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# SAG and AFTRA: The Case for Merger of the Entertainment Unions

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# SAG AND AFTRA: THE CASE FOR MERGER OF THE ENTERTAINMENT UNIONS

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## I. INTRODUCTION

Few members of the public are aware of it, but virtually all actors who appear in a professional stage play, television show, or movie are members of a union. The public also may not know that the authors of the script performed by the actors, are union members (Writers Guild), as well as the man or woman who directs the script (Director's Guild) and the crewmembers responsible for lighting, cameras, and other equipment (International Alliance of Theatrical Stage Employees). In a country where only 12 percent of workers are unionized, it may seem astonishing that so many people employed in the entertainment industry are represented by labor organizations.

How well the Screen Actors Guild (SAG) and the American Federation of Television and Radio Artists (AFTRA) serve their members and their efforts to merge in 1999 and 2003, are the subject of this article. It is the thesis of this paper that actors' interests would be best served best by an

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immediate merger of SAG and AFTRA, and eventually with Actors' Equity Association (AEA).

## II. HISTORY OF THE SCREEN ACTORS GUILD (SAG) AND THE AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS (AFTRA)

### A. The Creation of the Screen Actors Guild (SAG)

The Actors' Equity Association has represented the interests of stage actors since 1919, when live performance was the dominant form of entertainment. Motion pictures and radio were in their infancy and television had not yet been invented. In the 1920s, AEA made repeated efforts "to convince film producers... to accept [it] as the... bargaining agent for film actors."<sup>1</sup> This was at least a decade prior to the passage of the National Labor Relations Act in 1935, which is the federal law that prohibits employers from interfering with employees' right to bargain collectively via legal representatives.<sup>2</sup>

Despite the booming economy of the twenties and the burgeoning popularity of films, especially with the debut of *The Jazz Singer*, the first "talkie,"<sup>3</sup> film producers made their first attempt to cut actors' salaries in 1927.<sup>4</sup> With the advent of the Great Depression in 1929, conditions for actors worsened. Producers were paying \$15 for one day's work during a time when one workday could last twelve to sixteen hours or longer.<sup>5</sup> Some actors were paid only \$66 for working a six-day workweek.<sup>6</sup> Despite the studios' efforts to keep actors' wages in check, by January 1933 Paramount and RKO had declared their theater chains bankrupt and Warner Brothers, Universal, and Columbia were virtually insolvent.<sup>7</sup> Only Metro Goldwyn Mayer (MGM) was profitable.<sup>8</sup>

<sup>1</sup> SCREEN ACTORS GUILD, YEAR IN REVIEW: 2000, at 4 (2000) (hereinafter YEAR IN REVIEW).

<sup>2</sup> See PATRICK J. CIHON & JAMES D. CASTAGNERA, EMPLOYMENT AND LABOR LAW 392-93 (West 4th ed. 2002).

<sup>3</sup> TIME-LIFE BOOKS, THIS FABULOUS CENTURY: 1920-1930, at 25 (1969).

<sup>4</sup> YEAR IN REVIEW, *supra* note 1; see also DAVID F. PRINDLE, THE POLITICS OF GLAMOUR: IDEOLOGY AND DEMOCRACY IN THE SCREEN ACTORS GUILD 17 (1988). The arrival of talking pictures forced producers to make large investments in sound equipment immediately after they built large studios and bought theatre chains to showcase their products. See *id.* at 16.

<sup>5</sup> See YEAR IN REVIEW, *supra* note 1.

<sup>6</sup> See *id.*

<sup>7</sup> See PRINDLE, *supra* note 4, at 16.

<sup>8</sup> See *id.*

The impetus for the creation of SAG began on March 9, 1933 when newly inaugurated President Franklin D. Roosevelt (FDR) declared a "bank holiday."<sup>9</sup> In Hollywood, the studios responded by canceling actors' contracts and demanding 50 percent pay cuts. Later, the Academy of Motion Picture Arts and Sciences rescinded the pay cuts and created a new formula. Actors making less than \$50 per week would not suffer a reduction in wages, but those earning between \$50 and \$75 per week would lose 25 percent and those making between \$75 and \$100 would lose 35 percent.<sup>10</sup> Actors earning \$100 or more per week would sustain 50 percent pay cuts.<sup>11</sup> Such highhandedness by studio executives only served to reinforce the will of the actors involved in the nascent unionizing effort. The advent of talkies not only created a hardship for the studios which were forced to borrow money for new sound equipment, but also adversely affected the careers of many silent screen stars who could get by with heavy foreign accents or thin, reedy voices in the old medium but whose careers were irreparably damaged by talking pictures.<sup>12</sup> John Gilbert,<sup>13</sup> Theda Bara,<sup>14</sup> and Clara Bow<sup>15</sup> were among the silent stars that found their careers in jeopardy. Stage actors, who had formerly been shunned by Hollywood, were now in great demand and most were willing to relocate to Hollywood where the compensation for working in motion pictures far exceeded what they had been earning in New York.

One theory posits that since the New York actors were already members of a union, they brought a pro-union ethos to Hollywood that led to the eventual creation of SAG. A second theory argues that the theater actors who made their way west were shocked by the long hours that went into making movies in sharp contrast to theatre performances, which required no more than three or four hours of work per day. Actors complained of Hollywood workdays that routinely stretched as long as twelve or fourteen hours.<sup>16</sup> Others cited instances where one workday ended at midnight and the next day's work began at four o'clock in the morning. One of the first SAG presidents, Robert Montgomery, recalled working on the set for thirty-five hours without a break.<sup>17</sup> Other actors complained about being denied

<sup>9</sup> See PRINDLE, *supra* note 4, at 17.

<sup>10</sup> See MURRAY ROSS, STARS AND STRIKES: UNIONIZATION OF HOLLYWOOD 44 (1941); NANCY LYNN SCHWARTZ, THE HOLLYWOOD WRITERS' WARS 5-6 (1982).

<sup>11</sup> See PRINDLE, *supra* note 4, at 17.

<sup>12</sup> See *id.* at 18.

<sup>13</sup> See DAVID THOMSON, THE NEW BIOGRAPHICAL DICTIONARY OF FILM 335-36 (4th ed. 2002).

<sup>14</sup> See TIME-LIFE BOOKS, THIS FABULOUS CENTURY: 1920-1930, at 45-46 (1969).

<sup>15</sup> See *id.*

<sup>16</sup> See PRINDLE, *supra* note 4, at 18.

<sup>17</sup> See *id.*

lunch breaks until late afternoon, the lack of adequate bathroom facilities, and no concern for safety on the sets.<sup>18</sup>

Beginning in 1932, a group of twenty-five actors began meeting covertly to discuss a variety of grievances.<sup>19</sup> The studio-imposed pay cuts of 1933 drove this group to conclude that unionizing was the only answer to their problems. Although the meetings were held in secret, producers found out about them and dispatched private detectives to monitor the attendees.<sup>20</sup> Many actors were threatened by a loss of work.<sup>21</sup>

Initially, lesser-known actors attended the union meetings. Since forming any kind of union in the early thirties was a dicey proposition, the fledgling organization faced two major hurdles, echoes of which still plague it today. The first was what to name the organization. Many of the actors were exceedingly cautious as well as “socially and politically conservative,”<sup>22</sup> so they were reluctant to include the word *union* in the title. The term *guild* was chosen as a bow to the artisans of the Middle Ages. The second challenge was to lure stars to join, many of whom were financially comfortable and leery of being held personally liable for union activities. Even today SAG is plagued by the fact that few, if any, of the officers and board members are *above the title* actors.<sup>23</sup>

The decision to unionize was accelerated by developments in Washington D.C.. Congress passed the National Industrial Recovery Act (NIRA) on June 16, 1933.<sup>24</sup> The NIRA created a powerful agency, the National Recovery Administration (NRA), which established codes for industries and set wages and prices. The proposed motion picture code outraged the actors because it had been written by producers and was lopsidedly biased in the latter’s favor. Under its provisions, actors would be tied to a studio for seven years and, after that contract expired, that studio would have the only option to the actor’s services.<sup>25</sup> “No actor could earn more than \$100,000 per year”<sup>26</sup> and agents would be licensed by the studios because they were working for the producers instead of the actors.<sup>27</sup>

<sup>18</sup> See *id.* at 18-19.

<sup>19</sup> See *id.* at 20.

<sup>20</sup> See *id.* at 20-22.

<sup>21</sup> See *id.* at 22.

<sup>22</sup> *Id.*

<sup>23</sup> See PRINDLE, *supra* note 4, at 22.

<sup>24</sup> The NIRA was eventually declared unconstitutional in *Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935) (holding NIRA provisions were an unconstitutional delegation of congressional legislative authority).

<sup>25</sup> See PRINDLE, *supra* note 4, at 24.

<sup>26</sup> See *id.*

<sup>27</sup> See *id.*

The NRA code issue galvanized even the most recalcitrant of the *prominent actors* to join the union and prompted a personal appeal to FDR by one of the most famous performers of the day, Eddie Cantor, who served as the first President of SAG from 1933-35.<sup>28</sup> FDR eliminated all of the provisions to which actors had objected from the final version of the motion picture code.<sup>29</sup>

Despite this demonstration of presidential support, SAG remained in limbo for nearly four years. While it sought and got recognition from AEA as the recognized representative of the screen actors, and in 1935 even obtained a charter from the American Federation of Labor (AFL),<sup>30</sup> the producers still withheld their recognition from SAG as the actors' bargaining unit. Through 1936, SAG engaged in interminable and unavailing talks with management and prepared to launch a strike. It was not until May 9, 1937, at an historic meeting with Louis B. Mayer, that the producers agreed to recognize SAG as the official bargaining agent for actors.<sup>31</sup> The first contract was signed on May 15 establishing a \$25 minimum for day players with no ceiling on wages.<sup>32</sup> The contract also had provisions for overtime, location shooting, and the use of stunt men and extras.<sup>33</sup> This agreement provided a template for all future SAG contracts.

#### B. *The Origin of the American Federation of Television and Radio Artists (AFTRA)*

The creation of the forerunner of AFTRA, the American Federation of Radio Artists (AFRA), was less tumultuous than its screen actors' counterpart. AFTRA grew from the original AFRA, which represented only radio performers and was located in New York City. Many actors belonged to both unions, which were affiliated with the AFL.<sup>34</sup>

When radio networks expanded into television networks, AFRA wanted to represent performers in the new medium, but since television was projected on a screen,<sup>35</sup> SAG believed that it should represent television talent. In 1948, as television began to be broadcast nationally, SAG and

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<sup>28</sup> See YEAR IN REVIEW, *supra* note 1, at 2.

<sup>29</sup> See PRINDLE, *supra* note 4, at 25.

<sup>30</sup> See *id.* at 28; see also YEAR IN REVIEW, *supra* note 1, at 4.

<sup>31</sup> See PRINDLE, *supra* note 4, at 30.

<sup>32</sup> See *id.* at 32.

<sup>33</sup> See *id.*

<sup>34</sup> See *id.* at 74.

<sup>35</sup> See *id.*

AFRA warred over which union should have jurisdiction.<sup>36</sup> In 1934, AEA, the American Guild of Variety Artists (AGVA), and the American Guild of Musical Artists (AGMA) formed the Television Authority (TVA) in anticipation of the medium's development. These unions and AFRA joined in asking that TVA be the union representing all performers who appeared on television.<sup>37</sup> SAG rejected this notion because, since it was based in California, it feared a powerful new rival located in New York. Location was not SAG's only concern. Its primary fear was that television would supplant movies as a primary source of entertainment, thereby lessening the number of jobs for screen actors who traditionally suffered high levels of unemployment. SAG viewed gaining some control over television as a matter of its survival.<sup>38</sup>

SAG and the Associated Actors and Artists of America (the four "A's" or AAAA) argued for two years over whether SAG or TVA would be the recognized bargaining agent for television performers.<sup>39</sup> In 1950, the four "A's" awarded jurisdiction over all television acting to the TVA, but SAG immediately petitioned the NLRB for elections to determine which union the actors wanted as representative.<sup>40</sup> Of the thirteen elections held between 1950-1952, SAG won twelve. Not surprisingly, actors voted for a tried and true union, SAG, over a neophyte organization that lacked experience in representing movie actors.<sup>41</sup>

Eventually, the four "A's" gave up the struggle to create the TVA and ceded jurisdiction over filmed television to SAG. AFRA added a "T" to its acronym and became AFTRA, which had jurisdiction over live television beginning in 1952.<sup>42</sup> The dispute between the two unions did not end with this Solomon-like decision. Arguments continue to this day over the wisdom of having two unions represent actors who must belong to both in order to work in one medium—television.

For over fifty years, there has been an artificial division of jurisdiction between the two unions and a Byzantine method for joining SAG, which has jurisdiction over motion pictures, filmed television shows, and most commercials.<sup>43</sup> AFTRA covers radio, live and taped television shows (including soap operas and game shows), as well as a broad array of

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<sup>36</sup> See *id.* at 75.

<sup>37</sup> See *id.*

<sup>38</sup> See *id.* at 74.

<sup>39</sup> See *id.* at 76.

<sup>40</sup> See *id.*

<sup>41</sup> See *id.* at 76-77.

<sup>42</sup> See *id.* at 77.

<sup>43</sup> See JUDY KERR, *ACTING IS EVERYTHING: AN ACTOR'S GUIDEBOOK FOR A SUCCESSFUL CAREER IN LOS ANGELES* 123 (2000).

performers that includes actors, dancers, news people, singers, disc jockeys, sportscasters, announcers, recording artists, and stunt performers.<sup>44</sup> SAG performers have long disdained the notion of joining with what many of them regard as lesser beings that comprise AFTRA's membership.

In addition, the fact that it is easier to join AFTRA than SAG has remained a major sticking point in any potential merger between the unions. To join AFTRA, all one has to do is sign an application and pay the initiation fee and annual dues.<sup>45</sup> After being a member for a year and having appeared in a speaking role on an AFTRA show, one is then eligible to join SAG.<sup>46</sup> To join the latter, an actor must present a letter indicating the performer is being hired for a speaking role in a film, television show, or commercial or has had three days of employment as an extra on a SAG project.<sup>47</sup>

While there had been numerous discussions since the 1950s concerning the desirability of a merger between the two unions, it was not until 1999 that the first vote was taken on the issue. This raised traditional and novel arguments against a new entertainers' union. As early as 1961, a document called the Cole Report had recommended a merger.<sup>48</sup> Talks between the unions concerning a merger had been ongoing since 1991.<sup>49</sup>

### III. TO MERGE OR NOT TO MERGE? THE 1998-1999 BATTLE

In 1998, prompted by the increasing consolidation of corporations in the entertainment industry, leaders of SAG and AFTRA pushed for the merger of both unions, which would have represented a total of 123,000 performers.<sup>50</sup> Among the arguments in favor of the merger was that a united group of actors would be more effective in bargaining with such industry behemoths as Disney or Sony Corporations, whose businesses embrace film, television, and music.<sup>51</sup> A merger would also avoid the likelihood of producers playing one union against the other in the negotiation of contracts for some network shows.<sup>52</sup> It was not until 1981 that both unions agreed to

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<sup>44</sup> See *id.* at 124.

<sup>45</sup> See *id.*

<sup>46</sup> See *id.* at 123.

<sup>47</sup> See *id.*

<sup>48</sup> See David Robb, *It's Still Two Parts for Actors: SAG Members Reject Merger with AFTRA by 52%-46.5%*, THE HOLLYWOOD REP., Jan. 29, 1999, at 61.

<sup>49</sup> See David Robb, *SAG-AFTRA Ballots Due at 5 P.M.*, THE HOLLYWOOD REP., Jan. 25, 1999, at 42.

<sup>50</sup> See Jeff Leeds, *Hollywood's Two Major Actors Unions Consider Merging*, L.A. TIMES, Dec. 16, 1998, at C-1.

<sup>51</sup> See *id.*

<sup>52</sup> See *id.*



jointly negotiate contracts for prime time productions, commercials, and training films with the expectation that a merger would eventually take place.<sup>53</sup>

Despite cooperation in contract negotiations, there have been numerous instances in which SAG and AFTRA have disagreed; most notably over which union has jurisdiction over digital television. This issue was not resolved until 2002, with unions dividing the shows on a case-by-case basis.<sup>54</sup> Questions also remain about which union will eventually control High Definition TV.<sup>55</sup> These are just two examples of the issues on which SAG and AFTRA disagree.

The vote to merge in 1999 generated a debate over the pros and cons of such a move within both unions. Both agreed that the proposed merger would bring "coordinated planning with a focused staff which would lead to better contracts. A merger would eliminate union-shopping by employers and both unions could coordinate their lobbying efforts with Congress and state legislatures."<sup>56</sup> In 1998, for example, the unions disagreed on the wisdom of a proposed California law which outlawed stalking by paparazzi.<sup>57</sup> SAG lobbied successfully for passage, while AFTRA, which represents television journalists, did not support the bill.<sup>58</sup> The latter issue points out one of the concerns foes raised in 1998-99; namely, that a merger of the two unions would bring together too diverse a group of performers in one bargaining unit. Former SAG President, Charlton Heston, who opposed the merger, complained, "SAG should not merge with AFTRA because most of them are broadcasters and weathermen."<sup>59</sup> Statistics on AFTRA membership, however, undermined Heston's assertion because 84 percent of AFTRA members were actors, 8 percent were recording artists and singers, and only 8 percent were broadcasters.<sup>60</sup> Moreover, 62 percent of AFTRA's 65,000 members were also members of SAG and 44 percent of the latter were also AFTRA members.<sup>61</sup>

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<sup>53</sup> See *SAG Merger Plans SAG*, BOX OFFICE, Apr. 1999.

<sup>54</sup> See Peter Kiefer, *SAG, AFTRA Settle Digital Spat*, THE HOLLYWOOD REP., Sept. 18, 2002, at 4.

<sup>55</sup> See *SAG Merger Plans SAG*, *supra* note 53.

<sup>56</sup> David Robb, *Merger Debate Before Voters*, THE HOLLYWOOD REP., Nov. 23, 1998, at 17.

<sup>57</sup> See Nick Madigan, *Unions War Over Marriage Proposal*, VARIETY, Nov. 30-Dec. 6, 1998, at 10.

<sup>58</sup> See *id.*

<sup>59</sup> David Robb, *SAG-AFTRA 'Deja Vu' Deal Panned by Street Theater*, THE HOLLYWOOD REP., Nov 20, 1998, at 52.

<sup>60</sup> See *id.*

<sup>61</sup> See *id.*

Some industry purists contended that SAG was strictly an actors' union while AFTRA was a mixed group.<sup>62</sup> There is an element of snobbery among some in SAG who look down upon the soap opera actors, disc jockeys, and radio and TV staffers who predominate in AFTRA.<sup>63</sup> SAG, itself, is not exclusively comprised of actors, it also includes background performers, stunt people, dancers, puppeteers,<sup>64</sup> and even extras in the wake of the 1998 merger of the Screen Extras Guild.<sup>65</sup>

Merger opponents argued that a larger union would put an even heavier burden on middle-class actors who could not afford the anticipated dues increase that the merger would bring and who would face additional competition from more actors. Many SAG members complained of the easy access to union membership that AFTRA affords.<sup>66</sup>

The upshot of these efforts to unite the two unions in January 1999 was that while members of AFTRA voted to approve the proposed merger by (19,155-9,106), a 67 to 33 percent margin,<sup>67</sup> SAG members voted it down by a vote of 21,745 – 19,419 (52 to 46 percent).<sup>68</sup> Within AFTRA, there was no organized opposition to the merger, but it was clear from the vote that strong opposition from SAG members provided the margin for scuttling it.<sup>69</sup> Clearly, the SAG leadership had failed to make the case that the merger would be beneficial to its membership.

#### IV. A PROPOSAL FOR MERGER OF SAG AND AFTRA IN 2003

While the merger proposal failed within SAG by a convincing margin in 1999, there were even more compelling reasons for it to succeed in 2003. The decision by SAG members to vote it down was wrong-headed, but opponents raised valid issues that needed to be addressed before the next vote was taken. In addition, tactical and substantive errors made by merger proponents would have to be corrected. The several key mistakes made in 1998 should have been corrected before another vote was held.

First, advocates of joining the unions should not overstate the effects of failing to merge. The leaders of SAG and AFTRA told the members that

<sup>62</sup> See Nick Madigan, *SAG/AFTRA Merger Foes Fire Salvos*, VARIETY, Dec. 2, 1998, at 26.

<sup>63</sup> See *id.*

<sup>64</sup> See Robb, *supra* note 59, at 52.

<sup>65</sup> See David Robb, *SAG Membership Approves Merger with Extras Guild*, VARIETY, Feb. 28, 1990, at 4.

<sup>66</sup> See Jeff Leeds, *Screen Actors Guild Rejects AFTRA Merger*, L.A. TIMES, Jan. 29, 1999, at 8.

<sup>67</sup> See David Robb, *Merger Gets AFTRA Nod; It's a Cliffhanger at SAG*, THE HOLLYWOOD REP., Jan. 28, 1999, at 1.

<sup>68</sup> Nick Madigan, *SAG's No Vote Kills AFTRA Merger Plan*, DAILY VARIETY, Jan. 29, 1999, at 1.

<sup>69</sup> See David Robb, *Save SAG: Destroy Merger*, THE HOLLYWOOD REP., Oct. 28, 1998, at 45.

there would be dire consequences if it failed; however, that was an overdrawn conclusion because the unions had been cooperating in contract negotiations with producers since 1981 and there was no reason for members to believe that the amicable relationship would end even if the merger failed. As one Board member put it in 1998:

They've told the membership that the world will come to an end if this thing doesn't pass, that it's going to be all-out warfare between these two unions . . . . They've told everyone the Chicken-Little thing—'The sky is falling; the sky is falling' – but it's garbage . . . . [T]he sky is not going to fall.<sup>70</sup>

SAG leadership used a similar scare tactic in 2002 to induce its members to approve the union's agreement with the Association of Talent Agents (ATA), which would have allowed agents to be partially owned by media companies.<sup>71</sup> SAG membership voted down the agreement and the dire consequences predicted did not come to pass as agents merely asked their clients to sign General Service Agreements to continue their relationships.<sup>72</sup> The issue remains unresolved.

The union leadership should not oversell a merger in order to get a favorable vote. It must examine the reasons why the 1999 and 2003 votes failed and address those issues to the satisfaction of the rank and file before proceeding with another ballot. There are said to have been "three main reasons"<sup>73</sup> for the defeat in 1999. These reasons include the fear of increased competition among actors, as well as the merger of health care plans and the possibility of a dues increase.

Many actors thought "that the influx of 25,000 AFTRA members who [were] not SAG members would increase competition in their ability to find work."<sup>74</sup> That objection belies the fact that there is a very significant overlap of membership between SAG and AFTRA, which share some 44,000 members.<sup>75</sup> Moreover, AFTRA's requirements for membership of merely

<sup>70</sup> See Nick Madigan, *SAG Merging or Diverging?*, VARIETY, Jan. 25-Jan. 31, 1999, at 16.

<sup>71</sup> See Peter Kiefer, *SAG Warns Actors of Costs if ATA Pact is Voted Down*, THE HOLLYWOOD REP., Apr. 2-8, 2002, at 1; Dave McNary, *Pisano Drops SAG Bombshell*, VARIETY, Mar. 18-24, 2002, at 3. See also Claude Brodesser & Dave McNary, *Agent's Dates of Wrath*, VARIETY, Dec. 10-16, 2002, at 1.

<sup>72</sup> See Peter Kiefer, *SAG Warns Against Signing GSAs*, THE HOLLYWOOD REP., May 13, 2002, at 3. William Windom signed a GSA with his agent and their relationship is the same as before.

<sup>73</sup> Robb, *supra* note 48.

<sup>74</sup> *Id.*

<sup>75</sup> See *Consolidation 2003*, SCREEN ACTOR, Spring 2003, at 25.

filling out a form and paying an initiation fee would have changed had the merger been approved.<sup>76</sup>

Actors have a valid point in trying to eliminate the competition in an industry that suffers an 85 percent unemployment rate and where 70 percent of the Guild's members earn less than \$7,500 a year. A scant 2 percent of the approximately 98,000 SAG members earn over \$250,000. Only 8 percent of the union membership is considered middle class earning more than \$40,000 a year. About 20 percent earn between \$7,500-\$40,000.<sup>77</sup> Compounding these grim statistics is the fact that in 2001, film and TV roles for SAG members dropped 9.3 percent.<sup>78</sup> In order to remedy this problem of competition, any merged union will have to erect some barriers to limit the number of actors competing for work. There are two approaches to this problem. One is to establish some qualifications before one can join the union, such as requiring any actor under thirty who seeks admission to have appeared in summer stock or regional theatre, have a degree from a college or university in drama or music, or acting school experience. In addition, the current SAG requirements that demand employment with a union production in television or film should be retained.

A second way to limit the number of union members is to eliminate any actor from the membership rolls who has not been represented by an agent for the past five years. Not having an agent is generally an indicator that the actor has not been actively seeking employment. The membership of such a person could be sunsetted until the actor retains an agent or obtains work on any production that has a contract with the union. Such a proviso would eliminate the concerns that some merger opponents have about being overrun with actor wannabees supplanting those whose main source of income is from acting.

Eliminating inactive actors will avoid such anomalous results as those that occurred in April 2002 when non-working actors without an agent carried the day in a SAG vote that rejected the franchise agreement with the ATA.<sup>79</sup> Of the 25,695 votes cast, those who had no agent cast 62 percent of the votes cast.<sup>80</sup> Approximately 75 percent to 80 percent of the vote came from union members who earned less than \$2,000 in 2001.<sup>81</sup>

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<sup>76</sup> See Nick Madigan, *AFTRA, SAG: Together or Apart*, DAILY VARIETY, Nov. 23, 1998, at 21.

<sup>77</sup> Peter Kiefer, "SAG's 'Vanity' Vote," THE HOLLYWOOD REP., Apr. 15, 2002, at 1.

<sup>78</sup> See Peter Kiefer, *SAG Report: Hollywood Roles Decrease in 2001*, THE HOLLYWOOD REP., July 2-8, 2002, at 1.

<sup>79</sup> See Peter Kiefer, *Agentless Actors in Control of SAG's ATA Referendum*, THE HOLLYWOOD REP., Apr. 26-28, 2002, at 1.

<sup>80</sup> See *id.*

<sup>81</sup> See *id.*

The SAG decision contrasted with that of the AFTRA national board, which favored the ATA pact.<sup>82</sup> Some SAG officers would like to see some sort of qualified voting system, but they do not know how to implement it. One possible solution is to emulate the requirement of the Writer's Guild of America (West), which permits a member to vote only if he or she has worked in the previous four years;<sup>83</sup> however, the best way to eliminate such anomalous results is to establish either experience or earnings qualifications for union membership or to create separate categories for membership. Associate members could continue to pay dues but if they earned less than \$10,000 a year as an actor or were not represented by an agent, they would be ineligible to vote in elections or on major issues facing the union.

The second major reason for failure of the 1999 merger is because there was no plan to join the SAG and AFTRA pension and health plans. Such a program is essential to any future merger proposal, a fact that was brought home in September 2002 when the administrative director of the Screen Actors Guild, Producers Pension and Health Plan announced that, for the first time, participants would have to start paying a monthly premium in 2003.<sup>84</sup> The change was prompted by the skyrocketing costs of health care, which increased 55 percent since 1997, along with a decline in income to the union.<sup>85</sup> Thresholds for eligibility increased and coverage for dependent children was changed. Deductibles increased along with out-of-pocket costs for prescription drugs.<sup>86</sup> AFTRA announced that its health plan would require a \$250 per quarter premium payment beginning in July 2003, as well as additional charges for spouses and dependent children.<sup>87</sup> In addition, earning pension credits will become more difficult.<sup>88</sup> Given the increased costs of medical care faced by both unions, it is clear that significant economies of scale could be achieved by uniting the SAG and AFTRA plans and determining the most effective way for a new one to serve its beneficiaries.

The third reason for the 1999 rejection vote was that dues for SAG members would have more than doubled to the AFTRA level.<sup>89</sup> The cost of running two unions is undeniably high, but it makes little sense that those

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<sup>82</sup> See Peter Kiefer, *AFTRA Board Vote to Start New Deal with ATA, NATR*, THE HOLLYWOOD REP., Apr. 15, 2002, at 1.

<sup>83</sup> See Kiefer, *supra* note 77.

<sup>84</sup> See Ray Bennett & Peter Pryor, *SAG Treating Ailing Health Plan*, THE HOLLYWOOD REP., Sept. 24-30, 2002, at 43.

<sup>85</sup> See *id.*

<sup>86</sup> See *id.*

<sup>87</sup> See *id.*

<sup>88</sup> See Robb, *supra* note 48.

<sup>89</sup> See David Robb, *Merger Debate Before Voters*, THE HOLLYWOOD REP. Nov. 23, 1998, at 17.

44,000 actors who belong to both AFTRA and SAG must pay dues to two unions so they can be eligible to work in an entertainment industry that was artificially divided nearly three generations ago. Surely, it would make better economic sense to have one union which will have only one set of highly paid executives and staff instead of two. Furthermore, satellite offices can be closed or combined to achieve savings. In an era of internet communication there is little need for so many regional and local union offices. One of the opponents of the 1999 merger complained prior to the vote: "There is no business plan. There's no departmental plan. No staffing plan and no executive plan . . . They're asking the membership to sign a blank check."<sup>90</sup>

Any future merger proposal must address these issues in a carefully written plan in order to have a chance at winning member support. Experts must be hired to analyze the organizational functions of the unions and come up with an administrative plan that will combine both into one efficiently run organization. Assistance could be sought from the national unions, such as AFL-CIO, or from a commission composed of labor law experts and law school professors as to how the unions could be merged. A survey of the membership should be done to determine what services the rank and file want from the union.

Among the claims made by merger proponents in 1999 and 2003 were that uniting the unions would lead to increased clout with the producers,<sup>91</sup> but that faction never adequately explained to the actors how this would be true. Any future merger proposal must be prepared to make this case to the memberships of how a united union would effectively combat the powerful media industry.

Perhaps the most convincing argument for a joining of these two unions is to look at the era in which SAG and AFTRA were founded—the 1930s—and compare it with the twenty-first century. If there were no actors' unions and actors were to organize today, would they create three separate unions, one for film production, another for taped productions, and still a third for stage performers? There would be one union.

A compelling example of the breadth of production companies in the twenty-first century is Disney, which produces live and animated film, primetime television, radio broadcasts, computer games, phonographic recordings and live theater.<sup>92</sup> It owns a major network, individual television stations, several cable channels, theme parks and a Broadway theater,

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<sup>90</sup> Robb, *supra* note 59.

<sup>91</sup> David Robb, *Merger Debate Before Voters*, THE HOLLYWOOD REP., Nov. 23, 1998, at 17.

<sup>92</sup> See David Robb, *SAG Head Urges Key Members to Sign Merger List*, THE HOLLYWOOD REP., Nov. 3, 1998 at 136.

through which it promotes and distributes products.<sup>93</sup> Disney illustrates the problematic division of labor among the entertainment unions.<sup>94</sup> For example, if an actor makes a film, he or she is represented by SAG, but the soundtrack album from the film is covered by AFTRA.<sup>95</sup> If the movie later becomes a stage play, Actors' Equity is involved. If a theme park ride is created based on the film, it is SAG or Equity; a Disney television series could be SAG or AFTRA.<sup>96</sup> If any of these productions is recreated as an interactive computer game or is shot on digital video, it could be SAG or AFTRA.<sup>97</sup>

Next to this entertainment Gulliver, the quaint operations of the entertainment unions seem Lilliputian. In the 1930s, television, computers, videos, and theme parks did not exist. SAG was originally established to represent movie actors and AFTRA, the forerunner of AFTRA represented radio, which was then the dominant form of entertainment in America.<sup>98</sup> The change in the nature of entertainment and the growth of mega-corporations that produces entertainment, not only in and for the United States but also internationally, call for a unified bargaining agent; a mega-union that is governed by a central board comprised of actors, dancers, sportscasters and radio announcers in proportion to their membership numbers.

In addition, this union should not confine its efforts to negotiating minimum salaries with producers and stringent work rules, it must envision for itself a larger role as an advocate for the hiring of actors of color and actors over forty who find roles scarce, despite the fact that their skills are enhanced as a result of their experience. The *new* union must see itself as an advocate for its members in state legislatures and in Congress, lobbying for legislation to protect the earnings of child actors, to strengthen laws involving the right to publicity and workplace safety, to address digital imaging, and most importantly to combat runaway productions which are siphoning off acting jobs in the United States to Canada and other countries.<sup>99</sup> The new union must also be an advocate for all phases of their members' livelihood including the increasingly lucrative production companies, licensing of merchandise derived from the characters portrayed by actors using the latter's likenesses, and creating other non-industry

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<sup>93</sup> See *id.*

<sup>94</sup> See *id.*

<sup>95</sup> See *id.*

<sup>96</sup> See *id.*

<sup>97</sup> See *id.*

<sup>98</sup> See TIME-LIFE BOOKS, THIS FABULOUS CENTURY: 1930-1940, at 30 (1969).

<sup>99</sup> See Carl DiOrio & Dave McNary, *H'Wood's Runaway Train*, VARIETY, Feb. 4-10, 2002, at 1.

employment opportunities for members and more residuals reflecting the explosion of new channels, videos, CDs and DVDs.

Furthermore, the new union must be more successful in enlisting the active participation of high profile *above the title* actors similar to those who began SAG in the 1930s. One of the problems with the current organization of SAG is that its officers and board members are comprised of little-known performers. Many stars are barred from active participation because they own production companies, but special union waivers could suspend this ban to encourage leadership from recognized performers. Internal feuding must cease and a strong executive director of national reputation and impeccable credentials as a trade unionist must be hired to run the organization.

## V. CONCLUSION

In July 2002, SAG and AFTRA created committees to explore the development of a permanent relationship with each other.<sup>100</sup> In creating the committees it was suggested that both organizations recognize there is more to be gained from unity than rivalry, and that the increasing cost of administration and health care management demands economies of scale. As a result of the sour taste that was left from the 1999 battle, the groundwork was laid for better cooperation, but many more steps will have to be taken in preparation for a successful merger vote.

In December 2002, talks began between SAG's Relations Committee and AFTRA's Strategic Alliances Committee. A joint statement issued by the Presidents of SAG and AFTRA said that both unions must "find ways to coordinate [their] efforts to face the continuing consolidation of our employers."<sup>101</sup> After three days of summit talks in January 2003,<sup>102</sup> in February, both SAG and AFTRA boards met to propose a new plan to affiliate the unions' membership.<sup>103</sup> Understandably gun shy about using the term merger, the unions proposed a new constitution, which would

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<sup>100</sup> See Peter Kiefer, *Gilbert's Task: Restoring Unity at SAG. Q-A with Melissa Gilbert, Screen Actors Guild President*, THE HOLLYWOOD REP., Dec. 5, 2001, at 21.

<sup>101</sup> *Clips: Labor Love*, THE HOLLYWOOD REP., Dec. 20-22, 2002, at 6; see also *Digest, SAG, AFTRA Continues Talks*, THE HOLLYWOOD REP., Dec. 17-23, 2002, at 8 (stating the December 17-19 meeting was the second meeting held between the two unions since November and that one of the purposes of the meetings was to discuss shared concerns as well as the issues of which union should have jurisdiction over digital television).

<sup>102</sup> See Peter Keifer, *Guilds Begin Merger Talks: SAG, AFTRA Boards Set Feb. 8 Meeting*, THE HOLLYWOOD REP., Jan 27, 2003, at 4.

<sup>103</sup> See Peter Kiefer, *SAG, AFTRA Brass Plan 'Affiliation' As New Union*, THE HOLLYWOOD REP., Feb. 5, 2003, at 1.



create a pyramid-like governance structure.<sup>104</sup> Three autonomous affiliates would be created existing under the umbrella of one union: broadcasters, recording artists, and actors; each with its own board, president, and vice-president.<sup>105</sup> Although each affiliate would be responsible for administering and negotiating its own contracts, there would be a “single national dues structure.”<sup>106</sup>

The proposal did not address two thorny issues: how to merge the AFTRA and SAG health and pension plans and how to deal with the fact that, while the SAG rank and file voted down the ATA agreement, the AFTRA board approved a contract that does not expire until 2005.<sup>107</sup> In order for any consolidation of SAG and AFTRA to occur, the constitution and by-laws of both unions require a 60 percent majority of the votes cast for passage,<sup>108</sup> a threshold that is difficult for SAG to achieve in light of its decisive rejection of the merger in 1999.

In July 2003, SAG members again rejected a merger with AFTRA. With 57.8 percent of voting members in favor, this amount falls short of the 60 percent required.<sup>109</sup> The AFTRA membership vote was 75.8 percent in favor.<sup>110</sup> As was the case in 1999, post mortems on the balloting attributed defeat to the fact that merger proponents never made it clear how the pension and health plans would be joined and how much power the leadership of the new union would have.<sup>111</sup> SAG members feared their interests would be submerged in an amalgam of broadcasters and musicians.

It seems that in light of the increasing concentration in the entertainment industry, actors will eventually have no choice but to band together in light of the daunting reality that while in 1985, there were twenty-six major employers of performers, in 2004, there are only six.<sup>112</sup> “Only eight studios control 88 percent of all domestic theatrical production and distribution,”<sup>113</sup> and five record companies control 84 percent of that industry.<sup>114</sup> It is clear that in light of consolidation among the companies that

<sup>104</sup> See *id.*

<sup>105</sup> See *id.*

<sup>106</sup> *Id.*

<sup>107</sup> See *id.*

<sup>108</sup> See *Consolidation 2003*, *supra* note 75.

<sup>109</sup> See Ray Bennett & Peter Pryor, *SAG-AFTRA Merger is Defeated: Defiant Guild Chief Gilbert Says She Will Seek Re-Election*, THE HOLLYWOOD REP., July 8, 2003, at 18.

<sup>110</sup> See *id.*

<sup>111</sup> See Postcard from Former SAG President Ed Asner (undated) (copy on file with the University of Miami Business Law Review).

<sup>112</sup> See *Consolidation 2003*, *supra* note 75.

<sup>113</sup> *Id.*

<sup>114</sup> See *id.*

run the entertainment industry fragmented unions often at war with each other are no matches for these giants. The merger of SAG and AFTRA, and eventually AEA, has been discussed for more than sixty years.<sup>115</sup> It is an idea whose time has come.

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<sup>115</sup>*See id.*

