

APPENDIX K
NEGOTIATION PROTOCOL
FOR
THE NATIONAL COMMERCIAL AGREEMENT

Whereas the Parties have always recognized the value and public interest in maintaining a legal and enforceable contractual framework for the negotiation of national standards of engagement for Performers in this industry;

And whereas the Parties to that end are desirous of continuing their practice of negotiating a National Commercial Agreement (“NCA”) available to all Engagers, as defined in the NCA, wishing to engage Performers represented by ACTRA in their radio-and television commercials.

And whereas ACTRA by letter to the ICA dated August 2, 2007, has put the ICA/ACA on notice that it will henceforth be refusing to authorize ACTRA performers to work on commercial productions other than for "true engagers" who choose to sign the National Commercial Agreement.

The parties now agree as follows:

1. The terms of this Negotiation Protocol shall govern the process of collective bargaining for the renewal of this National Commercial Agreement. It is the Parties’ desire to resolve matters without resorting to strike or lockout. Therefore, prior to the declaration of a strike or lockout, the Parties mutually commit to using the Negotiation Protocol to govern their negotiations.
2. The Institute of Communications Agencies and the Association of Canadian Advertisers (ICA/ACA) recognize that ACTRA is a trade union, as has been determined by the Ontario Labour Relations Board, and that it is duly authorized to represent each and all Performers working under the NCA.
3. ACTRA recognizes the ICA/ACA as the sole and exclusive bargaining agent for Engagers who sign an Authorization for the ICA to negotiate this national Agreement on their behalf. Prior to each round of bargaining, the ICA shall take concrete steps to obtain from Engagers such Authorizations to bargain this Agreement on their behalf.
4. The Authorization that each Engager shall be asked to execute shall include:
 1. i) a requirement that each Engager-member agree that the ICA shall be its exclusive bargaining agent, authorized to bargain on its behalf in respect of the renewal of the National Commercial Agreement, and
 2. ii) a requirement that each such member shall be bound by the terms and conditions of the Agreement, which is the result of collective bargaining between the ICA/ACA on the one hand and ACTRA on the other hand, subject to ratification in accordance with the bylaws or practices of each Party.

The ICA will, at the commencement of each round of bargaining, provide to ACTRA a list of all of the Engagers who have executed such Authorization.

5. To the extent that any matters are the subject of negotiations between the ICA/ACA and ACTRA, the Engager, once such Authorization is given, shall be precluded from negotiating separately with ACTRA or from entering into any agreement with ACTRA different from the NCA. Similarly, ACTRA shall be precluded from negotiating separately with such Engager, or from entering into any agreement with the Engager different from the NCA, for so long as the terms and conditions of the NCA continue in effect.
6. The Parties agree to meet within forty-five (45) days of notice to bargain having been given, and to bargain in good faith and to make every reasonable effort to enter into a new Agreement.
7. While bargaining continues, and until the right to strike or lockout has accrued in accordance with this Protocol, the terms and conditions of the current NCA shall continue in full force and effect, and neither party shall alter, or threaten to alter any of the terms thereof, without the written consent of the other party. In particular, without limiting the generality of the foregoing, the Engagers shall not, without the written consent of ACTRA, alter any rates or any other term of the current NCA or any right or privilege of the Performers in the bargaining unit or any right or privilege of ACTRA until the requirements of the Protocol have been met.
8. Where a Party to the NCA considers that Mediation/Conciliation would be helpful, the Party may request the assistance of a Mediator/Conciliator. Such a request shall be made by the Party giving written notice to the other Party of its desire to obtain the assistance of a Mediator/Conciliator. Such notice shall contain the names of three persons whom the Party giving notice is prepared to accept. The proposed persons shall be neutral persons who have no direct interest in the subject matter of the negotiations, and who have not acted as employee, agent or advisor for either of the Parties or for an interested Party in any previous proceedings between the Parties or their members.
9. The Party receiving such notice shall reply in writing within ten (10) days, accepting the appointment of one of the Mediators/Conciliators suggested by the other Party or indicating that none of the suggested persons is acceptable. In the latter event, the Party responding shall suggest alternative persons as part of its written response. The Parties shall then have a further 10 days in which to reach agreement upon a Mediator/Conciliator. Should the Parties be unable to do so, they shall forthwith submit a mutual request to the Ontario Minister of Labour to appoint the Mediator/Conciliator.
10. Where a Mediator/Conciliator has been agreed to by the Parties or otherwise appointed under paragraph 9, such person shall forthwith confer with the Parties and endeavour to assist them to reach a new Agreement.
11. The Parties agree that the fees and expenses of the Mediator/Conciliator (“the Officer”), if not paid by the Ministry of Labour, shall be paid fifty percent (50%) by ACTRA and fifty percent (50%) by the ICA/ACA.
12. After the Parties have met with the Officer and have made reasonable efforts to enter into a new Agreement without success, either Party shall have the right to request a Report from the Officer that the parties have reached an impasse in their bargaining.

13. The Parties agree that there shall be no strike or lockout declared until the expiry date of the Agreement and fifteen days have elapsed from the date that the Report of the Officer indicates it was issued.
14. ACTRA agrees that there shall be no strike against any Engager, on whose behalf the ICA/ACA has been authorized to negotiate, and the ICA and ACA agree that there shall be no lockout by any Engager on whose behalf the ICA/ACA has been authorized to negotiate, unless there is a strike against all Engagers, or a lockout by all Engagers, on whose behalf the ICA/ACA has been authorized to negotiate.
15. The Parties to this Negotiation Protocol agree that “strike” and “lockout” shall have the same meaning as those terms have under the Ontario Labour Relations Act.
16. The Parties and any Engagers signatory to this National Commercial Agreement expressly acknowledge that the National Commercial Agreement, negotiated in good faith between the Parties, is intended to be a binding and enforceable agreement. Accordingly, neither party nor any signatory Engager shall, during the life of this National Commercial Agreement, raise as an issue in any proceeding to enforce its terms:
 - (a) whether ACTRA had or has status to represent performers covered by this Agreement,
or
 - (b) whether the performers covered by this Agreement are “employees”, “dependent” contractors, or “independent” contractors.
or
 - (c) whether this is an enforceable agreement.
17. Subject to the provisions of the *Act respecting the professional status and conditions of engagement of performing, recording and film artists* (R.S.Q.,c.S-32.1), which prevails, the Negotiation Protocol is applicable in Quebec.