

‘The Hobbit Dispute’: Organizing through transnational alliances

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ABSTRACT

It is now seen as a common sense strategy for trade unions to organise at a transnational level, in order to attempt to counter the global nature of capital in the neo-liberal political economy. Events surrounding the controversy over the location of the production of the two Hobbit movies in New Zealand in 2010 highlight how the forces of labour remain embedded in the nation state. This location of labour within the institutions, history and culture of particular nations, combined with a non-neutral state actor, can negate the power of transnational alliances, leaving labour powerless against threats of capital flight. This paper will seek to explore the transnational strategy adopted by the actors’ Global Union Federation (GUF), the International Federation of Actors (FIA). In doing so, it will use the framework for analysis of such alliances suggested by Brookes (2013). It will also attempt to explain how a brief two- week period in New Zealand (NZ) industrial relations has come to be seen as a failure of trade unionism and global action, even while the objective of that action, collective bargaining, was achieved.

KEYWORDS

Film industry, Global Union Federations, globalisation, the Hobbit, New Zealand, neo-liberalism, transnational alliances, trade unions.

Introduction

It is now seen as common sense that, as the processes of globalisation have freed capital from national boundaries, so too should labour organise at a global level. Such global organising, it is hoped, should allow labour to continue to act as a counterweight to the power of capital, on the same global level. This is posited as one of many strategies to combat the 'crisis in trade unionism'. The events surrounding the *Hobbit* controversy of October 2010 can, however, be seen as an example of how industrial relations, and in particular the forces of labour, remain embedded in the nation state. This location of labour within the institutions, history and culture of particular nations, combined with a non-neutral state actor, can negate the power of transnational alliances, leaving labour powerless against threats of capital flight. This paper will seek to explore the transnational strategy adopted by the actors’ Global Union Federation (GUF), the International

Federation of Actors (FIA). In doing so, it will use the framework for analysis of such alliances suggested by Brookes (2013). It will also attempt to explain how a brief two- week period in New Zealand (NZ) industrial relations has come to be seen as a failure of trade unionism and global action, even while the objective of that action, a start to collective bargaining, was achieved.

First, I will present an overview of the dispute, followed by a discussion of the global crisis in trade unionism, with a summary of the historical trajectory of industrial relations in NZ and the current role of ideology in NZ society. In summing up this paper will look at the determining factors in the outcome of the dispute, and will, in keeping with the overall objective of this special issue, consider whether there are any lessons for future transnational alliances to be learned.

The Background to the Dispute

The film industry is an important part of NZ culture and patriotic pride, particularly since the successes of the *Lord of the Rings* trilogy and of Peter Jackson and the Weta Workshops in gaining international recognition for their work. Indeed, it has been commented that '[t]here is a sense that Sir Peter has been elevated to a status unachieved by most successful business people... beyond reproach and in some way untouchable' (Haworth, 2012: 102). NZ governments have invested heavily in attracting film and television project finance since the mid-1990s and government policy has been turned toward film-making as a potentially significant contributor to export earnings since that time. According to McAndrew and Risak, '[t]hese films are seen as contributing temporarily to the NZ economy during production, but also carrying longer term spinoff benefits in, for example, the tourism sector' (McAndrew & Risak, 2012: 61). That said, the subsidies, through tax concessions granted to film and TV production remain controversial, and it is entirely up for debate whether the amount of investment from successive governments has had a worthwhile return for the economy generally. A 2009 Price Waterhouse Coopers study concluded that the industry contributed just over one per cent to NZ GDP in 2008, with total employment created in 2008 at almost 22,000 full time equivalents (Price Waterhouse Coopers, 2009) out of a total reported labour force of 2,293,000.¹

The issue which propelled the controversy was an attempt by the NZ actors' union (NZ Equity) to commence negotiation with the main producers' association, the Screen Production and Development Association (SPADA), over an update to previously negotiated minimum contract terms and conditions for work on screen productions in NZ. The previously negotiated minimum agreement, termed 'The Pink Book', had been concluded in 2005. (There was also an agreement as to minimum terms and conditions for the industry's technicians – 'the Blue Book'.) NZ Actors' Equity is an autonomous part of the Media, Entertainment and Arts Alliance (MEAA). This is an Australian trade union, which was (according to their website) requested by NZ actors in 2006 to set up an office in NZ. According to Helen Kelly, President of the Council of Trade Unions (CTU – NZ's peak trade union body), the membership of NZ Equity at April 2011 was around 600 (Kelly, 2011).

While attempts to initiate bargaining had been ongoing since 2009, an opportunity for Equity to have some leverage over the film industry in NZ, and to garner international support, came when the notices for *The Hobbit* production began to be sent out to agents around the world in May 2010. In June 2010, having discussed the situation surrounding the refusal of SPADA to agree to bargaining, the executive of the FIA issued a 'Do not sign' notice encouraging affiliates to dissuade their members from agreeing to appear in *The Hobbit* at that time. This 'grey list' was not made public, but a letter was sent to the local production company Three Foot Six to advise them

of the FIA's position in August 2010. Their response was that the production company could not negotiate with the union, as they were negotiating on behalf of self-employed contractors, and that such collective bargaining was illegal under NZ competition laws. Further discussions were on-going, but Peter Jackson, who was not the film's producer, and not a party to the dispute, released a statement on 27 September 2010, in which he condemned the union as an 'Australian bully' looking to wreck the NZ film industry to the benefit of the Australian industry.² He also put out notice of the possibility of the film being moved overseas (in this case to 'Eastern Europe'). To put Jackson's description of the union being Australian into context, there is a long history of cultural and sporting rivalries between the two countries. Being close geographically and also culturally, having been colonised by the British at similar times, the two countries also have a history of social and economic co-operation. They agreed a series of agreements in 1983 known as 'Closer Economic Relations', which spans a range of areas, including free trade in most goods, market harmonisation in services and capital, mutual recognition of many standards and a creation of an open labour market (Patman, 2006). Over the past decade, however, the Australian ownership of capital (for example the majority of the banks in NZ are Australian owned), together with the higher wages available in Australia have made the rivalry a political issue – so much so that at both the 2008 and 2011 general elections the number of New Zealanders leaving the country to permanently live and work in Australia were election issues. These figures were only made worse after the Canterbury earthquakes of 2010 and 2011. The number of New Zealand born citizens who departed for Australia in 2002 was 17,619. The number rose until in 2008 it reached 35,967. While there was a drop back to 23,117 in 2009 and 26,144 in 2010, 37,423 and 39,409 migrated to Australia in 2011 and 2012.³ This is in the context of an estimated total population in 2002 of 3.9 million, rising to 4.4 million in 2012.

Given the esteem in which Jackson is held by the NZ public, public opinion was very much informed by '...the xenophobic tone of Sir Peter and the Government'. As a result '[t]he legitimacy of international union involvement when dealing with Warner Bros and MGM and their NZ nexus was substantially lost in popular coverage' (Haworth, 2012: 107).

Jackson's statement led to the peak union body, (CTU) becoming involved in the dispute for the first time, on 28 September 2010. Further this also prompted the Government to get involved in what was to become tripartite negotiations. There were various meetings held involving SPADA, the CTU, NZ Equity, and the Economic Development Minister, Gerry Brownlee, between this date and 17 October 2010, at which time an agreement was reached whereby SPADA would enter negotiations with NZ Equity at a later date, and the FIA would remove the 'do not sign' order. While this would appear to be a successful end to a transnational industrial action to initiate collective bargaining between NZ Equity and SPADA, this was not the end of the saga. Indeed, it was only at this point, after the dispute was settled, that the decision of Warner Brothers executives, as the overall investors and controllers of the production, to travel to NZ to discuss the industrial relations climate became an issue.

Ongoing Union Activities

Quite separately, and as part of an ongoing public awareness campaign run by the CTU, a national day of action had been arranged for 20 October 2010 'to express [unions'] wish to see fairer workplaces in New Zealand and their frustration with the National Government's proposed employment law changes.' The Employment Relations Amendment Bill 2010 included the removal of any rights to personal grievances for unfair dismissal within the first 90 days of employment;

changes to sick leave but particularly the right of the employer to require a medical certificate on the first day of sickness; restrictions on union access to workplaces; and changes to the Holidays Act. This soon after became the Employment Relations Amendment Act 2010.

These demonstrations took place across the country at noon. On the same day, workers in the film production industry in Wellington were contacted and invited to a meeting at the Weta Workshops, at which those workers were told that the dispute was not settled, the boycott continued and that consequently production of *The Hobbit* was moving offshore. A leaflet which was handed out at that meeting specifically states that there continues to be a 'boycott' of the film, that this is an Australian union's boycott and that the film industry in NZ will not survive. While the CTU, MEAA, Actors Equity and the US Screen Actors' Guild (SAG) all then issued statements confirming that the 'Do not work' order had been rescinded, and that this had been known to everyone involved, the ongoing narrative now turned to the Warner Brothers executives planned travel to NZ to meet with the Government the following week, about the 'uncertainty' surrounding filming in NZ, and the status of the actors as independent contractors.

The relevant employment law case here, which happened to have involved one of Jackson's companies, *Bryson v Three Foot Six Ltd.* was now at the forefront of the discussions, along with the alleged 'ongoing' boycott.⁴ The Bryson case had confirmed the orthodox common law approach to determining whether a contract is one of employment or between a contractor and a principal. This approach involves looking not only at the written contract and how it is labelled, but primarily at the substance of the relationship between the principal and the contractor, including, amongst others, the amount of flexibility in hours and work organisation, the supply of tools by the principal or the contractor, and the presence of on the job training. In this case, the Employment Court, in a judgment later confirmed by the Supreme Court, found that notwithstanding that it might be common practice in this industry for workers to be engaged as self-employed contractors, looking at the whole circumstances of Bryson's relationship with Three Foot Six Ltd. showed that this was a relationship better characterised as employer/employee. This finding against Three Foot Six Limited meant that they were obliged to pay Mr. Bryson redundancy pay for having terminated his contract.

No-one involved in the Actors Equity campaign had suggested that they would look to be employed rather than engaged as independent contractors. Indeed if they had wanted to be engaged as employees, they would not have had to bargain for many of the minimum terms that they were looking for – payment for delays to production and sick pay for example – as these would be included in their contract of employment under NZ employment law. The actors who are engaged in film production around the world through union-negotiated contracts, such as those of SAG, are independent contractors, not employees, and no-one had suggested at any point in the ongoing NZ dispute that a change would be made to this common industry practice.

Whether the actors, as independent contractors, were able to collectively bargain under prevailing NZ law is still open to interpretation and discussion. However, a way forward which would not affect production of *The Hobbit* had been already agreed between all parties to the dispute.

The Pay Off

Warner Brothers' executives came to NZ in the last week of October 2010, where they met with the Government over two days. The result of this meeting, announced on 28 October, was that the filming of *The Hobbit* and its sequel would take place, after all, in NZ. But these negotiations had seen the Government make substantial concessions to Warner Brothers.

The Government's concessions were twofold. First, an amendment to the ERA 2000 was announced on 28 October, and was passed into law on 29 October 2010 under a process called 'urgency' (meant for emergencies, by which a piece of legislation can be passed through all the Parliamentary stages without any public consultation, Committee stages, or any regulatory impact statement).

The Employment Relations (Film Production Work) Amendment Act 2010 inserts into the definition of 'employee' within ERA s6(1) that this definition:

- (d) excludes, in relation to a film production, any of the following persons:
 - '(i) a person engaged in film production work as an actor, voice-over actor, stand-in, body double, stunt performer, extra, singer, musician, dancer, or entertainer:
 - (ii) a person engaged in film production work in any other capacity.'⁵

This entirely changes the law which was set out in the Bryson case, and means that workers in the film production industry will no longer be regarded as employees, no matter the reality of the relationship, if their contract deems them to be contractors.

The further financial concession to retain the production in NZ was that the Government would offset the films' marketing costs by US\$10 million (NZ\$13.4 million) and pay up to US\$7.5 million (NZ\$10 million) in extra tax breaks for each of the two movies, subject to their success.⁶

On 17 October 2010 the successful conclusion of transnational labour action should have been celebrated by the transnational alliance of actors' unions through the FIA. What happened, in the short period from 18 October to 29 October, to turn this around to such an extent that Warner Brothers executives were leaving a country with the film and TV production labour market effectively de-regulated, and with further NZ taxpayers' funds in their pockets? In an attempt to answer this I will now look at the changing nature of trade unionism and its legitimate role in society, before providing a brief overview of NZ industrial relations, and the prevailing ideology in the country. I will then analyse the actions of the unions using Brookes' framework, and conclude by commenting on the actions of the major investors and the NZ Government.

Trade Unions in the Neoliberal Global Political Economy

Trade unions have played important roles in the political economy of industrialised capitalist economies: providing a measure of democracy in the workplace through collective voice; providing a countervailing measure to the socio-economic power of capital, and; acting as a 'sword of justice' by fighting for the vulnerable in society and, through this, articulating values which provide aspirations for a different society (Gumbrell-McCormick & Hyman, 2013). Trade unions and trade unionism, however, are under serious pressure in most industrialised countries. This is what has been referred to as the 'crisis in trade unionism'.

There has been much written about this crisis in trade unionism globally over the past two decades. The crisis can be summarised as consisting of a decline in membership and density, together with a loss of political influence and social standing for trade unions (Gumbrell-McCormick & Hyman, 2013: 29, Dufour & Hege, 2010). There has also been a concomitant amount of commentary and debate about the various strategies being deployed to combat this crisis, or in other words, to renew trade unionism globally. The crisis has been caused by changes in the political economies of the industrially developed nations, both within nations, and through the processes of globalisation. In this respect the freeing up of capital markets, allowing the swift movement of

capital around the globe, has left labour unions, as national level actors, in competition with each other for the capital investment which brings, or keeps, jobs.

While trade union membership and density remains static across much of the OECD, the trend appears towards membership erosion. Add to this the heterogeneous nature of those workers choosing to remain outwith unions and it may be fair to argue that there is more at stake than a need to boost recruitment, but rather that we are dealing with changes in the societal status of these collective organisations. This may be described as a 'crisis of legitimacy' (Dufour & Hege, 2010: 366). Indeed, McKay & Moore (2009) reported that a number of the long-standing activists engaged in their focus group research identified a reduction in the legitimacy of the union in the workplace, and placed this in the context of wider political change (Moore, 2011: 40). This loss of legitimacy and wider political, ideological change in NZ can be argued to be the major contributors to the apparent failure of the transnational alliance in *The Hobbit* case. Since the Fourth Labour Government of 1984-1990, New Zealand 'has been notable for a remarkable programme of radical economic reforms' (Dalziel, 2006: 62). As discussed further below in the context of industrial relations, this is marked by a move towards a neo-liberal consensus with a putatively small, but neutral, role for government and liberal markets in all areas. Most of the Government's trading arms were privatised, the Reserve Bank of New Zealand was made independent from ministerial intervention (Reserve Bank of New Zealand Act, 1989) and markets were opened up to foreign investment (Dalziel, 2006: 62).

Local vs Global Analysis

This was a purely local dispute, but was to become of international interest due to its location within the global film production industry, and the strategic decision to bring the industrial action from the local, largely powerless base to a stronger, global scale through the work of the industry GUF – the FIA.

International organisations of trade unions are not new, nor unique to the modern period of globalisation, and the original international organisations emerged simultaneously with the major national confederations, at the end of the 19th century (Gumbrell-McCormick & Hyman, 2013: 158). Between 1889 and 1914, thirty-three International Trade Secretariats (ITS) were formed (Hensman, 2011: 280). Over the past century there have been different configurations of such international organisations, but most have been industry based, international associations to which national trade unions or trade union confederations affiliate. The successors to the ITS, Global Union Federations (GUFs), therefore do not have direct, individual members, but are 'organisations of organisations' (Gumbrell-McCormick & Hyman, 2013: 161). This has implications for their ability to act; most trade union action depends on the mobilisation of their members by their unions, and the willingness of the membership to take part in that action. Therefore the ability of a GUF to act is dependent on their affiliates both agreeing with the action, urging their own members to act *and* having the power to mobilise the actions by their own members. Further, the heterogenous nature of the industrial relations systems within which the affiliates find themselves adds further to the issues surrounding global solidarity as envisioned through such transnational organisations.

While the processes of globalisation have been said to remove the legitimacy of analysing the actions of labour or capital at a national level, there do remain fundamental considerations about union activities at a national level. Indeed, Meardi (2011 in Gumbrell-McCormick & Hyman,

2013) has pointed out ‘if nations are not the beginning and the end of culture, they are not dead or irrelevant either... Law, political traditions and language are particularly important factors that operate mostly at the national level.’ As Gumbrell-McCormick & Hyman (2013) have argued, it is impossible to understand unions in isolation as they are embedded, at a national level, in four main types of relationship: with their own members and constituents; with employers; with governments; and with ‘civil society’ or ‘public opinion’. Each union, or national union movement, has a different relationship with each of these and so the relevant strategies and tactics adopted by unions will depend upon reflection and consideration of what relationships currently exist and which of those can, and should, be influenced to change in light of changing ideologies.

The fourth relationship identified by Gumbrell-McCormick & Hyman, and arguably the most important where an ideological shift has led to a lack of legitimacy, is that with ‘civil society’ or ‘public opinion’. The reactions in the media to the disputes over casualisation of work at Ports of Auckland and around this *Hobbit* dispute, culminating in the passing of the Employment Relations (Film Production) Amendment Act 2010, have been suggested by Bogg et al. (2013: 5-6) as evidence of the emergence of (at least) three ideological shifts in NZ society: the emergence of a neoliberal ‘deregulatory’ ideology; a ‘third way’ competitiveness ideology; and a ‘liberal neutrality’ ideology. This will be discussed further below. First, though, it will be useful to have a brief historical overview of industrial relations in NZ, given how the ‘differences among national institutional contexts can both hinder and help transnational labo[u]r alliances’ (Brookes, 2013).

Industrial Relations in NZ

Industrial relations in NZ have been marked by four distinctive periods (Geare and Edgar, 2007: 248): the pre-Arbitration period (1840-1893), the Arbitration era (1883-1987), the Collective Bargaining era (1987-1991) and the current Laissez-faire era (1991- ...).

The pre-Arbitration era encompassed the time of first European settlement of NZ, and, at least in theory, English law was enforced. This era was ended by the passing of the Industrial Conciliation and Arbitration Act 1893 by the NZ Parliament. On the face of it the Conciliation and Arbitration era should have been supportive of unions, as it envisaged national level, sectoral bargaining, with compulsory arbitration of disputes and, from 1936, compulsory union membership. Despite these strong institutional factors, employment relations in NZ became, on the contrary, increasingly unitarist and paternalistic. ‘By the time the Labour party became the Government in 1984 strikes were all either explicitly unlawful, or liable to penalties, arbitration was available as a guaranteed ‘back stop and certain issues...were interpreted by the Courts as being managerial prerogatives and hence not negotiable under law’ (Geare and Edgar, 2007: 299).

The Labour Relations Act 1987 was the fourth Labour government’s only labour market reform, during a period (1984-1990) in which they radically restructured the rest of the NZ economy with a programme of market liberalisation policies and privatisations. Prior to the election of the fourth Labour Government in 1984 the NZ economy was subject to high levels of government intervention and regulation (Gustafson, 2006: 8) and was ‘arguably the most controlled in the Western world’ (Gustafson, 2006: 9).

The 1987 Act, which marks the move to the short-lived Collective Bargaining era, made strikes lawful in certain circumstances, did not accept that some issues were managerial prerogatives and encouraged unionism and collective bargaining. What was retained from the previous era was a system of regional and national awards, blanket provisions extending those awards to all employers in the region or country, and compulsory membership of unions. This Act can be seen in contrast to

the rest of the Labour government's de-regulatory reforms in its continuing support for union membership and collective bargaining. It may be argued that this was due to the political dependence of the Labour party on the labour movement, and the trade unions. The party itself was founded in 1916 'to be the political wing of the industrial labour movement' (Aimer, 2006: 356), and a hallmark of the organisation is the affiliation of trade unions (Aimer, 2006: 359). Alternatively, however, from the point of view of the NZ trade unionist this was the first major reform of industrial relations since 1893. The move away from the award system towards collective bargaining may be seen as undermining, rather than supporting, trade unionism in that context.

The general election of 1990 brought a change to a National-led government and the start of the ongoing neo-liberal era. Their 1991 Employment Contracts Act (ECA) swept away any legislative support for collective bargaining and trade unions, and has been described as having shifted NZ from one of the most highly regulated to one of the most liberalised labour market regimes in the industrialised world (Haynes, 2005: 259). The Act recognised only the employer and employee as parties to the employment relationship, which was to be regulated purely by contract negotiated between the parties. There are suggestions in the purpose of the Act that employers and employees can negotiate whether employment contracts are individual, or collective, or both; but there is no mention of 'unions' in the Act at all. The references are instead to 'employee organisations'.

In 1991, at the introduction of the ECA, union density was 35.4%. By December 1998 this had fallen to 17.7% (Geare and Edgar, 2007: 321) and to 17.1% by December 1999.⁷ What was established, in fact if not in rhetoric, was freedom and flexibility for employers, with none of the recognition of the lower bargaining power of workers, and indeed an assumption of equality of bargaining power.

In their reaction to the ECA 1991 the focus of trade unions in NZ remained almost exclusively on collective bargaining, producing an increasing reliance on a shrinking group of core workers for leadership and a further reliance on legislative protections. Given the nature of trade union strategies, and their assumptions about labour, this is not a major difference from unions in other countries in their reactions to the crisis. The more restrictive focus on collective bargaining of unions until 1991 in NZ, however, has, it seems, narrowed the possible avenues for action without a radical change in policy. Indeed, the wish of NZ Equity to represent members for whom there are no formal collective bargaining structures runs contrary to this general trend.

The return to power of Labour in 1999, under the leadership of Helen Clark, brought with it a new legislative framework for industrial relations. The Employment Relations Act 2000 (ERA) was intended to bring the concept of 'good faith' to NZ employment law and also boost support for collective bargaining and trade unions, as opposed to the ECA, whose purpose was 'to promote an efficient labour market' (ECA, 1991). Despite these intentions, while there was a small increase in union membership and collective bargaining coverage between 2000 and 2005, these numbers have remained static.

The Role of Ideology

Wilson (2010) has described modern NZ industrial relations as a 'struggle between competing ideologies' in that the key features of the statutory framework have shifted dramatically, even without a broad based political consensus underlying the changes. Indeed, the new leadership of the NZ Labour Party has signalled that a new legislative framework for industrial relations will be one of their priorities if they lead the Government after the 2014 election (to be held on 20

September). This may allow for a boost for unions in the short term, but it is not necessarily a long term solution to the crisis.

While Wilson saw no broad based political consensus underlying the legislative changes between 1991 and 2010, others have argued that there are, on the contrary, emerging themes in NZ society which could be described as broadly embracing a 'neo-liberal' outlook (Bogg et al., 2013). As the Labour Minister responsible for the ERA 2000, it might be that Wilson does see a bigger difference in ideology between that Act and the ECA 1991 than others looking in from the outside.

These themes identified by Bogg et al., and noted above, are a combination of a) de-regulation in all markets, including the labour market, b) as part of a strategy of economic competition, c) together with a roll back of the role of the State from one of promoting the representative role of trade unions to one of neutrality. This last is too cautious a description, however, given the intervention of the Government in this dispute. It seems more that the role of the state has been recast as one representative of capital as opposed to neutrality, while retaining an image of neutrality through the conflation of the 'public good' with the attraction of inward investment. The National-led Government has proposed changes to employment legislation at various times since the 2008 election. These proposals have always been described as neutral, even-handed attempts to "re-balance" the power between employers and workers (Employment Relations Amendment Bill 2013, preamble). The real effects, however, of the changes will be to negate the power of organised labour in NZ.⁸ In particular changes to the legal foundations of collective bargaining contained in the Employment Relations Amendment Bill 2013, including the removal of the requirement for bargaining to be concluded, are viewed as likely to remove any enforceable requirement for employers to bargain with unions.

As Bogg et al. (2013) point out, in its public narration of events surrounding the Hobbit dispute, the Key government conflated the common good with the attraction of inward investment through de-regulation of the labour market. These ideologies could be described as gaining 'hegemonic' status in NZ in the sense of becoming 'the common sense of a whole social order' (Eagleton, 2011). That this appeared to be accepted as 'common sense' by the bulk of the mainstream press, and by the bulk of NZ voters cannot be denied. This ideological outlook most certainly pits union members as outsiders in society, and at its most extreme, as a potential threat to the economy, and so to the social order.

In this regard, the affiliation of NZ Equity to MEAA can only be seen to have negatively impacted on the power of the unions. 'While the need for strong support and the traditional international collaboration in a global industry centred elsewhere might have made affiliation with the MEAA seem an attractive prospect for NZ Equity, it was probably a strategic mistake' (McAndrew & Risak, 2012: 72). Not only could the unions be framed as outsiders to the Kiwi social order, threatening the national economy in general, and the future of the film industry, the MEAA affiliation meant they could be seen as true, Australian outsiders.

The Transnational Nature of the Alliance

In her survey of the academic literature on transnational labour alliances Brookes (2013) states that the picture is complicated. 'No single snapshot could capture the extensive array of tactics workers utilize in transnational campaigns' (Brookes, 2013: 182). It may be useful here, however, to distinguish between two different types of transnational alliance which were involved in this dispute. There was both a strategic, ongoing trans-Tasman alliance between the NZ Equity union and the MEAA, and a tactical, dispute based alliance with the MEAA and the FIA. The first,

the ongoing relationship between NZ Equity and the MEAA, is perhaps more akin to the type of trade union merger or amalgamation that has been common, within national borders, since the early 1990s. Given the size of the NZ population generally, and the number of professional actors in particular, it is a sensible strategy to make use of a close relationship with a bigger, better resourced and so stronger union, in the same industry based in a close trading partner. Munck (2014: 299) indeed comments that in other contexts '[i]ncreasingly unions are establishing bi-lateral relations with sister organisations in other countries...' He cites the examples of the Dutch and British maritime sector unions merger in 2009 to form Nautilus as an example of such a sectoral, cross border partnership. Munck's other example of the merger of the UK and Ireland's biggest union, Unite, with the US and Canada's United Steelworkers is of a different type given the sheer size of the membership of the enlarged organisation, added to the complexities involved with the widespread natures of the sectors covered.

The dispute based alliance with the FIA perhaps is a better illustration of the type of transnational alliances that Brookes discusses, though what both have in common is that they are 'instances of active co-operation across national borders between two or more unions or other organised groups of workers' (Brookes, 2013: 182).

Brookes (2013) identifies three distinct types of power which can be exercised by labour in transnational alliances; structural, institutional and coalitional power. Structural power is the ability of workers to influence employers because of their location in the economic system (Brookes, 2013: 183). This type of power is not necessarily confined to the national economy but can also be exercised at a global level. Institutional power comes from the ability of workers in one country to use their more advantageous institutional position to support less privileged workers in another country (Brookes, 2013: 187). Finally, coalitional power is the use of networks of social relations to expand the scope of conflict by involving other, non-labour actors willing and able to influence an employer's behaviour (Brookes, 2013: 192).

The strategic decision to exercise any or all of these types of power will depend upon the nature of the dispute, the nature of the employer's business, the knowledge the union has about the nature of the employer's business and the inter-dependence between the workers and the employer in each case. In the case of this dispute, it could be argued that while the unions successfully used both structural and institutional power, the overall outcome might best be explained by the success of the employers' exercise of coalitional power.

In relation to the idea of structural power, Brookes suggests that there are two types – marketplace bargaining and workplace bargaining power. Workplace bargaining is the most common in transnational labour alliances, in particular where workers are bound up in tight, interconnected production and supply chains.

With regard to marketplace bargaining, this is conceived as the ability of workers to influence a particular employer by withdrawing their labour from the marketplace and surviving on non-labour sources of income. While this is acknowledged to be rarely encountered in transnational labour alliances, the nature of the global film industry, with workers being engaged on a project basis for each production, means that this may be the best way of describing what was being attempted through the 'Do not sign' order. While the actors were not withdrawing their labour completely from the marketplace, they were withdrawing from this particular production, but with the possibility to survive on income from other projects. This type of action, having the possibility of delaying or stopping a single production altogether without preventing the actors finding other sources of income and work, is an extremely powerful tool.

There were also additional pressures on this particular production, over and above the financial issues being experienced in the industry on the back of the global financial crisis (Haworth, 2012: 101). In particular *The Hobbit* had been in various stages of pre-production for around six years, while personnel changed and other problems beset it. A delay in beginning filming due to a global industrial dispute at this late stage was an addition unlikely to be welcomed by all those involved (Handel, 2012).

In addition to their structural power simply as actors per se, the FIA used the international nature of the putative cast for the movie as a further part of their strategy to influence SPADA in NZ. If all the actors, not just NZ actors, would only engage with the production once an agreement on bargaining had been reached, it should be a strategic decision for Warner Brothers, as the main investor, to influence SPADA to come to that agreement. Further, while the rhetoric around the uncertainty of filming in NZ was based on the idea that when Warner Brothers moved production overseas the putatively ongoing dispute would be over, this was a global action – the same actors, including the big name US and British actors in concert with the NZ actors may well have continued to refuse to engage with the production, no matter where it was located geographically.

With regard to the institutional power employed by the unions through the FIA, actors in most other English speaking economies have solidly recognised rights to minimum contract terms and conditions, collectively bargained by their unions – in the United Kingdom (UK) by Equity, in Australia by the affiliated union the MEAA and, most influentially, in the United States of America (USA) by SAG. SAG's constitution states that 'No member shall work as a performer or make an agreement to work as a performer for any producer who has not executed a basic minimum agreement with the Guild which is in full force and effect.'⁹ Until 1 May 2002, this rule was only enforced on productions shot in the United States, however since that date, what is referred to as Global Rule One extends to all members working outside the US for foreign producers as well. This means that any producer wishing to engage a member of SAG as a performer in their film/TV show/commercial or industrial production, no matter where in the world it is to be filmed, must 'become signatory to a Screen Actors Guild Global Rule One agreement, providing for minimum wages, working conditions and protections for each such member.'¹⁰

The global action by the FIA can therefore be seen as a clear example of workers from the other English speaking countries using their better terms and conditions, and strong collective bargaining influence, to try to force the film industry in NZ to improve the relatively weak position of NZ workers. In a country where only 17.4% of the labour force belongs to a trade union such international solidarity seems to be a viable option for building support, and leverage for campaigns for labour rights.¹¹ As has been noted '...Warner Bros strategists had little to fear from an organisation of several hundred NZ actors' (McAndrew & Risak, 2012: 72).

As Brookes points out, however much an alliance of unions and workers can select their strategy for each action based on their own understanding of the institutional and structural background, 'labour cannot control the political and economic context in which a transnational campaign plays out' (Brookes, 2013: 196).

Coalitional Power in Opposition

The third distinct type of power identified by Brookes is that of coalitional power, or the use of networks of social relations to expand the scope of conflict by involving other, non-labour actors willing and able to influence an employer's behaviour (Brookes, 2013: 192). As the FIA's 'Do not sign' order was not publicised and only notified directly to the production companies involved, it

seems that the federation had made the strategic decision that their structural and institutional power would be sufficient in this context. Indeed, it might be difficult for actors to garner non-labour support for industrial action, due to their perceived position as relatively wealthy, transnational workers. As Kelly discusses (1997: 29) social movement theorists have articulated that there are three critical processes through which groups go before taking collective action: attribution, social identification and leadership. Even if a wider social grouping than actors were to see their grievances as genuine, and subsequently attribute the blame for those grievances to SPADA, it may be impossible to have the requisite number of that wider social group also identify with film actors. In particular due to the perception of actors as being Hollywood stars with a 'jet set' lifestyle.

In the context of the global film production industry, therefore, the labour alliance built around the FIA using the actors' economic and industrial location as structural and institutional power would theoretically, and did in fact, lead to success. But what overshadowed the success in gaining an agreement to re-negotiate minimum terms and conditions in return for the lifting of the 'Do not sign' order has much deeper and longer lasting consequences of NZ industrial relations, and perhaps says more about the society than this one particular incident.

In any dispute, the employers also have an opportunity in which to exercise their own respective structural, institutional and coalitional power to resist labour actions. Brookes describes how workers can leverage the influence of 'consumers, voters, shareholders, journalists, political leaders and various other actors with the potential to influence the outcome of conflicts between capital and labo[u]r' (Brookes, 2013: 191). In this case, in spite of the dispute being over, and industrial action lifted, it was the employer who brought to bear leverage from all these sectors to craft an opportunity for the forces of capital to achieve both the de-regulation of the film production labour market, in the passing of the Employment Relations (Film Production) (Amendment) Act 2010, and additional tax subsidies attached to the production of the film. Between the 17 October 2010, when the dispute was settled, and the exit from NZ of the Warner Brothers executives, the unions had no ongoing dispute, and their choice to delay the announcement of this until Warner Brothers agreed to do so turns out to have been an error. This error let the later confirmation of the CTU (along with SAG and the FIA) appear to be in response to the Warner Brothers' threat to move the production offshore, and allowed the 20 October 2010 demonstration at Weta Workshops to appear to be a reaction to the industrial action, rather than a well-crafted tactic on the part of the capital investors and employers to turn the situation to their advantage. In the context of the hegemonic nature of neoliberal ideas in NZ, as discussed above, turning this union victory to a victory for capital was simple.

Conclusion

While in the long run it might seem, at best, over-optimistic to claim the FIA's transnational action around the production of the *The Hobbit* was a successful one, it remains the case that SPADA and NZ Actors' Equity entered into negotiations to update the NZ actors' minimum terms and conditions as had been sought by the unions. In light, however, of the overshadowing of this success by the de-regulatory legislation and further tax subsidies to the foreign investors, the conclusion must be reached that overall this was to the detriment of the trade union movement, if not in global terms, at least within NZ.

The fact that the NZ public was so ready and willing to accept Peter Jackson as one of their own, acting on their behalf, rather than as a capital investor and employer, is a contributing factor to the other ideological issues at play. In addition, the emergence of the neo-liberal ideals of attracting

inward investment through competition and labour market de-regulation are attaining something of a hegemonic status. The combination of these two factors allowed the Government to intervene in an apparent attempt to broker a deal between the unions and capital, ostensibly as a neutral bystander. In reality, its role was far from neutral; it was actively and exclusively engaging with Warner Brothers' executives on their visit to NZ, and directly negotiating the terms of the agreement with them to conclude a dispute which no longer, as they knew, existed.

If there are lessons to be learned by unions from this very brief, but turbulent period it may be that the exercise of structural and institutional power is no longer sufficient to offset the power of capital. In a society where trade unions, and labour, have seemed to have lost their legitimacy as actors at a national level, and the role of counter-weight to capital investment is no longer seen as expedient or indeed wise, there is a further need to use whatever coalitional power, at a national level, is available. NZ Actors' Equity's alliance with MEAA is a type of cross-border partnership which is becoming common, but this was used to great effect by Peter Jackson and the NZ Government in framing the issue in the minds of the general public. There must therefore be a harnessing of power to narrow or exclude the options for capital to use their own coalitional power to depict the unions as separate to the workers, and therefore as the outsider and threat to the national economy and so the nation's social order.

NOTES

1. Data accessed on 12 March 2014 at <http://stats.oecd.org/Index.aspx?DataSetCode=STLABOUR#>.
2. <http://www.scoop.co.nz/stories/CU1009/S00283/statement-regarding-the-hobbit-and-claims-by-meaa.htm>.
3. Downloaded from <http://www.stats.govt.nz/infoshare/> on 31 March 2014.
4. *Bryson v Three Foot Six Ltd* (2005) 1 ERNZ 372 (SC).
5. <http://www.legislation.govt.nz/bill/government/2010/0229/latest/whole.html>.
6. <http://www.beehive.govt.nz/release/hobbit-movies-be-made-new-zealand>.
7. Data extracted pm 03 Oct 2013 22:33 UTC (GMT) from OECD.Stat.
8. The National party is NZ's conservative, 'right of centre' political party. They, and the media, describe the party as right of centre, though on economic policy they may be described as market drive, *laissez faire*. Since 2008 they have, in coalition, formed the Government of NZ through retaining control of the proportional representation Parliament.
9. <http://www.sag.org/content/global-rule-one>.

10. <http://www.sagaftra.org/production-center/globalruleone>.
11. <http://www.dol.govt.nz/er/starting/unions/registration/UnionMembershipNumbers2011.pdf>.

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