AMERICAN ARBITRATION ASSOCIATION
CASE NO. 13300 01906 07

In the Matter of the Arbitration

-between-

ANA-AAAA JOINT POLICY COMMITTEE ON BROADCAST TALENT RELATIONS,
Claimant

-and-

SCREEN ACTORS GUILD,
Respondent

Re: Pension and Health Contribution Amounts

OPINION AND AWARD

BEFORE: JACK D. TILLEM, Arbitrator

APPEARANCES:

For the Claimant:
REED SMITH LLP
By: DAVID L. WEISSMAN and
NEIL S. ROSOLINSKY, Of counsel

For the Respondent:
RUSSELL NAYMARK, Assistant General Counsel

Pursuant to the procedure for arbitration contained in the agreement between ANA-AAAA JOINT POLICY COMMITTEE ON BROADCAST TALENT RELATIONS ("JPC") and the SCREEN ACTORS GUILD ("SAG", "Guild" or Union") the undersigned was appointed to hear and decide the claim involved herein. A hearing was held on March 28, 2008 at the offices of Reed Smith LLP, 1901 Avenue of the Stars, Los Angeles, California. After hearing the witnesses, submission of exhibits and arguments of the parties, decision was reserved. Post hearing briefs were submitted.

The parties did not agree on the framing of the issue. The JPC proposed:

> What is the proper way to resolve disputes between the JPC and Screen Actors Guild on the appropriate pension and health allocation amounts to be made on covered services provided for in a multi-services talent contract?

SAG proposed:

1. Is this matter arbitrable?
2. If so, did SAG violate the 2003 Commercials Contract (the "CBA") between the JPC and SAG?
3. If so, what is the remedy, if any?

The JPC, a committee comprised of advertisers and advertising agencies, is the signatory to the Collective Bargaining Agreement with SAG which represents performers who act in commercials. The CBA, for our purposes, essentially deals with celebrities – actors, models, athletes – who act or perform in short advertising messages for showing on television or the internet. The advertisers, also known as the producers of these commercials, commonly hire these celebrities as spokespersons for their products not only for TV commercials but for other types of advertising.

So, for example, Vera Volley, a renowned tennis player, may enter into a contract for $3 million to do a TV commercial for a cereal and also have her picture in magazines and on the cereal box. And the fashion model Sara Stunning may sign a deal worth $2 million to do a TV commercial for a luxury car and have her picture in magazines leaning against the hood. The CBA covers only the TV commercials, the performing part, while the print ads, the non-performing part, are not covered. Therein lies the root of this controversy.

Section 46 of the CBA provides for the producers and advertisers to contribute to SAG's Pension and Health Plans (the "Plans"). It provides in pertinent part:

> A. . . . Producers shall contribute an amount equal to 14.30% of all gross compensation to principal performers as herein defined with respect to television commercials produced on and after October 30, 2003.*
>
> *   *   *
>
> E. Where producer borrows acting services from a signatory loan-out company, or enters into a contract with a principal performer under which covered services and non covered services are to be provided, the following shall apply:
>
> 1. There will be a separate provision in principal performer's agreement or loan-out agreement covering only acting services. Where other services are involved and there is a dispute over the portion of the compensation allocated to acting services, the principal performer's 'customary salary' shall be given substantial consideration in resolving such dispute.
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> 2. Contributions shall be payable on the amount allocated to covered services.
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> *   *   *

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*The contribution rate was raised to 14.80% pursuant to the October 2006 Extension Agreement.

G. The funds contributed to the Pension Plan and the Health Plan shall be trust funds and shall be administered under the Screen Actors Guild-Producers Pension Plan Agreement, and the Screen Actors Guild-Producers Health Plan Trust Agreement both dated February 1, 1960, which Agreements and Declarations of Trust shall become part of the collective bargaining contract.

Returning to Ms. Volley, assuming $1 million of her $3 million contract is allocated to performing or covered services, the producer or the advertising agency will contribute, apart from that amount, 14.30% or $143,000 to the Plans. Or if Ms. Stunning is deemed to be engaged in covered services in 80 percent of her work, the producer will contribute, if my arithmetic is correct, $228,800 ($2 million x 80% x 14.30%). That much is clear.

The question presented, however, concerns the method of determining the amount or percentage of the performer's total compensation which is covered by the CBA and thus subject to the 14.30% contribution. The essential facts are not in dispute. For as long as the parties have had a collective bargaining relationship and the Plans have been in existence, thirty-five years or so, it is the Plans' trustees, not the parties to the contract, who have determined the allocation between covered and uncovered services. It is SAG's position that that practice is in accord with the CBA, has been endorsed by the parties and the Plans and therefore must not be disturbed. Joining the issue, the JPC says the practice is in direct contravention of the CBA; the Plans have no authority to make the determination; the parties must do it and if they disagree the question must be presented to an arbitrator.

Established by SAG and the signatories to its collective bargaining agreements – besides the JPC representing the commercial producers, the other major employer party is the Alliance of Motion Picture and Television Production (AMPTP) – the Plans are multi-employer trust funds each governed by eighteen trustees appointed by SAG and eighteen trustees appointed by management. Of the eighteen management trustees, eleven are appointed by AMPTP and seven by the JPC. The trustees, owing a fiduciary duty to the participants of the plans, do not report to or take direction from SAG or the employer organizations.

Over the years, the Plans have used informal guidelines to determine the contribution obligations of the producers in multi-service agreements. Developed by a collection committee comprised of equal members of SAG and management appointed trustees, the guidelines were ultimately published and issued to the producers in July 2007. They read as follows:

> "Commercials" as defined by the Screen Actors Guild Commercial Contract may include, but are not limited to: television and in-cinema advertising (film or tape), internet, in-store/television unit, internal usage, and commercials made for or designed for exhibition on new Media, etc. In addition, commercial services include the right to produce and use commercials and to hold the performer to exclusivity, whether or not that right is exercised.

A. 100%of contract amount is reportable where compensation paid is solely for SAG commercial services.

B. As a minimum, 90% allocation for combined SAG commercial services and radio services, subject to adjustment based on proportion of television to radio usage. An allocation of 80% or less may be considered based on contract specification of usage.

C. As a minimum, 50% allocation for a multi-service contract where SAG commercial services are involved with other non-covered services (including radio services). This allocation also applies where no SAG commercials are produced or used in a given period, but the employer has the right to do so and to hold the performer to exclusivity. Higher allocation may be appropriate in cases where SAG commercial services are involved in a significant amount and other non covered services are minimal.

D. As a minimum, 40% allocation for a multi-service contract of currently active athletes who endorse a product/brand with which they are strongly associated and who generally wear the corporate logo/image on their clothes or equipment. This allocation does not apply to athletes advertising products that are unrelated to their sport; nor does it apply to retired or inactive athletes regardless of the product/brand they are advertising. Guideline C would be applicable in those cases.

E. As a minimum, 40% allocation for a multi-service contract of print and fashion models advertising beauty products, clothing, etc., or other similar products. This allocation does not apply to actors performing as models in commercials. Guideline C would be applicable in those cases.

F. As a minimum, 40% allocation for commercials used exclusively in a contiguous regional foreign market (such as East Asia), but which is short of worldwide. Any distribution for territories greater than regional market remains subject to the minimum 50% allocation.

G. As a minimum, 40% allocation for performers in commercials for products or product lines which the performer has had an active role in developing and often features the performer's name or image on the product or product line.

H. As a minimum, 40% of any upfront non-refundable guarantee to performers appearing in commercials for products or product lines, where performers have a financial interest in the sale of products or product lines, and other non-covered services are involved.

In the introduction to the guidelines the Plans explain that there is some flexibility which may at times be necessary. For example, the introduction includes the following paragraph:

> The Trustees recognize that because there can be such a wide range of covered and non-covered services, contractual provisions and performer histories, there may be circumstances where the "customary salary" should be higher or lower than these Guidelines would indicate. For example, there may be cases where television advertising may be dominant and the non-covered services may be minimal and in such cases, allocations from 60% to 90% or higher may be appropriate. The opposite may also be the case; where the television services are contractually limited and the non-covered services are substantial, a lesser allocation may be appropriate.

It is the JPC's position that Section 46 of the CBA requires the producers and SAG, not the Plans, to determine the amount allocated to covered services.

Should there be a dispute over that amount, Section 46 directs that ". . . *the principal performer's 'customary salary' shall be given substantial consideration in resolving such dispute.*" If they are unable to agree, JPC continues, the impasse must be resolved pursuant to arbitration as required by Section 57 of the agreement which provides in pertinent part:

> All disputes and controversies of every kind and nature whatsoever between any Producer and the Union or between any Producer and any principal performer and extra performer ("performer") arising out of or in connection with this Contract, and any contract or engagement (whether overscale or not and whether at the minimum terms and conditions of this Contract or better) in the field covered by this Contract as to the existence, validity, construction, meaning, interpretation, performance, non performance, enforcement, operation, breach, continuance, or termination of this Contract and/or such contract or engagement, shall be submitted to arbitration in accordance with the following procedure:
>
> A. The Union, acting on its own behalf or on behalf of any person employed under this Contract, or the Producer concerned, may demand such arbitration in writing. The parties shall thereupon endeavor to agree upon a single qualified arbitrator acceptable to them both. If the parties cannot agree upon a single qualified person within 5 working days after the demand for arbitration, the party demanding arbitration shall serve upon the other a notice which shall include the name of the arbitrator appointed by the party demanding arbitration. . .

The JPC seeks an award declaring that disputes regarding amounts to be allocated for covered services must be governed by Section 46 of the collective bargaining agreement and bargained over between SAG and the relevant producer.

In the event that the producer and SAG cannot agree on the allocation amount, such a dispute shall be subject to arbitration pursuant to Section 57 of the CBA.

First of all, SAG answers, the arbitrator has no jurisdiction to hear this claim because there is no dispute between a producer and the Union and no producer sought arbitration. JPC's reliance on Section 57 is misplaced, SAG says, pointing to the first sentence of Section A:

> The Union, acting on its own behalf or on behalf of any person employed under this Contract, or *the Producer concerned*, may demand such arbitration in writing. (Italics added)

While the provision clearly authorizes the union to file a grievance, SAG says, it explicitly limits the right to individual producers – and the JPC is not a producer. In any event, this dispute has nothing to do with it, the union adds, reasoning that if the JPC has any complaint it is with the Plans, but the Plans are not a party to the contract and not subject to arbitration.

Yet assuming for the sake of the argument there is a dispute between SAG and the JPC or a producer about the amount due to the Plans, SAG asserts that the U.S. Supreme Court in *Schneider Moving & Storage Co. v. Robbins*, 466 U.S. 364 (1984) has clearly ruled that a trust fund need not resolve contractual disputes through the arbitration provision of a labor agreement prior to instituting a collection action under ERISA. SAG underscores the following statement by the Court:

> It is unreasonable to infer that the parties to these [collective bargaining] agreements, or to the trust agreements, intended the trustees to rely on the Union to arbitrate their disputes with the

> employer. Because arbitration may be expensive, there is no reason to assume, without more persuasive evidence than is presented here, that the Union intended to incur such expenses at the request of the trustees and without any requirement that the trustees provide reimbursement. It is even less likely that the parties to the *trust* agreements intended to agree to such complete reliance on the Union. If the Union disagreed with the trustees' construction of the agreement, it could refuse to arbitrate the claim, or compromise the trustees' position in arbitration. The outcome of any subsequent judicial proceeding could be predetermined by the outcome of arbitration. . . In the absence of such evidence [of a duty of fair representation to arbitrate collections claims], we will not engage the unlikely inference that the parties to these agreements intended to require the trustees to rely on the Union to arbitrate their disputes with the employer. Without that inference, as petitioners' concede, there is no basis for assuming that the parties intended to require arbitration of disputes between the trustees and the employer. (*Schneider*, 466 U.S. at 375-376)

Furthermore, the SAG says, the JPC's argument that the Plans' trustees must defer their collection efforts to the actions of the Guild might well constitute a breach of fiduciary duty by the trustees for which they can be held liable. The trust agreements give the trustees full authority to enforce contribution collections in the broadest of terms without conditioning such collections on the exhaustion of the contract's arbitration provision. For example, SAG points to Article III Section 4 of the Health Plan Trust Agreement which states:

> The Plan Trustees may take or cause to be taken any action deemed by them advisable or necessary to enforce payment of the contributions due hereunder, including actions in law or equity. . . . The provisions of this Section 4 shall be without prejudice to the rights of the Guild, if any, under its collective

bargaining agreements, or otherwise, against the defaulting Producer by reason of such default.

For almost four decades that is the way it has been; the trustees exercising their fiduciary duty to collect the contributions. Allowing that the final sentence in the above provision gives it the right to file its own separate action for unpaid contributions under the contract, SAG says this should not be mistakenly conflated with requiring deferral to the union. If deferral were required, SAG reasons that the final sentence would be superfluous.

SAG points out that despite this clear language and a past practice in existence for as long as the parties have had a contractual relationship, never before has the JPC raised this issue. In fact, although the parties negotiated an increase in the pension and health contributions to 14.80% in 2006, the JPC did not offer a proposal consistent with its present position on multi-service allocations.

So what happened now, SAG ponders, for the JPC to awaken Rip Van Winkle-like to challenge a practice in which it has acquiesced contract after contract, never raising an issue about it at the bargaining table. The answer: *Nothing!* In SAG's view, the JPC claim is as inexplicable as it is devoid of merit. For all the foregoing reasons, SAG urges that the claim of the JPC be denied in its entirety.

SAG's defense basically consists of three arguments: JPC has no standing to bring this claim; lack of substantive arbitrability; and lack of substantive merit.

Although its counsel has presented a thorough and articulate case, all three arguments pose a difficult proposition for me.

Take the first one: Contrary to SAG's contention, JPC, as the party to the contract, is entitled to file an arbitration claim under Section 57 of the agreement. The producers are not parties, no more than members of a bargaining unit are parties to a contract entered into by their bargaining agent, their union. Absent a specific prohibition in an arbitration provision against a union filing a claim on its own, it cannot be gainsaid that the union retains that prerogative. The same rationale must apply to an employer association acting on behalf of its members. Citing a case exactly on point, *New England Road Builders Association, et al v. Operating Engineers Local 478,* 285 F. Supp. 311, 68 LRRM 2537 (D.Conn. 1968), <u>Fairweather's Practice and Procedure in Arbitration</u> states:

> Another case presenting the issue of whether an employer can enforce an agreement to arbitrate arose in the context of an employers' association. There, a federal district court held that the association had standing to invoke arbitration on behalf of the member employers. Since the association was the employers' agent in contract negotiations and a party to the agreement, and because the agreement allowed the employer to initiate arbitration, the court allowed the association to commence arbitration proceedings. The court cited a clause stating that either "the Employer or the Union shall submit the grievance to the [arbitration] Committee. . . ." (68 LRRM at 2540) *Fairweather*, 3rd Edition, p. 47, Footnote 159

The preamble to the parties' collective bargaining agreement supports the conclusion that the JPC, as the party to the agreement, is entitled to act on behalf of its constituent producers:

> AGREEMENT made by and between SCREEN ACTORS GUILD, INC. . . ., herein called the "UNION" and the ANA-AAAA JOINT POLICY COMMITTEE ON BROADCAST TALENT UNION RELATIONS, hereinafter called the "JOINT POLICY COMMITTEE", *acting on behalf of advertisers and advertising agencies who have authorized said Committee to act on their behalf. . . hereinafter individually referred to as "Producer."* (Italics added)

Should any doubt linger that a party to a labor contract has the right to use the contractual grievance and arbitration provision, it was laid to rest almost a half century ago in the *Steelworkers Trilogy*, the Supreme Court landmark cases establishing the overriding principle that collectively bargained dispute resolution procedures constitute the exclusive remedy for disputes arising under the agreement. The Court declared that an order to arbitrate will not be denied "unless it may be said with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the asserted dispute."(353 U.S. at 455.)

To be sure, the Supreme Court has carved out some limited exceptions to this principle. Yet as a rule they are limited to enforcement of rights granted by federal statute. Notwithstanding SAG's reliance on *Schneider,* this is not such a case. Suffice it for our purposes to state at this juncture – more on *Schneider* later – that JPC, the party that negotiated and entered into the CBA, has standing to arbitrate this dispute in accordance with Section 57 which clearly provides that to be the proper vehicle with reference to "all disputes and controversies of every kind and nature in connection with the contract."

SAG counters that there is no dispute to be arbitrated. If a producer or advertiser believes that the Plans' Guidelines or its collections have somehow violated their rights, SAG suggests that they seek redress against the Plans. *We didn't do anything*, SAG says. *What does that have to do with us?* As SAG sees it, JPC, aware of this fatal defect in its case, has attempted to circumvent it by asserting a theory that the Guild improperly delegated authority to the Plans. Deriding this theory as an absurdity, SAG points out that there is absolutely no proof of such delegation; let alone that it would probably be a violation of the trustees' fiduciary duty to enter into such an agreement with the Union. Simply stated, SAG insists that even assuming, contrary to reality, that JPC's claim has merit, it is a claim against the Plans, not the Guild.

I would disagree. To be sure, the Guild's argument that it didn't do anything is accurate. That, however, is precisely the problem. The contract requires it to negotiate the allocation with the producer. Whether it actually delegated that responsibility or just let the Plans fill the void is beside the point.

Let's go to the contract. Section 46(E), the provision focusing on allocation of covered and non-covered services, states that

> when there is a dispute over the portion of the compensation allocated to acting services, the principal performers' 'customary salary' shall be given substantial consideration in resolving such dispute.

The dispute refers to one between a producer and the union. It doesn't make any sense to construe it to mean a dispute with a third party – in this case the Plans. Coupled with Section 57 requiring arbitration of all disputes arising out of or in connection with the agreement, I don't see how it could be any clearer unless the parties added, *"We really mean it!"*

SAG refuses or simply shrugs off its obligation under Section 46 to negotiate over the allocation, abdicating that role which has been allocated by the Plans. And now, reasoning that it didn't do anything, insists there is nothing to arbitrate. Nonfeasance, however, can be just as violative of an agreement as misfeasance. JPC alleges a nonfeasance; the Guild denies it. That is a dispute arising out of the contract and hence arbitrable.

SAG's reliance on *Schneider* is misplaced. Schneider dealt with collecting contributions. It had nothing to do with the function of determining allocation amounts. We're talking apples and oranges. This case is not about collecting contributions which are due to the Plans, an entirely different function, one most definitely belonging to the Plans which *Schneider* emphatically endorsed. In this collective bargaining agreement, however, the amount to be allocated for collection must first be determined according to Section 46.

Admittedly, this CBA is different than agreements which include a provision for contributions to a third party trust fund. In those agreements the parties bargain a specific amount or percentage; for example, ten percent of the hourly rate. In this one, it's 14.30%. No argument. If the producer doesn't pay that percentage, as *Schneider* instructs, the Plans need not yield to the Guild to collect the amount due. They may seek to enforce the producer's ERISA obligation in federal court without waiting for any arbitration award.

But this case is about deciding in the first instance the amount to which the 14.30% must be applied. *Schneider* does not wipe out the rights of the parties to a CBA to negotiate the percentage to be contributed to a third party trust fund – and that is essentially what SAG's misinterpretation of Schneider would require. Granted, this CBA is unusual in splitting the compensation between covered and uncovered work for performers whose compensation varies. Although the 14.30% remains constant the parties have agreed in Section 46 that in the event of a dispute, the amounts for covered work must be negotiated on an *ad hoc* basis.

For still another reason, *Schneider* is not applicable to this case. The Court relied on the fact that there was no language in the trust agreement or the collective bargaining agreement suggesting that the trust fund give any deference to the agreement or the parties thereto with regard to contributions. In this case, not only does Section 46 of the CBA state that the parties must determine the allocation, but the Plans'

Trust Agreements expressly require that they defer to the parties to do so. Article III Section 1 of the Trust Agreements provides that:

> [t]he rate and amount of contribution shall at all times be governed by said collective bargaining agreements. . . [and] [n]othing in this Trust Agreement or in any Plan or trust agreement pursuant hereto shall be deemed to change, alter or amend any of said collective bargaining agreements.

So there you have it. *Schneider* is distinguishable on two grounds: here we deal with the question of how much the allocation should be in order to determine the amount of the contribution while *Schneider* was concerned not with determining the amount due but with its collection. And in this case the CBA and the Trust Agreements leave no room for doubt that the allocation must be made by the parties, not the Plans.

The Union's reliance on past practice is equally misplaced. Past practice can be dispositive when there is no contractual language or the language is ambiguous. Section 46 is lapel grabbing clear, however – and clear language is to past practice as sunshine is to Dracula. Nor do contractual rights atrophy from non-use. The practice of the parties herein, albeit for thirty-five years, in allowing the Plans to decide the allocation being contrary to the explicit letter of the CBA, never mind the Trust Agreements, the practice must be brought into line with the contractual requirements of Section 46 and 57. Think about it. A contrary decision would uphold a violation of the contract.

Still, let us put aside what I believe to be the clear mandate of this CBA that the parties must do the allocation and the equally clear federal policy that arbitration provisions in labor agreements must be honored as the favored, if not the exclusive, method of resolving disputes. Instead, let us look at the practical aspects of this controversy and assume for the moment that the position advanced by SAG prevails. The outcome, I would submit, is untenable.

This is what would happen:

- JPC does not have standing in this case. Hence, the claim is dismissed because only a producer can bring an arbitration.

- The producer brings the arbitration. SAG prevails in its argument that it hasn't done anything. It's a dispute between the producer and the Plans. The grievance is dismissed.

- Relegating to bringing its claim of an erroneous allocation in federal court, the producer sues the Plans. *Good luck!* The evidence would suggest that a producer would be more likely to "pay the $2" before incurring the expense and delay of a federal lawsuit, never mind the damages looming should the Plans prevail on an ERISA counterclaim.*

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*Douglas Wood, the lead negotiator for the JPC, testified about the problems a producer would encounter challenging the contribution amount sought by the Plans:

Q. What have your participating agencies informed you the issue they have with the particular guidelines?
A. Well, there are multiple problems that these present.
First, on an individual Producer basis in connection with an audit that the Plan auditors might commence where an advertising agency, for example, might have allocated 50 percent and Plan invariably wants a little more, 60 percent, whatever the number may be, that that difference of ten percent with respect to the amount that would be owed in additional contributions is generally in individual situations not necessarily a substantial number. Some situations it is, but in many situations it is not.

The Plan administrators and the auditors when they discuss this with agencies or signatories, they make it clear that if they cannot come to an agreement, that their remedy will be to institute litigation under the ERISA Act in Federal court. And they are fast to point out that in the event of a loss of such an action, that the signatory will not only be obligated to pay the amount in dispute that might be determined in the ERISA action, but, if they should lose that action, they would also be obligated to pay attorney's fees and additional damages, liquidated damages.

As a result, on individual situations it was economically – it was economically imprudent to fight the audits to a point of facing the prospect of ERISA litigation.

Secondly, and in particular with respect to these new guidelines, these official guidelines, if you will, that were issued in 2007, they created a floor, effectively, of about 50 percent, that in discussions with the auditors, signatories were finding that they were insisting that anything less than this would be unacceptable, and they were holding many agencies to additional compensation – additional contributions that in our view on an individual basis were unfair, but on an individual basis were very difficult to economically justify the challenge. (Transcript p. 70-71)

Without going too far out on a limb, one can predict with a reasonable degree of certainty that a federal court, discerning no privity between the producer and the Plans, would remand the matter to arbitration. *Catch 22!* Having traveled full circle, back where he started from, if SAG's position is correct, the producer has no way to resolve an allocation dispute. The Plans will decide the allocation and that must be the end of it. Stretching the logic of that conclusion to the limits of its absurdity, should the trustees of the Plans decide tomorrow to set the floor in their Guidelines for all allocations at 95%, well, that's the way it would be; Section 46 and 57 of the CBA rendered useless.

It turns the whole purpose of contractual dispute resolution on its head to accept the proposition that parties to a CBA who agree on arbitration to resolve all their disputes are precluded from using it. Instead, as SAG would have it, a producer must start a federal lawsuit, not against the union, but against the Plans – an extraordinarily risky move with ERISA penalties hanging like a sword of Damocles over his head.

Besides, it's a litigation that makes no sense. It is the Guild with whom the producer has the complaint, not the Plans. But recall SAG's position that regardless of whether JPC or the producer brings the claim, it's not arbitrable. I can't buy it. Parties to a collective bargaining agreement should not be presumed to have been shoveling smoke when they negotiate an arbitration provision.

In conclusion, Section 46 and Section 57 of the CBA require SAG, in the event of a dispute, to negotiate the allocation for covered services with a producer and if they do not agree, SAG must arbitrate the impasse.

AWARD

The claim of the JPC is sustained as follows:

1. Disputes over determinations regarding amounts allocated to covered services for performers in commercials governed by Section 46 of the CBA must be bargained over between SAG and the relevant producer.
2. In the event that the producer and SAG cannot agree on an allocation amount, such a dispute is subject to arbitration pursuant to Section 57 o the CBA.

Dated: June 11, 2008

JACK D. TILLEM, Arbitrator

STATE OF NEW YORK)
COUNTY OF NASSAU) SS:

On the 11th day of June, 2008, before me personally came and appeared JACK D. TILLEM, to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged to me that the same was executed by him.

DEANNA P. PEARL
Notary Public, State of New York
No. 01PE4823999
Qualified in Nassau County
Commission Expires Nov. 30, 2010