

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
2 Department of Industrial Relations
3 State of California
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BEFORE THE LABOR COMMISSIONER

STATE OF CALIFORNIA

10	CAROLE BENNETT, an individual)	Case No. TAC 15-95
11	dba THE BENNETT AGENCY,)	
12)	
13	Petitioner,)	INTERIM ORDER RE: PETITION
14)	TO DETERMINE CONTROVERSY
15	vs.)	
16)	
17	DOROTHY M. DARTLAND, an individual)	
18)	
19	Respondent.)	

20 The above-captioned petition, filed on July 12, 1995, alleges
21 that Respondent DOROTHY M. DARTLAND owes a 10% talent agency fee
22 to Petitioner CAROLE BENNETT, an individual dba THE BENNETT
23 AGENCY, on all gross earnings which may become payable to
24 Respondent in connection with her current employment as a "co-
25 executive producer" on a new CBS television series entitled
26 'Caroline In The City', and seeks a determination from the Labor
27 Commissioner ordering payment of this fee.

28 Respondent's Answer to the Petition to Determine Controversy
raises numerous affirmative defenses, two of which we shall
address herein. Respondent asserts, in its Answer and also in
previously filed correspondence to the Labor Commissioner, that
this matter is subject to arbitration pursuant to 'Rider W' of the

1 contract between DARTLAND, a member of the Writers Guild of
2 America ("WGA"), and her talent agent. But 'Rider W' expressly
3 provides that "[w]hen [a] writer performs multiple services which
4 include services other than writer services . . . the provisions
5 of Rider W shall apply only to the writing services and shall not
6 apply to the non-writing services." This controversy concerns
7 Petitioner's entitlement to commissions on the earnings derived
8 from Respondent's employment as a "co-executive producer" under a
9 contract with CBS that expressly provides that DARTLAND "shall not
10 write under this agreement any story and/or teleplay". This
11 controversy, therefore, does not fall within the scope of 'Rider
12 W'. Consequently, the provisions for arbitration under Labor Code
13 §1700.45 are not applicable to this dispute.

14 Respondent also asserts, in its Answer, that the Labor
15 Commissioner lacks subject matter jurisdiction to adjudicate this
16 controversy. Subject matter jurisdiction must rest upon Labor
17 Code §1700.44, which vests the Labor Commissioner with primary and
18 exclusive jurisdiction in "cases of controversy arising under [the
19 Talent Agencies Act, Labor Code §1700, et seq.]". The purpose of
20 the Talent Agencies Act is to regulate the activities of talent
21 agents with respect to their dealings with artists and to provide
22 a framework for the resolution of disputes between talent agents
23 and artists. A dispute over a talent agent's fees for having
24 procured employment for an artist unquestionably "arises under"
25 the provisions of the Talent Agencies Act. But fee disputes
26 concerning non-artist employment cannot be said to "arise under"
27 this Act. The term "artists" is defined at Labor Code §1700.4 to
28 include:

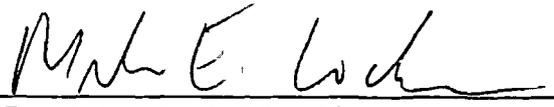
1 "actors and actresses rendering services on the
2 legitimate stage and in the production of motion
3 pictures, radio artists, musical artists, musical
4 organizations, directors of legitimate stage,
5 motion picture and radio productions, musical
6 directors, writers, cinematographers, composers,
7 lyricists, arrangers, models, and other artists and
8 persons rendering professional services in motion
9 picture, theatrical, radio, television and other
10 entertainment enterprises".

11 The issue of whether DARTLAND, in her capacity as a "co-
12 executive producer" , falls within the definition of an "artist"
13 under Labor Code §1700.4(b) turns on whether her job duties and
14 the actual work she performs as a "co-executive producer" fall
15 within the meaning of the phrase "persons rendering professional
16 services in . . . television and other entertainment enterprises".
17 Despite this seemingly open ended formulation, we believe the
18 Legislature intended to limit the definition of "artists" to those
19 individuals who perform creative services in connection with an
20 entertainment enterprise. Without such a limitation, virtually
21 every "professional" connected with an entertainment project - -
22 including the production company's accountants, lawyers and studio
23 teachers - - would fall within the definition of "artists".
24 Obviously, the Legislature could not have intended such an absurd
25 result.

26 Here, if Respondent's job duties and the work she performed
27 as a "co-executive producer" was essentially of a creative nature,
28 she would fall within the definition of an "artist" and the Labor
Commissioner would have subject matter jurisdiction over this
controversy; but if not, such jurisdiction would be lacking. In
order to reach a determination on this jurisdictional issue, the
parties are hereby requested to file evidentiary declarations and

1 any legal argument no later than January 10, 1996. Based on a
2 review of the evidence and argument submitted, the Labor
3 Commissioner will either certify the non-existence of controversy
4 within the meaning of Labor Code §1700.44; or schedule a hearing
5 to resolve any disputed factual issues necessary to reach a
6 determination on subject matter jurisdiction; or if it is
7 determined that subject matter jurisdiction exists, schedule a
8 hearing on the merits of the controversy.

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10 DATED: 12/14/95


MILES E. LOCKER, Attorney for
the Labor Commissioner

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