a local other than that to which he belongs shall deposit with the secretary of the said local his working card, and obtain a receipt therefor. The secretary shall hold the card until the member leaves the jurisdiction of the said local.

Sec. 10. Refusing to Withdraw From Jurisdiction.

Any member who refuses to withdraw immediately from the jurisdiction of a sister local, when so ordered by the local of which he is a member, shall be expelled and shall not be reinstated for at least five years, and then only by a two-thirds vote of the delegates in convention assembled.

Sec. 11. Insolvent Locals.

Any member of a local which, through insolvency or lack of membership, has had its charter revoked, shall have the right, provided he makes request within ninety (90) days from date of local's delinquency, to retain his mem-

bership in the International Alliance through application to the General Secretary-Treasurer, upon payment to that officer of the total amount of his indebtedness to his local at the time of revocation of charter, and of Two dollars and forty cents ($2.40) per month, payable yearly in advance not later than August 1st, plus assessments as may be levied by this Alliance. Members carrying a card out of the I. A. Office from towns that have lost their charter, shall at any time the town is reorganized and a charter granted from the I. A., automatically become members of the new local at once.

Sec. 12. Date of Membership.

The membership of any member of this Alliance shall commence from the date of his registration with the General Secretary-Treasurer.

Per capita tax must be paid on all apprentices from date of original registration with the General Secretary-Treasurer.

Sec. 13. Lost Due Books.

When a member loses his due book he shall be issued a duplicate due book from the General Office with stamps affixed to replace those in the old due book for which he will pay Three dollars ($3.00) for the cost of each stamp.. The local secretary will notify this Office of the loss of due book, and upon receipt of remittance to cover cost of duplicate stamps, the due book will be issued at once.

ARTICLE FOUR.

Strikes and Lock-Outs.

Section 1. Radical Demands.

Except by consent of the General Executive Board, no local union shall be permitted during a period of one year from date of charter to make radical demands which might result in strike or lockout; but this shall not apply to insistence upon compliance with the provisions of this Constitution and By-Laws or with instructions of this Alliance.

Sec. 2. Disagreement With Employer.

In the event of serious disagreement between a local and employer, the local union

shall promptly advise the President of this Alliance of the circumstances, which he shall cause to be thoroughly investigated in an endeavor to consummate amicable adjustment. However, should he be unsuccessful in these negotiations, he shall be empowered to authorize the affected local to call a strike in the manner hereinafter provided.

Sec. 3. Strike Vote.

Within twenty-four hours of receipt of the International President's authorization of strike, the president of the local union shall call a meeting of his organization, constitutionally notifying all members to vote on the question of a strike. No member who has not been in good standing for a period of at least six months shall be permitted to vote on such question, and three-fourths of the total vote present shall be required to legally carry a motion to call strike, provided, however, that the proper local official or officials shall have the power to order a strike to enforce compliance with the provisions of this constitution and by-laws or with the instructions of the International President or his duly accredited representative.

Sec. 4. Notify General Office.

If a strike be called, after being authorized by this Alliance, the President of the local union involved shall promptly notify the General Office of the action taken, the number of union men affected and the number of non-union men concerned.

Sec. 5. Official Road Call.

Affiliated local unions possessed of the official road call shall be permitted to exercise their own discretion in enforcing this call during strike or lockout.

Sec. 6. Calling Out Road Men.

No local union of this Alliance shall be permitted to call out road members employed by any traveling attraction except in observance of official road call properly presented or under direct instruction of this Alliance. Any local violating this section shall be penalized not less than Two hundred and fifty dollars ($250.00)

fine, plus reimbursement of salary lost by member or members illegally withdrawn from employment.

Sec. 7. Financial Support.

No affiliated local union of this Alliance shall be permitted to solicit of sister organizations financial assistance, through the medium of subscriptions or the sale of dance, raffle or picnic tickets, unless endorsement first be obtained from the President of this Alliance.

Sec. 8. Controversy to be Investigated.

If a local union, upon receiving an order from the General Office to withdraw their members in support of an affiliated organization, so desires, such order shall be held in abeyance until the entire matter has been investigated by an International Official.

Sec. 9. Attractions Playing Unfair Theatres.

When a theatre or place of amusement is declared internationally unfair to the members of this Alliance and any road or traveling attraction proceeds to give performances therein, such attraction may, at the discretion of the President, with the consent of the majority of the General Executive Board, be also declared unfair to the members of this Alliance and no member shall be permitted to accept employment with, nor work for, such attraction, under penalty of being adjudged guilty of ratting and suffering immediate expulsion from membership in this Alliance.

Sec. 10. Controversy Adjusted by Alliance.

When this Alliance receives an appeal to adjust a controversy in which an affiliated local union is involved, the parent body shall not have the power to consummate agreement unless such agreement meets with the approval of the local union involved.

ARTICLE FIVE.

Vaudeville Acts.

Section 1. Frame Scenery.

Any vaudeville act carrying frame scenery the lateral spread of which measures fifty (50) feet or more shall be required to carry a carpenter of this Alliance.

Sec. 2. Cyclorama and Batten Drops.

Any vaudeville act carrying scenery in excess of two (2) batten drops, or a cyclorama measuring fifty (50) feet or more shall be required to carry a carpenter of this Alliance.

Sec. 3. Special Appliances, Tank Acts, Etc.

Any vaudeville act carrying special appliances, such as tanks, etc., requiring the services of a mechanic, shall be obliged to carry a member of this Alliance in that capacity.

Sec. 4. Electrical Effects.

Any vaudeville act carrying public address machines, practical radio sets, amplifying equipment, television apparatus, stereopticons, spot, flood or effect lamps (such as waterfall, fire, cloud, lightning effects, etc.) or sufficient other electrical apparatus, shall be required to employ a member of the Alliance to care for and operate such equipment.

Sec. 5. Duties.

Any member traveling under contract with any vaudeville act must confine his services to the act covered by his contract. But this shall not be construed as preventing a member from working in more than one department with such an act.

Sec. 6. Number of Men Required.

A vaudeville act shall not be required to carry more than one traveling member of this Alliance, unless there should be sufficient material carried to warrant the services of additional help.

Sec. 7. Excess of Eight Pieces Requires I. A. Man.

Any act carrying equipment in excess of eight pieces shall be required to engage a member of this Alliance under Official Road Contract.

Sec. 8. Vaudeville Certificate System.

Any act carrying eight or less pieces of equipment shall be required to secure from the Local Representative at the point of opening a Certificate Form in triplicate, same to be filled out and furnished to the act, which shall carry same and produce it when requested by any Local Representative. One copy of said Form shall be filed in the General Office and one copy to be retained by the Local furnishing same.

Sec. 9. Notify Next Stand.

"Any local union in whose jurisdiction any violation of the above sections occur shall notify the next stand and the General Office of such violation, and failing to so notify the General Office shall be subject to a fine of Fifty ($50.00) Dollars."

ARTICLE SIX.

Tabloid Musical Comedies.

Section 1. Classification.

Those requiring one hour or less for presentation shall be regarded as vaudeville acts; those requiring longer than one hour for presentation shall be regarded as shows or productions.

Sec. 2. Tabloid as Vaudeville Act.

When a tabloid is offered as one of the acts of a vaudeville show, it must be classified and handled the same as a vaudeville act, subject to the provision of Section 1, Article Six.

ARTICLE SEVEN.

Section 1. Traveling Companies.

All traveling companies must employ traveling members of this Alliance in each de-

partment where equipment is used in the presentation. Traveling companies shall be permitted to engage members of local unions at the local scale to operate front lamps; provided, however, that no electrical equipment is carried with the company.

Sec. 2.

Any traveling attraction carrying spot lamps for front of house in addition to electrical effects and equipment on stage must carry an assistant electrician to operate front lamps or engage a spot lamp operator locally.

Sec. 3. Acting Not Permitted.

No member engaged with an attraction playing burlesque theatres is permitted to play parts of any description, and must not perform any duties other than those stipulated in the traveling contract. This law also applies to members engaged with tabloid attractions.

ARTICLE EIGHT.

College Shows.

Sec. 1. Scale.

Members engaged en tour with college shows shall receive $115.00 per week.

Sec. 2. Advertising Displays and Stagettes.

Advertising Displays and Stagettes are required to conform with all I. A. laws pertaining to traveling attractions.

ARTICLE NINE.

Charges.

Section 1. Addressed to President.

All accusations or charges directed against any affiliated local union or member of this Alliance for violation of this Constitution and By-Laws shall be addressed to the International President.

Sec. 2. Must Be in Writing.

Accusations or charges must be presented in writing over the signature of the complainant.

Sec. 3. Form.

Accusations or charges shall cite clearly in the form of a sworn affidavit the

offense charged, against whom filed, time, place and nature of the violation, together with notation of the section or sections of the Constitution and By-Laws alleged to have been violated.

Sec. 4. Cognizance of Charges.

Upon receipt of charges properly formulated and submitted the President shall decide whether or not they are cognizable. If it is so decided the President shall immediately cause notification to be sent to the accused.

Sec. 5. Accused Must Answer.

The accused shall be obliged to enter defense in writing within ten (10) days of receipt of notification of charges filed, or, in default, shall be adjudged guilty as charged.

Sec. 6. Charges Not Proved.

Any member or Local preferring against any other member or local of this Alliance malicious charges which are not founded on facts or laws of this Alliance may be fined the sum of Twenty-five dollars ($25.00) at the option of the International President.

Sec. 7. Enforcement of Decisions.

Rulings of any proper tribunal of this Alliance shall be enforced pending disposal of appeals. This shall be construed:

1st. To compel observance of decision of any affiliated local union pending reversal by the President of this Alliance, except in case of reprimand, when penalty shall not be imposed until appeal be disposed of.

2nd. To oblige compliance with decision of the President of this Alliance until reversed by the General Executive Board.

3rd. To compel obedience to ruling of the General Executive Board until reversed by this Alliance in convention assembled.

Sec. 8. Penalties for Violations.

Any members violating any law of this Constitution and By-Laws wherein no specific penalty is provided shall be liable to a fine of not less than Fifty dollars ($50.00).

ARTICLE TEN.

Appeals.

Section 1. Time Allowed for Filing.

Appeals from a lower to a higher tribunal of this Alliance shall be cognizable only if filed within thirty (30) days after receipt of decision by the accused.

Sec. 2. Must Be in Writing.

All appeals must be submitted in writing and no verbal plea shall be entertained. A member filing an appeal against the action of his local union shall be required to file copy of such appeal with the local union.

Sec. 3. Form.

All appeals shall contain a clear and concise review of the case from inception to date of appeal, including reference to the section or sections of the Constitution and By-Laws not properly interpreted by preceding tribunals, together with notation of those facts which are considered to entitle appellant to reversal of ruling.

Sec. 4. Signature of Appellant.

All appeals must be personally signed by the appellant and must set forth the name and number of the local of which he is a member.

Sec. 5. Order of Appeal.

The order of appeal shall be:

(1) To the local union from its own or its officers' decision;

(2) From decision of local union to the International President of this Alliance;

(3) From the decision of the International President to the General Executive Board;

(4) From the ruling of the General Executive Board to this Alliance in convention assembled, and the latter body shall be the tribunal of ultimate judgment.

Sec. 6. Appeal From President's Decision.

In event of appeal being taken from the decision of the International President of this Alliance to the General Executive Board, it shall be the duty of the President to submit a written statement to the General Executive

Board setting forth reasons in support of his ruling.

Sec. 7. Appeal From Executive Board.

If appeal be entered against decision of the General Executive Board, it shall be the duty of the General Secretary-Treasurer, upon receipt of notice from appellant, immediately to inform all interested parties that the case is docketed for consideration by the Alliance in convention assembled.

ARTICLE ELEVEN

Claims.

Section 1. Filing.

All claims shall be filed with the Manager of the Claim Department, on forms which will be provided by him upon application.

Sec. 2. Time Allowed.

It is mandatory that all claims be filed within thirty (30) days after the amount in question is due and payable.

Sec. 3. Illegal Claims.

Any member knowingly making claim for money to which he is not justly entitled shall be liable to a fine of not less than Fifty dollars ($50.00).

ARTICLE TWELVE.

Miscellaneous.

Section 1. Bulletins.

Official Bulletins shall be compiled and issued monthly by an Editor to be appointed by the President, and as many copies of each issue shall be mailed first-class to the Secretary of each affiliated Local as may be requested, but not in excess of the number sufficient to furnish one copy to each theatre in the Local's jurisdiction playing road attractions, plus two copies for the Local Union files. Such Bulletins shall contain the Post Office Box number of the Local Unions, the names of the Local Secretaries, the Business Agents, the telegraphic addresses of the Local Secretaries and Business Agents, and the names and addresses of the District Secretaries and their respective District numbers.

Sec. 2. I. A. Emblem.

Local Unions shall insist that the I. A. T. S. E. emblem be placed on all theatrical equipment constructed and film used within their jurisdiction—such emblems to be furnished by the Local Unions.

Sec. 3. Union Label and Slide.

All moving picture machine operators' union slides or union labels, for box office display, shall be procured from the General Office.

Sec. 4. Moving Picture Studios.

Any member of any other Local Union of the International Alliance obtaining a position in a moving picture studio, doing work of any sort, over which this Alliance exercises control, shall be obliged to obtain the permission of the local holding such jurisdiction or in its judgment shall be required to transfer his membership to the said Local Union, except in such cases as special exemption may be granted by the International President.

Sec. 5-a. Studio Mechanics.

Studio Mechanics' Local Unions shall be permitted to send entour with established companies to play in theatrical jurisdictions of other Local Unions not more than three heads of departments, provided such company heads of departments will not be permitted to displace the Local heads of departments.

Sec. 5-b.

Motion Picture Studio Mechanics shall be permitted to work on exterior location outside of their own jurisdiction with three heads of departments and such other assistants as may be necessary, provided that permission of the Local Union in whose jurisdiction such assistants are to be employed is first obtained.

Sec. 6. Bands.

Any traveling Band or Orchestra consisting of twenty-five or more members, carrying no scenery, but other paraphernalia, such as trunks, platforms, etc., shall carry International Alliance member under Official Road Contract.

AGREEMENT OF THE AMERICAN FEDERATION OF MUSICIANS AND THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA.

The following is a copy of the agreement entered into between the

International Alliance of Theatrical Stage Employes and Moving Picture Machine Operators of the United States and Canada
and
American Federation of Musicians.

First—If a local union affiliated with either party to this agreement has a grievance pertaining to union wages or conditions against an employer representing a theatre or place of amusement and fails to have such grievance adjusted, and in an effort to do so has exhausted all its local resources, and after the Central Labor Union of the town or city wherein either local has failed to bring about an adjustment, or is, or remains inactive in the matter, then the local union affected shall inform its national organization, and thereupon the officers of such national organization may request the other organization as party to this agreement to instruct its members to cancel, by giving two (2) weeks' notice, the contracts which they hold with the employer involved in the controversy.

Second—Both parties to this contract agree to pass resolutions making it obligatory upon their members to insert the two (2) weeks' notice clause, or any other stipulation, in their contracts, which will enable them to carry out the intent of this agreement.

Third—Contracts existing between the unions or members affiliated with either organization and their employers, if entered into before the time of the making of this agreement, shall not be affected by this agreement, but any extension of this contract shall not be recognized by either party to this agreement unless said extension of agreement provides that the stipulations of this agreement are binding upon it.

Fourth—Either party to this agreement will localize any controversy and confine same to

the theatre or town wherein it had its inception, except as hereinafter otherwise provided for.

Fifth—If a controversy, in the opinion of either party to this agreement, is of such vital importance as to affect or hinder the usefulness of its organization, or if an employer, or combination of employers, follows a policy to destroy their organization, then the controversy may be extended to cover as many local unions or towns as the manager or employer involved in the controversy, through his affiliations or interests, controls. However, before action can be taken under this proviso, the Executive Board of both organizations, parties to this agreement, must sanction the extension of such controversy, whereupon, if such sanction is given, an Advisory Board consisting of three (3) members of the National Executive Board of each organization shall meet and be in charge of the controversy until an honorable agreement is reached.

Sixth—If either party to this agreement becomes involved in a dispute with an employer (theatrical syndicate, producers of theatrical performances, etc.), concerning wages and conditions to govern its members who are in the employ of traveling theatrical companies, then either party to this agreement may call upon the other to render all moral support, and if deemed expedient by both organizations, they may further proceed in the matter in the same manner as set forth in Section 5 of this agreement.

Seventh—Nothing in this agreement shall be so construed as giving either party thereto any authority whatever to judge or pass upon the wages or conditions which the other party to this agreement, through its rules and regulations, provides for its members.

Eighth—If an employer never had the members of both parties to this agreement in his employ at his theatre or place of amusement (this does not apply if an employer opens a new theatre, in which case see Section 1), then neither party to this agreement shall be asked to cause its members to cancel their contracts with such an employer during a theatrical season; but, after the expiration of such season, either party may be requested to cause its mem-

bers to refuse to enter his employment, but before such request is made all stipulations as contained in Section 1 must have been adhered to.

Ninth—Local unions of both organizations, parties to this agreement, are free to enter into local trade agreements of their own. Such local agreements shall in no way be construed as contrary to this national agreement, even though some of the provisions therein may run contrary to same, and both parties to this agreement agree to hold their locals strictly to the carrying out of such local agreements.

The foregoing agreement may be altered by modifying or eliminating or adding to any of the provisions therein contained or supplemented by new matter by and with the consent of both the Executive Boards of the aforesaid organizations.

STANDING RULES

1. No business shall be taken up except in the order prescribed unless, on motion, such irregularity shall be sanctioned by a majority of the members present.

2. No motion shall be received or laid before the Alliance unless moved by two members, nor opened for discussion until stated by the presiding officer. When a question is before the Alliance, no other motion shall be in order, except, first, to adjourn; second, to lay on the table; third, the previous question; fourth, to postpone; fifth, to refer; sixth, to amend, which motions shall have precedence in the order in which they are here arranged. The first three shall be decided without debate. The fourth shall also be decided without debate, unless it is proposed to postpone to a definite period, in which case it shall be debatable.

3. Resolutions, amendments to the Constitution and By-Laws, and charges against officers and locals must in all cases be presented in writing, otherwise they shall not be considered.

4. The mover of any verbal proposition shall, upon requisition of the chair or two or more members, reduce it to writing.

5. Any member entitled to a vote may move for a division on the question when the sense of the same will admit of it.

6. A motion to reconsider any former motion or vote shall only be made and seconded by members who voted with the majority.

7. When the reading of any paper is called for and objected to, the question shall be decided by vote. A division of this Alliance shall be taken on any question and recorded at the request of five members.

8. When members speak they shall rise and address the presiding officer, confining themselves strictly to the question under consideration. A member shall not be interrupted while speaking unless by the presiding officer, who may call to order or admonish to a closer adherence to the subject and to avoid all personalities. Nor shall a member be allowed to speak more than twice on the same subject without the permission of the presiding officer. When two or

more members rise at once the presiding officer shall decide who shall speak first.

9. On the call of a member for the previous question the President shall put it in this form: "Shall the main question be now put?" And until that is decided, it shall preclude all amendments to the question, and all further debate shall cease.

10. All standing committees shall be appointed by the President.

11. The officer or member presiding in the absence of the President shall, for the time being, possses all the powers and privileges vested in the President by the Constitution and By-Laws of this Alliance.

12. No subject of a partisan or religious nature shall at any time be admitted.

13. No person who is not a member shall be allowed at any of the meetings without the consent of the Alliance.

14. In the absence of a standing rule to apply to questions before the Alliance, recourse shall be had to Roberts' Rules of Order.

15. Questions of order shall be decided by the presiding officer, but in case of an appeal from his decision the meeting shall determine without debate.

16. Refreshments other than cold water shall not be allowed in apartments belonging to this Alliance while the meeting is in session.

INSTALLATION OF OFFICERS.

I (full name) do hereby pledge my word of honor to perform the duties of my office as set forth in the Constitution and By-Laws of this Union to the best of my ability, and to bear true allegiance to the International Alliance of Theatrical Stage Employes and Moving Picture Machine Operators of the United States and Canada. At the close of my official term, I solemnly promise that I shall deliver to my successor in office all books, papers, and property of this Union which may be in my possession. I further pledge that at the close of my official term I shall deliver to my successor in office all property in my possession belonging to the International Alliance of Theatrical Stage Employes and Moving Picture Machine Operators of the United States and Canada. To these promises I pledge you my word, fully realizing that to violate this pledge is to stamp me a man unworthy of trust.

(INSTALLING OFFICER):—You have obligated yourself to faithfully and to the best of your ability discharge the duties of your office. You will now proceed to your station and perform the duties of that office and so conduct yourself as to be worthy of the trust reposed in you.

NUMERICAL LIST OF AFFILIATED LOCAL UNIONS.

Reference Marks:

S (stage) M (mixed) O (operators) S M (studio mechanics) C (cameramen) LT (laboratory technicians)

Local No.	*City and State*	*Date of Charter*
S 1	New York, N. Y.	July 17, 1893
S 2	Chicago, Ill.	July 17, 1893
S 3	Pittsburgh, Pa.	July 17, 1893
S 4	Brooklyn, N. Y.	July 17, 1893
S 5	Cincinnati, Ohio	July 17, 1893
S 6	St. Louis, Mo.	July 17, 1893
S 7	Denver, Colo.	July 17, 1893
S 8	Philadelphia, Pa.	July 17, 1893
S 9	Syracuse, N. Y.	July 17, 1893
S 10	Buffalo, N. Y.	July 17, 1893
S 11	Boston, Mass.	July 17, 1893
S 12	Columbus, Ohio	Nov. 1, 1893
S 13	Minneapolis, Minn.	Jan. 1894
S 14	Albany, N. Y.	Mar. 5, 1895
S 15	Seattle, Wash.	Jan. 1894
S 16	San Francisco, Calif.	May 1, 1894
S 17	Louisville, Ky.	May 1, 1894
S 18	Milwaukee, Wis.	June 1, 1894
S 19	Baltimore, Md.	June 1, 1894
S 20	St. Paul, Minn.	July 1, 1894
S 21	Newark, N. J.	July 1, 1894
S 22	Washington, D. C.	July 15, 1894
S 23	Providence, R. I.	July 16, 1894
S 24	Toledo, Ohio	Aug. 1, 1894
S 25	Rochester, N. Y.	Sept. 1, 1894
S 26	Grand Rapids, Mich.	Nov. 1, 1894
S 27	Cleveland, Ohio	Mar. 1, 1895
S 28	Portland, Ore.	Mar. 1, 1895
S 29	Troy, N. Y.	Mar. 5, 1895
S 30	Indianapolis, Ind.	May 1, 1895
S 31	Kansas City, Mo.	May 1, 1895
S 32	Duluth, Minn.	May 15, 1895
S 33	Los Angeles, Calif.	Mar. 1, 1896
S 34	Springfield, Ohio	Feb. 3, 1896
M 35	Saginaw, Mich.	Feb. 1, 1926
S 36	Lowell, Mass.	Feb. 2, 1896
SM 37	Hollywood-Culver City, Cal.	Jan. 1, 1925
S 38	Detroit, Mich.	Jan. 18, 1894
S 39	New Orleans, La.	Feb. 3, 1896

Local No.	City and State	Date of Charter
S 40	Sioux City, Ia.	Sept. 15, 1896
S 41	Atlanta, Ga.	Sept. 15, 1896
S 42	Omaha, Neb.	Dec. 1, 1896
S 43	St. Joseph, Mo.	Dec. 8, 1896
S 44	Paterson, N. J.	July 19, 1897
M 45	Newburgh, N. Y.	July 30, 1897
S 46	Nashville, Tenn.	July 20, 1897
S 47	Pueblo, Colo.	July 20, 1897
S 48	Akron, Ohio	Sept. 9, 1897
S 49	Terre Haute, Ind.	Dec. 25, 1897
S 50	Sacramento, Calif.	Dec. 25, 1897
S 51	Houston, Texas	May 1, 1899
SM 52	**New York, N. Y.**	**July 1, 1924**
S 53	Springfield, Mass.	July 21, 1898
S 54	Binghamton, N. Y.	July 21, 1898
M 55	Roanoke, Va.	June 30, 1917
S 56	Montreal, Canada	July 25, 1898
S 57	Fall River, Mass.	Aug. 12, 1898
S 58	Toronto, Canada	Sept. 5, 1898
S 59	Jersey City, N. J.	Jan. 1, 1899
M 60	Pensacola, Fla.	Feb. 6, 1899
S 61	Canton, Ohio	Feb. 6, 1899
M 62	Colorado Springs, Colo.	Mar. 30, 1899
S 63	Winnipeg, Canada	Mar. 30, 1899
M 64	Wheeling, W. Va.	Apr. 11, 1899
S 65	Galveston, Texas	May 1, 1899
S 66	Dayton, Ohio	May 1, 1899
S 67	Des Moines, Ia.	May 15, 1899
S 68	Scranton, Pa.	May 15, 1899
S 69	Memphis, Tenn.	Aug. 15, 1899
S 70	Youngstown, Ohio	Sept. 1, 1899
M 71	Newark, Ohio	Nov. 1, 1899
S 72	Norfolk, Va.	Feb. 1, 1899
S 73	Lynn, Mass.	Feb. 15, 1900
S 74	New Haven, Conn.	May 15, 1900
S 75	Peoria-Pekin, Ill.	Jan. 22, 1900
S 76	San Antonio, Texas	Jan. 25, 1900
S 77	Atlantic City, N. J.	Aug. 10, 1900
S 78	Birmingham, Ala.	Nov. 7, 1900
M 79	Massillon, Ohio	Feb. 7, 1899
S 80	Elizabeth, N. J.	Jan. 15, 1901
S 81	Tacoma, Wash.	Jan. 15, 1901
S 82	Wilkes-Barre, Pa.	Feb. 1, 1901
M 83	North Adams, Mass.	Apr. 11, 1901
S 84	Hartford, Conn.	May 10, 1901
S 85	Davenport, Ia.—Moline, Ill.	May 15, 1901
M 86	Fitchburg, Mass.	June 15, 1901
S 87	Richmond, Va.	July 1, 1901

Local No.	City and State	Date of Charter
S 88	Waterbury, Conn.	Nov. 1, 1901
S 89	Holyoke, Mass.	July 22, 1902
S 90	Stockton, Calif.	July 13, 1909
M 91	Boise City, Idaho	July 22, 1902
M 92	Montgomery, Ala.	July 22, 1902
S 93	Spokane, Wash.	Oct. 1, 1902
M 94	Butte, Mont.	Oct. 1, 1902
S 95	Ottawa, Canada	Oct. 1, 1902
M 96	Worcester, Mass.	Oct. 1, 1902
M 97	Reading, Pa.	July 13, 1903
S 98	Harrisburg, Pa.	July 13, 1903
S 99	Salt Lake City, Utah	July 15, 1903
M 100	Parkersburg, W. Va.	July 15, 1903
S 101	New Castle, Pa.	July 15, 1903
S 102	Evansville, Ind.	July 15, 1903
M 103	Dubuque, Ia.	July 15, 1903
M 104	Zanesville, Ohio	July 15, 1903
M 105	London, Canada	July 15, 1903
M 106	Marion, Ind.	Oct. 1, 1903
S 107	Oakland, Calif.	Oct. 1, 1903
M 108	Geneva, N. Y.	Oct. 1, 1903
S 109	Bridgeport, Conn.	Oct. 1, 1903
O 110	Chicago, Ill.	Jan. 1, 1915
S 111	Lawrence, Mass.	July 11, 1904
S 112	Oklahoma City, Okla.	July 15, 1904
S 113	Erie, Pa.	July 15, 1904
S 114	Portland, Me.	July 15, 1904
S 115	Jacksonville, Fla.	July 15, 1904
S 116	Trenton, N. J.	July 15, 1904
M 117	Bellingham, Wash.	July 15, 1904
S 118	Vancouver, B. C.	July 16, 1904
M 119	Auburn, N. Y.	Oct. 1, 1904
M 120	Pittston, Pa.	Oct. 1, 1904
M 121	Niagara Falls, N. Y.	July 15, 1905
S 122	San Diego, Calif.	July 15, 1905
M 123	East Liverpool, Ohio	July 15, 1905
S 124	Joliet, Ill.	Oct. 1, 1905
M 125	Bay City—Saginaw, Mich.	Mar. 1, 1906
S 126	Fort Worth, Texas	July 12, 1906
S 127	Dallas, Texas	July 12, 1906
S 128	Utica, N. Y.	July 12, 1906
S 129	Hamilton, Canada	July 14, 1906
M 130	Altoona, Pa.	July 14, 1906
S 131	New Bedford, Mass.	July 14, 1906
M 132	Warren, Ohio	Dec. 15, 1922
M 133	Hammond, Ind.	Aug. 1, 1907
S 134	San Jose, Calif.	Aug. 1, 1907
M 135	Sedalia, Mo.	Aug. 1, 1907

Local No.	City and State	Date of Charter
M 136	Hamilton, Ohio	Aug. 1, 1907
S 137	Springfield, Mo.	Aug. 1, 1907
S 138	Springfield, Ill.	Aug. 1, 1907
S 139	Schenectady, N. Y.	Aug. 15, 1907
S 140	Chattanooga, Tenn.	Sept. 1, 1907
M 141	La Crosse, Wis.	Oct. 20, 1907
S 142	Mobile, Ala.	Apr. 1, 1908
O 143	St. Louis, Mo.	July 16, 1908
O 144	Memphis, Tenn.	Nov. 1, 1910
M 145	Lakewood, N. J.	Jan. 1, 1924
S 146	Fort Wayne, Ind.	July 16, 1908
S 147	East St. Louis, Ill.	July 16, 1908
M 148	Logansport, Ind.	July 16, 1908
S 149	Brockton, Mass.	July 16, 1908
O 150	Los Angeles, Calif.	July 16, 1908
M 151	Lincoln, Neb.	Aug. 1, 1908
M 152	Hazleton, Pa.	July 1, 1923
M 153	El Paso, Texas	Aug. 20, 1908
O 154	Seattle, Wash.	Sept. 1, 1908
M 155	Piqua, Ohio	Sept. 1, 1908
M 156	Danville, Ill.	Oct. 1, 1908
S 157	Allentown, Pa.	Nov. 1, 1908
S 158	Fresno, Calif.	Nov. 1, 1908
O 159	Portland, Ore.	Nov. 20, 1908
O 160	Cleveland, Ohio	Dec. 4, 1908
S 161	McKeesport, Pa.	Feb. 2, 1909
O 162	San Francisco, Calif.	Mar. 20, 1909
O 163	Louisville, Ky.	Apr. 25, 1909
O 164	Milwaukee, Wis.	May 1, 1909
M 166	Galesburg, Ill.	July 13, 1909
M 167	Oshkosh, Wis.	July 13, 1909
M 168	Victoria, B. C.	Aug. 14, 1909
O 169	Oakland, Calif.	Sept. 1, 1909
O 170	Kansas City, Mo.	Sept. 17, 1909
O 171	Pittsburgh, Pa.	Sept. 27, 1909
M 172	Jackson, Mich.	Nov. 1, 1909
O 173	Toronto, Canada	Sept. 17, 1909
M 174	Lafayette, Ind.	Nov. 22, 1909
O 175	Tacoma, Wash.	Dec. 1, 1909
S 176	Joplin, Mo.	Mar. 1, 1910
M 177	Connellsville, Pa.	Mar. 7, 1910
M 178	Salisbury, N. C.	Feb. 1, 1924
S 179	Williamsport, Pa.	Mar. 7, 1910
M 180	Everett, Wash.	Mar. 7, 1910
O 181	Baltimore, Md.	Apr. 1, 1910
O 182	Boston, Mass.	Apr. 20, 1910
M 183	Beaumont, Texas	Apr. 20, 1910

Local No.	*City and State*	*Date of Charter*
M 184	Porterville, Calif.	June 15, 1925
O 185	Spokane, Wash.	May 9, 1910
O 186	Springfield, Mass.	May 19, 1910
S 187	South Bend, Ind.	May 19, 1910
M 188	Kalamazoo, Mich.	May 26, 1910
M 189	Alliance, Ohio	Oct. 1, 1910
S 190	Wichita, Kan.	Oct. 15, 1910
M 191	Cedar Rapids, Ia.	May 14, 1910
M 192	Findlay, Ohio	Dec. 1, 1910
M 193	Bloomington, Ill.	Dec. 20, 1910
O 194	Indianapolis, Ind.	Dec. 20, 1910
M 195	Manchester, N. H.	Dec. 20, 1910
S 196	Salem, Mass.	Jan. 25, 1911
S 197	Knoxville, Tenn.	Feb. 4, 1911
M 198	Bangor, Me.	Feb. 4, 1911
O 199	Detroit, Mich.	Feb. 9, 1911
M 200	Norristown, Pa.	May 1, 1911
S 201	Flint, Mich.	May 1, 1911
M 202	Waterloo, Ia.	May 15, 1911
M 203	Easton, Pa.	May 15, 1911
M 204	Little Rock, Ark.	May 28, 1916
M 205	Austin, Texas	July 15, 1911
S 206	Topeka, Kan.	July 15, 1911
M 207	Freeport, Ill.	Mar. 1, 1923
M 208	Uniontown, Pa.	July 15, 1911
M 209	Carbondale, Pa.	Jan. 1, 1923
S 210	Edmonton, Canada	July 15, 1911
M 211	Belleville, Ill.	July 15, 1911
S 212	Calgary, Canada	July 15, 1911
M 213	Great Falls, Mont.	July 15, 1911
M 214	Sandusky, Ohio	July 15, 1911
M 215	Bakersfield, Calif.	July 15, 1911
M 216	Marysville, Calif.	Sept. 4, 1911
M 217	Rockford, Ill.	Sept. 4, 1911
M 218	Pottsville, Pa.	Sept. 15, 1911
O 219	Minneapolis, Minn.	Oct. 9, 1911
S 220	Sioux Falls, S. D.	Oct. 20, 1911
M 221	Aurora, Ill.	Oct. 20, 1911
O 222	Shreveport, La.	Oct. 21, 1911
O 223	Providence, R. I.	Oct. 28, 1911
O 224	Washington, D. C.	Nov. 3, 1911
O 225	Atlanta, Ga.	Nov. 30, 1911
S 226	Waco, Texas	Dec. 4, 1911
M 227	Ponca City, Okla.	Mar. 1, 1923
O 228	Toledo, Ohio	Dec. 14, 1911
M 229	Fort Collins, Colo.	Apr. 1, 1923
O 230	Denver, Colo.	Jan. 9, 1912
M 231	Grand Forks, N. D.	Jan. 22, 1912

Local No.	City and State	Date of Charter
M 232	Northampton, Mass.	Jan. 22, 1912
O 233	Buffalo, N. Y.	Jan. 1, 1912
M 234	Walla Walla, Wash.	Feb. 1, 1912
M 235	Fond du Lac, Wis.	Feb. 10, 1912
O 236	Birmingham, Ala.	Feb. 26, 1912
S 237	Racine, Wis.	Feb. 26, 1912
M 238	Muscatine, Ia.	Feb. 27, 1912
M 239	Fairmont, W. Va.	Mar. 8, 1912
M 240	Billings, Mont.	Mar. 8, 1912
M 241	Vallejo, Calif.	Mar. 8, 1912
M 242	Pittsburg, Kan.	Mar. 13, 1912
M 243	Asbury Park, N. J.	Apr. 22, 1912
O 244	Newark, N. J.	May 24, 1912
O 245	Lynn, Mass.	May 27, 1912
M 246	Muskogee, Okla.	May 27, 1912
S 247	Lancaster, Pa.	May 27, 1912
O 248	Dayton, Ohio	May 28, 1912
O 249	Dallas, Texas	June 14, 1912
O 250	Salt Lake City, Utah	June 15, 1912
M 251	Madison, Wis.	July 17, 1912
O 252	Sacramento, Calif.	July 17, 1912
O 253	Rochester, N. Y.	July 17, 1912
M 254	Yakima, Wash.	July 17, 1912
M 255	Helena, Mont.	July 17, 1912
O 256	Lawrence, Mass.	July 17, 1912
O 257	Ottawa, Canada	Aug. 19, 1912
M 258	Cumberland, Md.	Aug. 26, 1912
O 259	Chattanooga, Tenn.	Sept. 1, 1912
M 260	Lake Charles, La.	Sept. 1, 1912
M 261	Salina, Kan.	Apr. 1, 1923
O 262	Montreal, Canada	Nov. 14, 1912
M 263	Richmond, Ind.	Nov. 26, 1912
M 264	Newport News, Va.	Jan. 7, 1913
M 265	Greensburg, Pa.	Jan. 7, 1913
M 266	Jamestown, N. Y.	Jan. 7, 1913
M 267	Tiffin, Ohio	Jan. 7, 1913
M 268	Alton, Ill.	Jan. 7, 1913
M 269	Lawrence, Kan.	Feb. 15, 1924
M 270	Clarksburg, W. Va.	Jan. 7, 1913
S 271	Charleston, W. Va.	Jan. 7, 1913
M 272	Cortland, N. Y.	Jan. 7, 1913
O 273	New Haven, Conn.	Jan. 1, 1913
M 274	Lansing, Mich.	Feb. 4, 1913
S 275	Pittsfield, Mass.	Mar. 1, 1913
M 276	Urbana, Ohio	Mar. 1, 1924
O 277	Bridgeport, Conn.	Mar. 5, 1913
M 278	Asheville, N. C.	Mar. 17, 1913
O 279	Houston, Texas	Mar. 17, 1913

Local No.	City and State	Date of Charter
M 280	Denison, Texas	Mar. 17, 1913
M 281	Paducah, Ky.	Mar. 20, 1913
M 282	Middletown, Ohio	Mar. 20, 1913
M 283	York, Pa.	Apr. 19, 1913
S 284	Wilmington, Del.	May 16, 1913
O 285	Troy, N. Y.	June 19, 1919
O 286	Des Moines, Ia.	July 10, 1913
M 287	Beaver Falls, Pa.	July 10, 1913
O 288	East St. Louis, Ill.	July 10, 1913
M 289	Elmira, N. Y.	July 10, 1913
M 290	Gloversville, N. Y.	July 10, 1913
O 291	Grand Rapids, Mich.	July 10, 1913
M 292	Muncie, Ind.	July 10, 1913
O 293	New Orleans, La.	July 10, 1913
M 294	Phoenix, Ariz.	July 10, 1913
M 295	Regina, Canada	July 10, 1913
M 296	Warren, Pa.	Apr. 10, 1915
O 297	San Diego, Calif.	July 10, 1913
S 298	Shreveport, La.	Oct. 1, 1924
O 299	Winnipeg, Canada	July 10, 1913
M 300	Saskatoon, Canada	July 10, 1913
M 301	New Britain, Conn.	July 10, 1913
O 302	Calgary, Canada	July 10, 1913
O 303	Hamilton, Canada	July 10, 1913
O 304	Waterbury, Conn	July 10, 1913
O 305	Galveston, Texas	July 10, 1913
O 306	New York, N. Y.	July 12, 1913
O 307	Philadelphia, Pa.	July 10, 1913
M 308	Dunkirk, N. Y.	July 10, 1913
M 309	Newport, R. I.	July 10, 1913
O 310	Atlantic City, N. J.	Sept. 17, 1913
M 311	Middletown, N. Y.	Mar. 22, 1922
M 312	Enid, Okla.	Oct. 14, 1913
M 313	Amsterdam, N. Y.	Oct. 27, 1913
O 314	Schenectady, N. Y.	Oct. 29, 1913
M 315	Steubenville, Ohio	Nov. 18, 1913
O 316	Miami, Fla.	July 1, 1928
M 317	Waukegan, Ill.	Dec. 22, 1913
M 318	Lockport, N. Y.	June 15, 1925
S 319	Mansfield, Ohio	Dec. 27, 1913
M 320	Savannah, Ga.	Feb. 6, 1914
M 321	Tampa, Fla.	Feb. 6, 1914
M 322	Charlotte, N. C.	Feb. 13, 1914
O 323	Springfield, Ill.	Feb. 19, 1924
O 324	Albany, N. Y.	Mar. 19, 1924
O 325	Wilkes-Barre, Pa.	Apr. 8, 1914
M 326	Hot Springs, Ark.	Apr. 3, 1914
O 327	Cincinnati, Ohio	July 19, 1932

Local No.	City and State	Date of Charter
M 328	Pine Bluff, Ark.	Apr. 6, 1914
O 329	Scranton, Pa.	Apr. 8, 1914
O 330	Fort Worth, Texas	Apr. 8, 1914
M 331	Temple, Texas	July 10, 1914
M 332	Clinton, Ia.	Apr. 17, 1914
M 333	Charleston, S. C.	Apr. 20, 1914
O 334	New Bedford, Mass.	May 1, 1914
M 335	Bradford, Pa.	May 1, 1914
S 336	Council Bluffs, Ia.	May 1, 1914
O 337	Utica, N. Y.	May 19, 1914
M 338	Watertown, N. Y.	May 19, 1914
M 339	Missoula, Mont.	June 1, 1914
S 340	Nassau & Suffolk Counties, N. Y.	Aug. 1, 1922
M 341	Oil City, Pa.	June 1, 1914
M 342	Butler, Pa.	June 1, 1914
O 343	Omaha, Neb.	June 1, 1914
M 344	Olympia, Wash.	June 1, 1914
M 345	Brockville, Canada	June 1, 1914
M 346	Lexington, Ky.	June 3, 1914
M 347	Columbia, S. C.	June 9, 1914
O 348	Vancouver, B. C.	June 9, 1914
M 349	Lima, Ohio	July 1, 1914
M 350	Meriden-Middletown, Conn.	July 8, 1914
M 351	Anacortes, Wash.	June 9, 1914
O 352	Springfield, Ohio	July 14, 1914
M 353	Port Jervis, N. Y.	Nov. 1, 1924
S 354	Tulsa, Okla.	Aug. 1, 1914
O 355	Sioux City, Ia.	Aug. 15, 1914
O 356	St. Paul, Minn.	Aug. 15, 1914
M 357	Kitchener, Canada	Dec. 1, 1922
M 358	Ogden, Utah	Aug. 15, 1914
O 359	Trenton, N. J.	July 10, 1914
O 360	Edmonton, Alta., Canada	Aug. 15, 1914
M 361	Kenosha, Wis.	Sept. 1, 1914
O 362	Paterson, N. J.	Sept. 2, 1914
M 363	Reno, Nev.	Oct. 12, 1914
O 364	Akron, Ohio	Oct. 30, 1914
M 365	Crawfordsville, Ind.	Aug. 15, 1925
S 366	Westchester County, N. Y.	Nov. 11, 1914
O 367	Evansville, Ind.	Nov. 17, 1914
M 368	Hutchinson, Kan.	Nov. 24, 1914
M 369	Huntington, W. Va.	Nov. 28, 1914
O 370	Richmond, Va.	Dec. 9, 1914
M 371	Defiance, Ohio	Dec. 24, 1914
M 372	Vincennes, Ind.	Dec. 29, 1914
O 373	Terre Haute, Ind.	Jan. 13, 1915

Local No.	*City and State*	*Date of Charter*
O 374	Joliet, Ill.	Jan. 19, 1915
O 376	Syracuse, N. Y.	Jan. 28, 1915
M 377	Ithaca, N. Y.	Feb. 8, 1915
M 378	Wichita Falls, Texas	Feb. 15, 1915
M 379	Perth Amboy, N. J.	Feb. 20, 1915
O 380	Oklahoma City, Okla.	Feb. 23, 1915
S 381	Haverhill, Mass.	Feb. 24, 1915
O 382	Holyoke, Mass.	Feb. 24, 1915
M 383	Texarkana, Texas	Mar. 3, 1915
O 384	Hudson County, N. J.	Mar. 15, 1915
M 385	Burlington, Ia.	Mar. 27, 1915
O 386	Columbus, Ohio	Apr. 5, 1915
M 387	Lawton, Okla.	Nov. 1, 1922
O 388	Youngstown, Ohio	June 15, 1915
M 389	Fort Dodge, Ia.	July 12, 1915
M 390	Lynchburg, Va.	Dec. 8, 1924
M 391	Port Arthur, Tex.	July 12, 1915
M 392	Kewanee, Ill.	Aug. 7, 1915
M 393	Mexia-Corsicana, Tex.	Jan. 1, 1922
M 394	Appleton, Wis.	July 10, 1913
M 395	Ann Arbor, Mich.	Nov. 28, 1914
O 396	Binghamton, N. Y.	Aug. 18, 1915
O 397	Haverhill, Mass.	Sept. 14, 1915
M 398	Meadville, Pa.	Sept. 15, 1915
M 399	Bartlesville, Okla.	Sept. 24, 1915
M 400	Alexandria, La.	Oct. 11, 1915
M 401	Centralia, Chehalis, Wash.	Oct. 29, 1915
M 402	Torrington, Conn.	Nov. 15, 1915
M 403	Sunbury, Pa.	Nov. 26, 1915
O 404	Topeka, Kan.	Dec. 2, 1915
O 405	Knoxville, Tenn.	Dec. 6, 1915
M 406	Moose Jaw, Canada	Dec. 8, 1915
O 407	San Antonio, Texas	Dec. 8, 1915
S 408	Camden, N. J.	Dec. 10, 1915
M 409	San Mateo, Calif.	Apr. 15, 1921
M 410	Manitowoc, Wis.	Dec. 27, 1920
O 411	Williamsport, Pa.	Mar. 15, 1928
M 412	Bradentown, Fla.	Aug. 1, 1925
M 413	Gadsden, Ala.	Dec. 29, 1915
O 414	Wichita, Kan.	Jan. 3, 1916
M 415	Tucson, Ariz.	July 1, 1926
M 416	Rochester, Minn.	Jan. 6, 1916
M 417	Durham, N. C.	Jan. 15, 1926
M 419	Decatur, Ill.	Jan. 17, 1916
M 420	Santa Rosa, Calif.	Oct. 25, 1920
M 421	Herrin, Ill.	Jan. 22, 1916

Local No.	City and State	Date of Charter
M 422	Ashtabula, Ohio	Jan. 24, 1916
M 423	Albuquerque, N. M.	Jan. 25, 1916
O 424	Fall River, Mass.	Jan. 27, 1916
M 425	Kankakee, Ill.	Jan. 28, 1916
M 426	Casper, Wyo.	Apr. 1, 1921
M 427	Rome, Ga.	Mar. 29, 1921
O 428	Stockton, Calif.	Feb. 16, 1916
M 429	Hoquiam-Aberdeen, Wash.	Feb. 17, 1916
M 430	Eureka, Calif.	Feb. 8, 1916
O 431	San Jose, Calif.	Feb. 25, 1916
M 432	Peterboro, Canada	Feb. 26, 1916
O 433	Davenport, Ia., Rock Island-Moline, Ill.	Mar. 1, 1916
O 434	Peoria, Ill.	Mar. 2, 1916
M 435	Sault Ste. Marie, Can.	Aug. 1, 1925
M 436	Winona, Minn.	Aug. 15, 1915
O 437	Brockton, Mass.	Mar. 25, 1916
M 438	Sherbrooke, Canada	Oct. 25, 1920
M 439	New London, Conn.	Mar. 29, 1916
M 440	St. John, N. B., Canada	Oct. 30, 1920
M 441	Ottumwa, Ia.	Apr. 3, 1916
M 442	Santa Barbara, Calif.	Apr. 4, 1916
M 443	Jefferson City, Mo.	Apr. 6, 1916
M 444	New Kensington, Pa.	Apr. 4, 1916
M 445	Bremerton, Wash.	Mar. 31, 1921
M 446	Astoria, Ore.	Apr. 29, 1916
O 447	Springfield, Mo.	May 11, 1916
O 448	Pueblo, Colo.	May 17, 1916
M 449	Stamford, Conn.	May 22, 1916
M 450	Mason City, Ia.	June 3, 1916
O 451	Sharon, Pa.	Mar. 1, 1924
O 452	Pittsfield, Mass.	July 14, 1916
M 453	Willimantic, Conn.	Aug. 1, 1923
M 454	Attleboro, Mass.	Nov. 10, 1920
M 455	Fort Smith, Ark.	Aug. 15, 1916
M 456	McKinney, Tex.	Aug. 17, 1916
M 457	Superior, Wis.	Aug. 22, 1916
O 458	Portland, Me.	Sept. 18, 1916
M 459	Norwich, Conn.	Sept. 18, 1916
O 460	Racine, Wis.	Oct. 10, 1916
M 461	St. Catharines, Canada	Oct. 20, 1916
M 462	Vineland, N. J.	Oct. 26, 1916
M 463	Pocatello, Idaho	Oct. 28, 1916
M 464	El Dorado, Kan.	May 1, 1922
O 465	Joplin, Mo.	Nov. 1, 1916
O 466	Fort Wayne, Ind.	Nov. 2, 1916
M 467	Fort William, Canada	Dec. 15, 1920
M 468	Sherman, Tex.	Nov. 14, 1916

Local No.	*City and State*	*Date of Charter*
M 469	Amarillo, Tex.	Nov. 16, 1916
M 470	Henryetta, Okla.	Nov. 17, 1916
M 471	Okmulgee, Okla.	Nov. 1, 1920
O 472	Flint, Mich.	Nov. 20, 1916
O 473	Wilmington, Del.	Nov. 21, 1916
M 474	Rome, N. Y.	Jan. 15, 1926
M 475	Eau Claire, Wis.	Dec. 18, 1916
SM476	Chicago, Ill.	Feb. 2, 1931
M 477	Green Bay, Wis.	Dec. 22, 1916
M 478	Bethlehem, Pa.	Dec. 26, 1916
M 479	Norwalk, Conn.	Dec. 27, 1916
M 480	Corning, N. Y.	Jan. 20, 1917
M 481	Lewiston, Mont.	July 27, 1917
M 482	Champaign and Urbana, Ill.	Jan. 29, 1917
M 483	Elgin, Ill.	Feb. 7, 1917
M 484	Olean, N. Y.	Feb. 13, 1917
O 485	Union County, N. J.	Mar. 12, 1917
O 486	Hartford, Conn.	Mar. 22, 1917
M 487	Virginia, Minn.	Apr. 25, 1917
O 488	Harrisburg, Pa.	Sept. 1929
M 489	Gary, Ind.	May 23, 1917
M 490	Elkhart, Ind.	June 5, 1917
M 491	Parsons, Kan.	June 18, 1917
M 492	Battle Creek, Mich.	June 21, 1917
M 493	Janesville, Wis.	Nov. 19, 1920
M 494	Frankfort, Ind.	Dec. 27, 1920
O 496	South Bend, Ind.	July 1, 1927
M 497	McAlester, Okla.	Feb. 15, 1921
M 498	Kansas City, Kan.	Aug. 20, 1917
M 499	Poughkeepsie, N. Y.	Aug. 22, 1917
O 500	Charleston, W. Va.	Feb. 26, 1915
M 501	Chico, Calif.	Mar. 22, 1921
M 502	Morris County, N. J.	Nov. 28, 1917
M 503	Mitchell, S. D.	June 1, 1921
M 504	Santa Ana, Calif.	Aug. 19, 1912
M 505	Waltham, Mass.	May 17, 1912
M 506	Anniston, Ala.	Dec. 1, 1917
M 507	Macon, Ga.	June 9, 1914
M 508	Oneida, N. Y.	July 1, 1913
O 509	Duluth, Minn.	Dec. 11, 1917
M 510	Fargo, N. D.	May 12, 1915
O 511	Jacksonville, Fla.	Dec. 18, 1917
M 512	Spartanburg, S. C.	Dec. 27, 1918
O 513	Tulsa, Okla.	Jan. 8, 1918
M 514	Bellefontaine, Ohio	Feb. 26, 1918
M 515	Shamokin, Pa.	May 1, 1925
M 516	Chester, Pa.	May 8, 1918

Local No.	City and State	Date of Charter
M 517	Sapulpa, Okla.	May 8, 1918
M 518	Taft, Calif.	Sept. 20, 1921
O 519	Mobile, Ala.	Aug. 1, 1918
M 520	Wilmington, N. C.	Dec. 9, 1914
O 521	Long Beach, Calif.	Feb. 16, 1922
M 522	Quincy, Ill.	Oct. 9, 1918
M 523	Quebec, Canada	Oct. 17, 1918
M 524	Glens Falls, N. Y.	Jan. 9, 1919
M 525	Aberdeen, S. D.	Jan. 17, 1919
M 526	Orange, Texas	Jan. 18, 1919
M 527	Marshalltown, Ia.	Apr. 2, 1915
M 528	Kingston, Ont.	Jan. 22, 1919
M 529	Long Branch, N. J.	Sept. 15, 1920
M 530	Bristol, Tenn. and Va.	Mar. 5, 1919
M 531	Petersburg, Va.	Mar. 5, 1919
M 532	Oswego, N. Y.	Nov. 1, 1923
M 533	Frederick, Md.	Mar. 11, 1919
M 534	New Brunswick, N. J.	Mar. 17, 1919
M 535	Johnstown, N. Y.	July 1, 1922
M 536	Red Bank, N. J.	Mar. 17, 1919
M 537	Talladega, Ala.	July 1, 1922
M 538	Westerly, R. I.	Apr. 17, 1931
M 539	Anderson, Ind.	Apr. 1, 1924
M 540	Baton Rouge, La.	Mar. 21, 1919
M 541	Elyria, Ohio	Mar. 21, 1919
M 542	Marinette, Wis.	May 8, 1915
M 543	Marietta, Ohio	Mar. 22, 1919
M 544	Kokomo, Ind.	Mar. 27, 1919
S 545	Miami, Fla.	Nov. 10, 1914
O 546	Lowell, Mass.	May 1, 1914
M 547	Florence, Ala.	Apr. 22, 1919
M 548	Greenville, Tex.	Apr. 2, 1919
M 549	Taunton, Mass.	July 13, 1913
O 550	Norfolk, Va.	Apr. 28, 1919
M 551	Shawnee, Okla.	Apr. 2, 1915
M 552	St. Petersburg, Fla.	Apr. 1, 1924
M 553	Albany-Decatur, Ala.	May 25, 1919
M 554	Lebanon, Pa.	Sept. 1, 1924
M 555	Atchison, Kan.	July 18, 1919
O 556	Sioux Falls, S. D.	July 13, 1919
M 557	Salem, Ohio	Apr. 15, 1924
M 558	Daytona Beach, Fla.	May 1, 1925
O 559	St. Joseph, Mo.	Aug. 30, 1919
M 560	Richmond, Calif.	July 10, 1913
M 561	Johnstown, Pa.	Sept. 16, 1919
M 562	Hannibal, Mo.	Sept. 1, 1920
M 563	Danville, Va.	Oct. 1, 1921
M 564	Modesto, Calif.	Oct. 17, 1919

Local No.	City and State	Date of Charter
M 565	Centralia, Ill.	Oct. 27, 1919
O 566	McKeesport, Pa.	Sept. 29, 1913
M 567	Boone, Ia.	Nov. 17, 1919
M 568	Columbus, Ga.	May 1, 1915
M 569	Douglas-Bisbee, Ariz.	Aug. 1, 1926
M 570	Michigan City, Ind.	Jan. 2, 1915
M 571	Portsmouth, Ohio	Oct. 1, 1924
572		
M 573	Moberly, Mo.	Mar. 1, 1926
M 574	Greensboro, N. C.	Nov. 18, 1919
M 575	Pottstown, Pa.	Nov. 18, 1919
O 576	Mansfield, Ohio	Dec. 27, 1913
O 577	San Bernardino, Calif.	Sept. 1, 1923
M 578	Morgantown, W. Va.	Feb. 20, 1914
M 579	Woonsocket, R. I.	Mar. 14, 1914
M 580	Windsor, Canada	Nov. 21, 1919
M 581	Batavia, N. Y.	Dec. 5, 1919
M 582	Brantford, Canada	Dec. 5, 1919
M 583	St. Cloud, Minn.	July 15, 1930
M 584	Ranger, Eastland and Breckenridge, Texas	Dec. 8, 1919
O 585	Allentown, Pa.	Dec. 13, 1919
M 586	Columbus, Nebr.	Feb. 1, 1927
M 587	Marshall, Tex.	Dec. 17, 1919
M 588	Muskegon, Mich.	Dec. 17, 1919
M 589	Jackson, Miss.	Dec. 20, 1919
M 590	Greenwood, Miss.	Dec. 20, 1919
M 591	Hagerstown, Md.	Dec. 24, 1919
M 592	Saratoga Springs, N. Y.	Dec. 24, 1919
M 593	Creston, Iowa	Dec. 30, 1919
M 594	Nanty-Glo, Pa.	Sept. 24, 1931
M 595	Carthage, Mo.	Nov. 1, 1922
M 596	Greenfield, Mass.	Dec. 30, 1919
O 597	Waco, Texas	Dec. 30, 1919
M 598	Marion, Ohio	Jan. 2, 1920
O 599	Fresno, Calif.	July 8, 1914
M 600	La Salle, Ill.	Jan. 2, 1920
M 601	Benton Harbor, Mich.	Jan. 2, 1920
M 602	Trinidad, Colo.	Jan. 2, 1920
M 603	Raleigh, N. C.	Jan. 5, 1920
M 604	Corpus Christi, Tex.	May 1, 1923
M 605	Visalia, Calif.	Feb. 12, 1920
M 606	Wausau, Wis.	Dec. 15, 1922
M 607	Kittanning, Pa.	Feb. 17, 1920
M 608	Boulder, Colo.	May 14, 1920
M 609	Little Falls, N. Y.	May 1, 1923
M 610	Fort Madison, Iowa	Mar. 1, 1920
M 611	Watsonville, Calif.	Feb. 1, 1926

Local No.	City and State	Date of Charter
M 612	Franklin, Pa.	Dec. 2, 1929
M 613	Salem, Oregon	Mar. 15, 1925
S 614	San Bernardino, Cal.	July 1, 1923
M 615	Hattiesburg, Miss.	Mar. 15, 1920
M 616	Meridian, Miss.	Mar. 16, 1920
M 617	Greenville, Miss.	Mar. 13, 1920
M 618	Bloomington, Ind.	Mar. 18, 1920
O 619	Alexandria, Va.	Mar. 18, 1920
M 620	Pontiac, Mich.	Apr. 3, 1920
O 621	Erie, Pa.	Aug. 1, 1927
M 622	Port Huron, Mich.	Apr. 1, 1923
M 623	West Palm Beach, Fla.	Mar. 2, 1925
M 624	Lewiston, Me.	June 1, 1923
M 625	Tyler, Texas	Apr. 10, 1920
O 626	Nashville, Tenn.	Mar. 3, 1915
M 627	Washington, Pa.	Apr. 16, 1920
M 628	Charleroi-Monessen, Pa.	July 1, 1923
M 629	Idaho Falls, Idaho	June 21, 1920
M 630	Peru, Ind.	Dec 1, 1923
M 631	Orlando, Fla.	Dec. 14, 1924
M 632	Fort Scott, Kan.	June 30, 1920
M 633	Cambridge, Ohio	Jan. 1, 1925
M 634	Sudbury, Canada	July 1, 1920
M 635	Winston-Salem, N. C.	Nov. 1, 1923
M 636	Lewistown, Pa.	Jan. 1, 1924
M 637	Kingston, N. Y.	Jan. 1, 1924
M 638	Carbon County, Pa.	Feb. 2, 1925
M 639	Jackson, Tenn.	Sept. 15, 1926
O 640	Nassau & Suffolk Cos., N. Y.	Sept. 1, 1926
M 641	Arkansas City, Kans.	Nov. 15, 1926
M 642	Bergen County, N. J.	Oct. 15, 1926
M 643	Lakeland, Fla.	Nov. 1, 1926
C 644	New York, N. Y.	Nov. 15, 1926
M 645	Rockland Co., N. Y.	Nov. 15, 1927
M 646	Ft. Lauderdale, Fla.	Feb. 15, 1927
M 647	Cheyenne, Wyo.	Mar. 1, 1927
M 648	Provo, Utah	June 15, 1927
M 649	North Platte, Nebr.	May 1, 1927
O 650	Westchester Co., N. Y.	Mar. 1, 1927
M 651	Wenatchee, Wash.	Aug. 15, 1927
M 652	Dodge City, Kans.	Dec. 16, 1929
M 653	Loraine, Ohio	Sept. 1, 1927
M 654	Minot, N. D.	Sept. 1, 1927
M 655	Sheboygan, Wis.	Feb. 15, 1928
M 656	El Centro, Calif.	May 1, 1928
M 657	Leavenworth, Kans.	May 1, 1928
M 658	Jacksonville, Ill.	May 15, 1928

Local No.	*City and State*	*Date of Charter*
C 659	**Los Angeles, Calif.**	**Aug. 1, 1928**
M 660	Huntington, Ind.	Aug. 1, 1928
O 661	Reading, Pa.	Jan. 1, 1929
M 662	Danbury, Conn.	Sept. 1, 1928
M 663	Lewiston, Idaho	Jan. 1, 1929
M 664	Prince Albert, Canada	Jan. 1, 1929
C 665	Toronto, Ont., Canada	Jan. 1, 1929
C 666	Chicago, Ill.	Jan. 1, 1929
S 667	Lethbridge, Alb., Canada	Feb. 15, 1929
M 668	Monroe, La.	Jan. 15, 1929
LT 669	New York, N. Y.	Feb. 1, 1929
M 670	Goldsboro & Wilson, N. C.	Feb. 15, 1929
O 671	Canton, Ohio	Apr. 1, 1929
M 672	Klamath Falls and Medford, Ore.	Apr. 1, 1929
M 673	Lubbock, Texas	Mar. 15, 1929
M 674	Biloxi & Gulfport, Miss.	Apr. 1, 1929
M 675	Eugene, Ore.	May 15, 1929
M 676	Hornell, N. Y.	May 15, 1929
M 677	West Warwick, R. I.	May 22, 1929
M 678	Laredo, Texas	Aug. 26, 1929
M 679	Miami, Okla.	July 15, 1929
M 680	Halifax, N. S., Canada	Aug. 15, 1929
M 681	Gillespie, Ill.	Aug. 15, 1929
O 682	Lancaster, Pa.	Aug. 15, 1929
LT 683	Los Angeles, Calif.	Sept. 15, 1929
M 684	Mankato, Minn.	Nov. 26, 1929
M 685	Concord, N. H.	Jan. 2, 1930
O 686	Panama Canal Zone	Aug. 15, 1930
M 687	Beatrice, Nebr.	Feb. 1, 1930
M 688	Harlingen, Texas	Feb. 15, 1930
M 689	Grand Junction, Col.	Mar. 15, 1930
M 690	Iowa City, Iowa	June 15, 1930
M 691	Salem, Mo.	June 15, 1930
M 692	Latrobe, Pa.	July 1, 1930
M 693	Brownwood, Texas	July 15, 1930
M 694	Beaver Dam, Wisc.	Aug. 15, 1930
ST 695	Los Angeles, Calif.	Sept. 15, 1930
M 696	New Castle, Ind.	Nov. 1, 1930
M 697	Greenville, S. C.	Nov. 15, 1930
M 698	Bismarck, N. D.	Jan. 20, 1931
M 699	Johnson City, Tenn.	Oct. 15, 1931

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INTERNATIONAL ALLIANCE

of

THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS

of the United States

and Canada

———o———

CONSTITUTION AND BY-LAWS

Hudson County, New Jersey

Local 384

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Affiliated with the American Federation of Labor, New Jersey State Federation of Labor, and the Central Labor Union of New Jersey.

BARNEY & COMPANY
530 JERSEY AVENUE
JERSEY CITY



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PREAMBLE

We, the workers identified with the theatrical and moving picture industries of the United States and Canada, in order to improve our conditions, to insure the maintenance of a fair rate of wages for services competently rendered, to assure the employment of our membership in these industries so that equity may be maintained, do signify willingness in all difficulties to accept wise, honorable and conservative mediation, and to secure ourselves and posterity the benefit of such unity, do adopt and establish this Constitution.

ORDER OF BUSINESS

1. Roll-Call of Officers and Members.
2. Reading of all Minutes.
3. Propositions and Reports on Candidates.
4. Ballotting on Candidates.
5. Obligations; Initiations.
6. Report on Delinquents.
7. Fines and Dues.
8. Recess.
9. Communications and Bills.
10. Reports of Committees.
11. Business Agent's Report.
12. Unfinished Business.
13. New Business.
14. Receipts and Expenditures.
15. Good and Welfare.
16. Adjournment.

CONSTITUTION AND BY-LAWS

Local Union 384

I. A. T. S. E. and M. P. M. O.

Revised Edition Approved at a Regular Meeting of Local 384, on Tuesday, May 12, 1931.

All previous laws or part of laws inconsistent, or in conflict with these Constitution and By-Laws are hereby repealed.

Authorized Committee on revision of the Constitution and By-Laws:

William H. Luden, Chairman
Edward J. Heyden, Secretary
Anthony Boscorelli,
Francis Steiner,
Howard Boyd,

Active members of the Committee.

These Constitution and By-Laws were approved of and endorsed by:

The International Alliance of Theatrical Stage Employees, and Moving Picture Machine Operators of the United States and Canada.

Endorsement:

LOUIS KRAUSE
Assistant President
May 18, 1931

STANDING RULES

1. No suspension of rules shall be taken unless ordered by a two-thirds vote of the majority of members voting.

2. The deliberations of this body shall be governed by Roberts' Rules of Order in any case where no provision is made for same in our By-Laws.

3. No business shall be transacted except in the regular form prescribed unless changed by two-thirds majority vote of members voting.

4. Resolutions or amendments to the Constitution and By-Laws and charges of any kind must be submitted in writing at all times and in triplicate form, otherwise they shall not be considered.

5. The proposer of a verbal motion shall reduce same in writing at the request of the chairman, or of two or more members.

6. Any motion to reconsider any former motion or vote shall be made and seconded by members who voted with the majority and must be in writing.

7. Any member entitled to vote may move for a division of the question when the sense of same will allow it.

8. When the reading of a paper is called for and objected to, the question shall be decided by a majority of vote of members entitled to vote.

9. Never shall a member be allowed to speak more than once on the same question without the permission of the presiding officer, and then only if no other member, who has not spoken on the question, is asking to be heard; each speaker's time shall be limited to five minutes at the most, and he shall confine himself strictly to the question under consideration, and shall never be interrupted by other members, or cross-firing.

10. Reflecting upon previous speakers, adverse criticism, or subjects of a partisan or religious nature shall never be permitted.

11. Any person not a member of the International Alliance shall not be admitted to any meeting of this Union without the consent of this

Local. Intoxicated persons shall never be admitted to the meeting.

12. Question of order in the meeting shall be decided by the presiding officer, but in case of an appeal from the decision of the chair the meeting shall decide without debate.

13. Any request for Ballot-Box Vote by a member in good standing shall be granted without debate.

CONSTITUTION

ARTICLE I

Name

Section 1. The name of this organization shall be "The International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada," Local Union No. 384, of Hudson County, New Jersey.

Object

Sec. 2. The object of this Union shall be the attainment and maintenance of a fair rate of wages and proper working conditions of its members under its jurisdictional control.

Permanency

Sec. 3. This Union shall not have the right to dissolve if there be (7) dissenting Senior Members.

ARTICLE II

Membership, Applications and Applicants

Section 1. Local 384 shall consist of a Senior and a Junior Body, all additions to the Senior Membership

shall be taken from the rank and file of the Junior Body, apprentices of Local 384, and in accordance with Section 2 of this Article.

Sec. 2. Books to be opened at the first regular meeting in August. All Senior members to be notified by mail if applications are to be received, two-third vote secret ballot of Senior members shall be required to except the application.

Sec. 3. Any man who is twenty-one years of age and who can secure four members in good standing with the Senior Body, who will vouch for him as to his age, good character and ability as an operator, and by signing their name on his application, may make application to become a member of the apprentice body of Local 384, in accordance with all rules and regulations and laws of this Union and the International Alliance.

Sec. 4. All applications properly filled out and bearing the endorsement as stated in sections two and three of this article, together with one-half of the initiation fee in force, must be presented at a regular meet-

ing of this Union in order to be legally acted upon.

Sec. 5. All applications must be read in their entirety to the members in meeting assembled, and if found to contain no errors or omissions, shall be ordered to take their usual course.

Sec. 6. All applications ordered to take their usual course shall be sent to the International Alliance for consideration and endorsement, and if returned from that office with the stamp of approval shall be dealt with as set forth under Section 7 of this article.

Sec. 7. All applications after being dealt with as prescribed in Sections 4, 5 and 6, shall be turned over to the Examining Committee, same shall again verify all statements made in the applications and give the applicant a practical examination as to his ability of an operator and fitness to become a member of the Junior Body.

Sec. 8. The Examining Committee shall report its findings at a regular meeting, and a majority vote of all members present shall sustain the acceptance or rejection of any applica-

tion, but all members shall have been notified in writing by the Secretary stating number of applications and the names of applicants to be voted upon.

Sec. 9. Any applicant when admitted to membership of the Junior Body shall be given a copy of the Local By-Laws and a copy of the Constitution and By-Laws of the International Alliance, and he shall be given to understand that as an apprentice he is entitled to only such considerations as are set forth in his agreement with Local 384, and is subject to all rules and laws governing same.

Rules and Agreement of Junior Membership

Section 1. Any male person of good character, who is a practical moving picture machine operator, and who has been a resident of Hudson County, N. J., for a period of eighteen months immediately preceding application to this Union, and who can be vouched for by four members of the Senior Body, is eligible to Junior Membership.

Sec. 2. Applications for membership must be filed at a regular meeting. Applicants shall be voted for by a secret ballot. If a majority of the total votes cast be favorable, the applicant shall be declared elected. If a majority of the total votes cast be unfavorable, the applicant shall be declared rejected, and his initiation fee to be returned at once. Any person so rejected shall not be eligible to again make application for a period of twelve months.

Sec. 3. The Initiation Fee of all applicants to Junior Membership shall be Five Hundred Dollars ($500), one-half to accompany the application, and the remainder to be paid when obligated.

Sec. 4. Applications accepted shall be referred to the Examining Committee. This Committee shall make a thorough investigation as to the character of the applicant, and shall give him a practical examination as to his qualifications as an operator, and report to the Union at its next regular meeting.

Sec. 5. The following named members shall be recognized as Senior Members. They shall have the right, and are hereby given seniority over all other members with reference to employment:

Abbot, Larry
Abramowitz, Toby
Armellino, Ralph
Anderson, Wm. H.
Arata, Edw.
Arata, Geo.
Baer, Hugo
Brown, Frank L.
Brown, Frank L.
Boyd, Howard
Gulfo, John
Gelsamine, Chas.
Hoppke, Fred
Heyden, Edw. J.
Hoppe, Chas.
Hedberg, Carl W.
Huppert, William
Ingersoll, Chas. H.
Jamieson, James J.
Pedrin, John
Peterson, Thomas
Pagano, William A.
Pileggi, Frank
Ring, Leon A.
Romano, Joseph
Reck, Joseph
Sapp, Harvey
Stubel, Henry C.

Bemis, Walter A.
Barber, Arthur S.
Boscorelli, Anthony
Butler, Thomas
Bordman, Edw. W.
Blake, Harry F.
Baril, Lucien R.
Cantoli, Joe
De Titta, Albert
Dawson, Pete J.
Dulberger, Harold
Daubemer, C., Jr.
DeHart, Elwood E.
Evins, Elisha
Furkey, Clarence
Giles, John
Godfrey, Joseph
Gallop, Stanley
Kolbenheyer, Walter
Kahl, William
Katz, Abraham
Koch, William
Luden, William H.
Mandrake, F.
Maurus, F. X.
Meyer, Wm. H.
May, Charles
Martin, Edw.
Midili, Anthony
Mobbs, Albert
Miller, John L.
Montemorro, Nicholas
McCauley, Thomas
McDermott, Vincent
Neathery, Thomas
Small, Chas. R.
Silverstein, Robert
Steiner, Francis
Shwab, Edward
Schultz, Arthur R.
Spalos, Frank
St. John, Charles
Tramutola, Joseph
Trezza, John
Tammen, Samuel

Ulrich, Anthony
Voorhees, R. W.
Ventimiglia, Egizio
Wohlfahrt, Leroy
Wedemeyer, George
Westel, John
Young, Edwin

Sec. 6. No person shall ever be, at any time, admitted to Senior Membership except in the following manner:

A. Accepted to Junior Membership in the regular form.

B. Serve as an apprentice until such time as he is obligated to Senior Membership.

C. Make application with the consent of the Executive Board, and be vouched for by five Senior members, and paying the balance of the application into the Senior Body.

D. Be voted on by a secret ballot at a regular meeting and receive two-thirds vote of all Senior Members present at such meeting.

E. Complying with all constitutional requirements.

Sec. 7. Junior Members' meetings to be conducted by the Executive Board of Local 384; all members to

pay per capita tax to the I. A.; also insurance.

Sec. 8. Junior Members will, at all times, be subject to removal from jobs if such jobs are desired by Senior Members.

Sec. 9. An honorable withdrawal card will be issued by this Union to any Junior or Senior Member in good standing, against whom no charges are pending, who desires to withdraw from the business and this Union. There shall be no charge or fee for such card. Should he desire to return to active duty and membership, he may do so upon payment of ten per cent. (10%) of the initiation fee, and be voted upon at a regular meeting, and receive a majority vote of all members present, provided he has done nothing detrimental to the welfare of this Union, or the International Alliance. Any Senior Member withdrawing under this section and returning to membership shall assume the standing from which he withdrew. Junior Members desiring to return to membership after withdrawal, shall comply with Article Two,

Section Seven, Paragraph B of this Constitution.

Sec. 10. All members and persons becoming members agree to abide by the rules and regulations of this Union without resorting to a court of law, and, in the event of expulsion, agree to forfeit all properties and rights in this Union.

Sec. 11. I, the undersigned, having read the above rules and regulations pertaining to Junior Membership into Local 384, I. A. T. S. E., do hereby agree to follow and keep within the ruling to the best of my ability.

Signature .....

Witness .....
Subscribed and sworn before me

the..... day of .....

.....
Notary Public.

Sec. 12. Transfer Cards shall be issued to any member in good financial standing with this Union, in com-

pliance with the laws of the International Alliance. Withdrawal Cards must be issued to any member in good standing, upon proper application at a regular meeting.

Sec. 13. This Union shall be obliged to refuse to re-admit to membership any withdrawal member and holder of a Withdrawal Card who, after investigation by a Committee, is found to have committed acts detrimental to this Union, or to the International Alliance, or Organized Labor in general during the time he was withdrawn from membership of this Union.

Sec. 14. A withdrawn member may make application for reinstatement to membership upon presentation of his honorable Withdrawal Card, but same can be accepted at a regular meeting of this Union only.

Sec. 15. All Withdrawal Cards presented at a regular meeting asking for reinstatement shall be referred to the Examining Committee, and they shall make a thorough investigation as to the doings of such applicant while withdrawn from this Local; they

shall make a report at their earliest convenience, to the members in regular meeting. A charge of one-tenth of the regular initiation fee in force shall be made to the members if reinstated, and upon payment of the quarterly dues.

ARTICLE III
Officers and Executive Board

Section 1. The Officers of this Union shall be: President, Vice-President, Secretary-Treasurer, Recording Secretary, Sergeant-at-Arms, one Business Agent, a Board of three Trustees.

Sec. 2. The Executive Board of this Union shall be composed of the following: President, Vice-President, Recording Secretary, Secretary-Treasurer, Sergeant-at-Arms, and four members, to be elected at the regular election in June.

Sec. 3. All Officers and members of the Executive Board and Delegates to conventions and the Board of Trustees, shall be elected from members of this Local, as prescribed under Sections of this Constitution dealing with elections.

Nominations

Sec. 4. Only Senior Members who have been in continuous good standing for one year just previous to nomination, and who have been members of the International Alliance for not less than five years, and who have never been debarred from holding any office in this Local shall be eligible for nomination to any office, or serve as delegates or on committees.

Sec. 5. Delegates to the I. A. Convention and other Conventions may be nominated and elected at any regular or special meeting if all members have been notified to that effect.

Sec. 6. Any member accepting a position as a manager or assistant-manager shall be requested to withdraw from membership of this Union. Any member not working at the craft, or not within the jurisdiction of this Local, shall not be eligible for nomination to any office, nor act as delegate or on committees.

Sec. 7. Nominations shall be held the first regular meeting in June of every year; members absent from meeting are eligible for nomination to

any office, providing their intention has been previously made in writing to the Secretary, over their signature.

Sec. 8. Elections shall be conducted under a printed ballot system and take place at the second regular meeting in June every year, all members having been officially notified to attend.

Sec. 9. There shall be two sets of ballots—one to be known as the sample-ballot, and shall be of a different color than the official ballot, and shall not be numbered. This sample ballot shall be mailed to each member, with the notification to attend election meeting. The names of all candidates nominated for office shall be on the sample ballot in such form as they were nominated, and as they appear on the official ballot.

Sec. 10. The official ballot used for election shall have a detachable stub. These stubs shall be numbered from 1, to such number as may be required for the election procedure, as set forth under Section 11 of this Article.

Voting Procedure

Sec. 11. The Board of Trustees shall, before election, provide a sealed box for the reception of votes, into which shall be deposited all ballots when detached from their stubs. When the polls have been declared open the voting shall take place in the following manner: The Board of Election, consisting of two Inspectors and two Tellers appointed by the President, and who are not candidates for any office at this election, shall, upon receipt of the Due-Card from a member in good standing, give him a ballot and see that he enters alone the booth or room set aside for this purpose. The member, upon entering such booth or room, shall mark his ballot and fold same in such a manner as to conceal his votes, and upon leaving the booth shall present his ballot to the Inspectors of the Election Board. He shall wait and see that the stub is detached from the ballot and the ballot proper is deposited in the ballot-box.

Sec. 12. After all members entitled to vote shall have voted, the polls

shall be declared closed by the President, and no more votes shall be received. The Board of Election shall then proceed as follows: Before opening the ballot-box they shall count and announce to the meeting how many members voted, and that the number of due-cards correspond with the number of stubs detached from the ballots. If same is found to be correct, they shall, under supervision of the President, proceed to open the ballot-box and count the number of votes deposited in the box. If the number of votes in the box correspond with the number of stubs and the number of due-cards, they shall then proceed to read the ballots and state the votes given each candidate as marked on the ballots.

Sec. 13. The Inspectors and Tellers shall keep a correct tally of all votes as read off and report their findings to the President, who, in turn, shall announce same to the membership and declare the candidates who received the majority votes, elected.

Sec. 14. Any candidate shall have the right to be present at the count-

ing of votes, or have some other member of his choosing to be present. Members not in good standing financially, or not present themselves are not entitled to vote, not to have voice on the floor unless asked to speak.

Sec. 15. Names of all candidates so elected shall be entered upon the minutes of the meeting over the signature of the Board of Elections and the President, countersigned by the Recording Secretary.

Sec. 16. Installation of Officers-elect shall take place at the next regular meeting following election, and for a period of one year, or until replaced by a successor.

Sec. 17. Vacancies in office may be filled at any regular meeting if all members have been notified. Should any officer absent himself from three consecutive meetings without any reasonable excuse, his office shall be declared vacant. All such vacancies must be filled in accordance with Section 4 of this Article.

Sec. 18. Suspension from office shall be resorted to in case of recog-

nized and pending impeachment charges. In such cases the chairman shall, with the consent of the membership, appoint an officer protem until such charges are disposed of, as defined under section dealing with impeachment charges.

ARTICLE IV

Duties and Salaries of Officers

President

Section 1. It shall be the duty of the President to preside over all meetings held by this Union. He shall make it his duty to call all meetings to order at the time specified when a quorum of members be present. He shall preserve order and enforce the observance of the Constitution and By-Laws, and see that every officer does his duty. He shall, at the request of fifteen members in good standing, call a special meeting in accordance with sections of these By-Laws dealing with meetings. He shall appoint all committees, and be chairman of all committees, he may attend such committee meetings, but shall have no

vote on such committees. He shall be fair in all his rulings and never side with opposing parties on a question. He shall never take a part in a debate while occupying the chair. It shall be his duty to give a deciding vote in case of an equal division of votes, and his decision shall be upheld without debate or comment. It shall be his duty to sign all checks issued by this Union, but he shall, at no time, permit issue of checks that have not been authorized in meeting, or for any other purpose contrary to the rules of this Union. Never shall be permit cash withdrawals of moneys. All checks signed by him must be countersigned by the Secretary-Treasurer, and bear the Local Seal. He shall be in charge of the Local Seal and be responsible for its use. It shall be the duty of the President to inspect the Local's bankbooks at every regular meeting, compare same with the receipts and expenditures from previous meetings, and report his findings to the membership. It shall be within the power of the President to impose fines upon

be held responsible for all moneys belonging to this Local. He shall deposit all moneys as received by him within forty-eight hours in such bank or banks as ordered by this Local. He shall be bonded to the extent of Ten Thousand Dollars ($10,000), with some reliable surety company as this Union, through its Board of Trustees, may select, and the premium for such shall be paid for out of the Local's treasury. He shall issue stub-receipts for all moneys received with the exception of dues, which receipt he shall enter upon the due-cards, both Senior and Junior. He shall make a summarized report of all receipts and expenditures at every regular meeting. He shall keep books for his records, as required by law, and co-operate with the Board of Trustees and the Accountant when checking up on such books and records. He shall collect dues and assessments from Junior Members every second and fourth Monday of each month. A Senior Member shall be placed on his job in the theatre he is working on such collection days,

members for misconduct or objectional behavior during meetings. Whenever he desires to leave the chair during meetings he shall place the Vice-President in his place, and appoint all such protems for vacancies as required.

Vice-President

Sec. 2. It shall be the duty of the Vice-President to attend all meetings as called for; in the absence of the President he shall take his place with all the power vested in the chair. It shall be his duty to co-operate with the President to preserve order in meetings.

Financial Secretary and Treasurer

Sec. 3. It shall be his duty to attend all meetings as called for. If for any reason he is unable to attend meeting he shall notify the President, giving enough time to have a protem appointed in his place. He shall at no time pay out moneys not ordered by this Union. Moneys ordered paid shall be paid by check only. He shall be the sole authority to issue checks and receive moneys due this Local, regardless of what nature. He shall

and shall be paid the regular scale out of the funds of this Union. The Secretary-Treasurer shall receive his regular salary he earns from the theatre.

Corresponding-Secretary

Sec. 4. It shall be his duty to attend all meetings as called for. He shall record all proceedings of such meetings. The minute book kept by the Secretary shall be bound form with numbered pages, and shall be open for inspection to every Senior Member in good standing at any regular or special meeting. He shall also keep an amendment book in which he shall enter all amendments and changes in the Constitution and By-Laws that may be adopted by this Union. He shall make such provisions that in case of his absence from meetings, the Secretary-protem may have access to the books and papers necessary for the conduct of meetings. It shall be his duty to notify every member appointed to act on committees, in writing under the Local's letterhead and seal, within forty-eight hours after such appoint-

ments have been made. All of his notifications should bear the Local seal and if of great importance should be sent by registered mail. He shall send notifications to all members to attend meetings when so ordered, stating time when meetings are called to order, and place where held. He shall take proper care of all books and records and all other documents and resolutions pertaining to the business of this Union. Upon the installation of his successor he shall turn over to him everything belonging to this Union and in his possession. He shall keep a correct roll-call of all members both Senior and Junior. He shall keep a book with all names and addresses of every member of this Local and report any member who does not keep him properly informed as to his correct address.

Sergeant-at-Arms

Sec. 5. It shall be his duty to attend all meetings as called for. He shall attend the doors at all meetings and admit no one not a member of this Local unless directed to do so at the order of the chairman. He

shall, under direction of the Presiding Officer enforce all rules and regulations to keep an orderly meeting. He shall conduct all candidates during initiation ceremonies. It shall be his duty to report to the President of the meeting any member who, after repeated warnings from him, makes himself objectionable to the meeting.

Board of Trustees

Sec. 6. The Board of Trustees shall have supervision and be in charge of all properties belonging to this Union. They shall keep a record of all equipment and shall see that proper title is secured to all physical properties purchased with the Local's funds. They shall make a written report as to the condition of all properties and make suggestions as to anything in need of repairs or replacement. All such reports shall be placed on file with the Recording Secretary. It shall be the duty of the Board of Trustees to see that a suitable bond is procured from the Financial Secretary-Treasurer before he assumes the duties of his office. Such bond and all other documents

such as contracts, insurance papers, shall be placed in a safe deposit box, to which only the President, Secretary-Treasurer and the Board of Trustees have a joint access. The Board of Trustees shall make it their duty to have all financial records of this Union audited every quarter, by a certified public accountant designated by this body and under their direction. The Board of Trustees shall make an itemized report of all properties and financial conditions every three months; such reports shall include assets as well as liabilities, and must be made at a regular notification meeting.

Business Agent

Sec. 7. It shall be his duty to attend all meetings as called for. He shall represent this Union in all transactions with the employer at the direction of this Union, and in all other business where only one delegate is required. He shall not be an active member of the Executive Board, but shall work under the direction of that Board and in accordance with the decisions given by that body in

meeting assembled. The Business Agent shall be in the field for so many days of every week as this Union may designate from time to time; such decisions shall be decided upon by a majority vote at a regular or special notification meeting. He shall not make contracts or give decisions on anything not adopted by this Local at a regular or special meeting. He shall call upon the President of this Union to assist him in any matter of importance. If the President is not available he shall call upon any other officer or member in good standing, but at all times where there is business or controversy of a serious nature he shall procure a witness. It shall be his duty to visit every booth in theatres under the jurisdiction of this Union at least once every month. He shall mention all such visits in his report at every meeting. He shall make all reports in writing, and same are to be placed permanently on file with the Recording Secretary. He shall, at no time, collect moneys due this Union such as dues or assessments, or any other

money that may be due or payable to this Union. He shall assist the Executive Board in distributing positions to both Senior and Junior Members in accordance with Sections of our By-Laws dealing with employment. Senior Members shall, at all times, be given preference in distributing installation work and jobs in new theatres, such positions may be given to a Junior Member in case no Senior Member be available for the time being. He shall pay all dues and assessments as any other member or officer, and shall be remunerated for his services, as set forth in Section 30 of this Article.

The Executive Board

Sec. 8. The Executive Board shall go into session whenever required and when called upon by the President. Reports of all their meetings shall be read at every regular meeting. A majority of members of this Board shall constitute a quorum for the transaction of all business. If a quorum of the Board is not present no business shall be transacted. The Executive Board shall act as a tribunal

for all transactions with the employer. All disputes arising between members and the employer shall be reported to them by the Business Agent for adjustments at the interval of meetings. The Executive Board shall have charge of all considerations of contracts with the employer and dispose of same as decided upon in regular or special meetings of this Union. The Executive Board shall, upon receipt of any charges against any member or officer, instruct the Committee of Investigation and Grievances to investigate such charges and report back to them as soon as possible, and the Executive Board shall bring their report and recommendation as to the disposal of the case to the next regular meeting, to be acted upon by the membership in meeting assembled. At no time shall they discipline a member without proper trial, as stated and required in the Constitution of this Union. All members of the Executive Board shall be renumerated for their services, as set forth in Section 9 of this Article.

Salaries, Dues and Assessments of Officers

Sec. 9. All salaries of officers, with the exception of the Business Agent shall be paid monthly, as earned, and shall be as follows:

President—$25.00 per month.

Vice-President—$12.00 per month.

Secretary - Treasurer — $20.00 per month.

Recording, Corresponding-Secretary —$20.00 per month.

Sergeant-at-Arms—$12.00 per month.

Board of Trustees, each member—$2.00 per month.

Elected members to the Executive Board—$10.00 per month, each member.

Business Agent—$105.00 per week, and $20.00 expenses when in the field for the Union.

The Secretary and Treasurer, when collecting dues every 2nd and 4th Mondays of each month, shall receive the salary he earns in the theatre in which he is employed, and the member working for him at his job shall be paid out of the funds of this Local. The President shall be permitted one

telephone at his home, which shall be paid for out of the funds of this Local. The Business Agent's telephone shall be at the office of this Union, and shall be paid for out of the funds of this Local.

Sec. 10. The salary of officers shall not be raised, nor their tenor of office be extended except as by resolution necessary for changing or amending the Constitution and By-Laws of this Union.

Sec. 11. All officers of this Union are required to pay dues and assessments to the same amount and at the same time as any other member of this Union.

Delegates

Sec. 12. All delegates of this Union shall be elected. The delegates to the New Jersey State Federation of Labor shall be elected at the regular election of officers in June. The delegates of the Central Labor Union shall also be elected at the Regular Elections in June.

The delegates to conventions of the International Alliance may be elected at any notification meeting, regular or

special, but every member must be officially notified to attend such elections. Nomination and election may be held together at the same meeting.

Delegates to conventions shall be paid their salaries earned on their respective jobs, out of the funds of this Union. All delegates, with the exception of delegates to I. A. Conventions, shall be paid first-class transportation, and $10.00 per day hotel expenses.

Delegates to the I. A. Conventions shall be reimbursed as to their salary only, same to be on the scale of their earnings as an operator on their respective positions.

The Business Agent, if attending I. A. Conventions, shall, during that time, receive his salary from this Local only as all additional expenses are paid by the I. A.

This Local may advance to the delegates attending I. A. Conventions moneys such as one-way transportation, salary, and hotel expenses, but all moneys so advanced must be refunded to this Local upon the dele-

gates' return from such conventions, with the exception of salaries.

Delegates returning from any convention shall make a complete report of the proceedings and decisions of conventions at the next regular meeting following such conventions. Their report shall be filed with the Recording Secretary.

The Examining Committee

Sec. 13. The Examining Committee for the purpose of examining applicants and applications shall be appointed by the President from the Senior membership, and in compliance with Article Three, Section 4 of this Constitution and for such duration, and at any time that this Union may be in need of such Committee.

Sec. 14. The Examining Committee shall examine all applicants and their applications; see if they are qualified to become members of this Union, and shall be guided and work in accordance with Article Two, Sections 1 to 8 of this Constitution.

Sec. 15. They shall not report an applicant favorable for acceptance unless he passes his examination, 75%.

If an applicant has been reported as favorable, he shall be dealt with in accordance with the rules and regulations covering Junior membership.

Sec. 16. It shall be the duty of the Examining Committee to see that all applications bear the endorsements of the International Alliance before same are acted upon. Any member of the Examining Committee who, after being notified to attend a meeting of the Committee and without giving due notice, does not attend such meeting, shall be replaced by another member by the President. All reports of the Examining Committee must be in writing, and filed with the Recording Secretary for future reference. Members of this Committee cannot act if their names appear on any applications as an endorsee, but must be replaced by another member in good standing, by the President.

Sec. 17. Each member of the Examining Committee shall be paid for his services at the rate of $2.00 per examination meeting.

ARTICLE V

Accusations, Trials, Appeals and Discipline

Section 1. Charges against members or impeachment charges against officers of this Union must be presented in writing at a regular meeting.

Sec. 2. All accusations and charges against any member or officer shall be made in writing over the signature of the complainant. They must also clearly state against whom the complaint is directed, the offense, time, place and the nature of the violations together with notation of the laws alleged to have been violated. They shall be, when presented at a regular meeting, either be rejected or accepted as cognizable under the laws of this Union. They shall be, if declared cognizable, referred to the Committee of Five.

All charges must be written in triplicate and upon presentation one copy shall be retained by the Recording Secretary and written into the minutes of the meeting at which they are presented; one copy shall be given

the accused, and the third copy given to the Committee of Five.

The committee of five shall be selected from a panel of ten members whose names have been placed in ten separate envelopes and as each name is drawn from such envelope and announced by the Sergeant-at-Arms, each side shall be entitled to five challenges.

Sec. 3. It shall be the duty of this committee to furnish copy of charges to the accused, to instruct the presence of complainant and accused at hearings, dates for same to be arranged by this Committee, giving the accused ten days' notice of trial; to command the attendance of witnesses and afford both the complainant and the defendant every opportunity to present their case and evidence.

Sec. 4. A majority vote of this committee shall decide the innocence or guilt of the defendant. The committee, however, shall not have the power to impose penalty, but shall report to the next meeting its verdict and recommendation.

Sec. 5. If the charges are sustained

in whole or in part by the evidence taken in examination, the accused shall have the privilege to speak in his own behalf or delegate some member to speak for him in his defense. He shall then be required to retire from the room and the presiding officer shall put to vote, first, the **recommendation** of the committee; that failing he shall put the highest punishment, expulsion, and if lost, the next highest order of punishment; in case of an officer it shall be a fine of $250.00 and to debar him from ever holding office again; in case of a member, if the highest penalty, expulsion, fails, it shall be a fine of $200.00, and suspension of six months. And if all the afore-mentioned penalties are lost by majority vote such penalties as this Union may select by vote shall be imposed upon the guilty party or parties.

Sec. 6. Any member holding office and standing impeached, shall be relieved of his office at once for the duration of trial or pendency of such trial. If he be exonerated he shall receive all back salary for that period.

The President, with the consent of the meeting, shall appoint a member in good standing, in accordance with the Constitution, a protem to conduct the office of the member under charges.

Appeals

Sec. 7. All appeals must be presented in writing within thirty days after penalty, and must be presented at a regular meeting of this Union.

Order of Appeals

Sec. 8. (1) To the Local Union from its own decision or its officers' decision; (2) From decision of the Local Union to the International President of the Alliance; and further, as prescribed by the Constitution and By-Laws of the International Alliance.

ARTICLE VI

Altering or Amending the Constitution and By-Laws of Local 384

Section 1. Proposed amendments or alterations or appeals of sections of these Constitutions and By-Laws must be presented in duplicate to the Recording-Secretary at a regular meeting and a copy of same must be sub-

mitted for endorsement to the International Office before same can be adopted.

Sec. 2. Thirty days' notice must be given to this Union at a regular meeting of any proposal for amending the Constitution or By-Laws. After thirty days have expired the proposed amendment must be read at two consecutive, regular meetings, and a two-thirds ballot box vote shall be required to either accept or reject such proposed amendments. Every member must be officially notified to attend such regular meetings, and these notifications must clearly state the business to be transacted at this meeting.

BY-LAWS

ARTICLE I

Section 1. The regular meetings of this Union shall be held every second and fourth Mondays of each month. The second meeting in each month may be suspended if there be no business warranting such meeting to be held. However, every second meeting of the month must be suspended with by a majority vote of members present at the first regular meeting in order to be legal. The second meeting in June of every year shall be set aside for the election of officers.

Meetings of the Junior Body shall be held whenever called for by the President, at the decision of the Executive Board. All members, both Senior and Junior, shall be notified when such Junior meeting is to be held.

Sec. 2. Special meetings of this Union may be called by the President of this Union whenever he sees fit that such meetings are necessary.

Special meetings may also be called at the written petition of twelve Senior Members in good standing. Such petition must give the object for which such meeting should be called, and every member must be notified when such meetings are to be held. Any member signing such petition and failing to attend shall be fined the sum of $25.00, such fine to be charged against such members as dues, and no excuse, unsupported by trustworthy evidence of inability to attend, will be accepted. Members signing such call for a Special meeting shall be notified by registered mail and signed return-receipt, informing same when and where the special meeting is to be held. Special meetings may also be called for any purpose if decided upon at a previous regular meeting by majority vote.

Sec. 3. Twelve members in good standing shall constitute a quorum for the transaction of all business.

Sec. 4. All members to be classified as in good standing must have the quarterly due-card properly stamped, or a written receipt from the Secre-

tary-Treasurer verifying that they are in good standing with this Union.

Sec. 5. A vote of this Union shall not be necessary to suspend a member for being in arrears in dues, but shall be suspended automatically if his dues are not paid at the first regular meeting of each quarter. The Business Agent shall, at the end of the first meeting of each quarter, take immediate steps to have such delinquent members replaced on their respective positions with a member in good standing until such time that the delinquent member appears before the Secretary-Treasurer and pays his indebtedness in full.

Sec. 6. All operating positions, where operators are to be replaced, must be filled by the Business Agent from the unemployment list.

Sec. 7. Any member soliciting or accepting an operating position from a manager or owner of a theatre contrary to Section 6, or any member who places a man on a job without the approval of the Business Agent, shall immediately be removed from his job and at conviction by this

Local shall be fined the sum of $50.00 for the first offense, and $100.00 for the second offense, and expulsion from membership if found guilty of a third offense.

Sec. 8. Members indebted to this Union for any sum of money other than the regular dues, such as assessments or fines, and failing to pay same within the allotted time, shall have same charged against them as dues, thus placing the member in arrears in dues, and subject to Section 5 of this Article—automatic suspension.

Sec. 9. Ignorance of the aforegoing Sections of these By-Laws, or any other Articles or Sections of the Constitution and By-Laws, can not and will not be regarded as an excuse where a violation of the laws have been committed.

Sec. 10. Officials of this Union shall not be permitted and are hereby forbidden to make any contracts, verbal or in writing, pertaining to the welfare, working conditions, or salaries of members of this Union, with-

out same having been properly sanctioned by the membership in meeting. No member, Senior or Junior, shall make or cause to be made any agreements, verbal or in writing, with owners or managers of theatres in which they are employed, or otherwise, or with any party concerning work or salaries coming under the jurisdiction of this organization.

Sec. 11. No member is permitted to leave his position or place another man on his job without the permission from the Business Agent. All members must notify the Business Agent of any and all changes in working conditions or policies in theatres in which they are employed. No member is permitted to give decisions on any matter to managers or owners, but shall refer all such questions to the Business Agent. Violation of this Section shall be penalized with a fine of not less than $10.00 for each offense.

Sec. 12. Members desiring to change their positions must give a written notice to that effect to the Business Agent or present same at a Regular

meeting. At no time shall members discuss notices of their own of any other member with managers or owners of theatres in which they are employed, or any others. No member is permitted to accept notices of discharge in person, but shall refer same to the office of this Union. Violation of this Section shall carry a fine of $5.00 for each offense.

Sec. 13. Every member, Senior or Junior, shall confine his work to only such apparatus directly under his care and in the projection room only; at no time shall he perform work coming under the jurisdiction of some other craft or Labor Unions or Labor Councils.

Sec. 14. Any member filling in relief shall not alter or interfere with, mechanically or electrically, or otherwise, anything in the projection room, except in case of emergency. Nor shall relief men solicit their positions. Violation of this section shall be a fine of $25.00.

Sec. 15. Upon losing employment, or upon notice to that effect, members must report to the Business

Agent in person. They shall place their name and address and telephone number on a list at the bottom, in their own handwriting. This unemployment list shall be open for inspection to any member in good standing. Jobs shall be given out in approximate rotation to any member in good standing in the Senior Body. Junior Members shall be kept on a similar list of their own. A report of every member so placed in employment, and where, shall be read at every regular meeting. Positions in new theatres shall be filled by taking into consideration "Seniority," meaning from members who have been of the longest and continuous standing with this Union, providing such members be available. A complete report of all members, Senior or Junior, so placed must be made at every regular meeting.

Sec. 16. No member of this Union shall be permitted to give positions to Junior members, or members of sister locals unless sanctioned by this Union. All reliefs must be paid by members not later than the first pay

day after such work was performed. The Business Agent, at the direction of the Executive Board, shall remove any member from his position until such time as he complies with this Section.

Sec. 17. Members must not, and are hereby forbidden to initiate any action that may provoke controversy with an employer. Any grievance or complaint must be reported to the proper officials of this Union. Any violation of this Section shall be penalized by removal from such job, and a fine of $50.00.

Sec. 18. All members of this Union must possess any city licenses that may be in force in Hudson County. Failure to comply with this ruling shall be construed as a violation of these By-Laws, and is punishable by suspension of the offending member until such time as he complies with this rule.

Sec. 19. Members are hereby forbidden to hang around their place of employment on their off-days, nor shall members make a practice of hanging around the manager's office

for any reason. Orders as to their run of shows should be received per schedule or 'phone or messenger. Members causing trouble on account of this shall be removed from such jobs, if found guilty.

Sec. 20. Any member or members having grievances against another member with whom they are working, or against any other member, shall, at no time, resort to insidious reports or slander of a member to the manager or owner of a theatre, but bring their grievances before this Union for redress. Any member found guilty of violating this Section shall be unconditionally suspended from membership.

Sec. 21. Any member of this Union informing outsiders or suspended members not in good standing with this Union, of any business transacted or acted upon in meetings or otherwise, shall be suspended for six months and fined $100.00. This law also applies to Senior Members informing members of the Junior Body of anything transpired in regular or in any other meetings of this Union.

Any members knowing of such violation and not reporting same shall be deemed equally guilty and be subject to the above penalty.

Sec. 22. Any member not receiving his due salary within forty-eight hours after pay day must report same to the Business Agent. Failing to do so he can not expect aid from this Local to secure same. This applies to all moneys, including overtime.

Sec. 23. No member is permitted to carry film, or any other articles or supplies to or from the booth, this ruling to be stipulated in all contracts with exhibitors.

Sec. 24. Members must be in the Projection Room no more nor less than fifteen minutes before starting time. Any member who, for any good reason can not be on time to fill his job, or sees that he will be late, must notify the Business Agent, or some other official of this Union, to have his job covered in time.

Sec. 25. In any theatre where there is more than one operator employed to a shift, all are to remain in the booth on duty for the entire duration

of the show or shift. Violation of this Section shall be a fine of $25.00 for each and every offense.

Sec. 26. Each man on a shift where there is more than one operator employed to a shift or job, all must be present at all screenings, and in no case will one man be allowed to do any screening or sound-picture projection, or testing of sound during show hours, or any other time. In case of a member not reporting for such work, it shall be the duty of the other man to report same to the Business Agent at once, so that another man may be sent to work the vacancy. Violation of this Section shall be a fine of $25.00 for each offense.

All extra work concerning sound testing or technical inspections must be done either before or after show hours. All such work must be performed by the operators themselves under the supervision of the serviceman or technical inspector.

Sec. 27. This Local reserves the right and shall have the power to levy such penalties as may be deemed proper for any offense committed by

its members and provided for in these By-Laws.

Sec. 28. No fines imposed upon members or any other penalties shall be remitted or withdrawn except by majority vote at a regular meeting.

Sec. 29. No member of this Union shall be permitted to teach any person not a member of this Union, to operate a moving picture machine of its appliances under his care, except if he has the permission of this Union in writing. Any member violating or knowing of a violation of this Section shall be dealt with at the option of this Union, but at no time shall the penalty be less than $100.00 fine.

Sec. 30. Junior members shall, at no time, be permitted to attend the meetings of the Senior Body, unless called upon for certain reasons. They shall have no vote on anything pertaining to the business of this Local, but may speak in their own behalf when assembled in their own meeting.

ARTICLE II

By-Laws

Section 1. The funds of this Local shall be for the legitimate expenses required for its conduct and maintenance, and shall at no time be diverted from for any other purpose. No funds shall be used to finance any other organization, or any other purpose except when sanctioned by two-thirds ballot box vote, and at a regular notification meeting. Money from the Sinking Fund can not be used for any other purpose but an emergency, and then only if decided upon by a two-thirds ballot box vote at a regular or special meeting, and all members have been notified. The amount of $6.00 from every Senior Member's dues paid shall be deposited in the Sinking Fund. Such Sinking Fund shall be deposited and kept under a savings account in a bank. All insurance premiums for members in good standing shall be paid out of the general fund.

Sec. 2. The amount of dues to be paid by all members and officers shall be of such amount as this Union may

decide upon from time to time. Such decisions shall be decided upon by a two-thirds ballot box vote of all members voting, and at a regular meeting, all members having been notified to attend.

Sec. 3. Assessments may be levied at any regular or special notification meeting, all members having been informed that an assessment is to be levied. Assessments for the good and welfare of this Local must be paid by all members and officers of this Union, and shall be charged against members as dues. Assessments for ball, banquet, or raffle tickets of any kind, shall not be compulsory, but voluntary only, and can not be charged against members as dues.

Sec. 4. All communications of this Union must be signed by the Secretary or President, and bear the Local seal to be valid. Otherwise, they will be considered as unauthorized.

Sec. 5. The minute book of this Union, kept by the Secretary, must contain bound and numbered pages (not in loose leaf form), wherein com-

plete and accurate records shall be made of all meetings, Regular, Special, Executive and Junior.

Sec. 6. No member or officer of this Union shall be permitted to destroy any records or books of this Union, no matter how trivial, unless such destruction has been ordered in regular meeting. All officers shall be directly responsible for records and properties of this Local, and under their care. Violation of this Section shall be expulsion from membership.

Sec. 7. All officers in retiring from office must give a full account of all physical properties and documents pertaining to their office, and secure a receipt for same from their successor in office, under a penalty of a fine of $50.00.

Sec. 8. Any officer convicted of accepting presents, directly or indirectly, from members for positions or any other favors, shall unconditionally be expelled from membership.

Sec. 9. Officials or members of this Union, if found guilty of accepting money or any kind of presents as a bribe, shall unconditionally be expelled

from membership of this Union. Any member knowing of such violation shall be deemed equally guilty if not reporting such violation, and the penalty shall be the same.

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New Jersey Court of Errors and Appeals

Between WILLIAM CAMERON, *et als.*, Complainants-Respondents, and THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, LOCAL UNION NO. 384, OF HUDSON COUNTY, NEW JERSEY, *et als.*, Defendants-Appellants.	On Appeal from the Court of Chancery.

BRIEF OF DEFENDANTS-APPELLANTS.

Statement of Case.

The final decree entered in this cause on January 13th, 1934, dismissed the complainants' bill (p. 104, Part II).

On appeal, the decree of the Court of Chancery was reversed, in an opinion by Justice Heher, reported in 118 Eq., page 11, "and cause remanded for further proceedings in conformity with this opinion" (p. 19, p. 41, Part I).

Upon presentation of the remittitur, the Court below concluded that a rehearing should be held (p. 43, Part I) and after argument by respective counsel (without taking any additional proofs) filed the memorandum (p. 49, Part I) and entered the Decree of Reversal (p. 14, Part I) from which the defendants now prosecute their appeal.

The questions involved on this appeal may be stated as follows:

1. Does the Decree of Reversal conform to the mandate of the Court of Errors and Appeals and the remittitur?

2. What is the effect of annulling the written Junior Membership Contract of March 4, 1930, upon the status of the juniors in the union?

The complainants-respondents (Juniors) contend that by the annulment of their contract, they have acquired the status and rights of full fledged membership in the union, on an equality and parity with the other members (seniors).

The defendants-appellants contend on the other hand, that the effect of annulling the contract of the juniors, is to require the restoration of the *status quo ante,* i. e. the juniors revert to their original position and the same status they held on the evening of March 4, 1930, *just before* they executed their written contracts—"Permit Men"—awaiting action of the local union on their applications for membership.

3. Does the decree of reversal, and the relief therein granted to complainants, violate the rights of these defendants, under the Fourteenth Amendment to the Constitution of the United States?

Specifications of Grounds of Appeal.

Appellants contend that the decree is erroneous and should be reversed upon grounds which may be summarized as follows:

1. The Court of Chancery was without jurisdiction to grant the Decree because an Order of Reference had not been entered to the Vice Chancellor advising such Decree.

2. The Chancellor should have dismissed complainants' bill, because jurisdiction had not been obtained over the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, a voluntary, unincorporated association, and a necessary and indispensable party to the suit.

3. The Court of Chancery was without power and authority to disregard the mandate of the Court of Errors and Appeals, as shown by the remittitur, and was without power and authority to take any further proceedings in the cause or enter a Decree therein, except in strict compliance therewith.

4. Said Decree does not conform to the Mandate of the Court of Errors and Appeals, as manifested by the Remittitur.

5. The relief granted by said Decree is greater than the relief to which complainants-respondents are entitled, under the opinion and mandate of the Court of Errors and Appeals, and the remittitur entered in said Court.

6. The complainants-respondents are not entitled to have adjudged and decreed that "such portions and provisions of any constitution, by-laws, resolutions, rules, motions, regulations and other actions adopted by said local as effect or provide for any division or classification of members of said local into "Seniors" and "Juniors" (or "Apprentices") or otherwise, or for any differentiation between any such members of said local", be annulled, made void, unenforceable and of no effect, and insofar as the final DECREE OF REVERSAL grants such relief to complainants, it fails to comply with and goes beyond the scope and the directions of the mandate of the Court of Errors and Appeals, and the remit-

titur, and is inequitable and oppressive to these appellants.

7. Complainants-respondents are not entitled to have adjudged and decreed that "complainants and those other members of said local heretofore known or designated as "Juniors" (or "Apprentices") are members of said local on a parity with those members thereof heretofore known and designated as "Seniors", and are entitled to, and that they be accorded, without distinction or discrimination, all rights, benefits and privileges accorded to those members of said Local heretofore known or designated as "Seniors", and that hereafter all of said "Juniors" and "Seniors" be referred to and designated by the same designation, without any distinction", and insofar as the final DECREE OF REVERSAL grants such relief to complainants, it fails to comply with and goes beyond the scope and the directions of the mandate of the Court of Errors and Appeals, and the remittitur, and is inequitable and oppressive to these appellants.

8. Complainants-respondents are not entitled to have adjudged and decreed, that appellants be permanently enjoined and restrained from "effecting or attempting to effect any distinction or discrimination between those members of said Local heretofore known or designated as "Juniors" (or "Apprentices") or any of them, and any other members of said Local, according to those members of said Local heretofore known or designated as "Seniors", any right, benefit or privilege not accorded or enjoyed on the same terms, and in the same manner, to and by complainants and every other member of said local to the end that all members shall in all respects be on an equality and parity with each other", and insofar as the final DECREE OF REVERSAL

grants such relief to complainants, it fails to comply with and goes beyond the scope and the directions of the mandate of the Court of Errors and Appeals, and the remittitur, and is inequitable and oppressive to these appellants.

9. The sole relief to which the complainants-respondents are entitled, and the full measure thereof, in accordance with the directions of the remittitur, is the annulment and cancellation of the Junior Membership Contract, entered into on March 4, 1930.

10. The Court of Chancery should have adjudged and decreed that upon the annulment and cancellation of the Junior Membership Agreement, the *status quo ante* should be restored, i. e. the complainants-respondents, as well as all other Juniors of said local, revert to their original position or status of "PERMIT-MEN", awaiting action of the local union on their applications for membership, and in equity, the local should be ordered to take a vote on the admission of the said "PERMIT-MEN" to regular membership in the local, and if, upon such vote, any of the "PERMIT-MEN" are rejected, the local to refund to such "PERMIT-MEN" the fee paid the local on making the application for membership.

11. The Court of Chancery should have adjudged and decreed that the complainants-respondents had not at any time acquired the status or right of membership in the union, and that complainants could acquire full membership in the union only by the voluntary action of the local union itself.

12. The Court of Chancery by said Decree declared and established a new Membership Contract between complainants and the local union, not theretofore in existence, for the benefit of the com-

plainants-respondents, over the objections of these appellants.

13. The Decree and the relief therein granted to complainants-respondents, is violative of and repugnant to, the Fourteenth Amendment to the Constitution of the United States and deprives these appellants of their liberty and property, without due process of law, and denies to said appellants, the equal protection of the laws.

14. The Decree and the relief therein afforded, coerces, forces and compels these appellants against their will, to admit the complainants-respondents to membership within their ranks, granting them the full right of membership in the local union on a parity with all other members, thus making a new contract for the benefit of the complainants-respondents, in violation of the constitutional rights of these appellants under the Fourteenth Amendment to the Constitution of the United States.

15. The Decree and the relief therein granted to the complainants-respondents, coerces, forces and compels these appellants by judicial fiat to enter into a new contractual relationship with complainants against the appellants' will, and is thus destructive of the appellants' unalienable right of liberty of contract, to select and choose its own membership, and is repugnant to the due process clause and the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

The defendants-appellants are the local union itself, its officers and executive board, with the exception that Frank Mandrake, President of the local is also sued individually and as Agent of the senior members of the local. *The International Alliance*

of Theatrical Stage Employees and Moving Picture Machine Operators of the United States is not a party to the suit.

The complainants-respondents are seven "Juniors" of the local union.

Brief of the Argument.

We shall argue the case under the following subject headings, indicating the page numbers *in this brief,* where such heading may be found, viz.:

1. THE DECREE OF REVERSAL IS NUGATORY BECAUSE AN ORDER OF REFERENCE HAS NOT BEEN ENTERED TO THE VICE CHANCELLOR ADVISING SUCH DECREE (p. 8).

2. THE INTERNATIONAL ALLIANCE IS A NECESSARY AND INDISPENSABLE PARTY (p. 9).

3. THE OPINION OF THE COURT OF ERRORS AND APPEALS AND THE REMITTITUR (p. 16).

4. THE PRESENT STATUS OF THE JUNIORS (p. 22).

(A) THE NATURE OF MEMBERSHIP IN A VOLUNTARY, UNINCORPORATED ASSOCIATION (p. 26).

(B) THE INTENTION OF THE PARTIES (p. 28).

(C) EFFECT OF ILLEGALITY (p. 41).

(D) WHAT RELIEF DOES EQUITY AFFORD WHERE THE BARGAIN IS ILLEGAL (p. 47)?

5. THE CONSTITUTION OF THE UNITED STATES (p. 51).

6. CONCLUSION (p. 55).

New Jersey State Library

1.

The Decree of Reversal Is Nugatory Because An Order of Reference Has Not Been Entered to the Vice Chancellor Advising Such Decree.

Chief Justice Beasley said in the case of *Delaware Bay and Cape May R. R. Co.* v. *Edwin Markley,* 45 Eq. 139, 148, that

> "There can be no doubt that the Vice-Chancellor cannot assume jurisdiction over a cause except by force of a reference made by the Chancellor to that effect. And, as the rules of the Court are now framed, there does not appear to be any power given to the Vice-Chancellors to take cognizance of causes so as to finally dispose of them, upon the merits, except when there exists a special order for that purpose. In the present instance this was not done, and the consequence is the hearing by the Vice-Chancellor was irregular, and would have been, if properly objected to, entirely nugatory."

However, instead of objecting *in limine* counsel proceeded before the Vice Chancellor; the final decree was signed by the Chancellor and the objection was not made *until the appeal.* The Chief Justice held that the irregularity had been waived and the action of the Vice Chancellor ratified by the signing of the final decree *before* any objection had been made.

In the case at bar, appellants' counsel did object, *before* the entry of the final decree, and at the very first opportunity presented, stating, on the rehearing "I desire to urge *again* the objection that there never has been an order of reference that I know of" (p. 45, Part I).

2.

The International Alliance Is a Necessary and Indispensable Party.

The International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, is a voluntary, unincorporated association consisting of approximately 692 subordinate affiliated local unions; the local unions themselves are voluntary, unincorporated associations. The International Alliance has certain International Officers such as the International President, International Secretary, International Treasurer and Seven International Vice Presidents, and the General Office and Headquarters of the International Association are located in New York City and the Headquarters cannot be removed from New York City, except by referendum vote of the affiliated local unions (Art. 1, Sec. 3 of the Constitution of the International Alliance).

The International Alliance also has its own Constitution and by-laws, regulating the relations existing between itself, and the Local Unions and the membership (p. 9, Part II, Paragraphs 1, 2 and 3 of the Bill of Complaint). The Local Union, of course, owes its existence and very being to the Charter granted by the International Alliance.

The General Executive Board of the International Alliance—consisting of the President, Seven Vice Presidents and the General Secretary-Treasurer—has entire supervision and authority over the Alliance, excepting during convention periods (Art. 14, Section 2 of the Constitution of the International Alliance; Stipulation between Counsel, p. 59, Part I).

Membership commences from the date of registration with the General Secretary-Treasurer, and per capita tax must be paid on all "apprentices" from the date of original registration with the General Secretary-Treasurer (Art. 3, Section 12, of the Constitution of the International Alliance; p. 455, Part II). Apprentice and Junior are synonimous—they mean one and the same thing (p. 371, Part II).

A Local Union may not accept into membership any applicant, whose application has not first been approved by the General Secretary-Treasurer, under penalty of fine for each offense (Art. 2, Section 23 of the By-Laws of the International Alliance; p. 60, Part I).

The Constitution and By-Laws of all local unions are ineffective until first submitted to the General Office for approval prior to adoption (Art. 2, Section 43 of the By-Laws of the International Alliance; p. 60, Part I). The requirements of the Constitution and By-Laws of the International Alliance are binding upon all applicants for membership in any affiliated Local Union (Art. 3, Section 1 of the By-Laws of the International Alliance).

The "JUNIOR" members are registered with the General Secretary-Treasurer as "APPRENTICES" (pp. 370-371, Part II) [on February 18th, 1930] as shown by the endorsement stamped on the back of the applications. (See Ex. C-2, p. 392, Part II). The words "JUNIOR DEPARTMENT" are also stamped on the applications (p. 391, Part II, l. 35).

It is true that the stamp "JUNIOR DEPARTMENT" was *not* on the applications "at the time they were made to the local" (1928 and 1929) (p. 267, Part II). The Stamp "JUNIOR DEPARTMENT" was on the applications on March 4, 1930 *before* the "PERMIT MEN" were obligated and was thereon when the Contract (Ex. C-1) was executed.

All of the "PERMIT MEN" at the time they signed their contract, were registered at International Headquarters as "APPRENTICES" and *they are still so registered and so regarded by the International Alliance.* (See Ex. D-II, p. 463, Part II) and the testimony of Alexander Ornstein, pp. 369-373, inclusive, Part II.

It is apparent, therefore, that regardless of what was the agreement or relationship that existed between the local union and the men themselves, the requirements of the organic law,—the Constitution and By-Laws of the International Alliance—are superior and paramount, as the fundamental law of the organization. In the International Alliance these "PERMIT MEN" were registered as "APPRENTICES" and are still so registered. Nothing that the Local and the "PERMIT MEN" did, or agreed to do, between themselves, could affect the International Alliance, without its approval or consent.

Although the International Alliance has been made a party defendant to the suit, no effort has been made to obtain jurisdiction over it by publication or otherwise. *The International Alliance will be affected by any degree made in this cause, concerning the status or rights of the complainants in the organization.* Especially where the status of the complainants would be changed, in view of their assertion that they are entitled to membership on a *parity* with the Seniors.

Non-joinder of necessary parties may be ground for a dismissal of the bill—*Lysakoroski* v. *Blauvelt,* 115 N. J. Eq. 501.

In *Kempton* v. *Bartine,* 59 N. J. Eq. 149, affirmed 60 N. J. Eq. 411, Vice Chancellor Grey said:-

> "There is a wide difference between the mode of procedure at law and in equity touching the bringing in of parties to a suit. At law, save in a very few instances, the defendants who are

> called upon to respond are selected by the plaintiffs in the suit, and the court accepts the record as thus made up; but in equity, if it appears that there is a person, not in court, who holds an outstanding interest, the court will stand the cause over until the bringing in of that party. In equity, every person interested in sustaining or defeating the object of the suit should be a party, and be heard before decree. The spirit of the procedure in equity is to settle once and for all, in one suit, all disputes concerning the object of the litigation. Lord Hardwicke, in *Jones* v. *Jones,* directed a cause to stand over until the proper parties defendant were brought in, though the objection was admittedly (so far as the defendant was concerned) taken too late, on the ground that the court could not do justice without the presence of the absent parties, who appeared to have an interest in the object of the suit. Sir John Leach, in *Farquhar* v. *Seton,* declared that, where the defect of parties is apparent on the record, the court will take the objection, though the defendant does not; for, on appeal, if there be a defect of parties, the court of appeals will send the case back."

The reason for the rule requiring *all* persons interested to be made parties to the suit is stated, in *Cutler* v. *Tuttle,* 19 N. J. Eq. 549, as

> "Out of the Constitution of a Court of Equity, which aims not so much to decide the issues between the litigating parties, as to embrace the whole subject and determine upon the rights of all parties interested, to make the determination complete and quiet all questions, so that the performance of the decree may be perfectly safe to those who are compelled to obey it, and also that future litigation may be prevented."

The distinction between proper and *necessary* parties, has been stated in *Fletcher* v. *Newark Telephone Co.* 55 N. J. Eq. 47, as follows:-

"The Learned Judge (referring to a cited case) said that it was a familiar rule of equity pleading that all persons having a common interest and common object in the subject matter of a bill ought to be made parties or, if they are too numerous to render the joinder of all of them practicable, the bill should be brought by some in behalf of all, so that the rights of all may be duly adjudicated in the final decree; the language there used, 'all persons having a common interest and common object in the subject matter of a bill,' seems to me to be a better general statement of the rule than to say that 'all persons having an interest in the subject matter' should be made parties. But I think that neither of them is strictly accurate, as was pointed out by Chancellor Zabriskie in Van Keuren v. McLaughlin, where, in commenting upon somewhat similar language used by the Court of Errors and Appeals in the same case, at page 380, he cites with approval the language of Justice Story * * * that, 'it is not all persons who have an interest in the subject matter of the suit, but in general, those only who have an interest in the object of the suit, who are ordinarily required to be made parties; and Mr. Calvert's language in his treatise on Parties (Page 10); 'The property of a person being made a party depends upon his interest, not in the subject matter, but in the object, of the suit.' A still better definition, perhaps, is that of Thomas J., in Bank v. Gardner, 3 Gray, 308, thus 'The general doctrine in relation to parties in equity is often stated to be that all persons interested in the subject matter of the suit should be made plaintiffs or defendants. This statement is too broad. It would be more accurate to say, persons interested in the object of the suit must be made parties; that is, persons who are parties to the interest involved in the issue, and who must necessarily be affected by the decree.' "

In *Wilson* v. *American Palace Car Co.*, 67 N. J. Eq. 262, the court said:-

> "Even at the hearing the objection can be raised on motion that necessary parties are not joined in the cause; this motion would not be in lieu of demurrer, for the time for demurring is past, but a motion under a general equity rule of practice. Such a motion would amount to no more than a direction of the attention of the court to an alleged defect of parties which is so radical that the court of its own motion would hold the suit until the defect could be remedied, or, if irremediable, would dismiss the suit."

The Court, itself, can in the absence of any objection from the parties, "sua sponte" arrest the suit for want of necessary parties. *Booraem* v. *Wells,* 19 N. J. Eq. 87.

An intolerable situation would arise, if at International Headquarters, the complainants are regarded as "APPRENTICES" with the restricted rights and status connoted by such designation, and locally, by virtue of the court's decision, complainants and the other juniors, should be regarded as having a different status. A condition might then develop, endangering the entire local—with the local pulling one way and the International another—with a possible loss or revocation of the Charter.

The best evidence that the International Alliance is a necessary party, is the fact that the complainants themselves, made the International Alliance a party defendant to the suit and prayed for relief against it (See Par. 3 of the Prayer for Relief, p. 33—Part II). The International Alliance has not appeared in this cause, although it was named as a party to the Order to Show Cause, at the time of the filing of the bill on June 13th, 1933, which Order contained an interim restraint, restraining the International Alliance from revoking or confiscating the Charter of the local. There is nothing

in Rule 13 of the Court of Chancery repugnant to the foregoing views, and it is submitted, that to do complete and effective justice in this cause, without prejudice to the rights of the International Alliance, the International Alliance should be brought in and jurisdiction obtained over it.

A voluntary, unincorporated association such as the International Alliance is subject to suit in this state in its association name. (See Chapter 156, Laws of 1925; *Harris* vs. *Geier,* 112 N. J. Eq. 99; *Unkovich, et al.* vs. *New York Central Railroad,* 114 N. J. Eq. 448).

It should also be borne in mind that the specific point is whether the voluntary association *may be sued* in its association name (as defendant), and not whether a voluntary, unincorporated association *may sue* in its own name (as a complainant), and this distinction was pointed out by Vice Chancellor Backes in the recent case of *Kline* vs. *Knights of the Golden Eagle,* 113 N. J. Eq. 513.

Vice Chancellor Fielder just recently (February 7th, 1935) in his unreported conclusions in the case of *McAndrews* vs. *Glenday,* Docket 102, Page 452, held that a Labor Union (Carpenters District Council of Hudson County, a voluntary, unincorporated association) may be sued in its Association Name as a *defendant* in an equity case.

The non-joinder of a necessary party, may even be raised for the first time on appeal, and the decree of the Court of Chancery reversed and the record remitted, so that the necessary party may be added. *McLaughlin* vs. *Van Keuren,* 21 Eq. 379, citing with approval, Story's Eq. Pl. Section 72, that

> "It is the aim of courts of equity to do complete justice, by deciding upon and settling the rights of all persons interested in the subject matter of the suit, so that the performance of the decree may be perfectly safe to those who

are compelled to obey it, and also, that future litigation may be prevented. Story's Eq. Pl. S. 72."

Appellants raised the objection, seasonably—on the rehearing of the cause in the Court of Chancery (p. 46—Part I). The proceedings are fatally defective because of failure to obtain jurisdiction over the International Alliance and the bill should have been dismissed.

3.

The Opinion of the Court of Errors and Appeals and the Remittitur.

The Remittitur provides "that the decree of the Chancellor be reversed and cause remanded for further proceedings in conformity with the opinion heretofore filed." The cause is not "remanded for further proceedings" but is remanded for further proceedings "in conformity with this opinion."

The Court of Chancery is bound to obey the mandate of the appellate tribunal as indicated by the remittitur.

Johns vs. *Morris,* 28 Eq. 147;
Jewett vs. *Dringer,* 31 Eq. 586;
Tuttle vs. *Gilmore,* 42 Eq. 369;
Lake vs. *Weaver,* 77 Eq. 100;
Dewey Land Company vs. *Stevens,* 85 Eq. 374;
Lincoln Materials Co. vs. *Blair Co.,* 109 Eq. 159.

A perusal of these authorities, shows that when the highest Court intends to give detailed specific relief, or makes a special finding, other than is con-

tained in the general language of reversal, *the court clearly says so.*

In *Johns* vs. *Norris, supra,* the Court of Errors stated

> "The case should be remitted to the Court below, that an account may be taken under the direction of the Chancellor, and Theresa (one of the parties to the appeal) permitted to redeem on equitable terms."

In *Lake* vs. *Weaver, supra,* on application for entry of a Decree of Reversal, on the remittitur, Vice Chancellor Garrison said, at page 102,

> "The whole case, upon the bill and cross-bill and the respective answers, was before the appellate court, and if it had concluded that it was proper for the Court of Chancery to administer relief in favor of the cross-complainant *it would have so stated,* and would have found what equity she was entitled to, and directed what decree should be made in her favor; or, if it considered that this was a proper case for the Court of Chancery to first pass upon the equitable claims of the cross-complainant, would have so indicated, and would not have stated that the result of their conclusions was that she should be left free to proceed at law." (Italics mine.)

A carefully considered case is *Lincoln Materials Co.* vs. *Blair Co., supra,* where the appellate court had ordered a reversal and remanded the cause.

Justice Bodine, speaking for the Court, said

> "A remittitur from this court *specifically* directed the Court of Chancery to take further proofs and to determine therefrom how much of the money said to be the consideration for a certain mortgage given to the Newark Holding Company was applied in the construction of a building upon the mortgaged lands." (Italics mine.)

The Court in this case, again reversed the Court of Chancery, for failure to comply with the remittitur, saying at Page 164,

> "The final decree of July 28th, 1930, is reversed and the case remanded *with instructions to take further proofs* as to the advances used in the actual building construction, &c. in accordance with the mandate of this court previously entered and in accordance with this opinion." (Italics mine.)

In *Trust Company of New Jersey* vs. *Biddle,* 114 Eq. 508, Vice Chancellor Fallon stated the practice on the remittitur coming down, after reversal by the Appeals Court:

> "It is the clear duty of this court to strictly comply with the mandate of the Court of Errors and Appeals. It has been repeatedly held that when the Court of Errors and Appeals, after reversing a decree of this court, orders a decree to be entered in this court in accordance with its judgment of reversal, and remits the record of its judgment, this court has no authority to allow any amendments of pleadings in the cause, or to amend the record by a construction of the opinion of said court, and must not attempt in any way to evade, impede or thwart the mandate of said court. In Klein v. Journal Square Bank Building Co., 114 N. J. Eq. 510, I stated: 'In my judgment the Court of Chancery has no authority in the premises other than to observe the mandate of the Court of Errors and Appeals predicated upon its remittitur."

The form books indicate that the proper practice, on reversal is to make the decree of the Court of Errors and Appeals, the decree of this Court.

> *Kocher & Trier,* Vol. 2, Form No. 1964, on page 1428;
> *Dickinson's Chancery Precedents,* page 199

> "In some cases the appellate court, instead of affirming or reversing the decree appealed from, will give directions to the court below to rectify it. In such cases, and in cases where the appellate court reverses the decree, the order or decree of the appellate court must be made the order or decree of the Court of Chancery. Att'y.-Gen. v. Scott, 1 Ves. 419. Where a decree of the Court of Chancery was affirmed by consent, it was moved to make the judgment of the Lords an order of the Court of Chancery, but Lord Herdwicke doubted whether such a thing was ever done. Id. 419. It cannot, under any circumstances, be necessary, where a decree is simply affirmed, unless the proceedings under it has been suspended pending the appeal." 2 Dan. Ch. Pr. 1503.

Therefore, in the absence of specific instructions to the contrary, or special findings by the Court of Errors and Appeals, the Court of Chancery is limited to the entry of a decree, in the form set forth in Kocher's and Dickinson's *supra.*

The instant case involves an *equity* appeal where, unlike an appeal from a Law Court, the Court of Errors and Appeals, reviews not only the law, but also the facts. *Cartan* vs. *Phelps*, 91 Eq. 312.

The Appeals Court thus determines *all* the issues and questions raised before it, as if on a re-hearing. The Court may arrive at a different conclusion from the lower Court on the facts and may weigh the credibility of witnesses. This method of review is entirely unrestricted and most comprehensive. An appeal from a final decree brings before the appellate court all interlocutory orders or decrees involving the merits. *Clair* vs. *Terhune,* 35 Eq. 336. Once the Appeals Court has spoken on an appeal in an equity case, the lower court has nothing more to do than to follow instructions. A final decision on both the law and facts—on each and every phase of the cause—is thus reached.

> "The court renders such a decree as chancery ought to have made; reverses what is wrong; decrees what is right, and models the relief according to its own views of the ends of justice and the exigencies of the case."
>
> Dickinsons Chancery Precedents, note on page 198.

And so, in the case at bar, the court of last resort, had reviewed the *entire* case. It had before it the pleadings, the evidence and the briefs containing all the arguments and all the points raised by respective counsel. It arrived at *a* conclusion—that the Court of Chancery was in error in sustaining the validity of the contract—it should have adjudged the same null and void as against public policy. Likewise, had the highest Court spoken with reference to the nature of the decree and the relief to be afforded, namely—a decree should be entered annulling the contract—*nothing else.*

This is *all* the relief to which the complainants (the public) are entitled.

Manifestly, if the Court of Errors and Appeals had intended—having *all* aspects of the case before it—to grant *other* or *additional* relief to complainants, it would have said so. The failure of the Court of Errors and Appeals, to do so, is conclusive evidence that this court felt, that where the contract is repugnant to the public interest, the *full* measure of relief is the annulment of the contract—*nothing more.* That such was the court's intention is manifested by the concluding paragraph of the court's opinion, wherein it was said:

> "And it does not matter that, at the moment, the junior members have not, in fact, suffered an impairment of earning power by reason of the enforcement of this contract. If it tends to the public injury, *it should be annulled* with-

> out regard to whether public injury had in fact resulted. Attorney-General v. Firemen's Insurance Co., supra. (Italics ours)

We urge, therefore, that the *effect* of annulling the contract was duly considered by the Court of Errors and Appeals; that it likewise weighed the *effect* of voiding the contract on the present status or rights of the juniors in the organization; that in fact, it comprehended all the aspects of the cause and determined under circumstances disclosing *illegality of purpose* and *parties in pari delicto,* that the *sole* relief and the *full* measure thereof, is the annulment of the contract in the interest of the public welfare—no more—no less.

Hence the duty of the Chancellor was to execute the mandate of the reviewing court in accord with the remittitur, without amendment, modification or interpretation.

In the case at bar, this would require as the proper practice—the entry of a new decree, of reversal, not in words at length nor in special form, but as indicated in Kocher's and Dickinson's supra, "that the decree of the Court of Errors and Appeals, be and the same is hereby made the decree of this Court."

Thus, the original decree entered in this court on January 13, 1934, dismissing complainants' bill, is in effect, vacated, set aside and for nothing holden, and the mandate of the highest Court of our State —which does not in and of itself, vacate the original decree—becomes effective.

It is submitted that the learned Vice Chancellor misconceived the scope of Justice Heher's opinion, and the relief which this court intended to grant complainants.

Assuming that the position we have taken with reference to this Court's opinion and the binding

force of the mandate of the remittitur, is erroneous and untenable, and that the highest court of our state decided the case, without passing on the *effect* of its judgment on the status of the juniors and intended to leave to the Court of Chancery the task of working out the rights and equities of the parties, may we respectfully inquire, what is the present status of the complainants and the other juniors?

4.

The Present Status of the Juniors.

Whatever may be said to have been the status or rights of the juniors, they acquired the same on March 4th, 1930, *solely by virtue of and under the junior membership contract,* executed on that date. Surely, prior to the moment of actual signing of the contract on the evening of March 4, 1930, the complainants were still "PERMIT-MEN" and had been such since the filing of their applications in 1928 and 1929 (p. 438, Part II), awaiting action of the local union thereon. During this period the "PERMIT-MEN" paid no dues, nor per capita tax, nor insurance. They paid a work assessment of 10% of their weekly wage, as they earned it—if they did not work, they paid nothing. By no stretch of the imagination, did these "PERMIT-MEN" thus acquire a status or rights *in the union,* or in the *International Alliance.* This is conceded by complainants (p. 10, Par. 6; Part II). The local could have rejected their applications and removed them from the jobs, furnished by the local, and at which they worked with the local's permission, as indicated by the "PERMIT" given to each applicant.

Alterman vs. *Elliott,* Opinion by Justice Riegelman of the New York Supreme Court—Kings County, Special Term, as reported in the New York Law Journal, Edition of July 13, 1933—not reported in the Official Reports—where the "PERMIT-MEN" of Local 306 of the International Alliance were judicially declared not to be members and such relief sought by the "PERMIT-MEN" denied. *Mayor* vs. *Journeymen Stonecutters,* 47 Eq. 519.

The written instrument has been adjudged null and void from its very inception. Hence, whatever rights the juniors may have acquired thereunder, fall with the annulment of the contract. Obviously, the contract cannot be deemed entirely void and at the same time entirely valid; void for one purpose and valid for another purpose (67 Corpus Juris 263, Subdivision 2B).

The juniors may not repudiate their contract and at the same time enforce it in whole or *in part.* They cannot eat their cake and have it.

However, it may be that by virtue of some unique and esoteric method of reasoning—of which we are ignorant—the juniors may be said to still retain certain rights and a status even under the void and illegal contract. Granting the premises, can the juniors acquire rights or a status, *greater* or *broader in extent* than expressly provided for by the instrument itself—rights and a status greater or broader than the *parties themselves ever contemplated or intended; new rights* and *a new status?*

Manifestly, this court will not make a *new* contract for complainants (13 *Corpus Juris* 525). Yet, that is exactly what the complainants desire and what the court lacks the power or jurisdiction to do (p. 51; Part I).

Our Court of Errors and Appeals said in *Unger* vs. *Newlin Haines Company,* 94 Eq. 458, at page 469:

"The effect of the decision below is to make an agreement for the parties different from the one they made for themselves. This the Court of Chancery cannot do. Contractual rights cannot be disturbed. Mr. Justice Brewer, in the case of Merchants Loan and Trust Co. v. Chicago Railway Co., 158 Fed. Rep. 923, said, in speaking of a complicated street railway problem in Chicago, 'that the ordinance tendered by the city was reasonable and fair, and that as a business proposition it would have been wise for all parties to accept it; but the court does not make contracts for parties. It deals with legal rights, as the parties have, by contract, made them, and *although it may believe that a party insisting upon those rights is probably, or even certainly, bound to suffer loss, yet while he insists it must protect him in his insistence.* There is no wide discretion vested in the Chancellor which permits him to disturb contract rights—rights of property.' 'Of course, there can be no question about this. It appears from the discussion that this whole scheme is predicated upon the fact that the physical condition of the city railway system on the north and west sides is poor; that it needs improvement; that the interests there are conflicting; that franchises are expiring or have expired; rights are mingled and perhaps confused; separate liens and separate corporate interests shall be merged in one corporation, whose duty it shall be to borrow money enough to put the physical property in good condition. Now, that may be a wise business proposition, and if the court had power to take hold of these things and do for the people, who are the mortgage bondholders, that which it thinks best for them, we might have no hesitation in sustaining this; but every man in this country decides questions in respect to his own property for himself. Life, liberty, and the pursuit of happiness are guaranteed to each one. They are inalienable rights and *although a man misjudges what is best for him,* that fact gives no court the right to compel him to act otherwise." (Italics mine.)

In *Manganese Iron Ore Company* v. *Trotter,* 29 Eq. 561, at page 565, the Court said

> "A right to mine and furnish zinc was reserved, and may therefore be exercised; a right to mine and furnish franklinite was not reserved, and cannot, therefore, be exercised, even under the authority of the court, unless it has power to ingraft a new provision upon the contract against the will of one of the parties. *No department or agency of government possesses any such power.*" (Italics ours.)

In *Kupfersmith* v. *Delaware Insurance Company,* 84 Law 271, the Court said at page 275,

> "The law will not make a better contract for parties than they themselves have seen fit to enter into, or alter it for the benefit of one party and to the detriment of the other. The judicial function of a court of law is to enforce a contract as it is written."

The present status of the complainants should be settled and declared in accord with well settled and sound principles of law; *the clear and unequivocal intention of the parties* and the evidence in the case, which is substantially undisputed. The equities of the parties—if any—should be adjudged, in consonance with logical reasoning and fundamental, equitable maxims.

Viewing the instant case, in the light of the foregoing, the problems presented for decision are not difficult of equitable solution.

A—THE NATURE OF MEMBERSHIP IN A VOLUNTARY, UNINCORPORATED ASSOCIATION. Membership in an association arises from CONTRACT * * * the question of membership depending on the INTENT and UNDERSTANDING of the parties. 5 Corpus Juris, 1352, Section 63. (Capitals mine.)

Justice Heher has defined the relationship, under discussion, in the opinion of this court, in the instant case. *Cameron* v. *International etc., Local No. 384,* 118 Eq. 11 at page 21, where he states:

> "Trade union membership, like other *contractual* relationships, is *purely voluntary* on both sides. Such organizations come into being for purposes mutually agreed upon. The cohesive force is the common interest. Their right to prescribe qualifications for membership, and to make rules and regulations for the transaction of their lawful business, is not open to question. They may impose such requirements for admission and such formalities of election as may be deemed fit and proper; they may restrict membership to the original promoters, or limit the number to be thereafter admitted; the power of such a body to make its membership exclusive is incident to its character. The *underlying theory* of such combinations is association *mutually acceptable,* or in accordance with regulations agreed upon. *Enforced* admission to membership is manifestly contrary to the scheme of such a society. No person has an abstract or absolute right to such membership. Mayer v. Journeymen Stonecutters' Association, 47 N. J. Eq. 519." (Italics mine.)

Mayer v. *Journeymen Stonecutters' Association,* thus stands fully approved, and unquestionably is the law, at the present, as it has been for years in the past, with the force of its holdings unaffected and undiminished by the passage of time.

The principles of law therein enunciated, indicate the broad extensive powers, rights and absolute freedom of choice possessed by the members of Local 384, in their dealings and relations with the "PERMIT-MEN" and their pending applications. Indisputably, the local could have legally rejected the applications of the "PERMIT-MEN," with its consequent revocation of the working permit. The broad power to reject in toto, is synonymous with the *absolute* right of selection.

The very essence of these associations, is their voluntary nature—the total absence of compulsion in creating relationship.

In the final analysis, these complainants really seek by indirection that which this court lacks the power to do directly—to *force* and *compel* the union to admit them to *full* membership, regardless of the intent or wishes of the membership.

In *McKane* v. *Adams,* 123 N. Y. 609, 612—the Court, in discussing the rights of an individual to membership in an unincorporated association, stated as follows:

> "The right to be a member is not conferred by any statute; nor is it derivable, as in the case of an incorporate body. It is by reason of the action and of the assent of members of the voluntary association that one becomes associated with them in the common undertaking, and not by any outside agency, or by the individual's action. Membership is a privilege, which may be accorded or withheld, and not a right which can be gained independently and then enforced.' In Branagan v. Buchman (67 Misc. 242, 247) the court in discussing membership in an unincorporated association stated as follows:
>
> > 'Such membership is a privilege which the association may accord or withhold at its pleasure; and a court of equity has no juris-

> diction to compel the admission of a person not regularly elected, even though, as in the case of a political organization or labor union, the arbitrary rejection of the candidate may prejudice his material interests.' "

Both *McKane* v. *Adams,* and *Branagan* v. *Buckman,* are relied on by the Court in *Alterman* v. *Elliott, supra.*

B—The Intention of the Parties.

Can there be any question as to what the parties really *intended* on the evening of March 4, 1930?

The relationship being "purely voluntary" and "contractual", the intention of the parties is of the utmost importance, because this court will not disregard the obvious intent and foist a new relationship—a new contract on the seniors, *against their will.* To place the juniors on a parity with the seniors, will be to do this very thing.

The crucial time is the evening of March 4, 1930, What occurred that night is the best proof of the intention of the "Permit-men" and the local union.

Exhibit C-6, Page 425, Part II—tells the whole story. It is self-explanatory.

The intent is to be ascertained by the acts and conduct of the contracting parties and the surrounding circumstances, examined in the light of the fact that laymen, not versed in legal terminology, were endeavoring to accomplish certain definite objects.

The search for the intent should not be controlled or effected by one's personal beliefs as to what is good or best for organized labor; nor by speculation as to what the future may hold in store for trade unions; nor what the economic or social structure of such Labor Unions should be; nor by the desirability of compelling the admission of all applicants to trade unions, in view of their monopolistic ten-

dencies; nor by a belief that governmental regulation of the unions would be most beneficial to the public.

As we said in our brief, in the Court of Errors and Appeals on the first appeal, on Page 20 thereof—

> "The limits imposed by law, on the right of labor unions to organize their members—to enter into "COLLECTIVE BARGAINING AGREEMENTS" with their employers—and the character of the economic weapons which they may employ in furtherance of their pursuits, have not as yet been fully defined. The economic aspects of the changing social order; the emergent situation through which we are now passing; the limitations imposed on competitive business by governmental edict; the theory of a planned economy as against a balanced economy; the National Recovery Act (Section 7-A) with its guarantee to labor of "COLLECTIVE BARGAINING", and with a power to fix minimum wage scales and maximum hours of work; regimentation of industry, agriculture and labor versus rugged individualism; all are elements contributing to various lines of thought upon the propriety of the objects of trade unions, and the extent to which they may go, in the constant economic struggle."

But all such matters are beside the point and irrelevant to the present inquiry.

The gathering of the "PERMIT-MEN" on March 4, 1930, was not a meeting of the *membership* (p. 217, l. 11, p. 219, l. 5, Part II) but an Assembly of "PERMIT-MEN". The regular meeting of the local prior to March 4, 1930 had been held on February 11, 1930 and the first meeting thereafter was held on March 11, 1930.

The events of the evening of March 4, 1930 are undisputed. The Court is referred to the testi-

mony (pp. 217-228; pp. 353-368, Part II) as to the details of what occurred, at this assembly of the "PERMIT-MEN".

For instance the "PERMIT-MEN" were *openly told* that they would have neither vote nor voice (p. 359, ll. 28-35; p. 358, p. 363, ll. 1-20; p. 154, ll. 15-20; p. 166, ll. 4-8; p. 219, ll. 32-37; p. 225, ll. 18-21; p. 226, ll. 1-25, Part II).

Some of the prospective juniors asked for a copy of the local's by-laws (p. 218, ll. 30-41, Part II) and made the same request at subsequent junior meetings (p. 219, ll. 15-20, Part II) and were told that a committee had been appointed "to make up new by-laws to meet conditions existing at the present day on account of the advent of sound pictures, and just as soon as the by-laws were completed and available they would be distributed to the members" (bottom of p. 218, Part II); that during all the time between March 4th, 1930 and May 1931, when the by-laws were distributed, not a single junior member complained because he was not consulted in the revision of the by-laws (p. 219, ll. 25-30; bottom of p. 223 and top of p. 224, Part II); that the 1931 Constitution was distributed amongst the juniors, with each junior's name embossed on the cover, and none of them protested or complained (p. 227, ll. 1-10; p. 362, ll. 25-35, Part II).

A ballot was *not* taken on the juniors; balloting had always been in *secret,* by black and white balls and an applicant had to receive a majority vote to be elected to membership. None of the *members* of the local had an opportunity to ballot on the "PERMIT-MEN" on March 4, 1930 (p. 220, Part II); March 4, 1930 was not a "Meeting" night for the *members* of the union.

For over a year prior to March 4, 1930 the "PERMIT-MEN" knew they were to become juniors (p.

222, l. 25, Part II); and the Junior Membership Contract was not a surprise to them. In fact, some of the "PERMIT-MEN" had printed copies of the contract prior to March 4, 1930 (p. 360, Part II).

The men assembled were told "that they would have no more rights than they had as "PERMIT-MEN" *only with the one benefit that it would be impossible for any outsider to come in and secure their positions"* (p. 359, l. 8, Part II).

Some of these "OUTSIDERS" were present on the evening of March 4, 1930. (p. 358, Part II).

The "PERMIT-MEN" assembled, were told that "their meetings would be held as good and welfare under the direction of the Executive Board, and that they would not have the right to attend senior meetings." (p. 363, Part II).

The Junior Membership Contract was read section by section and the "PERMIT-MEN" present were asked if they had any questions and if they understood every article read and no one voiced any objection. (See third paragraph of Exhibit C-6, p. 425; p. 358, ll. 1-23, Part II).

None of the foregoing events of the evening of March 4, 1930 are contradicted by complainants.

It is not surprising, therefore, that Justice Heher, states on page 17 of his Opinion, that:—

> "The contract, as thus outlined, was not induced by fraud, material misrepresentation, mistake, duress or undue influence. There was indisputably such a manifestation of mutual assent by the parties to the terms embodied in the memorandum referred to as to give rise to a contract. The reality of consent of the parties, as it has been termed by a distinguished text writer (Anson on Contracts (14 Eng. Ed.) S. S. 10, 176) is not at issue."

The Junior Local was created by passage of a resolution for the first time to that effect, at the

meeting of January 14, 1930, "said local to be *governed* by the Senior Local at all times," (Exhibit D-5, p. 454, Part II; Exhibit D-10, p. 460, l. 30, Part II); and received its second reading at the local's meeting held on February 11, 1930 (Exhibit D-10, p. 461, l. 19, Part II). All of the printed Junior Contracts are dated February 11, 1930, although not actually signed until March 4, 1930.

The matter had been left largely in the hands of Evins, the then Business Agent who contacted other locals, having similar junior departments. (p. 221, Part II).

The *regular* meeting of the local held on February 11, 1930 received a report from the Executive Board of "Progress on the formation of Junior Local." (Exhibit D-10, p. 461, Part II).

The regular Executive Board Meeting held on February 18, 1930, indicates that the matter of drafting suitable by-laws for the junior local were still under consideration, and that the business agent, Evins was instructed to communicate with local unions of Atlanta, Ga. and Newark, N. J. and request "a copy of their *by-laws* governing their junior local and after they are obtained, *the Executive Board will take further action,*" (p. 63, Part I).

It is obvious from a reading of Exhibit C-6, itself, that the "PERMIT-MEN" were being admitted into the "JUNIOR LOCAL", not to *full* or *regular* membership, *in the union.*

The "PERMIT-MEN", *after* signing the Junior Membership Agreement, were *obligated.* Obligated into what? Regular membership *in* the Union? No —they were obligated to the "JUNIOR LOCAL."

The word "JUNIOR" was included in the obligation. (p. 220, l. 4, Part II).

At the *special* Executive Board Meeting, held on February 27, 1930, we find that the "Executive

Board spoke of drafting *By-laws for the Junior Local"* (p. 64, Part I).

Next in order, we find the Minutes of the "Assembly" of "PERMIT-MEN" on March 4, 1930. (Exhibit C-6, p. 425, Part II).

The events of the evening of March 4, 1930, were reported back to the regular meeting of the local, held on the evening of *March 11, 1930* and we find a minute that "Brother Evins read the *agreement* to the *body now prevailing* which *governs* the Junior Local. (p. 368, l. 31, Part II).

The junior Membership Agreement signed on March 4, 1930, (Exhibit C-1, p. 386) is entitled "Rules governing Membership, Application and Agreement for *Junior Department"*, and concludes with a paragraph referring to "rules and regulations, pertaining to Junior Membership into Local 384 etc."

The initiation fees evidently varied from $200.00 to $500.00 and only part thereof was paid on the signing of the application (Exhibit C-2, l. 21); the balance was paid off in installments from time to time, out of the earnings of the "PERMIT-MEN", on the jobs supplied them by the local union.

Who were these "PERMIT-MEN" prior to March 4, 1930, and was their economic status bettered or made worse by reason of their contact with Local 384? This is a proper inquiry for a Court of conscience in endeavoring to administer and weigh the equities.

Many of these men had been out of employment and were making small salaries running from $10.00 to $18.00 a week—one worked in a Butcher Shop, another took care of a Parking Station and another had been in the Grocery Business (p. 163, Part II)". "The local placed these men in theatres with which it had contracts, taught these men the

trade, with the result that their earnings ran over $100.00 a week, and in many cases exceeded what was being earned by the regular members of the Union (p. 162, l. 31, Part II).

The complainant, Cameron, for instance earned $760.00 during the month of April 1930, paying $76.00 to the local, for his 10%.

Complainant Barkowski, paid $36.00 as his 10% for the month of April 1930, indicating he earned $360.00.

Complainant, Muller, paid $65.92 as his 10% for the month of April 1930, indicating he earned $659.00.

Complainant, McCarthy made $597.00 during April 1930.

Complainant, Sapanor made $639.50 during April 1930.

Complainants, Steiner and Giardini did not work in April 1930. (p. 65, paragraph 13, Part I).

At the time of the hearing before Vice Chancellor Fallon, Cameron and Barkowski had been employed steadily, six days a week, at the same theatre, for more than four and one-half years—ever since they were "PERMIT-MEN"—earning never less than $42 per week (p. 325, ll. 10-40; Part II).

McCarthy, Muller, Saponer and Steiner have been employed steadily for the past one to four years, at the same theatres (p. 174, ll. 15-41; Part II).

Little wonder, that these men were "TICKLED PINK" (p. 156, l. 14, Part II) to earn $100.00 a week and more, on jobs that the *seniors gave them,* when they were only "PERMIT-MEN"—beginners, learning the trade—most of them just out of Motion Picture Operators Schools, with no practical experience—*earning while they learned.*

Little wonder that these men were so highly pleased and grateful that in the following month,

April, 1930, the Junior Members voluntarily and of their own volition gave a testimonial banquet in honor of the Senior Members at the Elk's Club, in Union City, N. J., as an expression of their appreciation. At this banquet the juniors gave gifts to the officers of the Senior Body and to their wives. The Juniors each contributed $35.00 toward the expenses of the banquet and all of the complainants in this case were present at said banquet (p. 180, l. 10, Part II; Stipulation, p. 64, Part I, par. 12; Ex. D-1 for identification, p. 451, Part II).

Exhibit D-1 (p. 451, Part II) shows beyond any question that these men were thoroughly cognizant of the fact that they were "JUNIORS" and members of the "JUNIOR DEPARTMENT"; so they characterized themselves in April 1930, when the "big money was coming in."

The foregoing acts and conduct of the contracting parties; the surrounding circumstances and undisputed events occurring on and prior to March 4, 1930, manifest clearly, that the intention and purpose of all persons concerned, was first, to give the "PERMIT-MEN" protection—a limited standing as apprentices—a rating in the International Alliance so that outsiders—travelling members of the Alliance—could not demand their jobs.

Hence the provision in the agreement that "All Junior Members are to pay per capita tax to I. A." *Secondly,* to protect the older men—who were Charter Members from the time the Charter was granted by the International Alliance on March 15, 1915 and who had built the organization—from the devastating effects of unemployment if sound should prove a failure and the local had to go back to one operator in the booth, as in the days of Silent Pictures.

These men had ten to twenty years experience from the very inception of the Motion Picture In-

dustry. They were uncertain as to how long sound was going to last. In fact, in the beginning no one was certain that sound would last, because of the many imperfections and many unsatisfactory results to the public (p. 262, Part II). The early days of Sound Pictures is familiar to everyone. In the beginning of sound, phonographic records were used, giving imperfect results. Later on these records were entirely eliminated and the sound was synchronized and recorded on one film. There was also talk of television. Many competent authorities in the beginning predicted the failure of sound. The older members of the local were fearful. They had always endeavored to maintain just enough men in the local to fill the jobs at the theatres under contract, so that every member would have steady employment. There had been a period in the local's history when it had too many members, with the result that some of them were out of work for at least two or three years. The older members of the local had this sad condition of affairs in mind, and if sound turned out to be a failure, the men realized that they would have too many men on hand to fill the available positions, causing internal dissension. With all this uncertainty prevailing, it was determined to divide the local into two classes—a Junior Local and a Senior Local, the older men to be known as Senior Members, to have seniority rights not only in employment, but in running the affairs of the local; the other class to be known as "Junior Members or Apprentices" "to be *governed* by the Senior Local at all times" (Ex. D-5, p. 454, Part II).

These purposes consummated by the execution of the Junior Membership Contract (Ex. C-1, p. 386, Part II) and performance on both sides for a number of years, have been frustrated and rendered abortive by the judgment of our highest

court that such an arrangement is an illegal waiver of the juniors' rights "to earn a living", guaranteed them by the Fifth Amendment of the Constitution of the United States and Article 1, Paragraph 1 of the Constitution of the State of New Jersey, or as Justice Heher, states in resumé, on page 29 of his opinion,

> "In short, the contract constitutes an irrevocable transfer to the seniors of the juniors' bargaining power and fundamental right of contract while they remain members of the union. Their status is not even that of nominal members of the combination. They are under the absolute control of this body, but are in no sense part of it."

The junior local and the junior membership contract thus fall. They are both tainted with illegality. Public policy requires their destruction.

What then, is the effect on the status of the juniors? The logical answer to this query is quite obvious. Their status—whatever it may be said to have been—was created by, derived from, and depended for, its continued existence, on the Junior Local and the Junior Membership Contract, signed on March 4, 1930. This contract having fallen—the status of the juniors falls with it—the destruction and annulment of their contract, destroys and annuls the status of "JUNIOR". The Juniors sought repudiation of their contract and they have been successful. The situation *now,* after annulment of the contract, is exactly the same, as if the contract never existed—the situation is the same, as it was, on the night of the assembly of "PERMIT-MEN" on March 4, 1930, *before* they signed.

In other words, the effect is the same as on any rescission—the parties revert to their original position and the status quo is restored.

Thus, the Juniors revert to their original status as "PERMIT-MEN" awaiting action of the local union on their applications.

In equity the local should be compelled to take a vote on the admission of the "PERMIT-MEN" applicants, to regular membership and if any of the candidates are rejected, in equity and conscience, that person's initiation fee should be refunded to him. *Alterman* vs. *Elliott, supra.*

We are in accord with the views expressed by the Court of Chancery (V. C. Bigelow) in *Dulberger, et al.* vs. *Local 384,* Docket 89, page 198, on March 14, 1933, and impressed with the sound, persuasive reasoning therein evinced, when the court said, referring to the possible annulment of the "JUNIOR MEMBERSHIP CONTRACT", viz.:

> "Does the amendment show a cause of action? Can this situation get you anywhere in this court? You were led into a contract by fraud or coercion, or contract against public policy, all right. *You should be led out of it again. You are not members at all. I don't see how the allegations contained in the amended bill can turn you into regular members.* It seems to me they give you a good standing to resign from the union; you didn't get what you intended to get perhaps gives you a good standing to get back the initiation fee, I don't know about that. I cannot see how it could result in the *complainants being held to be regular members of the union.*"

> "The Court: On March 4th, these men signed or took the oath, and then they signed a contract. That was in 1930, and they worked along under that contract for a year, and they didn't question it until two and a half years, and they say that we never made this contract, that the contract was illegal. We have the benefits of it for two and a half years; we have these benefits that we wouldn't otherwise have. *Now we want another contract.*"

> "The Court: I can't expect them to know that, these men *knew* they were accepting something *less* than regular membership; that they were paying ten percent of their dues, while the regular members were paying nominally. They knew the regular members were given the pick of the jobs, they knew the regular members were running the affair, and that as juniors they weren't exercising any voice at all. Whether they realied the legal consequence makes little difference." (Italics ours.)

Such inevitable consequences of *annulment* must logically and indubitably follow.

Placing the complainants back in their original position, as it existed prior to March 4, 1930—"PERMIT-MEN" with applications for membership pending—and requiring the members of the local to vote on such applications, would be recognizing the rules of law enunciated in *Mayer* vs. *Journeymen Stonecutters, supra.* Such a course would be consistent with the law, that membership in a voluntary association is "purely voluntary on both sides" and that "enforced admission to membership is manifestly contrary to the scheme of such a society," and that voluntary associations "may impose such requirements for admission and such formalities of election as may be deemed fit and proper."

As the Supreme Court of the United States said on April 1, 1935, in *Grovery* vs. *Townsend,* 79 Law Ed. 609, where it was held that a negro could be lawfully excluded from the Democratic primaries in Texas,

> "In Bell v. Hill, — Tex. — , 74 S. W. (2d) 113, — A. L. R. — , the same court, in a mandamus proceeding instituted after the adoption, by the state convention of the resolution of May 24, 1932, restricting eligibility for membership in the Democratic party to white

persons, held the resolution valid and effective. After a full consideration of the nature of political parties in the United States, the court concluded that such parties in the state of Texas arise from the exercise of the free will and liberty of the citizens composing them; that they are *voluntary* associations for political action, and are not the creatures of the state; and further decided that §§ 2 and 27 of Article 1 of the State Constitution guaranteed to citizens the liberty of forming political associations, and the only limitation upon this right to be found in that instrument is the clause which requires the maintenance of a republican form of government. * * * The Court declared that a proper view of the election laws of Texas, and their history, required the conclusion that the Democratic party in that state is a *voluntary political* association and by its representatives assembled in convention, has the *power to determine who shall be eligible for membership and, as such, eligible to participate in the party's primaries.*

We cannot, as petitioner urges, give weight to earlier expressions of the state courts said to be inconsistent with this declaration of the law. The Supreme Court of the State has decided, in a case definitely involving the point, that the legislature of Texas has not essayed to interfere, and indeed may not interfere, with the constitutional liberty of citizens to organize a party and to determine the qualifications of its members. If in the past the legislature has attempted to infringe that right and such infringement has not been gainsaid by the courts, the fact constitutes no reason for our disregarding the considered decision of the state's highest court. The legislative assembly of the state, so far as we are advised, has never attempted to prescribe or to limit the membership of a political party, and it is now settled that it has no power so to do. The state, as its highest tribunal holds, though it has guaranteed the liberty to organize political

> parties, may legislate for their governance when formed and for the method whereby they may nominate candidates, but must do so with full recognition of the *right* of the party to exist, to *definite its membership,* and to adopt such policies as to it shall seem wise." (Italics ours.)

Any other course would be illogical, inequitable, illegal and would *force* the local to enter into a *new* contract.

C. Effect of Illegality.

Did the Appeals Court decide that the Junior Membership Contract was *entirely* null and void, or that it was only partially void (void *pro tanto* as the complainants contend?).

Are the provisions of the contract *severable* so that the illegality is confined to certain specific clauses—leaving the others without taint, so that they still may be considered valid and enforceable; or does the illegality permeate *all* the terms and provisions of the contract so that the contract in its *entirety,* is sullied in its very essence, so that it must fall?

On the other hand, if the contract is to be considered only partially void, which are the valid provisions as distinguished from the invalid ones?

This question must be considered in light of the pleadings and the argument of respective counsel before the Court of Errors and Appeals, on the previous appeal.

The respondents (complainants) by their amended bill (p. 70, Part II) charge that *the* contract was and is *"ultra vires* said local 384 as well as illegal and void and contrary to public policy, etc." In their brief in the Court of Errors and Appeals, they argued under Point I on page 11 *"The* 'Con-

tract' and revised 1931 Constitution and By-laws of the local are contrary to public policy and void." (Italics ours.)

The defendants (appellants) under Point I of their brief on page 20 thereof, argued that the Junior Membership Contract was valid and binding. Thus the question was fairly before this court on the previous appeal, which in the course of its opinion, uses the following significant language

1. On March 4th, 1930, the "PERMIT-HOLDERS" subscribed to *the membership contract,* presented by the Union. (Opinion, p. 16, Part I, Italics ours.)

2. Is *a* contract embodying the terms here outlined contrary to sound public policy? (Opinion, p. 18, Part I, Italics ours.)

3. Complainants challenge the *asserted contract* upon the ground, *inter alia,* that *it* "bargains away the constitutional and inalienable right to earn a living." (Opinion, p. 20, Part I, Italics ours.)

4. Is *the* contract in question valid and enforceable? (Opinion, p. 21, Part I, Italics ours.)

5. But the contract must not be repugnant to public policy. Is *this* contract in that category? (p. 21, Part I, Italics ours.)

6. *The* contract at issue does not meet this test of validity. (Opinion, p. 24, Part I, Italics ours.)

7. In short, *the* contract constitutes an irrevocable transfer to the seniors of the juniors bargaining power and fundamental right of contract, *while they remain members of the union.* Their status is not even that of *nominal* members of the combination. They are under the absolute control of this body but are in no sense a part of it. (Opinion, p. 29, Part I, Italics ours.)

8. And it does not matter that, at the moment, the junior members have not, in fact, suffered an impairment of earning power by reason of the enforcement of *this* contract. If it tends to the public injury, *it* should be *annulled* without regard to whether public injury had in fact resulted. *Attorney-General* v. *Firemen's Insurance Co., supra.* Such is clearly *its* tendency. (Opinion, p. 30, Part I, Italics ours.)

We submit, therefore, that this court declared the contract in its entirety repugnant to the public welfare and hence *all* void. That the contract is not divisible or severable. If it were severable, the highest court would have so declared, and distinguished between the valid and invalid provisions.

In *Buckalew* vs. *Martins,* 108 L. 339, it was held that recovery could not be had on a note given pursuant to the provisions of an illegal contract, and "It cannot be separated from the rest of the contract, except by making a new contract for the parties."

One of the leading cases is *The Erie Railway Co. ads The Union Locomotive and Express Co.,* 35 L. 240, where Chief Justice Beasley, with his usual lucidity of expression, and after a review of the English authorities on the subject, stated the settled rule

> "That the fact that one promise is illegal will not render another *disconnected* promise void. The doctrine will *not* embrace cases where the objectionable stipulation is for the performance of an *immoral* or *criminal act,* for such an ingredient will *taint* the *entire* contract, and render it unenforcible in all its parts, by reason of the maxim ex turpi cause non oritur actio. Nor will it, in general, apply where any part of the consideration is illegal, so that in the present case, if, upon the trial it should appear that the plaintiffs have agreed to pay

> to the defendants more than the *charter of the latter* allows, it may become a question whether this suit will lie. There are many decisions to the effect that where there are a number of considerations, and any one of them is illegal, *the whole agreement is avoided,* this doctrine being put upon the ground of the impossibility of saying how much or how little weight the void portion may have had as an inducement to the contract. But, at the present stage of the cause, the entire consideration of the promise sued on must be regarded by the court as unobjectionable, as there is nothing on the record to show any overcharge."

In *Lehigh Valley R. R. Co.* vs. *United Lead Co.,* 102 L. 545, the Contract under discussion, provided for rebates or concessions by a Railroad Company, in violation of the Acts of Congress and also Statutes of the State of New Jersey. The Court denied recovery and citing *Erie Railway Co. ads Union Locomotive and Express Co., supra,* with approval, said on page 549:

> "A contract which violates the provisions of a statute is the simplest example of an illegal contract. The authorities and text-book writers are all in accord in stating that agreements in contravention of statutes are void. Our Court of Errors and Appeals has so held in the case of Brooks v. Cooper, 50 N. J. Eq. 761; 21 L. R. A. 621; in that case the decisions of the courts are reviewed at some length. It is there said the contract itself and its tendency are the tests of its illegality.
>
> Vice Chancellor Van Fleet, in the case of Cannon v. Cannon, 26 N. J. Eq. 316, said a contract which contravenes the provisions or policy of an Act of Congress is, unquestionably, void."

and further said, on page 550:

> "But, there are many decisions to the effect, said Chief Justice Beasley, in the case of Erie

> Railway Co. v. Union Locomotive, &c., Co., 35 N. J. L. 240, 247, that, when there are a number of considerations, and one of them is illegal, the whole agreement is avoided, this doctrine being put upon the ground of the impossibility of saying how much or how little weight the void portion may have had as an inducement to the contract. This is the precise situation we find in this case. The consideration of the contract in this case is based upon mutual, interwoven and interrelated covenants, so, the whole contract fails. If the plaintiff is not obliged to reimburse the defendant for its expenditures in maintaining the sidings, which, under the contract, the plaintiff was obligated to maintain, then the defendant is not obligated to reimburse the plaintiff for the loss sustained by the burning of the cars."

All agreements in contravention of statutes are void—*Brooks* vs. *Cooper,* 50 Eq. 761.

The ratio decidendi of Justice Heher's Opinion, is the repugnancy of the several terms of the contract, to the constitutional guarantees of liberty, found in both the Federal and State Constitutions. The Court said, on page 20:

> "Complainants challenge the asserted contract upon the ground, inter alia, that it 'bargains away the constitutional and inalienable right to earn a living.' This is a property right guaranteed by the *fifth amendment* of the Federal Constitution." (Italics mine.)

and implements its elucidation of the Federal guarantee by stating on Page 22, that the membership contract is likewise violative of the unalienable rights of the Juniors, under Article 1, Paragraph 1, of the State Constitution, and on Page 27 that

> "The classification in question is an unreasonable restraint of the Junior Members' constitutional rights. It is an arbitrary interfer-

> ence with the liberty of contract and, therefore, a palpable abuse of power"

And on Page 29,

> "It is a perversion, an embezzlement of power."

Can such vigorous, denunciatory language mean anything other than *all* the contractual covenants, violate the inhibitory provisions of both the Federal and State Statutes (Constitutions), and under the doctrine enunciated in *Lehigh Valley Railroad Co.* v. *United Lead Co., supra* are void and the several promises and considerations are "based upon mutual, interwoven and interrelated covenants, so, the whole contract fails"?

May we digress for a moment and point out, in connection with the Court's reference to the Federal constitutional guarantees of liberty, aforesaid, that the first 10 amendments to the Federal Constitution do not apply to the States, but constitute limitations on the power of the Federal Government only. *Ensign* v. *Pennsylvania,* 227 U. S. 592; *Weems* v. *United States,* 217 U. S. 349; *Twining* v. *New Jersey,* 211 U. S. 78.

Nor is the 5th Amendment applicable to private contracts, *U. S.* v. *Harris,* 106 U. S. 643. *Virginia* v. *Rives,* 100 U. S. 313. See also, *N. J. Painting Co.* v. *Local No. 26,* 96 Equity 632, 640.

Restatement of The Law—American Law Institute—Contracts—Section 607, states

"Partly Illegal Consideration in a Bilateral Bargain.

> Except as this rule is qualified by the rules stated in SS 578, 599-605, where any part of a bilateral bargain is illegal, no promise can be

> enforced unless not only that promise is legal but a corresponding legal promise is, by the terms of the bargain, apportioned as consideration therefor, nor even in that case if the illegal portion of the bargain is an essential part of it."

See Williston in his work on Contracts—Sections 1779, 1780 and 1782.

D—What Relief Does Equity Afford, Where The Bargain is Illegal?

The relief granted is in accord with the controlling maxims, viz:-

1. Ex dolo malo non oritur actio.
2. Ex turpi causa non oritur actio.
3. In pari delicto, potior est conditio possidentis.
4. Potior est conditio defendentis.

> *Ellicott* v. *Chamberlin,* 38 Eq. 604;
> *Cone* v. *Russel & Mason,* 48 Eq. 208;
> *Brooks* v. *Cooper,* 50 Eq. 761;
> *Brindley* v. *Lawton,* 53 Eq. 259;
> *Easton National Bank* v. *American Brick etc. Co.,* 70 Eq. 732;
> *Jourdan* v. *Burstow,* 76 Eq. 55.

Restatement of the Law—American Law Institute—Contracts,—Effect of illegality—Sections 598 et seq.

The relief, if any, is granted, subject to the elementary equitable maxims "He who seeks equity must do equity" and "He who comes into equity must come with clean hands."

Complainants are evidently under the impression, that because this Court has ordered the contract annulled, that thereby *they* as *individuals,* are entitled

to the relief prayed for in the bill; that thereby the complainants are the recipients of *specific* relief.

Complainants personally are not entitled to *any* relief, under the principles of law invoked by the Court of Errors and Appeals.

The *public* gets the relief—not the complainants. Complainants obtain nothing, other than what every member of the public gets.

Complainants are simply the conduits through which flows the relief to the public, by cancellation of the obnoxious agreement. The complainants' *individual* rights or losses are of no moment. The public welfare is conserved by destruction of the contract and restraint against the enforcement of its provisions. No *further* relief is necessary.

Justice Heher recognizes this distinction on Page 20 of the Opinion. It is pointed out

> "If this were merely a controversy between *private* parties, the complainants would not even on a clear showing that the object of the contract was illegal, be entitled to relief. It is the established rule that the law will not assist either party to an illegal contract. The parties being in pari delicto, it will leave them where it finds them. If the contract be still executory, it will not enforce it, and if already executed it will not restore the status quo ante. Ellicott *v.* Chamberlain, 38 N. J. Eq. 604; Cone *v.* Russell & Mason, 48 N. J. Eq. 208, 217; Attorney General *v.* Firemen's Insurance Co., 74 N. J. Eq. 372; Williston on Contracts S. 1630. But where the contracts tends to public injury, different considerations apply. The transaction is then affected with a public interest, and is not *juris privati.* It affects the community at *large.* Judge Story stated the applicable rule thus: 'In cases where the agreements or other transactions are repudiated on account of their being against public policy, the circumstances that the relief is asked by a party who is particeps criminis is not in equity material. The

> reason is that the *public interest* requires that relief should be given; and it is given to the *public through the party.*' Story Eq. Jur. (14th Ed.) S. 421. Compare Cone *v.* Russell & Mason, supra. Mr. Justice Garrison, in Attorney-General *v.* Firemen's Insurance Co., supra, held that relief is granted to a party in pari delicto through 'the fiction of acting for the public.' He said: 'The fundamental principle recognized by this line of cases is that one who has entered into a contract that contravenes public policy owes to the public the continuous duty of *withdrawing* from such contract. A duty thus owing to the public is, upon familiar principles, presumed by courts to be performed, and such presumption should be indulged in by the courts whenever necessary to give to the public, acting *through* its official representative, the same standing that the actual performance of such duty gives to one in pari delicto *to act for the public.*" (Italics ours.)

"The *public* has an interest which *transcends* the rights and interests of the union membership, *collectively* or *individually* * * * Here the public is virtually a *party*" * * * (Opinion p. 20, Part I). (Italics ours.)

"Public Policy is the public interest. It *transcends individual rights*". (Opinion p. 26, Part I). (Italics ours.)

Annulment by cancelling the illegal contract and injunction against its enforcement is the full measure of relief *nominally* granted to the complainants, as the representatives of the public.

Brooks v. *Cooper,* 50 Eq. 761, is perhaps one of the best considered cases on the subject, and on all fours—in principle—with the case at bar. There a contract *affecting the public interest,* was held contrary to sound public policy and void; both parties were clearly in pari delicto and a bill for an accounting of net profits arising out of the illegal

contract was held not maintainable, the Court stating on p. 775

> "Neither a court of equity nor of law must be allowed to enforce contracts which are opposed to maxims of sound policy. The court will not aid either part to an illegal contract, but will leave the parties where it finds them."

Whatever the view that may be taken, as to the effect of the illegality on the Junior Membership Agreement, it does not, ipso facto, result in elevating the Juniors to a "parity" with the Seniors, nor can it result in the substitution for the condemned contract of a brand new agreement, never contemplated by the parties. Complainants' argument overlooks the fact that the initiation fee into the Senior Body is $3,000.00. (p. 460, l. 27, Part II) ; and that "parity" is, under any theory, conditional on the payment of this amount.

> "In Wegby v. Connol, L. R. 14 Ch. Div. 482, 491, a member of a 'trades union' had been expelled for violating certain rules of the society which were stringently in restraint of trade, and he brought this suit to be restored to his rights of membership and the property rights belonging thereto. Trades unions had been legalized by an act of Parliament for certain specified purposes, but not for all purposes. The court held that, independent of the statute, the society and the articles of agreement between its members were clearly illegal, because contrary to public policy; that the suit did not come within the operation of the statute; and therefore a court of equity could give the plaintiff no relief." (Cited by Pomeroy, Fourth Edition, p. 753.)

But where a party to an illegal or immoral contract comes himself to be relieved from that contract or its obligations, he must distinctly and ex-

clusively state such grounds of relief as the court can legally attend to; and he must not accompany his claim to relief, which may be legitimate, with other claims and complaints, which are contaminated with the original immoral purpose; for if he sets up as a ground of relief the non-fulfilment of the illegal contract on the other side, and thereby that he is released from his obligation to perform it, that shows that he still relies upon the immoral contract and its terms for relief, and therefore the court will refuse it. *Bates* vs. *Chester,* 5 Bevan, R. 103, cited by Story.

5.

The Constitution of the United States.

Our contention is, as aforesaid, that the complainants revert to their original status—"PERMIT-MEN" applicants—*that,* is their present status. If this Court grants them any *other* status, on the annulment of the contract or declares a *new* contract for the benefit of complainants, then this court, we respectfully urge, would be violating the Constitutional rights of these defendants under the Federal Constitution.

Forcing these defendants to enter into a *new* relationship, is destructive of the defendants' unalienable right of liberty to contract with whomever they please, and repugnant to the "due process clause" of the Fourteenth Amendment to the Constitution of the United States.

The applicable constitutional guarantees contained in the Fourteenth Amendment are "nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

The prohibitions of this section have reference to State action exclusively.

Virginia vs. *Rivers,* 100 U. S. 318;
Hodges vs. *U. S.,* 203 U. S. 1.

"These provisions have reference to actions of the political body denominated a State, by whatever instruments or in whatever modes that action may be taken. A State acts by its legislative, its executive, or its judicial authorities. It can act in no other way. The constitutional provision, therefore, must mean that no agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. Whoever, by virtue of public position under a State government, deprives another of property, life, or liberty, without due process of law, or denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State."

Ex parte Virginia, 100 U. S. 346.

See also:

Home Telephone, etc. Co. vs. *Los Angeles,* 227 U. S. 278;
Chicago, etc. R. Co. v. *Chicago,* 166 U. S. 234;
Scott v. *McNeal,* 154 U. S. 45;
Missouri v. *Dockery,* 191 U. S. 165;
Reagan v. *Farmers' Loan, etc. Co.,* 154 U. S. 390;
Raymond v. *Chicago Traction Co.,* 207 U. S. 20;
Reinman v. *Little Rock,* 237 U. S. 171.
Reinman v. *Little Rock,* 237 U. S. 171;
Owensboro Waterworks Co. v. *Owensboro,* 200 U. S. 38.

That amendment governs any action of a State, "whether through its legislature, through *its courts*, or through its executive or administrative officers." *Carter* v. *Texas*, 177 U. S. 442, 447, 44 L. Ed. 839, 841, 20 S. Ct. 687; *Rogers* v. *Alabama*, 192 U. S. 226, 231, 48 L. Ed. 417, 419, 24 S. Ct. 257; *Chicago, B. & O. R. Co.* v. *Chicago*, 166 U. S. 226, 233, 234, 41 L. Ed. 979, 983, 984, 17 S. Ct. 581.

The right to contract about his own affairs is part of the liberty of the individual protected by the due process clause of the Federal Constitution.

> *Adkins* vs. *Childrens Hospital*, 261 U. S. 525.

Justice Heher in *Goerke-Kirch Co.* vs. *Goerke Kirch Holding Company*, 118 Eq. 1, decided February 4, 1935, had occasion to comment on the power of an equity court, to make a new contract for the parties, stating on page 6,

> "It is elementary that the law is powerless to supply, or add to, a contract, unless the parties have invited such assistance or addition by omission expressly to decline their obligations. Westville Land Co. v. Handle, supra; Assets Realization Co. v. Howard, 211 N. Y. 430; 105 N. E. Rep. 680. And this restraint is likewise imposed upon courts of equitable jurisdiction. The field of equity jurisprudence is not like unto an uncharted sea, with no compass to guide save the conscience of the chancellor, unrestrained by principle, precept or rule. Its jurisdiction rests upon and is limited by well established principles; otherwise, there could be no certainty or fixity of right and remedy—its functioning would be attended with uncertainty and consequent confusion. A. court of equity is not vested with arbitrary power; it does not rise above all law; nor can it substitute terms for those made by the parties to a contract. The rules of property, rules of evidence, and rules of interpretation in both

courts of equity and law are, or should be, exactly the same; both ought to adopt the best, or must cease to be courts of justice. Neither a court of equity nor of law can vary men's wills or agreements, or (in other words) *make wills* or *agreements for them.* Both are to understand them truly and therefore uniformly. One court ought not to extend, nor the other abridge, a lawful provision deliberately settled by the parties, contrary to its just intent. Both courts will equitably construe, but neither pretends to control or change, a lawful stipulation or engagement. 3 Bl. Com. 433, 434, 436; Pom. Eq. Jur. SS 1293, 1297; 21 C. J. 22. 'It is entirely beyond the power of any judicial tribunal to make a contract for litigants, or *compel* them to make a contract with each other * * *. No court has power to make a contract for persons sui juris. Domestic Telegraph Co. v. Metropolitan Telephone Co., 39 N. J. Eq. 160; affirmed 40 N. J. Eq. 287. 'A court of equity will not undertake to make a contract for the parties or to dictate terms into it that have never been agreed upon.' Story Eq. Jur. (14th Ed.) 1019.

Equity distinguishes between the stipulations which are the essence of a contract, and those which are not; but here, for the reasons to be stated, the provision for the determination of the question at issue by arbitration is in the former category." (Italics mine.)

The learned court below, by its decree, declared and established a *new membership contract* between the complainants and the union not *theretofore in existence.* It *compels* the union, against the will of the membership, to recognize the complainants as full fledged members, of the union, granting the "juniors" equality and parity with all other members.

The decree is destructive of the appellants' unalienable right of liberty of contract, to select and choose its own membership.

No court in the land has such power.

Appellants raised the constitutional question, both orally and in writing, at the very first opportunity, on the rehearing of the cause (p. 46, Part I; p. 47, Part I).

6.

Conclusion.

In considering the subject matter of this appeal, may we direct the Court's attention to certain elements which should assist the Court in arriving at a fair and equitable solution to the problems presented.

On March 4, 1930, the membership agreement was executed. The benefits of the relationship thus established resulted clearly in a betterment of the economic condition of the "PERMIT-MEN," who prior thereto were small wage earners—mostly out of work—grocery boy—parking attendant and butcher boy, earning from $10.00 to $18.00 per week. This Court—inferentially at least—takes cognizance of the fact that the Juniors *were* "apprentices" when it says on page 28 of its opinion:

> "They *are* not learners in any sense of the term. They are *now* skilled mechanics." (Italics mine.)

As the direct result of the illegal contract, they were placed on jobs *given to them by the older men,* whereby they earned over $100.00 per week (see pp. 33-35 of this brief). For three years, these men reaped the fruits and retained the benefits, until June 13, 1933, when the bill was filed. No wonder they were "tickled pink" (p. 156, Part II), and in their apparent gratitude, gave a banquet to the Seniors and distributed costly gifts among them.

Little wonder they were pleased, when during the worst economic crisis we have ever experienced they were all steadily employed at good wages, while other men and their families went on relief and are at the point of starvation.

The fact should not be overlooked, that from 1928 to 1930—prior to March 4, 1930—the "PERMIT MEN" were learning the trade and earning *full* salaries at the same time (p. 163, l. 35; Part II)—all due to the endeavors of the older members.

Should the old men be penalized *now* for bettering the economic position of the "PERMIT-MEN" and endeavoring to protect them in their jobs from itinerant members of the International Alliance, by having foisted on them, against their will, and without the right to vote or ballot thereon, men whom the union has not admitted as members?

The seniors got no benefits. The seniors received no advances in salary as a result of the contract of March 4, 1930. They had spent many years and thousands of dollars in building up a strong organization. All the Juniors did was to "walk right into a ready-made situation" and get the benefits of fine jobs, created and made possible by agreement between the Seniors and the Exhibitors.

The Junior agreement made on March 4, 1930, was consummated without legal advice, by laymen acting in good faith (at least, the Seniors were) and without the slightest idea that it was against public policy.

Prior to March 4, 1930, the membership had been limited to 80 men, because work was not available for more than that number (p. 167, Part II).

The new invention—sound—took these men by surprise. Conditions changed overnight. No one knew just what the outcome would be or how it would affect the men in their trade. If "TALKING PICTURES" had not become the vogue, there would

have been no "PERMIT-MEN"—NO JUNIOR LOCAL—NO CONTRACT. The complainants in all probability would be doing—if doing anything—the same work they did prior to 1928.

As to the 10% and other payments made by the Juniors, may we quote from pages 6 and 7 of our brief in the Court of Errors and Appeals, on the previous appeal:

> "Permit Holders paid no per capita tax to the International, nor any sums for insurance, nor did they pay any dues. They paid 10% of their earnings into the local's treasury as they actually worked. If a permit holder did not work, he paid nothing. The 10% was paid to the local because of the additional expenses the local was put to in taking care of these men and permitting them to learn the trade, keeping track of them and placing them on various jobs (pp. 160 and 161). These permit holders gradually increased from time to time until in March, 1930, they were about 35 in number.
>
> Because of the fact that a meeting place was necessary where the "PERMIT HOLDERS" could assemble to be assigned to work as calls came in from time to time, an office had to be equipped, whereas prior to 1928, the local union did not maintain any office. The local had to pay for damages done to equipment and machinery. A business agent or delegate was placed in the field in order to keep track of these "PERMIT HOLDERS" and see to it that they received proper rights not only in employment, but opportunities to acquire a knowledge of the trade. Prior to this time, the business agent was in the field only two days a week, and receiving two days salary from the local; due to the number of "PERMIT HOLDERS" a Business Agent or delegate was necessary in the field on daily time, six days a week, thus adding to the expense of the operation of the local's affairs. The 10% paid by the "PERMIT MEN" was insufficient to pay the increased expenses. (p. 161, Part II)."

The deficit and other expenses incurred by the local in the course of the customary union activities are paid by the seniors.

The juniors had never been called upon to pay assessments. Seniors have paid assessments in addition to their dues.

Per capita tax and group insurance premiums—$1,000.00 death benefit—amounts to $2.00 per month and is paid by each junior *and* senior. The local thus retains none of this $2.00 monthly payment, nor gets any benefit therefrom.

It should be noted that seniors pay their dues—Twenty Dollars per quarter—whether they work or not. If a senior is laid up sick, or if for any reason is unemployed, he must continue to pay his dues, to keep in good standing. If a junior is out of work, he pays only Six Dollars a quarter—the 10% is not paid, unless it is actually earned (p. 151, ll. 30-40; Part II).

The benefit of this to the juniors and the fairness of its operation becomes apparent when it is considered that during the summer months of 1932, there were only about sixteen (16) junior members steadily employed out of the forty-one (41) members, the rest being unemployed (Par. 41 of the bill, p. 25; Part II).

The local's books have been open to receive applications to the senior body each year (pp. 201-203, Part II) and see (p. 211, ll. 22-40, Part II).

No New Juniors nor new Seniors have been admitted since March 4, 1930, excepting that five or six Juniors were admitted into the Junior Local, between March 4, 1930 and June, 1930.

It is true there is a conflict of evidence as to whether the juniors knew that the initiation fee had been increased to $3,000.00. The great probability is, that they did know, as the seniors testified, that it was announced at the meeting of March 4th, 1930.

That would be the time to make the announcement, in the ordinary natural course of events.

This seems to be the single disputed question of fact in this case.

The instant case is really one of novel impression, and entirely without precedent. Complainants' counsel accurately diagnosed the difficulty of the subject, when they stated on page 11 of their brief in this Court, on the previous appeal, "We believe this to be the first case of its kind to be brought before the Courts", and may we project the thought, that the invocation of the doctrine of *stare decisis,* proved of trivial assistance in arriving at a solution of the many questions presented by the record.

In our judgment, the Court of Errors and Appeals has rendered the most far-reaching and important decision, dealing with the internal social structure of trade unions and the integrity thereof that has been ever handed down by any court of the Nation during its 150 years of existence. It is a land-mark decision.*

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* A constructive review of this Court's opinion may be found in the Yale Law Journal—June, 1935, beginning with page 1446, where it is said

> "The recorded law of membership within a trade union has been a negative development of prohibitions against extreme forms of punitive or coercive action, not a formulation of concrete standards for the procedure of the union in its daily life.
>
> A recent New Jersey case, however, attempts to formulate such concrete standards by extending the concept of public policy to define the political rights of trade union members *inter sese.*"
>
> * * * * * * *
>
> "The principal case thus has mutually incompatible consequences; on the one hand the court extends the principle of fair dealing in internal trade union activity in a manner calculated to safeguard the rights of members and thus in the long run to improve trade union organization; but at the same time it sets up a criterion of illegality for trade union membership contracts, based not on solicitude for members' rights, which was the issue at hand, but on the irrelevant

It would be a grave miscarriage of justice to grant the juniors "parity" with the seniors, under the circumstances disclosed by the record. To do so, would be not only harsh and inequitable, but repugnant to the clear and unequivocal intention of the parties. The "PERMIT-MEN" never expected "parity" on *March 4, 1930,* when they executed their Junior contracts—they were openly *told* and *knew* that they were securing something less. The parties should be permitted *now* to consummate their intention along legal lines, consistently with and keeping inside the guide posts of the public policy enunciated by our highest judicial Tribunal. Such a course would be in accord with the "purely voluntary" and "contractual" nature of membership, in a trade union. Thus, would *equity* be done, in the fullest sense of the word.

The decree should be reversed, set aside and for nothing holden.

Respectfully submitted,

SAUL NEMSER,
Solicitor of Defendants-Appellants.

JOHN MILTON,
Of Counsel with Appellants.

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object of protecting employers against labor monopoly. In asserting the latter objective, it affords to disgruntled individual union members a device by which they may secure the aid of the courts in overthrowing on the irrelevant ground of monopoly their otherwise valid contractual obligations to fellow members. The latter doctrine of the principal case is thus a potential threat to trade union unity, and therefore to the effectiveness of collective bargaining. If unchecked by the legislature or by a change of judicial attitude, the doctrine that a membership contract, though entirely fair, can be overthrown at the instance of a dissatisfied union member because the union is participating in an illegal closed shop agreement can be made generally accessible as an anti-labor precedent in the various jurisdictions where labor monopoly remains illegal. Since the economic consequences of any collective labor action are monopolistic, the rule is potentially useful as a judicial device for outlawing labor action which the courts wish to outlaw."

138OCT.T.1935

New Jersey Court of Errors and Appeals

BETWEEN: WILLIAM CAMERON, *et als.*, Complainants-respondents, and THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, LOCAL UNION NO. 384 OF HUDSON COUNTY, NEW JERSEY, *et als.*, Defendants-appellants.	On Appeal from Court of Chancery.

BRIEF OF COMPLAINANTS-RESPONDENTS.

POINT I.

Rule of the Court of Chancery providing for Order of Reference does not apply on remittitur from this court.

Article 6, Section 4, paragraph 1, of the Constitution of the State of New Jersey, as amended, says:

> "1. Court of Chancery; how constituted—The Court of Chancery shall consist of a Chancellor."

We maintain that the decree in question, signed by the Chancellor is the decree of the Chancellor.

The Chancellor makes and alters the rules of his Court. By the same power, he can ignore those same rules. If the decree was entered contrary to the rules, the Chancellor obviously did ignore them.

Oddo vs. *Saibin,* 106 N. J. Eq. 453.

Presumably the Chancellor did so intentionally if not, then the decree should have been vacated by him as improvidently entered—or an order of reference could be entered *nunc pro tunc.*

We contend that this rule does not apply to cases in which as here the only function of the Court of Chancery is to obey the mandate of this court—where no proofs are taken or final hearing held.

In any event if defendants-appellants are correct in their contention, this Court should take into consideration the practical results of a reversal on that ground. The matter will be sent back to the lower Court, and be presented to the Chancellor who would refer it to a Vice-Chancellor (if not the same Vice-Chancellor) to advise what decree should be made therein and it is reasonable to assume that any vice-chancellor to whom the matter might be referred would come to the same conclusion and advise the same decree as that made by Vice Chancellor Bigelow. The result would be that the defendants would again appeal to this court and the entire matter would be back in this court on the merits. We submit that this court can and should disregard this technicality and determine the case on its merits and direct that the Chancellor enter an Order of Reference to Vice Chancellor Bigelow *nunc pro tunc* as of May 13, 1935 and thus obviate all further chance of appeal by either party.

If this Court does reverse the decree on this ground, we respectfully take this occasion to sug-

gest that it inform the Court below specifically what decree should be entered.

We, therefore, submit that the decree as signed by the Chancellor, is a proper decree of the Court of Chancery as same complies with the Constitution of this State.

POINT II.

(A) The International Alliance is not a necessary or indispensable party.

(B) The objection to lack of parties comes too late.

Defendants-appellants raise, for the first time, the objection that the International Alliance is a necessary and indispensable party. This entire matter had been heard by the Court of Chancery and on appeal determined in this Court by opinion of Justice Heher. (*Cameron* v. *International Alliance, etc.,* 118 N. J. Eq. 11). Although the defendants-appellants had ample opportunity when before the Court of Chancery immediately following the rendition of the opinion of this Court, they raised no question as to the parties or to the lack thereof, The case was submitted to the Court upon the identical record presented to this Court in the October Term, 1934.

June 5 1935

This Court, by its remittitur, page 41, part 1, ordered:

> "That the record and proceedings be remitted to the Court of Chancery, to be therein proceeded on according to the rules and practice of said Court."

When, after a reversal by this Court, the case was submitted to the lower Court upon the same record,

the lower Court, of necessity, was bound to treat the decision of this Court as the law of the case (consequently any objection not already in the record comes too late) *McGarry* v. *Central Railroad,* 107 N. J. Law 387.

It has been held repeatedly that the duty of the Court of Chancery is to strictly comply with the mandate of the Court of Errors and Appeals. In the case of *Trust Company of New Jersey* v. *Biddle, et al.,* 114 N. J. Eq. 508, Vice Chancellor Fallon said:

> "It is the clear duty of this Court to strictly comply with the mandate of the Court of Errors and Appeals. It has been repeatedly held that when the Court of Errors and Appeals after reversing a decree of this Court, orders a decree to be entered in this Court in accordance with its judgment of reversal, and remits the record of its judgment, this Court has no authority to allow any amendments of pleadings in the cause * * * and must not attempt in any way to evade, impede, or thwart the mandate of said Court."

In the case of *Klien* v. *Journal Square Bank,* 114 Eq. 510, the same Vice Chancellor said:

> "In my judgment the Court of Chancery has no authority in the premises other than to observe the mandate of the Court of Errors and Appeals predicated upon its remittitur."

Justice Bodine, speaking for the Court of Errors and Appeals, in the case of *Lincoln Materials* v. *Blair Co.,* 109 N. J. Eq. 159, said:

> "The duty of the Court of Chancery to carry out our mandate, whether by reason of the constitutional power of our Court or by virtue of legislative enactment, has been judicially recognized for nearly a century. * * * But, when a cause of action has been submitted to the Court of Chancery, and has been there de-

> termined, and an appeal has been taken to this Court and has been decided, the decision of this Court is of necessity the law of the case."

Assuming, but not admitting that the defendants-appellants' objection is timely, we contend that the International Alliance is not a necessary and indispensable party because it has no interest in, and will not be affected by, any decree made in the cause.

Article 2, Section 1, of the International Alliance By-Laws (Exs. D-8 and 9, p. 455) says:

> "ARTICLE TWO
>
> Local Unions
>
> Section I. Home Rule.
>
> 'Home Rule' is granted to all affiliated locals of this Alliance, and this shall be construed as authority conferred upon each local union to exercise full control over its own affairs; provided, however, that in the conduct of such business no action shall be taken that will conflict with any portion of the Constitution and By-Laws of the International Alliance."

Vice Chancellor Egan on September 5th, 1935, rendered an opinion precisely in point, involving the same International Alliance and a local union from Elizabeth, New Jersey. (*LoBianco* vs. *Cushing*, 95-277.) In this case the defendant local union raised the same objection that the International Alliance was a necessary and indispensable party. The Vice Chancellor, after quoting the above Home Rule provision said:

> "This provision undoubtedly confers upon the local the right of self government, provided such action does not conflict with the constitution and by-laws of the International Alliance."

The Vice Chancellor then cites Article 1, Section 2 of the International Alliance Constitution.

> "The membership of this Alliance shall comprise such local unions as shall hold charter, as shall acknowledge its jurisdiction, and as shall keep valid their respective memberships as required by the laws legally enacted from time to time for the government of this body and its affiliated local unions."

Article 21, Section 1, of the International Alliance Constitution:

> "In order to repeal the principles of home rule which have been endorsed by this Alliance, it shall required a two-thirds vote of the delegates present at any one convention."

The Vice Chancellor, commenting on this Section, says:

> "The recognition of the principles of home rule for the local union is emphasized in the above quoted sections. To grant the motion of the defendant would, in effect, be a denial of Justice."

After the approval (endorsement) by the International Alliance of the (complainants) applications for memberships, as evidenced by Exhibit C-2, page 392, the International Alliance was not interested and the control of the members of the local rested wholly with the local. Consequently, this controversy does not interest the International Alliance.

The relief afforded by the decree of reversal concerns and affects only the local and its members and not the International Alliance.

The Court of Chancery properly overruled the objections to lack of parties.

POINT III.

(A) This Court by its opinion annulling the classification between "Seniors" and "Juniors" has determined the status of the "Juniors" to be that of full members on a parity with the "Seniors" and consequently the Decree of Reversal is proper.

(B) If this Court did not so determine, then the Court below by the "Further proceedings" directed by the opinion of this Court, has determined the Juniors' status and it remains for this Court now to pass upon the propriety of that determination.

A.

The question of the "Juniors' " status was placed squarely in issue by the Bill of Complaint (S. C. Part II, pp. 34-36, and the amendment thereof, S. C. Part II, pp. 70-74), and the answers thereto and by the Petition of Appeal (S. C., Part II, p. 2).

Our original Brief (pp. 1-2, First Appeal) stated:

> "In brief the Bill seeks an annullment and an injunction to restrain the enforcement of the Revised 1931 Constitution and By-Laws of the Local and of a 'contract' in so far as the same purport to create a classification of the members into 'Senior' and 'Junior' members or any differentiation between them in respect to rights, obligations, benefits, or privileges" (also to the same effect on page 20).

Mr. Stern's brief on behalf of the intervening Juniors (p. 3) raised the question of the 'Juniors' status.

There is not any counterclaim, cross bill or cross petition for the annulment of the "Juniors'" membership status.

The opinion of this Court should be read in the light of the issues thus before it.

The first sentence of the opinion recognizes that the Juniors were seeking parity with the "Seniors" through an annulment of the provisions of the "contract" by which the complained of classification was effected, and it determined that issue when it said (Sc, Part II, p. 35, l. 29):

> "A classification so based is clearly contrary to the public interest."

After discussing the limitations on the right of a Union as to non-members the opinion then deals with the limitations of the Union as to its members in these words (Sc, Part II, p. 36, l. 10):

> "And this limitation is likewise imposed upon the combination in dealing with its *members*" (Italics ours)

and then says (l. 26):

> "The classification in question is an unreasonable restraint of the Juniors' constitutional rights."

and at page 36, line 23:

> "But the power conferred upon such an organization must be directed to the advancement of the *common welfare of its members.* Such is its extent and limit." (Italics ours.)

and (p. 38, l. 11):

> "It is manifest that the sole purpose of the classification is to create a monopoly in favor of the Seniors."

And referring to the "contract" by which such classification was effected, i. e., the document re

ferred to in the decree of reversal, the opinion says (Sc, p. 39, l. 1, etc.) :

> "In short, the contract constitutes an irrevocable transfer to the seniors of the juniors, bargaining power and fundamental right of contract, while they remain members of the union. Their status is not even that of nominal members of the association. They are under the absolute control of this body, but are in no sense part of it. Thus the liberty of contract is unreasonably restrained; the design is not to advance the public welfare but the individual interest of the senior members solely.
>
> It is true that the juniors were not obliged to accept the status thus accorded them by the union, but it is equally true that membership in such a body, whatever its form, cannot be conditioned upon the surrender of the member's individual constitutional rights when that would not subserve the public interest. And there is, unquestionably, the suggestion of coercion here. Non-membership would impose a penalty, however lawful, that the juniors were seeking to avoid.
>
> Under these circumstances, equitable interposition is not only justified but demanded by the public interest. As was said by Mr. Justice Lamar, in Gompers v. Buck's Stove & Range Co., supra, 'But the very fact that it is lawful to form these bodies, with multitudes of members, means that they have thereby acquired a vast power, in the presence of which the individual may be helpless. This power when unlawfully used against one, cannot be met, except by his purchasing peace at the cost of submitting to terms which involve the sacrifice of rights protected by the Constitution; or by standing on such rights, and appealing to the preventive powers of a court of equity. When such appeal is made, it is the duty of government to protect the one against the many, as well as the many against the one.'
>
> And it does not matter that, at the moment, the junior members have not, in fact, suffered an impairment of earning power by reason of

> of the enforcement of this contract. If it tends to the public injury, it should be annulled without regard to whether public injury had in fact resulted. Attorney General v. Firemen's Insurance Co., supra. Such is clearly its tendency."

If the Juniors cease to be members, then all of the purposes and effects so vigorously condemned by the Court will have been successfully accomplished. The annulled "contract" will have been successfully made "the sine qua non of membership"—as the "Juniors" will have lost their membership because of their refusal to accede thereto. The "Seniors" will have acquired the "monopoly of the labor market" which the Court condemned. The "Juniors" will be obliged to "purchase peace at the cost of submitting to terms which involve the sacrifice of rights protected by the constitution" (provided the Seniors extend that grace).

Of what avail to them (or the public) will have been "standing on such rights and appealing to the preventive powers of a Court of Equity" (Sc, Part I, p. 39, l. 35), and of what avail the "equitable interposition" demanded by the public interest?"

We submit that the Court did not accord the Juniors a mere momentary status of membership in order to afford them a standing as litigants to procure the annulment of the "contract" in the public interest only to deprive them instantly and automatically thereof once that purpose was served, especially when to do so would defeat the very considerations on which the annulment was based.

Any doubt which might otherwise have existed as to the Court's opinion on the Juniors' status was removed by the paragraph which ends with (p. 39, l. 21):

> "Non-membership would impose a penalty, however lawful, that the Juniors were seeking to avoid."

followed by:

> "Under these circumstances, equitable interposition is not only justified but demanded by the public interest."

That the Court intended some adequate relief to the Juniors is made further evident by its remarks (Sc, Part I, p. 28) to the effect that if it had been merely a controversy between private parties the Juniors "would not * * * be entitled to relief * * *. But where the contract tends to public injury different considerations apply."

What adequate relief could be granted other than that provided by the Decree of Reversal? To annul the "contract" and oust the Juniors from membership would not be "relief" but penalization—for having served the public interest by making themselves the instruments by which the situation detrimental to the public interest was terminated.

If the complaining Juniors who have thus served the public interest have thereby forfeited their membership, what is the status of the non-complaining Juniors who have acted contrary to the public interest by continuing the system denounced? Are they to retain their membership while complainants lose theirs?

We submit that what the Court condemned was the classification effected by the "Rules" (referred to as the "contract" and later by the "Revised constitution and By-Laws of 1931"), but that at the same time it preserved the Juniors' status as members, and that the Decree of Reversal which so provides is proper and that the same should be affirmed.

B.

If this Court did not intend by its opinion to determine the issue of the "Juniors'" status, that question is *now* before it for determination.

By its opinion the deccree dismissing the Bill was reversed and the case was "remanded for further proceedings in conformity with this opinion". What proceedings were referred to? By the opinion the Bill was reinstated. The issue of the Juniors' status raised thereby was still undetermined (Assuming for the purpose of argument that this Court had not determined it). The Court of Chancery then determined that issue in favor of the Juniors, and entered the decree of reversal to that effect. Defendants now appeal therefrom. That issue is therefore now before this Court.

The Court below has taken one view of the meaning of the opinion. Defendants have taken the opposite view. Yet, in his brief (p. 21) our adversary seeks to perpetuate such uncertainty by contending that the Decree of Reversal should be confined to decreeing "that the decree of this Court of Errors and Appeals be and the same is hereby made the decree of this Court" (p. 21). Such a decree would leave the issue of the Juniors' status still a matter of dispute between the parties and the subject of further litigation—with a train of contempt proceedings appeals and all of the other evils attendant upon endless litigation. There is now before the Court the Decree of Reversal. It must be either affirmed, modified or reversed. If it is affirmed the question is settled. If modified or reversed, we respectfully suggest that the interest of the public and the parties would be well served if this Court would indicate specifically what decree should be entered.

POINT IV.

Complainants' membership status does not depend upon the illegal "rules" (so-called "contract").

The Juniors' status as members does *not* depend upon the so-called "contract", *i. e.,* the "Rules governing membership, application and agreement", etc. (Decree of Reversal, SC, Part I, p. 15, also SC, Part II, p. 386.) Their status as members was acquired by being "sworn in"—taking the "obligation" or oath of membership, followed by the issuance to them of "membership cards" (Ex. C-7, p. 427) (Ex. C-12, p. 447). As the Court below stated (SC, Part I, p. 51, l. 40): "Only one class of membership was recognized"—by the Constitution of 1923 (Ex. C-3, p. 393) by which the Local was governed.

The Local ("Seniors") sought by these "Rules" (the so-called "Contract") (denounced by the Court) to restrict the rights accorded the "Juniors" under the 1923 Constitution (then in force), which latter, by providing for only one class of members, placed the so-called "Juniors" on a parity with the "Seniors".

Abolition or annulment of these "rules" regulatory of the membership does not abolish the membership. They stand on no different basis than any other rules or regulations.

In other words, the status of membership is severable from the rules by which it is regulated—whether such rules be of long standing or of recent origin (as in this case), or be adopted before or after the Juniors' admission to membership. Otherwise the annulment of a rule or regulation would in effect dissolve the organization.

This Union like any Labor Union exists for certain declared *objects* (as applied to case at bar see preamble, flyleaf and Art. 1, Sec. 2, p. 11, Ex. C 4—also Ex. C 3, SC, Part II, p. 393) which are wholly legal and approved by the legislative policy of this state. The members become such for the accomplishment of those lawful objects. The banding together of those objects constitutes the membership status or relation.

The *mechanics* by which those *objects* are sought to be accomplished are the constitution, by-laws, rules and regulations. The *mechanics* must therefore be distinguished from the *objects*.

This Court in its opinion inferentially at least made that distinction when it said (pp. 33, 34, Part I):

> "The legislative purposes was indisputably to impart legality to organizations set up for the benefit of the members as a class * * * but * * * the power thereby conferred shall not be misused."

And it thus approved of membership but disapproved of certain of its mechanics.

Under the rule of *Buckelew* vs. *Martens*, 108 N. J. L. 339, 156 Atl. 436, where the objects of the enterprise are wholly illegal, then every means for the accomplishment thereof are illegal even if they would otherwise have been legal.

On the other hand, if the objects are legal, then each of the various mechanics for the accomplishment thereof must be tested with respect to its individual legality. Such of them as are legal will be enforced and such of them as are illegal will not be enforced. As was said in the *Buckalew* case:

> "Courts have when possible, regarded contracts in restraint of trade as divisible (authorities), and such contracts have been construed so as to give them validity, if the construction

does no violence to the express language" (authorities).

In the case of *New Jersey Painting Co.,* vs. *Local No. 26, etc.,* 96 N. J. Eq. 632, 126 Atl. 399, this Court recognized the distinction in principle between "objects" and "mechanics" as applied to a Labor Union when it said:

> "* * * It is the illegality of the purpose to be accomplished, or the illegal means used separately or in furtherance of the purpose which makes the act illegal * * *."

This Court in its opinion in this case drew such distinction when it denounced the: "abuse of power", "embezzlement of power", "system", "classification".

The books are replete with decisions in which one or more rules, by-laws or other provisions were held to be void because unreasonable, or contrary to public policy, without any suggestion that other valid provisions or the membership relation were in any way effected thereby.

In *Spayd* vs. *Ringing Rock Lodge, etc.,* 270 Pa. 67, 113 Atl. 70, 14 A. L. R. 1443, it was said:

> "We have often said that the by-laws, rules and regulations of these artificial bodies will be enforced only when they are reasonable."

(The rule in question was one which forbid Union members to use their influence to defeat the legislative policy of its representatives. Plaintiff was expelled for having violated this rule by petitioning the Legislature. Rule held void. See reference to a collection of decisions in case note in 14 A. L. R., p. 446).

16 R. C. L. Sect. 8, p. 422 (Italics ours):

> "* * * *So long as the by-laws of a Union relate* to matters in which no one is interested

> except the Association and its members, and *violate no* right of a third party or *no rule of public policy,* they are valid * * * *The obligations of pledges of members* of a labor union in their initiation must be construed with reference to the declared purposes of the organization, and *are binding only insofar as their purposes are lawful* and are to be attained by lawful means. *A rule* of a Labor Union which violates a statute *is illegal* * * *. Under the view that a labor Union has no power to collect funds for political purposes, it is illegal for a labor union to require its members to contribute for the purposes of securing parliamentary representation, or to require its members to vote for certain public officers * * *."

(Sect. 9, p. 423) :

> "When one chooses voluntarily to unite with others of the same craft * * * he is bound, so long as he desires to remain a member of that organization, to submit *within certain limits* his own freedom alike of judgment and of action * * *. The attempt of a labor union, by threats and *by imposing fines, to coerce* some of its members to *vote* for certain persons for public office is a *violation of law, whether such members had committed themselves to such voting or not* * * *." (Italics ours.)

Schneider vs. *Local Union No. 60* (116 La. 40 S 700 5 LRA NS 891 Sup. Ct. 1905) :

> "The obligation which initiates of Local Union No. 60 are required to take is to be construed with reference to the declared purposes of the organization and is binding on the initiate *only insofar as* those purposes are lawful and are to be attained by lawful means." (Italics ours.)

It is difficult to conceive of any constitutional provision, by-law, rule or regulation of a Labor

Union organized for lawful purposes, which is not divisible to the extent that one or more of them may be declared void as an unreasonable restraint of trade, oppressive or for other reasons, without disturbing the membership relation or the existence of the organization.

We submit that the complained of "Rules" or so-called "contract" (and the 1931 Revised Constitution and By-Laws based thereon) are divisible and separable from the membership relation and from the other constitutional and by-law provisions of the organization.

If the "Rules" (constituting the so-called "Contract") instead of relating to membership, had provided that the members should vote for only the candidates of a certain political party, or that they would never be candidates for public office or that if the members violated a rule of the organization they would agree to pay a fine of $10,000 without opportunity for hearing, it could not be claimed with any show of reason that the voiding thereof would forfeit the membership of the members who had agreed thereto as a *sine qua non* of membership. Clearly such provisions would be divisible from the membership status. Because in this case the complained of "Rules" happen to relate to membership does not make them any the less divisible or severable.

In short, the Juniors are members but by the "Rules" are segregated from the "Seniors" by the "classification" which the Court has annulled. Such removal of the classification *ipso facto* places all members on a parity.

The result of the annulment of such "Rules" or so-called "contract" coupled with the preservation to the Juniors of their membership status, will be consistent with the State's public policy referred to by this Court in this and other cases. The or-

ganization will be preserved. The Juniors will not be penalized for having been the instruments by which the illegal system was terminated. No one will be injured. There will be effectuated the holding of this Court that:

> "Membership cannot be conditioned upon the surrender of the members' individual constitutional right when that would not subserve the public interest."

Defendants insist (brief, p. 23) that:

> "The written instrument has been adjudged null and void from its very inception. Hence whatever rights the Juniors may have acquired thereunder fall with the annulment of the contract. Obviously the contract cannot be deemed entirely void and at the same time entirely valid. Void for one purpose and valid for another purpose."

The answer to that contention is:

The Juniors' membership status does not depend upon the "contract" (i. e., the "Rules" which were annulled). Their membership status was acquired by being "sworn in" as members and receiving membership cards. It may have been the fact that the Seniors would not have admitted the "Juniors" if they had known that the "contract" or "rules" on which the Seniors relied to deprive the Juniors of their rights of membership would be held invalid. Defendants say (p. 22) while the Juniors were only "Permit men" they had no status in the Union and that it "could have rejected their applications," etc. Quite true, but the fact is the *Union* did *not take that* course but instead *did admit them as members.* The Seniors have no just complaint if they are unable to enforce their oppressive rules or continue their illegal scheme, nor have the Seniors any just complaint because they failed to realize

that as a matter of law their attempted restriction of the Juniors' rights was void.

Defendants further cite (br., pp. 23-25) the cases of *Alterman* vs. *Elliott* (N. Y. Sup. Ct.), *Unger* vs. *Newlin Haines Co.*, *Manganese Iron Ore Co.* vs. *Trotter*, *Kupfersmith* vs. *Delaware Insurance Co.*

None of these cases have any application to the case at bar. The *Alterman* case, if applicable at all, supports our contention rather than that of Defendants. The Court says (referring to the "Permitmen" as distinguished from members). (Italics ours):

> * * * "He may become a member only after (1) his application is approved by the general Secretary-Treasurer of the International Alliance; (2) He is voted upon at a meeting of the Union and receives a favorable vote by more than two-thirds of the members present; (3) *he is obligated* as a member, that is, takes the prescribed oath of fidelity to the organization. It is undisputed that the application of the Plaintiffs herein were never approved by the Secretary-Treasurer of the International Alliance, that they were never voted upon by Local 306 and that they never took the prescribed oath or obligation * * *."

In the case at bar the Juniors were "obligated", their applications were indorsed by the General Secretary-Treasurer of the International Alliance (SC Ex. C 2, p. 392, p. 109) and were given membership cards (Exs. C 7, D 11, 12, S C, pp. 427, 447, 372, 230) which were wholly different from the "Working card" of a "Permit-man" (Ex. D 4, Sc, p. 453) and were "registered" at the office of the International Alliance (SC, p. 371) and were regularly reported by the Local to the International Alliance as members (Junior Department) (Ex. D 12, Sc, pp. 465, 372). Under such circumstances there was a waiver by the Local of any requirement of

formal voting by the Local on the individuals, lack of which is commented on by defendants (Br., p. 30).

The *Newlin* case dealt with the question of the revocability of the agency powers contained in a stockholders' protective committee agreement. The *Manganese* case with the interpretation of a mining agreement, and the *Kupfersmith* case with an insurance policy. In each of those cases the rights of the parties were measured solely by the agreement or contract so involved. In the case at bar, as we have pointed out, the Juniors' status depends on their being sworn in, receiving membership cards, and upon the 1923 Constitution. Not upon the annulled "Rules" ("contract").

By preserving to the Juniors their membership status, the Court is not making a new contract for the parties, it is merely annulling certain "Rules" which are divisible and severable from the general contract of membership.

Defendants (p. 26) call attention to the fact that the relationship of the members in such an organization is contractual. In that connection we call attention to the fact that such contracts are, *sui generis*. Without unanimous consent, any party to it may withdraw at any time, others may be added; its objects and provisions, by-laws, rules, etc., may be changed in vital particulars, and rights of the parties to it may be taken away and new rights may be created. As a consequence it is not always possible strictly to apply to such "contracts" some of the more narrow principles applicable to the ordinary contract having fixed parties and inflexible and unchangeable provisions. Especially is this true of Labor Unions, the operations of which vitally affect the public interest.

Defendants contend (Br., p. 8) that to place the Juniors on a parity with the Seniors is to foist

a new contract on the Seniors against their will and argue that it was not the intent of the parties that the Junior should have such parity.

We contend that the parties must be deemed to have intended the legal consequences of their actions; that the intent of the parties is to be determined by what they did, not by what the Court may surmise they intended.

The Seniors did make the Juniors members of *some* kind. Only one kind was provided for by the constitution of 1923 then in force. By "Rules" (referred to as the "Contract") (not adopted as amendments to the constitution) the Seniors attempted for an illegal purpose and by illegal means (so found by this Court) to "classify" them and thereby deprive them of rights accorded them by the 1923 constitution. Such "classification" has been annulled. The "classification" being removed, no difference between Juniors and Seniors exists. They are therefore on a parity as the Decree of Reversal provides.

Defendants call attention to the fact that the fee payable on elevation of juniors to a "seniors" status was $3,000.00 and contend that the decree of reversal ignores that fact. By the annulment of the classification there remained no "seniors" and no "seniority." The $3,000.00 fee provision has, therefore, no force or application.

Further, the $3,000.00 fee was an integral part of the illegal scheme constituting the "embezzlement of power" mentioned by the Court and falls therewith. Referring to this provision, the Court said:

> "and the increase of the admission fee from $200.00 to $3000.00 bears no reasonable relation to the technical skill of the applicant."

We *disagree entirely* with the statement in the brief (p. 37):

> "Their status, whatever it may be said to have been, was created by, derived from, and depended for, its continued existence in the Junior Local and Junior membership contract, signed on March 4, 1930. This contract having fallen, the status of the Juniors falls with it. The destruction and annulment of their contract, destroys and annuls the status of the Juniors."

The fallacies in that statement are:

(1) The membership contract (Ex. C, 15 c. p. 386) referred to was not a contract. It does not even purport to be. It was merely a series of illegal rules and regulations which purported to be merely a part of the membership relation governed by the International Constitution, By-Laws, rules and regulations as a whole—in so far as same were valid.

(2) The Juniors' status as members was acquired by being "obligated," having issued to them membership cards and being registered at the office of the parent body. It was neither acquired by nor dependent upon said illegal rules by which the Seniors illegally sought to restrict the rights of the Juniors,—any more than it was dependent upon the sustaining of the validity of any other rule of the organization.

(3) Defendants' argument has the effect of making adherence to and compliance with these rules and the classification attempted to be effected thereby, the *sine qua non* of membership—which this court said cannot be done.

(4) This is not a Bill for rescission. Rescission was not prayed for either by complainants or defendants. It is a Bill to enjoin the enforcement by defendants of a series of illegal rules and regulations which are violative of the rights of the Juniors

and detrimental to the interest of the public. *It is the defendants, not complainants, who are seeking to enforce what defendants refer to as the "contract," i. e. Rules.* Complainants are seeking to enjoin such enforcement.

Defendants contend that to preserve to the Juniors their membership status is tantamount to the Court forcing the Juniors into the organizations. Defendants answer their own argument when they say (p. 36):

> "With all this uncertainty prevailing it was determined to divide the Local into two classes —a Junior Local and a Senior Local, the older men to be known as Senior members, to have seniority rights not only in employment, but in running the affairs of the Local; the other class to be known as "Juniors or apprentices" to be *governed* by the Senior Local at all times."

Defendants thereby admit and recognize the fact that the Juniors had acquired the status of members. It is not the Court but the Seniors who made the Juniors members. All that the Court does is to tell the Seniors that when they "divided the Local into two classes" they acted contrary to public policy and that consequently such classification was void.

It is argued that it is also tantamount to making a "new contract" for the parties.

The Court does not create any new rules, it merely annuls certain rules made by the members. Because the rules are divisible and severable (for the reasons heretofore stated) from the membership relation, the annullment of one or more of such rules has no effect on the remainder.

In practically every case in which a portion of a divisible contract is voided in part, a "new contract" is made, in the sense that one party is deprived of something he contracted for and expected

to have, and without which he might not actually have contracted at all but in theory would have because of the divisibility. (*Trenton Potteries* v. *Oliphant,* 56 N. J. Eq. 680, 39 Atl. 923, reversed on other grounds.)

For instance, a purchaser of a business who has exacted from the seller so broad a covenant of non-competition that it is void, finds himself saddled with the purchase but without the contracted for collateral protection.

To place the Juniors on a parity with the Seniors serves the ends of Justice, which after all should be the ultimate controlling factor (*Fleckenstein* v. *Fleckenstein, supra,* at p. 618), and carries out the plain intent of the Appellate Court.

To restore them to their previous status as "permit" men (in which status they were not members at all) will work an injustice to them. We must not lose sight of the fact that the Local has a monopolistic control of employment in their trade in Hudson County. In view of that to oust them from membership would, in the language of the Court in *Harris* vs. *Geier,* 164 Atl. 50 112 N. J. Eq. 99).

> "* * * leaves them in the position where they will have to learn a new trade, or leave their established homes to seek employment in some Locality where the * * *, is not entrenched."

And the Court properly added in that case:

> "The Court is loath, in such cases, to let any obstacle interfere with granting equitable relief."

POINT V.

The illegality of the annulled "rules" does not bar complainants from the relief granted by the decree of reversal.

Defendants, not complainants, are in effect seeking to enforce the illegal "rules" (i. e., the so-called "contract"). Defendants seek what amounts to expulsion of the "Juniors" from the Union because of their refusal to comply with such "rules," and because of their successful attack thereon.

Complainants withdrew from participating in the application and enforcement of the illegal rules (as this Court has held it was their duty to do), and then sought the aid of the Court to prevent defendants from using the de facto power which defendants' position in the Union gives them, to enforce against complainants such illegal "rules."

Complainants are seeking what is sometimes called a "defensive remedy." (Pomeroy's Eq. Jur. Vol. 2 (3rd Ed. Sec. 942.)

(In the case of *Cone* vs. *Russell,* cited by this Court in the case at bar, a "defensive remedy" was granted.)

Defendants argue that complainants are barred from such relief because they are "in pari delicto," and cite in support of their argument the general rule.

There are, however, well established and recognized exceptions thereto:

> 6 Ruling Case Law, page 829—Sect. 220——*Parties* in Pari Delicto as affected by Public Policy.
>
> "Public policy, it must be borne in mind, lies at the basis of the law in regard to illegal contracts, and the rule is adopted, not for the

> benefit of parties, but of the public. It is evident, therefore, that cases may arise even under contracts of this character, in which the public interests will be better promoted by granting than by denying relief, and in such the general rule must yield to this policy. Hence, even between parties *in pari delicto,* relief will sometimes be granted if public policy demands it. The general rule operates only in cases where the refusal of the courts to aid either party frustrates the object of the transaction, and takes away the temptation to engage in contracts *contra bonos mores,* or violating the policy of the law. If it is necessary, in order to discountenance such transactions, to enforce such a contract at law, or to relieve against it in equity, it will be done, though both parties are *in pari delicto.* The party is not allowed to allege his own turpitude, in such cases, when defendant at law, nor is he prevented from alleging it when plaintiff in equity, if the refusal to execute the contract at law, or refusal to relieve against it in equity, would give effect to the original purpose, and encourage the parties engaging in such transactions. In such case the guilt of the respective parties is not considered by the Court, which looks only to the higher right of the public, the guilty party to whom relief is granted being the only instrument by which the public is served. * * *."

To afford complainants the defensive relief provided by the Decree of Reversal is to put into *practical operation* the Court's annulment of the "classification," and is to *protect* the public against the denounced system. To deny to complainants such relief is to enforce—to the detriment of the public—in practical operation the very classification and system which the Court has denounced.

In the language of the above quotation:

> "Public policy demands it" (the relief given by the Decree of Reversal).

The remarks in the opinion of this Court in *McCarter* vs. *Firemens' Insurance Co.* (74 N. J. Eq. 372, 73 Atl. 87) are pertinent:

> "* * * The rule of mere unenforceability thus relied upon makes, however, an exception, even as to the parties in pari delicto, which is thus stated by Judge Story: 'In cases where the agreements or other transactions are repudiated on account of their being against public policy, the circumstance that the relief is asked by a party who is particeps criminis is not in equity material. The reason is that the public interest requires that relief should be given; and it is given to the public through the party. (1 Story Eq. p. 298; Cone v. Russell, 48 N. J. Eq. 208, 217, 21 Atl. 847.
>
> It would seem, therefore, that the rule enforced by the learned Vice Chancellor applies to actions that are based on the reprobated contract, but not to those in which its repudiation may be assumed by the Court, whether as fact or as fiction.
>
> The fiction of acting for the public by which relief is granted to a party in pari delicto must a fortiori apply to the public itself when actually acting in its own interests. The fundamental principle recognized by this line of cases is that one who has entered into a contract that contravenes public policy owes to the public the continuous duty of withdrawing from such contract. A duty thus owing to the public is, upon familiar principles presumed by courts to be performed, and such presumption should be indulged in by the courts whenever necessary to give to the public, acting through its official representative, the same standing that the actual performance of such duty gives to one in pari delicto to act for the public.
>
> It would be inconceivably absurd that the defendants, in rebuttal of this presumption, should be heard to say that because of their original violation of public policy they had

> superadded a violation of another public duty, they were immune from ordinary judicial control yet such is the state of our jurisprudence under the rule enunciated in the court below, unless such presumption or legal fiction is invoked in aid of violated public policy."
> * * *

Further:

In the case at bar this Court in its opinion took cognizance of the situation created by the Union's monopoly of the labor in the trade when it said:

> "And there is, unquestionably, the suggestion of coercion here. Non-membership would impose a penalty, however, lawful, that the juniors were seeking to avoid."

In other words, complainants were *not* "in pari delicto." On this subject it is said in Story's Eq. Jur. (14th Ed., Vol. 1, Sect. 423, p. 399) as follows:

> "*Degrees of guilt*—And indeed in cases where both parties are in delicto, concurring in an illegal act, it does not always follow that they stand in pari delicto; for there may be and often are, very different degrees in their guilt. One party may act under circumstances of oppression, imposition, hardship, undue influence, or great inequality of condition or age, so that his guilt may be far less in degree than that of his associates in the offense. And besides, there may be on the part of the court itself a necessity of supporting the public interests or public policy in many cases, however reprehensible the acts of the parties may be."

Without desiring to be repetitious we again call attention to the fact that the Juniors' membership was acquired by being "obligated", receiving membership cards, etc., and that it does not depend

upon the illegal "rules" (the so-called "contract"). Complainants are therefore not seeking to enforce such "rules" but seeking a remedy which will adequately relieve them against the enforcement thereof by defendants. Consequently the complainants are not in the position of the plaintiffs cited in defendants' brief, in most of which they were endeavoring to enforce the illegal contract.

We also call attention to the fact that in this case objects of the Union were legal whereas in some of the cases cited in defendants' brief the objects were wholly illegal, as for instance, the accomplishment of an object forbidden by statute, or to defeat the purpose of a statute.

For the reasons stated defendants are not barred from the relief afforded them by the Decree of Reversal.

The Constitution of the United States.

The Court is not "forcing" complainants into the organization. *It is merely preventing defendants from forcing complainants out.*

As we have previously shown herein defendants admitted complainants to membership. Defendants are not "forced" "into a new relationship". It is the same "relationship"—i. e., membership—but minus the attempted and illegal restrictions upon the complainants' rights as members.

There is therefore no violation of "due process" or other provisions of the United States Constitution.

So that there can be no impression that the "Seniors" as an act of generosity admitted the "Juniors" to membership and that the "Juniors" ungratefully attacked and refused to be bound by the illegal rules, system and classification put into

effect when they became members, we quote from the defendants' brief filed in connection with the original appeal (p. 6) (Italics ours) in this case as follows:

> "* * * The Local found itself in a position, while it did not have sufficient number of men, to supply the various theatres under contract with it (p. 5) * * * the members of the local felt that the permit holders were potential members and desired to retain not only their good will, but also the practical knowledge of the trade which they had acquired * * * (p. 8) * * * which the older members of the local desired to elevate the status of the 'permit holders' and give them limited rights to membership, they also desired to protect themselves and maintain seniority in obtaining employment and running the affairs of the local" (p. 9).

Admittedly the defendants were forced by economic conditions to admit the Juniors to membership, but devised the denounced system solely in their own interests and with the obvious intent of giving the Juniors as little as possible.

CONCLUSION.

Defendants' counsel (p. 59, his brief) pronounces the decision a "land mark decision", and, as we understand them, inferentially criticise it as being an undue interference with the "internal social structure of trade unions".

There is no reason why a labor union, having a virtual monopoly of the labor market in a given trade, should be exempt from prohibitions against the abuse of the power created thereby any more than is any monopolistic business combine. In fact, the right to labor free from unreasonable re-

strictions is even more vitally necessary to the public welfare than the right to buy goods in a competitive market.

The principle of the decision in the instant case is not new. Only its application to labor unions is new—and much needed.

Therefore, we respectfully submit that the decree of the Court of Chancery should be affirmed.

WALLACE P. BERKOWITZ,
NORBURY C. MURRAY,
Solicitors for and of Counsel with
Complainants-Respondents.

Stipulation.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between: WILLIAM CAMERON, *et als.*, Complainants-Respondents, and THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, LOCAL UNION NO. 384 OF HUDSON COUNTY, NEW JERSEY, *et als.*, Defendants-Appellants.	On Appeal from the Court of Chancery.

It is hereby stipulated between Wallace P. Berkowitz, Solicitor and of Counsel with respondents, and Saul Nemser, Solicitor and of Counsel with appellants, as follows:

1. That the complainants-respondents annex to their brief, a copy of the Notice hereto annexed, marked Schedule "A" and made a part hereof, and the same shall be considered as part of the State of Case on this appeal; that the said Saul Nemser, Solicitor of appellants, acknowledged service of said Notice on the Third day of May, 1935.

Dated, October 14th, 1935.

WALLACE P. BERKOWITZ,
Solicitor of Complainants-Respondents.

SAUL NEMSER,
Solicitor of Defendant-Appellants.

Schedule A.

IN CHANCERY OF NEW JERSEY.

Between:

WILLIAM CAMERON, *et als.*,
Complainants,

and

THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, LOCAL UNION NO. 384 OF HUDSON COUNTY, NEW JERSEY, *et als.*,
Defendants.

96-548.
On Bill &c.
Notice.

TO SAUL NEMSER, Esq., and SAMUEL S. STERN, Esq.,
Solicitors for and of Counsel with Defendants:

SIRS:

You and each of you are hereby notified that application will be made to the Honorable Luther A. Campbell, Chancellor, at the Chancery Chambers, No. 1 Exchange Place, Jersey City, New Jersey, on Monday, May 13th, 1935, at ten o'clock in the forenoon (daylight saving time) or as soon thereafter as counsel can be heard, for the entry of a Decree of Reversal and for the settling and entry of Final Decree in the above entitled cause.

You and each of you are hereby further notified that at said time and place we will apply to have said Decree settled and entered in the form of that hereto annexed and made a part hereof and designated as "Decree of Reversal".

You are hereby further notified that at said time and place we will move for the allowance of a counsel fee and costs in favor of the Solicitors of Complainants, against and to be paid by Defendants.

Dated: May 3rd, 1935.

Yours, etc.,

WALLACE P. BERKOWITZ,
NORBURY C. MURRAY,
Solicitors for and of Counsel with
Complainants.

138OCT.T.1935

New Jersey Court of Errors and Appeals

Between
WILLIAM CAMERON, *et als.*,
Complainants-Respondents,

and

THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, LOCAL UNION NO. 384 OF HUDSON COUNTY, NEW JERSEY, *et als.*,
Defendants-Appellants.

On Appeal from Court of Chancery.

APPELLANTS' REPLY BRIEF.

Before replying to Point IV of the respondents' brief, may we point out that throughout their brief respondents *assume* the existence of the all important fact of *membership* in the union—in spite of annulment of the contract—as the major premise of their argument, and their reasoning and conclusions founded thereon, are predicated on this *unwarranted assumption.* In other words, respondents have *assumed* the very thing which they endeavor to prove, and thus beg the question.

As we have argued in our main brief, the effect of annulling the contract is to destroy *whatever* status the juniors had in the union; they go back to their original position of "PERMIT MEN"; they were not members then and are not members now, and not entitled to any rights as such.

To urge that the effect of annulling the juniors' contract, is to *ipso facto,* make the juniors *members*

of the union, on a *parity* with the Seniors, with the same rights and status, is to utterly ignore the events occurring *on* and *before* the evening of March 4, 1930, the clearly avowed intention of the parties and the only logical result that ensues from annulment.

Point IV of Respondents' Brief.

Respondents sum up their contentions on page 20 of their brief, when they argue that "the Juniors' status depends on their being sworn in, receiving membership cards, and upon the 1923 Constitution. Not upon the annulled 'Rules' ('Contract')".

Thus the respondents stress three factors, viz.:

A. "Being sworn in—taking the obligation."

B. Receipt of membership cards.

C. The 1923 Constitution, by which it is claimed, the local was governed on March 4, 1930.

(a) The Obligation.

An examination of Exhibit C-6 (Assembly of "PERMIT MEN" on March 4, 1930 (p. 425, Part II), discloses that the contract was accepted by the "PERMIT MEN" in its *entirety* and then it was signed.

After this was done and as the very last order of business, just before "Good and Welfare," the "Chairman then *read* the Oath of Obligation" (p. 426, Part II).

Thus, it will be seen, that the contracts were signed *first,* and then the oath "read" to those present—the obligation being nothing more or less than a token of confirmation of the contract just executed and an acknowledgment on the part of the "PERMIT MEN" that they had been admitted to the

"JUNIOR" body—it was an oath of "ALLEGIANCE", of "FEALTY", of "FIDELITY AND LOYALTY", to the *Junior Department.*

The word "JUNIOR" *was included in the obligation* (p. 220, l. 4, Part II) and the "PERMIT MEN" were registered at International Headquarters as "APPRENTICES", where they are still regarded as such (see pp. 9, 10 and 11 of our main brief).

When the bill was filed on June 13, 1933 (p. 9, Part II) it was verified by the oaths of complainants (p. 37, Part II). They concede *under oath,* that they were initiated "into the *Junior Department* of Local No. 384" (Par. 8 of the Bill, p. 11, Part II).

In Paragraph 13 of the bill, complainants again concede their *initiation* and *obligation* as junior members of Local No. 384; in paragraph 31 of the bill, they again charge "that since the date of their and each of their initiation and obligation into the defendant local, No. 384, the *Junior* Members," etc. and that the seniors have denied them certain rights and "they have steadily refused your complainants (who are regular members of the *junior department* of Local No. 384)," etc.

Under paragraph 48 of the bill, complainants charge that the junior membership contract signed on March 4, 1930, is "illegal, void and against public policy *in part,*" etc. and in Paragraph 9 of the prayer (p. 35, Part II) the relief sought was that only *certain portions* of said contract (naming them) "be stricken out and removed from and as *part* of the Contract of the Junior Members."

On September 18, 1933, complainants amended Paragraph 9 of the bill, changing their theory and charging that *the* contract signed on March 4, 1930, was illegal and void as against public policy, and that the "PERMIT MEN" had been initiated and obligated as "Members" of the local under the 1923

Constitution, and that complainants are entitled to "Parity" and charging that the difference between the juniors and seniors was not acquiesced in or consented to, but on the contrary was the result of coercion and intimidation on the part of the defendants and "not voluntary on the part of complainants" (p. 70, Part II).

At the final hearing complainants failed completely to sustain their case from a factual standpoint and although five of the seven complainants testified, it is significant that none of them even *attempted* to give proof of any coercion, fraud, intimidation or duress, practiced on or before the signing of the agreement on March 4, 1930; and the highest court has held, that the contract "was not induced by fraud, material misrepresentation, mistake, duress or undue influence" (p. 17, Part I). In fact, Counsel expressly withdrew any charge of fraud (p. 383, Part II, ll. 1-3).

(b) The Cards.

The so-called "Membership Cards" issued to the Juniors have stamped across their face, in bold, prominent type "JUNIOR DEPT," and **"Apprentice"** (Ex. C-7, p. 427; p. 129, ll. 18-25), whereas the cards issued to the seniors, while similar in form, do not contain such words. At the assembly of the "PERMIT MEN" on March 4, 1930, they (the permit men) were told *"that they would have no more rights than they had as* "PERMIT MEN" *only with the one benefit that it would be impossible for any outsider to come in, and secure their positions"* (p. 359, l. 8, Part II). As a matter of fact, the "PERMIT MEN" secured no more rights after they signed the contract, than they had prior thereto.

That the "PERMIT MEN" were *not* admitted to membership in the union, but *knew* that they were

accepting something *less* than regular membership, is demonstrated by the acts and conduct of the parties *after* March 4, 1930, as follows, viz.:

1. The Juniors paid 10% of their earnings, as they worked—if they did not earn, they did not pay the 10% (p. 389, l. 15), whereas the members (Seniors) paid "regular dues"—$20.00 quarterly—whether or not they worked (p. 131, l. 15).

2. Juniors held separate meetings—good and welfare meetings—once a month, under the supervision of the Executive Board of the senior body (p. 389, l. 10); whereas the seniors held their meetings, transacted the business of the local, elected officers and boards, disbursed the local's funds, etc.

3. The Juniors had neither voice nor vote and were not even permitted to attend the meetings of the Seniors, nor to participate in any manner in the affairs of the local or the administration of its funds, nor in the fixing of the wage scale and conditions of employment, nor in the negotiations for collective bargaining agreements with the Exhibitors (p. 18, Part II, Par. 23).

4. The Seniors exercised seniority rights with reference to employment (p. 387).

5. The Executive Board and Officers of the union (all seniors) made assignments to employment and determined who should work at particular theatres, and the qualifications, competency and skill of the men to hold jobs.

6. Charges against the juniors are tried before the seniors (p. 16, Part II, Par. 16).

The respondents have characterized their position within the organization, under oath, as "no

better than that of *serfs*" (p. 19, Part II, l. 21) (See also Pars. 30, 31, 39, 42, 46 and 48, of the bill-of-complaint, pp. 20 to 29; Part II).

The Decree of Reversal was entered on August 20, 1935 (p. 14, Part I) but pending the instant appeal, the *status quo* has been preserved, except as to the dues paid by the juniors (Par. 1 aforesaid) and seniority rights (Par. 4 aforesaid).

By order entered over the objection of the appellants, on the 10th day of June, 1935 (a copy of which order is hereto annexed, marked Schedule A and made a part hereof) the juniors since August 1, 1935 have paid the same dues as the seniors, *pendente lite.*

An appeal has been taken by the appellants herein, from said order of June 10, 1935 to this Honorable Court.

We point this out, particularly, to negative any possible inference or thought that the seniors *voluntarily* changed the dues heretofore paid by the juniors.

(c) The 1923 Constitution.

Were the "PERMIT MEN" admitted to regular membership in the union, under the 1923 Constitution?

The answer to this query must be in the negative, in view of the following:

1. The intention, so manifest in this case, to give the "PERMIT MEN" something less than membership, as we have already shown (see p. 28, *et seq.* of our main brief).

2. The 1923 By-Laws were not in force on March 4, 1930 (p. 111, Part II) and had become "obsolete" (p. 155, Part II) and "Outlived" (p.

362, Part II), and hence could not have been within the contemplation of the parties, as it was totally unsuited to meet the new conditions occasioned by the advent of sound. The local governed itself by resolutions and motions from meeting to meeting, during the period of transition and the uncertainty that prevailed until the local adjusted its affairs to meet the new conditions.

3. The 1923 Constitution was not even *mentioned* at the assembly of "PERMIT MEN" held on March 4, 1930, nor were any copies available. The Recording Secretary of the local testified that he *"never saw any"* (p. 219, ll. 1-15, Part II); some of the prospective juniors asked for a copy of the local's by-laws (p. 216, ll. 30-41, Part II) and made the same request at subsequent junior meetings (p. 219, ll. 15-20, Part II), and were told that a committee had been appointed *"to make up new by-laws to meet conditions existing at the present day on account of the advent of sound pictures, and just as soon as the by-laws were completed and available they would be distributed to the members"* (bottom of p. 218); that during all the time between March 4th, 1930 and May 1931, when the by-laws were distributed, not a single junior complained because he was not consulted in the revision of the by-laws (p. 219, ll. 25-30; bottom of p. 223 and top of p. 224); that the 1931 Constitution was distributed amongst the juniors, with each junior's name embossed on the cover, and none of them protested or complained (p. 227, ll. 1-10; p. 362, ll. 25-35), the 1923 Constitution had become *obsolete —outworn* and *impractical* with the changed conditions brought about with the advent of sound and what remained was the parliamentary procedure (p. 155, l. 20). (See also p. 165, ll. 25-40 to p. 167, l. 10).

One of the "PERMIT MEN"—Brother Wood—on March 4, 1930 asked for a copy of the by-laws and the President "told him at that time *they* had *no by-laws*" (p. 218, l. 30), *"there was none in existence; since sound came in our business had been all turned upside down, or words to that effect.* That the by-laws that we had had were *outlived,* but that there was a committee appointed and this committee was writing to the different locals all through the United States trying to get a copy of the by-laws, and it was their intention if they did to pick out their best conditions" (p. 362, Part II).

4. The provisions of the 1923 Constitution as to admission of members were not pursued.

A. No ballot box vote was taken (p. 395)—white and black balls—secretly.

B. The Examining Board did not function (p. 395); and see Section 21 of Article Two of the By-Laws of the International Alliance).

C. A majority vote was not had; in fact, none of the regular members voted (p. 220), nor could they have voted for the obvious reason, among others, that the "Assembly of PERMIT MEN" on March 4, 1930, was *not* a *meeting* of the regular membership, nor a "meeting" at all (p. 152, ll. 27-35, Ex. C-8, p. 425).

The complainants and their witnesses do not deny nor even attempt to contravert, in the slightest detail, any of the foregoing facts.

However, *even assuming* that the 1923 Constitution and by-laws *were* in force on March 4th, 1930, they were in force as *amended* by the creation of a Junior Local, said local to be "governed" by the Senior Local "at all times" (Ex. D-5, p. 454; Ex. D-10, p. 460, l. 30, and Ex. D-10, p. 461, l. 19).

The 1923 Constitution carries a reserve power to make amendments and the procedure therein prescribed was pursued in creating the junior local (Ex. C-3, Art. II, p. 407).

We have sketched heretofore, in detail, the Mechanics employed in creating the Junior Local (see p. 31, *et seq.* of our main brief). Pursuing this "assumption" still further, the Junior Membership Agreement of March 4, 1930 (Ex. C-1, p. 386)—in and by itself—may be logically considered as having the force and *effect of an amendment* to the 1923 Constitution, so as to create a "Junior Department," excluding the resolutions referred to in Exhibit D-5, page 454, and Exhibit D-19, page 460, and page 461.

Still *assuming* that the 1923 constitution was in force on March 4, 1930, it is entirely consistent with the undisputed testimony in the case at bar, and in accord with logical reasoning to view the Junior Membership Agreement signed on March 4, 1930, as a "contract"—offered to the "PERMIT MEN" and accepted by them entirely outside of the Constitution of the local—a special employment "contract" that had nothing more to do with the Constitution, or the local's internal affairs, than a lease of space to hold meetings or a business transaction with an Exhibitor, such as Exhibit C-8, page 428.

This view finds support particularly in the charges of Paragraph 7 of the bill (p. 11, Part II) which consists of five distinct sentences.

First sentence—"Thereafter, on or about March 4, 1930, your complainants were notified that their applications were accepted and were called down to a meeting of the local No. 384 to be obligated."

Second sentence—"At this meeting they were *confronted* with a contract which, after certain representations being made as to the *temporary* nature

of the said contract and of the *necessity* of this contract for a *short time,* they signed the contract; which classified them as Junior Members of Local No. 384."

Third sentence—"Said *contract* contained a provision wherein the then *regular members* of Local No. 384 were to have the seniority right over the complainants *as to employment.*"

Fourth sentence—"Further, that your complainants should *continue* to pay the sum of 10% of their respective weekly wages."

Fifth sentence—Said contract is well known to the defendants herein and copies of the same are in their possession, and a copy of this contract will be produced in court at the trial of the matters hereinafter set forth."

Respondents' argument based on the 1923 Constitution, is untenable and as we see it, at variance with the uncontradicted facts.

We submit, therefore, that the Juniors' Status does *not* depend "on their being sworn in, receiving membership cards, and upon the 1923 Constitution," but on the contrary—as we assert on page 37 of our main brief:

> "Their status—whatever it may be said to have been—was created by, derived from, and depended for, its continued existence, on the *Junior Local* and the *Junior Membership Contract,* signed on March 4, 1930. This contract having fallen—the status of the juniors falls with it. * * *. The situation *now,* after the annulment of the contract, is exactly the same, as if the contract never existed—the situation is the same, as it was, on the night of the assembly of "PERMIT MEN" on March 4, 1930, *before* they signed."

Respondents express the fear on page 11 of their brief

> "If the complaining Juniors who have thus served the public interest have thereby forfeited their membership, what is the status of the non-complaining juniors who have acted contrary to the public interest by continuing the system denounced? Are they to retain their membership while complainants lose theirs?"

This fear is groundless. Respondents ignore the express decretal provisions of paragraphs 2, 3 and 4 of their own decree (p. 16, Part I), making the same applicable to *all* the juniors (or apprentices) of the local union.

The suit is by class bill and *all* the juniors (including complainants) are in the same class: what applies to one, applies to all.

Respondents argue, on page 15 of their brief, that "The books are replete with decisions in which one or more rules, by-laws or other provisions were held to be void because unreasonable, or contrary to public policy, without any suggestion that other valid provisions or the membership relation were in any way effected thereby," and cite *Spayd* vs. *Ringing Rock Lodge, etc.,* 270 Pa. 67, 113 Atl. 20, 14 A. L. R. 1443.

We agree, but with the observation that in none of these cases, did the very *creation* of such membership status *depend,* in one iota, upon the constitutional or by-law provisions declared illegal and void. Spayd had been a member prior to the enactment of the illegal regulations.

If, in the instant case, the "PERMIT-MEN" had been voted into *regular* membership in March,

1930 and we had no junior membership contract or junior local, to consider, and thereafter the older members being in the majority, had sought to enact rules or by-laws as to seniority, dues, classifications as to rights and privileges, etc. similar to the ones denounced by our highest court, the mere annulment of such unlawful provisions, of course, would not effect a full fledged membership *theretofore in existence.* But such is not the present situation. The right of these respondents *in the union*—the very *creation* of the *right* in its *inception*—is interwoven and so interrelated with the unlawful contractual provisions, scheme and design, as to be part and parcel thereof, and inseparable therefrom.

There is another marked distinction from the case, *sub judice.* Spayd was *unquestionably* a *member.* He was expelled from the union. This fact alone assumes a membership in the union. Because of his violation of the by-laws, held unconstitutional by the Pennsylvania Supreme Court, and hence void, the Pennsylvania Court ordered his reinstatement to his previous *undisputed membership.*

Respondents urge on pages 13 and 17 of their brief, that "the status of membership is severable from the rules by which it is regulated etc." but cite no authorities in support of this conclusion. The learned Vice Chancellor said in answer to this argument (p. 51, Part I) "The bill alleges that the contract is void because it contravenes public policy and the appellate court upheld the contention. The gist of the decision is that the classification of membership into seniors and juniors, and the limitation placed on the latter, are illegal. The

whole contract is limited to a statement of the rights and duties of the juniors. *With the membership classification unlawful nothing of the contract remains.* The contract is *not* severable; it is *all* void." (Italics ours.)

Argument is advanced (Respts.' Br., pp. 23-24) which to our minds is an admission that what the respondents really want the court to do, is to establish a brand new contract in their favor.

The illustration of a restrictive covenant employed as an adjunct for the protection of the purchaser, on the sale of a business, limiting the seller's activities in a similar business for a reasonable time, over a limited area, is hardly apt. True, if the negative covenant is unreasonable, the courts will not enforce it, and the purchaser, as a practical proposition, lets the matter rest there and retains the business. But, we have not the slightest hesitation in stating that the purchaser in such a case could obtain equitable relief, *if applied for*—such as rescission and a restoration of the *status quo ante* on the ground of fraud—or reformation on the ground of mutual mistake or mistake on one side and fraud or misrepresentation on the other—the examples could be multiplied, of instances where the purchaser could secure the return of his money, the cancellation of a chattel mortgage and note and any other documents, given as evidence of the transaction. The purchaser is not, *necessarily* "saddled" with the purchase as claimed by counsel.

The cases cited by respondents, *Trenton Potteries* vs. *Oliphant,* and *Fleckenstein* vs. *Fleckenstein,* have hardly any application to a labor union.

The *Fleckenstein* case involved a restrictive negative covenant in restraint of trade, as ancillary to the *sale of a business.* To protect the purchaser thereof from an outrageous and flagrant fraud, sought to be perpetrated by the seller, the Court had to construe a covenant *in an otherwise legal contract,* for reasons best expressed in the Court's own language on page 617:

> "The construction of this contract which makes the description of the restricted area divisible is certainly a possible one, and it seems to me that when a vendor endeavors to *steal* from his vendee the business which he has sold, having in his pocket the moneys which were paid to him for it, courts should be diligent in the endeavor to find a way to prevent the consummation of so *fraudulent a scheme.* As was said by Lord Macnaghten in Nordenfeldt v. Maxim, &c. Co. (1894), App. Cas. 573, in speaking of a case like the present, it seems almost absurd to talk of public policy in connection with such a case. It is a public scandal when the law is forced to uphold a dishonest act, and the public suffers no injury in being deprived of the privilege of dealing with a man who is carrying on his business in violation of his solemn engagement not to do so." (Italics ours.)

In the case *sub judice,* our highest court has found as a fact, that there was no fraud.

The *Trenton Potteries* case is of the same general nature as the *Fleckenstein* case.

In *Buckelow* vs. *Martens,* relied on by respondents on page 14 of their brief, the Court as a matter of fact, held the entire contract and scheme, under discussion in that case, void and the promissory note sued on, as *indivisible* from the remainder of the unlawful agreement, and said (108 Law, at page 341):

> "It (the illegal covenant in restraint of trade) cannot be separated from the rest of the contract, except by making a *new contract* for the parties." (Italics ours.)

And the Court refused to make such *new* contract.

The learned Vice Chancellor correctly diagnosed the motivating reasons for the institution of this suit, when he said (p. 50, Part I) (italics ours):

> "The monopoly is the central fact in this litigation. *To secure for complainants (respondents) a full share of its benefits, is the real purpose of the suit.*"
>
> * * * * * * *
>
> "Actually the complainants desire the court to write into the contract new terms. Especially do they wish inserted a provision giving them a right to participate in the management of union affairs. They want, in lieu of their promise to pay 10 per cent of their wages to the union, a provision that they pay the same dues as the senior members. The Court cannot make these changes. The power of the court, when confronted with a contract against public policy, is *limited* to *annulling* it and, *perhaps,* to decreeing restitution."

And on page 52, Part I:

> "The only lawful class of membership of the union is the class that has been called the senior members. The evidence indicates that complainants were never admitted to membership of that class and that they have never exercised as members any control over union affairs. **There was no intention on their part to become members and no intention on the union's part to admit them.** Their position seems analogous to that of one who purchases

special stock, illegally, issued by a corporation. He does not thereby become a common stockholder; his remedy is rescission. American Tube Works vs. Boston Machine Co., 139 Mass. 6, 29 N. E. 63." (Bold face type ours.)

CONCLUSION.

The Decree should be reversed, set aside and for nothing holden.

Respectfully submitted,

SAUL NEMSER,
Solicitor for Appellants.

JOHN MILTON,
Of Counsel.

SCHEDULE A.

IN CHANCERY OF NEW JERSEY.

Between
WILLIAM CAMERON, *et als.*,
Complainants,

and

THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, LOCAL UNION NO. 384 OF HUDSON COUNTY, NEW JERSEY, *et als.*,
Defendants.

} On Bill, &c.

This matter being opened to the Court by Wallace P. Berkowitz, Solicitor of complainants, on notice, and in the presence of Saul Nemser, Solicitor of Defendants, and the Court having heard the argument of counsel and being of the opinion that the complainants and all other junior members are entitled to relief pending the settlement of the final decree.

IT IS, thereupon, on this 10 day of June, 1935,

ORDERED, ADJUDGED, and DECREED, that pendente lite and until the further order of the Court, that the defendants, its officers, executive board, and senior members, are hereby enjoined and restrained from in any manner or from interfering with, removing, or changing any of the complainants and all other junior members from their respective positions now held by them and from suggesting to any

of the employers or prospective employers that they remove any of the complainants and all other junior members from their employment or that they do not employ any of the complainants or any of the junior members and from in any manner or form interfering with any of the complainants or other junior members in obtaining or retaining employment and from in any manner or form discriminating against any of the complainants and other junior members in respect to the allocation of employment, and it is

FURTHER ORDERED, that pendente lite and until the further order of the Court, the defendants, its officers, executive board, and so called senior members, be enjoined and restrained from collecting or attempting to collect dues, assessments, or any sums from the complainants and other junior members in any greater sum than that now payable by the so called senior members, that is, at the rate of $20.00 dues per quarter beginning August 1, 1935 and $5.00 per month assessment, beginning as of the 1st inst. and in addition any other assessment which may be imposed on senior members by the I. A.

LUTHER A. CAMPBELL,
C.

Respectfully advised,

J. O. BIGELOW,
V. C.

Endorsed on Cover,

"Filed June 10, 1935,
J. O. B.,
V. C."