Strengthening New York's Emerging Arts and Entertainment Workforce

Research Report by Sally Alvarez, Jacob Barnes and Anne Gartlan July 2016

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Introduction

As New York's creative economy evolves to keep pace with the rapid growth of digital media and other changes in the arts and entertainment [A&E] industry, traditional unions face new challenges, especially among younger creative, technical, and craft workers. There is a growing need for unions in the arts and entertainment industry to enhance and share innovative strategies to represent and advocate for the interests of A&E workers. While research on industry trends and economic impact has been conducted and made available from a variety of sources, actual primary research among members of the emerging workforce and the organizations focused on representing and protecting their interests is rare.

According to a recent report authored by Lois Gray, Maria Figueroa, and Jacob Barnes at Cornell's Worker Institute, the increasingly precarious nature of the A&E workforce endangers the productive engine that the industry represents for New York's economy:

- New York is a world leader in the production and export of arts and entertainment, one of the United States' strongest export-growth industries.
- In 2015 this industry, which includes live performing arts (theater, music, dance), electronic media (film, broadcast & cable, sound recording, and internet), and visual arts (museums, galleries, and art dealers) was home to 52,451 arts related business, employing 314,099 people in New York.¹
- The multiplier effect of the arts and entertainment industry on New York's economic development includes its impetus to technological innovation, attraction to tourism, and inflow of jobs and population.
- New York's position in this industry is highly dependent on the depth and breadth of its labor pool, which may be at risk as a result of intermittent employment, low income, and lack of a social safety net.²

In the winter of 2015, with funding provided by the New York State Legislature through the Worker Institute at Cornell's School of Industrial and Labor Relations, researchers began to design a project that would focus on primary research among members of the workforce and the organizations that advocate for them. While this research focuses on the workforce concentrated in the greater New York metropolitan area, because the industry's economic impact is so broad, and because the trends discussed

¹ Americans for the Arts, *The Creative Industries in New York*, 2015. http://aftadc.brinkster.net/New_York/New_York.pdf

² Challenges to the Arts and Entertainment Workforce in New York. Lois Gray, et al. June 2016. Cornell ILR Worker Institute https://www.ilr.cornell.edu/worker-institute/new-york-state-projects/strengthening-new-york%E2%80%99s-emerging-arts-and-entertainment-workforce

are statewide and national in scope, the research has deep resonance with the situations faced by A&E workers more broadly. The research

- explores the experiences of these A&E workers themselves as they built careers
- collects information from the organizations and policy makers who advocate for them, and
- examines the broader socio-economic and demographic features of New York's arts and entertainment workforce.

The purpose is to contribute to a dialogue to generate insights and policy proposals that could assist unions and policy makers in responding more effectively to changes brought on by technological innovation, a rapidly changing industry, and an increasingly non-union workforce. This report represents a summary of that effort. Researchers conducted a series of focus groups with young workers, as well as intensive research in current literature, and secondary statistical analysis. The project has interviewed more than 80 union leaders, policy makers, leaders of non-profit groups in the arts, young workers in a variety of positions across the industry, and "incubators." Researchers focused on answering the following questions:

- What does a current arts and entertainment industry profile look like?
- How is the industry changing?
- How do these changes impact workers in the industry?
- How does the industry's transformation impact the unions' power and ability to represent workers?
- What new strategic options emerge for unions and policy makers in response to the challenges faced by these workers?

The Project

In addition to the final research report and summary here, the project has several other components:

• The research has resulted in the development of five case studies based on the experiences of five different sectors of the early-career workforce in the A&E industry in New York City. Gathering data for these case studies became an integral part of our research approach, generating many insights that we found could be generalized to the A&E workforce as a whole. These five cases are

³ We defined incubators as creative professionals who function either individually or in a non-profit institution as producers of theater, films, music, etc. They are not connected to mainstream arts institutions and represent the layer of the industry that generates work for early-career A&E workers who may or may not be represented by a union.

being used as the basis for discussion among the unions about the challenges they face. They provide a vehicle to discuss the best practices we discovered unions were already using in reaching out to and advocating for these younger workers. The cases have already helped to generate ideas for possible public policy initiatives to improve the lives and conditions of the workforce. The five case studies focus on the following sectors of the industry:

- 1. Young workers in reality television production
- 2. Musicians teaching in the NYC Schools
- 3. Producers of independent "indie" film
- 4. Workers in live immersive theater in New York City
- 5. Video game developers.
- This Research Report contains general observations about the industry and workforce, but the
 case studies provide much more detail on the specifics of the changes as they relate to particular
 segments of the workforce, so the report should be read in conjunction with the case studies. The
 testimony of the young workers and other sources that we used to develop the case studies
 provides additional support and documentation for the observations and analysis in this report.
- The project has developed an interactive training curriculum (ReSET: Revision of the Strategic Education and Training curriculum) on innovative practices and strategies to assist the unions and other workforce organizations facing these challenges. A planning committee of representatives from 12 unions from the A&E industry, as well as several auxiliary worker support organizations, met monthly from November 2015 through May 2016 to advise and provide input for the curriculum. A draft was tested with the committee on February 25, 2016, and the final version was completed in April. A printed Resource Book accompanies the curriculum and is provided to all participants with additional materials and resources. Three train-the-trainer sessions were held in April and May to train facilitators from the various organizations to present and use the curriculum. The initial version is designed for union leaders and staff in a mixed-union setting. Customized versions are being planned for several different types of audiences (new members, activists, students) and for use with individual unions or particular sectors.⁵

⁴ See Appendix A for a list of ReSET Planning Committee members and their organizations.

⁵ Please contact Sally Alvarez at the ILR Worker Institute if you want further information on ReSET, including using or customizing the curriculum, or receiving training to conduct it. sma21@cornell.edu. 212-340-2816.

• A daylong policy roundtable was convened on May 5, 2016, at the Cornell ILR Conference Center in New York City bringing together union leaders and activists, policy makers, academics, and creatives to dialogue about the changes in the industry and the challenges of representing workers, especially those early in their careers. The roundtable included the presentation of a newly updated report on the industry by Lois Gray, Maria Figueroa, and Jake Barnes. An earlier report, "Empire State's Cultural Capital at Risk? Assessing Challenges to the Workforce and Educational Infrastructure of Arts and Entertainment in New York," authored by Gray and Figueroa, was published in 2007. The new report updates that earlier publication and is titled "Challenges to the Arts and Entertainment Workforce in New York." It is available at https://www.ilr.cornell.edu/worker-institute/new-york-state-projects/strengthening-new-york%E2%80%99s-emerging-arts-and-entertainment-workforce.

A caveat for the researchers and the readers here is that the arts and entertainment workforce is not monolithic. The universe of workers in this industry ranges from ballerinas to video animators to security guards at motion picture sound lots, and beyond. Live theater differs widely from videogame production; jazz recording from set design; voiceover work from scriptwriting. We have attempted here to identify general trends, and especially to point out areas in which the changes are affecting wide swaths of the industry. A central finding of the study is that work in this rapidly changing environment is evolving outside (and across) the usual categories (live performance, television, film, etc.) and outside the craft/job designations that commonly identify these workers. This presents a unique set of challenges to unions that have historically organized and bargained along distinct craft lines.

Occasionally a union leader or staff member will argue there is nothing changing except the terminology and names of the employing companies: "It's always still 'Let's put on a show!" We disagree. When a ballet lover in Topeka can switch on her computer and be onstage with a member of the American Ballet Theater in New York close enough to see the sweat on her upper lip, the world has changed, and so have the dynamics of labor relations. We believe that whoever might profit from that phenomenon, it should include the dancer, the camera operator, and the stagehand. When someone in Eden Prairie, Minnesota can walk to their local movie theater and see an opera in New York streamed live, the musicians and technicians should all benefit from that, not just the owners of AMC Theaters⁶. While unions are actively engaged in responding to these new realities, it's often a defensive response to a reality that's already been imposed. Additional contract language or new backend provisions (adjustments made to compensation or credits based on profits generated by the work's eventual distribution) may not be enough when the backend is virtual. The unions cannot afford to rely on their mature contracts and downplay the new practices, structures, and profit models the industry is generating every day. Protections will cease to exist if they are left up to the owners and employers. The young workers entering the arts and entertainment workforce today have many insights and experiences that could help to anticipate changes rather than react to them. Listening to their input is both a way of anticipating changes facing the workforce, and winning them over to the importance of a collective rather than an

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⁶ https://www.amctheatres.com/programs/the-met

individual response. Their ideas and perspectives can enhance the effectiveness of the collective voice that all A&E workers can benefit from. We hope this research contributes to that effort.

Methodology

We defined the sectors of the industry where our research focuses as those areas that have traditionally been unionized (film, television, music, live performance). While the visual arts are clearly part of this universe, they are not generally understood as having significant labor relations practices or structures. Museums and historical sites were not included. Another major omission was spectator sports, which has its own unique labor relations practices concentrated at the player level, but with very few unionized sectors lower down the wage scale.

A major challenge in the data we collected was that publically available databases are not uniform in how they name or categorize A&E workers, or report economic impact. Examples would be that sometimes museums and visual arts are included in a dataset, sometimes they are not. Sports agents are sometimes included with theatrical agents, sometimes omitted altogether. As can be seen from the data in the ReSET PowerPoint on this website (https://www.ilr.cornell.edu/worker-institute/new-york-state-projects/strengthening-new-york%E2%80%99s-emerging-arts-and-entertainment-workforce), we have tried to clarify our categories where possible, and where the categories of data were just too difficult to disaggregate, we have noted it.

This data collection problem is exacerbated by at least three additional factors:

- 1. New jobs and sectors are emerging constantly as the industry develops. An example is that videogame developers did not exist as a category in the data ten years ago; now it's the fastest growing sector.
- 2. With the increase we found in self-employment and the "indie culture" of creative production, reporting of distinct "jobs" or self-identifying as a particular kind of artist/worker has been made more difficult. An actor-director-writer who works in voice-over and is also a film producer could have 50 W-2s and 20 1099s in one year, giving him/her multiple points of entry for the data.
- 3. With multiple platforms displaying the same content, the old ways of "counting eyeballs" to track media saturation or reach is useless. Even the distinction between the "television" and "film" sectors is misleading when that content might appear on multiple screens of various sizes and reach. Counting workers in one category versus another when the traditional categories now overlap is inevitably subjective.

Our research team developed a number of avenues for gathering data in this project. Our methodologies for primary data were focus groups and interviews. Significant and ongoing research exists on the arts and entertainment industry: its size, economic impact, structure, profit models, trends, etc. Less but still

significant research is conducted by and for arts and entertainment unions on their role in the economy, their efforts to adapt to some of the changes in the industry, and their trends in growth. Hardly any primary data is ever collected about the people who work in the industry at the creative or craft level. While we used data from the first two perspectives, as stated earlier, our focus was on qualitative data collected from the *workforce*, both union and nonunion.

We conducted five focus groups with young workers from May 2015 through December 2015, tapping into communities of young workers both above and below the line⁷, both union and nonunion. We recruited participants through a combination of union contacts, personal contacts, and Facebook invitations on multiple sites. Most of the participants in the groups had never met each other, though in several instances they had come with one other person they knew. Of the first four focus groups of young workers, two involved workers in live performance and two groups consisted of individuals in independent film and video. A fifth focus group was conducted for workers in reality television.

From February 2015 through April 2016, we conducted dozens of interviews from the following categories:

- "Incubators" of creative work, e.g. the artistic and managing directors of major Off-Broadway theater entities and young film producers
- Union leaders, staff and activists from all the major arts and entertainment unions in New York
 City
- Young artists: e.g., theater-makers, filmmakers, musicians, cinematographers
- Arts and worker advocacy organizations, e.g., the Actors' Fund (social services for the arts) and the Actors' Work Group, the NYC Volunteer Lawyers for the Arts, Creative Capital, League of Independent Theaters of New York, and others.
- Policy makers such as the NYC Commissioner and Deputy Commissioner in the Mayor's Office of Media and Entertainment

Our researcher from the Worker Institute, Jacob Barnes, conducted an extensive literature search and review of recent studies on the industry and workforce, as well as compiling a prodigious amount of data on industry and workforce trends drawn from public and governmental databases. This data was used in the development of the ReSET curriculum and appears in the ReSET PowerPoint and Resource Book available on this website. (https://www.ilr.cornell.edu/worker-institute/new-york-state-projects/strengthening-new-york%E2%80%99s-emerging-arts-and-entertainment-workforce)

Additionally, the ReSET Planning Committee itself was a tremendously important source of data and insight from the union community. The 36 members of the Planning Committee, representing 15 unions

⁷ These terms are still in common usage, but are remnants of the early days of film budgets when costs were divided into those who guided the creative process <u>screenwriter</u>, <u>producer</u>, <u>director</u> and <u>actors</u>) and those whose work involved the technical production process. (camera, sound, stage hands, wardrobe, etc.

from across the arts and entertainment community, met monthly to discuss the creation of the curriculum and what they were experiencing in their efforts to reach and represent new members of the A&E workforce in New York. They were able to corroborate trends we had observed from our other data sources. Their deliberations, questions, and insights were important contributions to the research. They pointed out issues that the unions were facing in response to the changes in the industry that we would never have identified without their input. One example was the growing expectation that camera people would now own and maintain their own equipment; another was the introduction of 3-D copiers to produce theatrical props and costume pieces; another was that make-up artists are constantly pressured to handle hair and wardrobe tasks. Protections of intellectual property, the use of social media to audition for and access gigs, the expectation that actors and musicians will perform promotional tasks that used to to be performed by paid promotions staff, are examples of issues identified by ReSET Planning Committee members that improved the final curriculum and contributed to this research.

Summary of Research Findings

The data sources and statistics that support this summary can be found in the ReSET PowerPoint and Resource Book that are available at https://www.ilr.cornell.edu/worker-institute/new-york-state-projects. We summarize the major findings and observations of the project below.

Profit models are shifting: Lots of work, but compensation and standards are down.

One of our interviewees, a veteran performer and incubator, called this "analog dollars, digital dimes" for workers. The internal structure of the industry is shifting, and along with it, the traditional models of how profits are generated, who assumes the risk, and where the divisions between labor and management, audience and creator, and professional and non-professional lie. While the arts and entertainment industry is still extremely concentrated in the few major corporations⁸ identified as "conglomerates," we are seeing huge growth in the number of smaller or individual entities that are producing an increasing percentage of entertainment content.

For a number of reasons, but particularly technology, we are seeing a shift of the larger corporate players into distribution and away from the major roles they used to play as generators and funders of creative content. Fewer medium-budget films are being financed by the major studios, which focus now on blockbusters and film franchises with potential international distribution markets not dependent on language. Distribution hubs controlled by major media conglomerates search for content in indie festivals and on YouTube. Demand for content is up, work and productivity are up, while wages and workplace standards are down. This is pushing risks and the costs of production onto workers and smaller companies. When this happens, the shrinking margin of profit makes it much harder for workers—and unions-- to fight for better compensation and higher standards.

⁸ Disney, Comcast, Sony, Time Warner, CBS, 20th Century Fox, Viacom. See ReSET PowerPoint, slides 22-25.

One example of this trend emerged in an interview we conducted with a young documentary producer. He had previously worked in video special effects for the company that produces a highly successful cable crime series for a major distribution network. After producing the series for several seasons, the company was informed that the producers were shopping for a company that would do it for less. Eventually a company underbid his employer and he lost his job. He said,

"I can't believe someone underbid us. We were all working out of one room and we had a total staff of seven. And we weren't getting paid that much. How can you do a major series for less than that?"

The answer is found in the changing world of film production and distribution. Because advances in technology have made it so much cheaper to launch a video production company on a shoestring, their competition could take advantage of a brave new world of eager entry-level employees, falling standards and precarious employment. This cable series was generating huge profits for the distribution entity, but in an emerging model that resembles Wal-Mart's brutal leverage on contractors in the global supply chain, the small entrepreneurs and their employees were competing against each other in a race to the bottom. And the unions were not in the game at all.

One particularly stark example of this environment of no-wage, no stability, no IP protections was provided by a young, ambitious female actor-producer of comic videos for her own YouTube channel. She is part of a comedy group that used crowdfunding to raise money for the productions:

We produced an episode for about \$5K per episode. We had 200 people who worked on our shows [for YouTube]. The problem is when you are working with people who work for free or for reduced rates, they aren't always available at your beck and call, to do everything. We required production assistants who were willing to work for free. The end credits for every episode go on for a full minute, which is fine, because we got people to write original comedic songs FOR those credits.

Clearly, this woman was not at a place in her career where she was looking for union protection, but YouTube is a corporate behemoth in the world of digital media, and is monetizing her work and the work of her collaborators. If she moves to the next stage in her career, she will need an increased level of awareness of what her rights are as an artist and worker, and what her responsibilities are as an employer.

It is not surprising that YouTube producers are actually organizing now in recognition of the value of collective sharing, if not of collective voice.

This month, [June 2016] (Hank) Green will launch a nonprofit organization called the <u>Internet</u> <u>Creator's Guild</u> that hopes to provide content creators with business advice, annotated contracts, and other resources. It will also interact with the press and platforms from a creator perspective.

Initially, the ICG will be funded by a grant from VidCon but also from membership dues, which will be \$60 annually.⁹

YouTube "stars" are one of many emerging phenomena that confound unions' typical structures of labor relations. New profit models challenge old practices. One of our actor-filmmaker interviewees uses the phenomenally successful YouTube celebrity Grace Hellbig as an exemplar of the future, whose quirky fame has leapfrogged over the need for union protections, but whose success also involves many employees who should be covered by unions. He observes:

Unions say, 'Grace Hellbig is NOW ready to join!!' [But] when the union approaches them to join, they say... "I'm not a person, I'm a BRAND. I'm a corporation with a marketing department, a social media person, a PR person, and a film crew".

It actually creates a new dynamic for contracts. When you have small organizations or groups of people getting together and wanting to make a video or a movie... or a theater piece that's also a movie that works in with a graphic piece that can be shown in a gallery, and you have all these hyphenate things going on...this cuts out your argument for the division of management & labor.¹⁰

The Changing Workforce Reflects a Changing Culture

With the introduction of the smartphone in 2007, the expectation for content-on-demand and constant interactivity became the norm. Millennials born after 1980 grew up with the internet. Their expectation that they would be characters in the drama of their own entertainment feed has been baked into their identities. The audience with the expectation of being passively entertained through sound and picture may soon be a relic of the 20th century. One young theater artist-incubator firmly planted in the digital world writes:

... within a few decades, that solid audience base will have passed on, and an entire generation of digital natives will take its place. Soon, these digital natives will have children, who will also be digital natives. Within the next 50 years or so, the entire country will consist of digital natives, and theatres that are still trying to cater to a digitally immigrant audience [anyone born before 1980] will have vanished, because that audience will no longer exist. ¹¹

We are seeing a new generation of workers entering the field of arts and entertainment who are used to not only choosing, but producing their own content. They are no longer limited to the broadcast or cable or theatrical choices to which their parents were accustomed. One veteran actor-producer who for years

 $^{^{9}\ \}underline{\text{http://www.fastcompany.com/3060617/youtube-stars-form-new-guild-to-give-creators-a-stronger-voice}$

¹⁰ See Indie Film Case Study by Anne Gartlan at https://www.ilr.cornell.edu/worker-institute/new-york-state-projects/strengthening-new-york%E2%80%99s-emerging-arts-and-entertainment-workforce

¹¹ Taylor Edelhart, "Ready Player Everyone: Digital Nativity, Games, the Body, and the Future of U.S. Theatre." Unpublished honor's thesis, New York University. May 7, 2015

was an elected leader in the union that is now SAG-AFTRA commented on the influence of interactivity of live theater trends,

"Curious Incident of the Dog in the Nighttime" used technology as a way to reinvent theater. Technology creates in us an expectation that everything will perform as well as the iPhone. Live theater is under pressure from everything around it. The performers live in the digital soup and they will bring these changes to their work....the writers, the composers, the lyricists.... What comes next will come with video game DNA.

When they decide to pursue a career in the industry, young creatives often become what is now termed a *hyphenate*: an actor-producer, or writer-filmmaker, or musician-playwright. Advances in technology have allowed them access to all phases of production. They are more entrepreneurial; they have lower expectations of stable employment; they have less interest in working on someone else's project, except as a short-term gig.

One young, male (non-union) hyphenate we interviewed said:

Most of my own experience has been with creating my own work. (It was) never in someone else's hands. It was exciting because it was new, the first project and first thing I'd ever produced and wrote.

At the same time, this free-wheeling environment poses risks these young workers are not ignoring. One young male actor/writer/director said

There's such an over-saturation of people making video content that it's hard to stand out, even if your work is worthy of standing out.

A 40-something male documentary and non-fiction writer (union member) showed more of the concerns of a mature career person when he observed:

While freelancing can be right for someone's temperament, it's a big problem when it comes to protections and stability. You have a sense of lack of power as a freelancer with leverage and money--which I realized how bad that is in terms of the lack of getting credit for my work.

Unions still have control over the high end of the industry

Unions are still very powerful in the more traditional and higher-profit corners of the industry. They still have many mature contracts that set industry standards. Stage technicians and actors in New York who work on Broadway are well-paid and enjoy high standards. Television and radio performers in major outlets are still protected by standard contracts. This outlook has historical roots: entertainment unions were built in an era of growing demand for and limited supply of their skilled labor. Like earlier craft guilds in shoemaking and barrel-making, their leverage with employers was based on controlling the supply of workers and thus controlling the work. While this model worked very well in the early years of film, radio, and eventually television, the industry and the economy have changed.

There are parallels with the building trades unions here. As more work became available, the employers in construction looked outside the limited supply of union workers and began to build their own workforce apart from the unions. Unions held on to the larger major contracts and projects in urban areas, but the residential market became almost completely non-union. Now even the high rise market for construction in New York City is under pressure from non-union contractors and non-union workers. Entertainment unions are facing even more cataclysmic changes in the structure of their industry and in the culture it reflects.

When asked about his own future, a young male actor-voiceover artist-filmmaker reflects pessimism about the likelihood that young people can stay in the city with stable families unless they have some level of union-provided stability:

In future generations, will there be people in their '30's with kids? Because they can't make a living doing it. Two people making six figures in the city with insurance? THEY can have kids. I'm 30 and pre-marriage (but it will happen soon). I'm looking at my life as an adult person, and last year was my best year ever, but it wasn't all covered work. There are scary things happening in commercials. It's quite terrifying. Will I max out, or will my work relationships continue to help me through? I'm not sanguine that this will continue. So I continue to look at other places...I'm not banking on voice-over.

Current membership and staff can be resistant to opening the doors to a new workforce that doesn't seem to appreciate the traditions and practices of the past. Roberta Reardon, founding Co-President of SAG-AFTRA, and current Commissioner of Labor of New York, is a keen observer of the industry she has worked in for decades:

Union reps have been heard to say, "We've got everything organized that needs to be organized." Sometimes, people have a hard time hearing what the young people are saying. And meanwhile, the non-union space is growing right out from under these major unions.

An indie film producer and loyal, longtime union member said,

The union [SAG-AFTRA] was built for a certain type of person and a certain type of industry. And that person is not here, and that industry is not here.

Some union leaders are aware of the challenges. One high-level elected leader in a live performance union acknowledged that "everything worth organizing we have organized" is not an adequate response, commenting:

How does a union as big as ours become nimble? We need a really efficient process and the ability to be flexible, while protecting the mature contracts. With business models changing so fast, where do you plant the flag?

The Executive Director of another union said,

We must embrace what is happening or we will become dinosaurs.

The workforce is growing in size and skill level, but is under increasing pressure

The universe of talented and skilled workers is growing. Schools and colleges, responding to a growing interest on the part of middle class students for careers in the arts, are churning out record numbers of degree holders in theater and film and music: well-trained, highly credentialed, and too often unemployable in a market that is struggling to absorb the supply. Entry level work that used to be performed by employees is now performed by unpaid interns. According to a recent report by the Strategic National Arts Alumni Project, only 15 percent of arts majors who graduated prior to 1983 reported working as an unpaid intern. Among the 2009-13 batch of graduates, 54 percent had an <u>unpaid internship</u>. Do unpaid internships result in better employment prospects, or are they another way of subsidizing employers and displacing paid employees?

According to a 2014 survey of students by the National Association of Colleges and Employers (2014), paid interns are considerably more likely to receive a job offer upon graduation than their unpaid counterparts. In the for-profit sector, 65.4% of students who held paid internships reported receiving at least one job offer upon graduation, compared to only 38.5% for unpaid interns; the latter figure is approximately the same as the job-offer rate for college seniors who did no internship at all (38.6%).¹³

One long-running Off-Broadway show in NYC that had been running for two years was 'called out' in the press in 2013 for its use of unpaid interns. After this article in the International Business Times by Christopher Zara ran online, Zara received a number of calls from cast members. He recalls:

... that around that time, the producers started giving unpaid interns the work that production assistants used to get paid to do.

An actor-dancer in the company of the granddaddy of 'immersive' theatrical productions, *Sleep No More*, which began as a non-union show, has been running for years, and is highly profitable, reported:

All of the sets and props are restored between shows by unpaid interns. Management told them it was normal in the theater to work for free.

These challenges are exacerbated by the unprecedented level of student debt that these early-career workers are shouldering, and the misfortune of trying to start a career in an economy just barely recovering from the economic disasters of 2008-10. While the new environment for creative work is

¹² Strategic National Arts Alumni Project. *Special Report: The Internship Divide. The Promise and Challenges of Internships in the Arts.* 2014. Page 6. http://snaap.indiana.edu/pdf/SNAAP15/SNAAP_Special_Report_2015.pdf page 6

¹³ Ibid. Page 5.

tremendously exciting, with more access to technology and opportunities for self-expression, it's also a time of reduced security and less stability than even this famously unstable and risky industry has been known for in the past.

One young female actor with a theater degree from a prestigious university said,

I am this creative force and hub, and I'm trying to get everyone else to have that same vision, that same work drive, creativity, ethic, so I'm constantly, even now dealing with that in my life. I always wanted to earn a living, and expected it really quickly. That did not happen. The hardest challenge is generating creativity with no funds.

A male union cameraman in his early 30s pointed to technology as he observed the competitive tension created by the expanding workforce and fluid work:

Technology makes it worse because just anybody can pick up a camera at this point, and if they have the drive to do, it's good for them, coming right out of school. I'm not going to say I wasn't eager coming right out of school, but I definitely worked my way up a lot more than I see other people doing, and it's completely frustrating that someone right out of college could take my job. And even by getting (paid) just a little bit less than I would be getting... and that's a general concern, that's just not me.

Entire new areas of the industry are growing up non-union in all jurisdictions

Examples are immersive theater, indie film, video game development, reality TV, jazz and rock club performance. When these new areas eventually become established and highly profitable, they are extremely difficult to organize. First contracts are even harder because low standards have become accepted practice by employers and an entire workforce has evolved to consider these standards and practices routine.

Reality television is an example of a sector that started as a scrappy, non-traditional genre produced with slim margins, low pay and poor conditions. Now it's a huge profit engine, but it has evolved its own set of resolutely non-union employers who benefit from the low-road production model and a workforce of young, desperate, but free-wheeling crew members unaware of even basic worker rights and happy to have any job in the industry at all.¹⁴

Videogame development is another segment of the industry that attracts young, tech-savvy creatives. Once there, they find contract jobs with terrible conditions and low pay, illegal requirements for unpaid overtime and no benefits. Paul Tozour is a researcher and journalist who covers the gaming industry.

¹⁴ See Alvarez, "The Real Deal: Organizing Young Workers in Reality Television in New York City." 2016. https://www.ilr.cornell.edu/worker-institute/new-york-state-projects/strengthening-new-york%E2%80%99s-emerging-arts-and-entertainment-workforce

Commenting on the notorious practice of *crunch time*, which refers to the period just before the rollout of a new game, when developers work 7 days a week, often 16-18 hours a day, he writes,

"It's common knowledge that **CRUNCH** leads to higher industry turnover and loss of critical talent, higher stress levels, increased health problems, and higher defect rates— and quite often, broken or deeply impaired personal relationships.¹⁵

Changes in the workforce and the industry exacerbate and sustain the lack of diversity in the arts and entertainment field

In a significant number of our interviews and focus groups, young workers expressed a concern about the lack of gender and ethnic diversity in the field, and they speculated on the reasons behind it. Recently, attention has been focused on the whiteness of the Academy Awards and Broadway. From the Los Angeles Times,

When the Academy of Motion Picture Arts and Sciences announced its 2016 Oscar nominees, only white actors and actresses were among the chosen few in the top four categories -- for the second year in a row -- resulting in the resurgence of the social media hashtag #OscarsSoWhite and a bevy of concerns about diversity in Hollywood.¹⁶

While this issue has existed in almost every arena of American life, studies of discrimination and inequality in our culture and the culture industries are legion. ¹⁷ Discussion of gender prejudice in TV and film directing has been increasing. ¹⁸ Racial and gender bias in fashion, visual arts, music, etc. is common. Recent debate over "cultural appropriation" focuses attention on the fact that for A&E, this is not just a question of parity in numbers of workers of traditionally excluded groups. The more deeply embedded issue is "whose stories get told? Whose stories are legitimate and authentic? Whose voices are privileged over others, and what narrative does our national culture systematically reflect and reproduce about difference and diversity?" These are very complex questions that go beyond counting people in a cast list.

The workforce in A&E is predominantly white, as is the membership of most A&E unions, although the latter statement is anecdotal, as unions generally do not track their members' ethnicity or gender. Leadership is overwhelmingly male. Many A&E unions are aware of this problem and have struggled to address it. Outreach to minority communities in training and recruitment does exist. Some unions have implemented quotas in leadership. But the depth of the issue can't be understood outside an analysis of the systems of privilege that have created it over centuries, and individuals and organizations find it

¹⁵ Paul Tousour, Gamasutra January 20, 2015 http://www.gamasutra.com/blogs/PaulTozour/20150120/234443/The_Game_Outcomes_Project_Part_4_Crunch_Makes_Games_Worse.php

¹⁶ Tre'vell Anderson, February 25, 2016 http://www.latimes.com/entertainment/la-et-oscars-so-white-reaction-htmlstory.html

¹⁷ See the work of Stuart Hall, Douglas Kellner and bell hooks, among others.

¹⁸ See <u>Denise D. Bielby</u> et al. Women and Men in Film Gender Inequality Among Writers in a Culture Industry. Accessed at http://gas.sagepub.com/content/10/3/248.abstract

difficult to understand or address in systemic terms. In our research, our data sources and our interviewees reported that people of color and working class people have less social and financial capital to weather early career hardships, fewer supportive networks, fewer incentives, less access to training, and less ability to shoulder the crushing student debt required to get the elite training their competition will have, etc. And this may not be improving. This will not improve because a few unions introduce quotas or there are a few diversity initiatives around the city. It needs to be addressed at a systemic level. The young people who live inside these systems have insights to share. The following quotes are all from different focus groups or interviews.

A male NYU Film School graduate says,

Fourth year and grad school students who have wealthy families...they subsidize their kids' film projects. These are thesis films produced that cost \$15K! It's grossly unfair, but it's the name of the game at NYU. Poorer families might use Kickstarter and raise, say, \$10K for their film.

The same young actress with a prestigious theater degree quoted earlier commented,

I think a lot of my friends that have really supportive parents are the ones that are making it. My friend Lexi has a trust fund and she doesn't work, she's incredibly talented and incredibly hard working but doesn't need a job. I live in Murray Hill so I'm right there, and my friends who live in, like, Queens, (or) areas that are much further away [from the casting studios] and cheaper, aren't doing as well, so I think that's interesting.

A successful young composer-playwright who lived with his parents in the New York suburbs off and on in the early years of his career said,

Now that I'm 35, with two kids, I look around, and all the incredibly talented young people I started out with have dropped out. All my peers who are still fulltime artists have no family, no kids, no stability. The only ones who are still doing it, and are married or have kids or a house, are the ones with parents who could help them, or who are from wealthy families and didn't have to work to survive.

An older (40-something) documentary filmmaker commented:

It may just be anecdotal, but whenever I start a project these days, it seems like the production companies have more and more of these unpaid interns and low-paid entry level people who are all trust-fund kids....

A young female properties artist commented on her own and her friend's efforts to get into the set designers union:

We talked about our economic ability to study for the test...like what Lauren did. She did not work a day job, she studied at the [union] studio upstate every weekend, practiced all the time. You

need social capital to be able to afford to intern...work for nothing. You need someone like your parents or a trust fund or whatever, to have the free time to do all the studying.

One 26-year-old male video special effects editor observed:

These (low-wage) production companies are actually being subsidized by middle class families who can afford to pay for their kid's apartment or health insurance while they start their careers.

Minority or working class kids don't get that subsidy because their families can't afford it. They have to get a real job....

A female theater-maker confessed:

I'm on my parent's insurance plan right now. Otherwise I wouldn't have insurance. Otherwise I have several ways of making money. ...I deliver food to rich people. Then I do research for my father. It hurts my soul a little. We are all white. The American expectation is that the family can support their kid until they make it.

Gender discrimination is built in as women who reach a certain point in their lives want to have families. These jobs, like jobs in many other high-skill industries are not sustainable if you have a family. This is true even in more established corners of the industry, A female television producer lamented that for women, their careers were actually derailed if they chose to have a family.

I'm in my mid-thirties and I can't keep doing this if I expect to give a child the kind of middle-class upbringing I had....

Her comments resonated with the male video special effects editor quoted previously, who observed that in his (non-union) experience, television crews quite often contained smart and skilled young women who worked until they turned thirty, and then seemed to disappear, just when their male counterparts were hitting their stride, gaining a reputation, and becoming successful.

And a staff member at the wardrobe union said:

Let's be blunt here. If the job candidates are a male vs. a female, the male will get it because she is more likely to get pregnant and have children, which will eventually cost the employer more in insurance expenses...

This qualitative data is confirmed in a study published in 2013 by the Strategic National Arts Alumni Project. Ethnic minorities and women were significantly less supported when building careers in the arts. Their educational experiences might be successful if they were able to access them to begin with but they faced barriers after schooling was completed:

¹⁹ "An Uneven Canvas: Inequalities in Artistic Training and Careers. Strategic National Arts Alumni Project . Annual Report 2013. http://snaap.indiana.edu/pdf/2013/SNAAP%20Annual%20Report%202013.pdf

Based on the responses of 65,837 alumni who took the SNAAP survey in 2011 and 2012, we find that arts institutions afford some unique advantages for women, minorities, and lower-SES students, perhaps giving these institutions an advantage when it comes to supporting and advancing the training and careers of those who have historically faced discrimination. However, significant gaps remain and inequalities persist related to minority enrollment in postsecondary arts institutions, school debt, racial diversity within artistic occupations, and disparities in earnings by gender.

Implications and Analysis

The arts and entertainment workforce is changing and evolving as the industry changes. A new, low-wage, non-union, entrepreneurial model for creative production is emerging and taking hold. Workers in this industry face a new normal created by the power of the Internet, convergence of forms and platforms (the one-screen phenomenon), and consumers' expectation of constant interactivity. The resultant blurring of lines between traditional crafts, between professionals and non-professionals, and between employers and employees have upended standards and labor relations traditions.

A young male voiceover artist-actor-filmmaker mused:

I have a 1080p camera on my cell phone. There is no division of management and labor at this level. It's gone. The Internet is a great equalizer and it has crushed labor and management's division. We have met management and they are us...

New sectors emerge with no standards to draw from, so employers invent their own, with the logic of "paying the least for the most" driving their profits and growth. All bets are off about how a workforce that has traditionally made a middle class living doing this kind of work will sustain their families and lifestyles. Unions struggle to adapt to these changes on an ad hoc basis, mostly by trying to accommodate the low-budget and low wage strategies of the employers, using creative contract language or carving out endless exceptions to standard contracts.

When asked, it becomes clear that young workers, especially non-union workers, are unaware of their rights in the workplace. Basic protections against things like wage theft, dangerous conditions, excessive overtime, and theft of intellectual property are unknown, and most young workers don't know to ask, and don't know where to go for information. All of these workers, union and non-union alike, are eager to share their experiences, but for the non-union workers, the idea that there might be a collective response that could improve their lives is foreign to them.

The attitude often reflected in the interviews and focus group was that unions are something for other (particularly older) people. They have little to offer, are inaccessible, rigid and archaic. In some instances, young A&E workers have been explicitly advised against union membership. They've been told by teachers, peers, and employers: If you join a union, you can't work non-union; the union will dictate what you can do; the fees and requirements are onerous; if you are producing something, the union will make it impossible to work with their members, etc. etc. With no access to information clarifying or countering this, unions are at a disadvantage in this new environment.

The workplace remains unrelentingly competitive. It is clear that the non-union workers are hungry for information and help that could assist them in standing up for themselves. A male actor in the original cast of a highly successful, non-union, immersive theater production Off-Broadway said

There are some Equity (union-ed.) performers in the show. In the beginning, we had numerous cast meetings off the premises to seek cast representation, to get unionized. In the beginning, the desire to be AEA I felt was very, very strong. But people were sent anonymous emails and told 'to stop this crap'. The cast was quite young and can get taken advantage of...Firing was threatened.

An actor in a long-running non-union Off-Broadway immersive play described how the producer's staff meets with the actors to determine what their salary should be, and then the staff takes that number to the boss, 'to negotiate on behalf of the actor' -- or so the actors are told. An actor wonders:

And so what kind of negotiation is this?? The show is largely made up of dancers with no agent representation, who are mostly glad to have a job at all.

From a young male union member working backstage on Broadway:

The technical requirements are going up at a pace MUCH faster than anyone can keep up with. And this is a tool of management to undercut our influence at the work place. So we have to be twice as good.

When union and non-union workers are put together in settings like our focus groups, it is clear the union workers enjoy advantages, but their experiences are not all positive either. They complain about the restrictions on work, the high initiation fees, the instability of health benefits, the lack of respect for their input they feel from their unions. It is also clear that the non-union workers are hungry for information and help that could assist them in standing up for themselves.

While the arts and entertainment industry is an engine of prosperity in New York, its workforce is rapidly becoming an example of a new *precariat*. These young people realistically expect to work for low wages and struggle during their early career years. This has always been a reality in this industry. But at some point, the calculus doesn't serve the industry, the workforce, or in the long run, the community and the larger economy. New York is a creative mecca, but the public policy infrastructure that could support this emerging workforce is weak.

Highly skilled and trained young people flock to New York as a mecca of creativity and opportunity. They find very little to sustain themselves as they try to build careers, and both the unions and the industry bear some responsibility for that. Lack of affordable housing, low wage work, lack of health insurance, high student debt, and uneven access to training opportunities all challenge these young New Yorkers.

Established workers in the industry resent the fact that young people will endure unethical and often illegal treatment, and will accept working for free while they fight for visibility in an overheated competitive artistic landscape.

How friendly are the city and state to A&E workers? A number of challenges related to public policy were articulated by these young workers.

A young writer familiar with New York State funding for the arts commented on the fact that support seems to exist for administrative functions, but not for creative workers themselves:

There's a workforce incentive as part of the Governor's economic development program. The jobs that were applied for were administrative jobs. Management directors could go from part-time to full-time. But there was NO funding for artists per se. I want jobs for writers elevated per se. For their OWN worth. Nano-technologists want to go live and work where there is quality of life...measured often by the availability of the arts. Each New York region could get such artists funded.

The director of an association that advocates for Off- & Off-Off Broadway theater identified the difficulty faced by artists who need performance and rehearsal space and can't find it within the budgets set by the unions:

The cost of real estate is growing so fast. The cost of space alone make the budget of a showcase hit the (AEA) \$35K cap more quickly, maxing out the budget. If anyone is making money, actors should make money. But the only one making money is the landlord.

While the New York State tax incentives program has been extremely successful in drawing production to the city, it is not linked to workplace rights or standards. Lack of support for training and diversity creates a shortage of labor while the incentives create demand. A senior staffer from a technical union said:

The Brooklyn Workforce Initiative program is a diversity initiative and very successful. Productions love these people because they are very well trained. Still, the [NYS] incentive program has been so successful, they've had to import workers.

An organizer for the NYC musicians union, Local 802, AFM, answered the question "What are the barriers the union faces in attracting young members?" by citing restrictions imposed by the city:

We need to work to overturn the Cabaret Law, which prohibits dancing if there is live music. It was passed in the '30s to prevent black and white people dancing together.

Implications for Unions

The unions in the arts and entertainment industry are definitely responding to these challenges, but unevenly. We discovered that many unions are taking proactive steps to address the changes they see going on around them. The unions we interviewed and worked with on this project shared new approaches to organizing, both internally and externally, creative research and new thinking about flexible contract arrangements. We saw efforts at assisting members in building their careers that go beyond the traditional practices of collective bargaining and contract enforcement. A number of these best practices are summarized in the ReSET Resource Book for the ReSET curriculum (https://www.ilr.cornell.edu/worker-

<u>institute/new-york-state-projects/strengthening-new-york%E2%80%99s-emerging-arts-and-entertainment-workforce</u>)

The larger unions are growing and prospering. Broadway is healthy, and unionized workers both above and below the line are doing well. The larger, influential unions have mature contracts that ensure their members will have secure employment and lifestyles. But the overall picture is one of declining influence going forward. Certain sectors, notably musicians and dancers, are seriously underpaid, precarious, and struggling. Musicians have been seriously affected by the restructuring of their industry due to technology. As non-union sectors grow, the standards erode for all workers, and the changes in technology, profit models and culture are affecting whether and how unions are able to represent all workers, especially young workers.

The scale of growth in the industry and workforce far exceeds the growth in union ranks. According to U.S. government data, from 2003-2013, A&E unions' net growth was 14,000 additional members $(3.2\%)^{20}$ in an industry with a workforce that grew by 312,000 $(13.6\%)^{21}$ in the same period.

Unions are facing multiple dilemmas that vary in visibility and seriousness for different unions:

Technology is a challenge for the technical craft unions, but the technological shifts in both production and distribution challenge how all the A&E unions function. Examples include how residuals are determined or rendered obsolete; how contracts based on budget levels are determined so that labor becomes a disproportionately large share of a budget; and even how jobs disappear altogether based on advances in technology that affect which jobs even exist. Two examples of that last point are the virtual orchestra on Broadway and backpack journalism in television news reporting. Scenic artists and wardrobe unions are challenged by 3-D machines that can create of props and costumes. The technology offers tremendous creative opportunities, but challenges the traditional ways workers perform, and are paid and valued.

Professionalism is undermined when the skilled craft of performance or expression is supplanted by the instant fame and fortune of YouTube celebrity. The craft-orientation of A&E unions dictates that their leverage is based on exclusion. This is an organizational logic that makes perfect sense in an industry that demands a high level of skill and employers are willing to pay for it. It is still an article of faith in mainstream live theater that if you want truly trained talent and skilled performers, you need Equity. But if live proscenium theater loses its perch amidst new forms like spectacle, circus, magic, and interactive immersive and devised theater, the profit center that has generated stable contracts is eventually undermined. The idea that you join the union when your professional career has progressed to a certain level may be on its way out. The value added for unions may need to be redeveloped for this new context.

²⁰ U.S. Department of Labor. Percentage based on LM2data reported from 13 unions in A&E https://www.dol.gov/olms/regs/compliance/rrlo/lmrda.htm

²¹ U.S. Census Bureau. Percentage determined from data retrieved from https://www.census.gov/econ/susb/historical_data.html

An oversupply of talent and skill has put pressure on the unionized workforce. One SAG-AFTRA hyphenate member commented, "The talent pool is getting bigger and bigger because almost anyone can pick up a camera or learn online how to do their own animation." One young (union) camera operator in our focus group articulated this dilemma when he commented that even though the Cinematographers' Guild allows members to work non-union, camera operators who aspire to join a union have to decide whether working union will pay the bills, and whether the investment in dues and initiation will pay off in work if they join.

Internal resistance from members and staff make change difficult. Unions often respond to these issues by pointing out their lack of capacity. It is completely understandable why members of any union, not just A&E unions, would want their union's resources focused on serving the current membership in their present circumstances. The challenge for leaders is to educate the members about the dangers of not responding to external environmental changes. Allocating all union resources to serving current members may threaten the long term survival of a union when the industry and workforce are changing so fundamentally, and the workforce coming up will have significantly different needs and challenges than the workforce that currently determines the allocation of resources.

If a union were to reexamine its mission and become an organization that represents all the workers working in its claimed jurisdiction, how might it function differently? Can it move in that direction and still maintain and protect its current members and mature contracts?

The poor public image and the lack of knowledge about unions among young workers is a hindrance to protecting this workforce. Outreach to schools and colleges is poor, uncoordinated between unions, and sometimes received grudgingly by faculty and administrators. Once a young graduate is out there looking for work, there are few if any consistent ways of communicating the benefits and advantages of working union. That idea of "when they are ready they will join" is useful in sectors like Broadway and major film studios, where work is very high-end and in limited supply. But work in A&E is exploding, and while unions are justifiably saying that some of it is not worth organizing, where do you draw the line? Opportunities for young members and unrepresented workers to provide ideas and input about this are limited. Union orientation seems to be predominantly one-way, and young members report, with only a few exceptions, that union leadership is uninterested in responding to their concerns or ideas.

Jurisdictional issues are unavoidable as the technology landscape changes. When live streaming of theater and dance, or virtual reality online for musical performances is the norm, how do unions divide up the work? Jurisdiction is organized labor's third rail, and the past is littered with examples of workers' interests lost in the fights between unions that can't find common ground on who they represent and how they advocate for groups with overlapping jurisdictions. Jurisdictions will be shaken up by the changes in production and delivery of A&E content, and unions are uncomfortable talking about that. Employers will take advantage of it, and the stakes for unions to be working together on these issues couldn't be higher.

Finding Common Ground

On May 5th, 2016, an invitation-only roundtable gathered representatives from all of the major A&E unions and worker advocacy groups to hear a report on this research and to discuss possible joint initiatives in representing this workforce in New York, including in public policy. A number of creative ideas were discussed, and some of them are being acted on now. The four ideas generated that day that got the most support and generated in-depth discussion were the following:

- Intellectual Property is an issue that needs special attention in helping young workers understand their rights and the need for protections. Many of these workers grew up in an interactive environment that made the ownership of intellectual property irrelevant, but as they mature and need to get paid for their work, these issues become critical. Technology has made these questions incredibly complicated, but the unions need to foster and facilitate informed discussions about the risks and possible protections
- 2. Misclassification is a controversial issue in A&E, as many workers prefer the flexibility of the contract system. Young workers rarely understand the implications of their employment status, and unions should be at the forefront of these discussions, on both state and national levels. Tax incentives should be tied to worker rights and standards and misclassification is an area of constant exploitation by employers. This is part of the larger public discussion about the gig economy and whether the distinction between employee and independent contractor is too rigid, and needs to be reconsidered.
- 3. Educational Outreach is an area of great potential cooperation and coordination between unions. There should be a coordinated strategy of outreach to schools and organizations where young people can learn about the union presence in A&E. Some unions are doing it well, but if resources were pooled, information shared, and outreach coordinated, it would go a long way toward reducing the level of ignorance and misinformation that young workers in A&E have about unions.
- 4. Creating a broad-based, young entertainment workers' resource center that would be an asset to all the unions in reaching out to young workers was an idea that generated tremendous enthusiasm. It could provide information on employment rights, the industry, the unions, wage scales, training opportunities, jobs, and other resources that could assist young workers in getting started in their careers. It could be supported with workforce development funding and be run by the young workers themselves. Interestingly, this idea could be the vehicle for the implementation of all three of the previous ideas.

Conclusion

It is noteworthy that in the ReSET development process, when we focused on identifying best practices, unions were mostly unaware of the best practices/innovations within other unions. As a result, the

Planning Committee members were adamant that the current conversations among unions in formal spaces are insufficient for this level of exchange. Public policy that could support this workforce is lagging behind, and needs to be discussed collectively by all stakeholders in spaces like the ones created through thisproject.

The five case studies included in this report provide a great deal more data and detail on the research and analysis generated by this project. While the observations and analysis contained in this report have been necessarily broad across the workforce and industry, the case studies provide more insights into how these general trends have affected particular segments of the workforce, and the unions' responses to those effects.

This report represents only one small piece of an on-going discussion. We are hopeful our research has generated ideas and enthusiasm about its importance. We welcome your feedback and would appreciate your comments on this report and on the case studies and ReSET materials. The research is only worthwhile if it adds to a conversation that leads to change. We are very grateful for the support of the New York State Legislature, the New York State AFL-CIO, and the many A&E unions and other organizations that contributed both financially and through their participation in this project. The Worker Institute looks forward to continuing the dialogue and continuing to identify ways to assist these unions, policy makers, and members of this very critical workforce in meeting these challenges.

Sally Alvarez

Anne Gartlan

Jacob Barnes

Appendix A

ReSET Planning Committee

Compiled 7-12-16

Actors' Equity Association

Tom Carpenter, National Counsel, Eastern Regional Director

Ben Liebert, Council Member

Melissa Robinette, Eastern Regional VP

Kate Shindle, President

Flora Stamatiades, Director of Organizing & Special Projects

American Federation of Musicians - International

Sam Folio

AFM (Musicians), Local 802

Gail Kruvand, Executive Board
Tom Olcott, Financial VP

American Guild of Musical Artists

Griff Braun, NY Area Dance Executive Louis Perry, Board Member

Directors Guild of America

Michael Ryan, Director of Special Projects

Association of Theatrical Press Agents and Managers (IATSE)

Nick Kaledin, Secretary-Treasurer

Actors Fund

Christopher Bloodworth, National Director, Career Center

Kathy Schrier, retired

United Scenic Artists (IATSE)

Cecilia Friederichs, National Business Agent Carl Mulert, Business Rep, Live Performance

SAG-AFTRA

Rebecca Damon, National Executive VP

Ed Fry, Member

Holter Graham, NY Local VP

Jennifer Peat, Director of Organizing, Eastern Region

Huseina Sulaimanee, House Counsel

Writers Guild of America East

Geoff Betts, Business Agent

Justin Molito, Director of Organizing

Stage Directors & Choreographers

Jennifer Toth, Associate Director of Member Services

Barbara Wolkoff, Director of Member Services

IATSE International

Tony DePaulo, 3rd Int'l Vice President / Co-Department Director, Stagecraft

Joe Hartnett, Co-Department Director, Stagecraft Department

IATSE, Local One

Will Armstrong, Member, Chair, Young Workers' Committee

International Guild of Cinematographers IATSE, Local 600

John Amman, Business Representative
Erin Henning, Member
Chaim Kantor, Eastern Regional Director
Caitlin Machak, Member

IATSE Local 764, Wardrobe

Margaret LaBombard, Education
Leah Okin, Business Rep, Live Performance

IATSE Local 798, Makeup & Hair

Rosemarie Levy, Business Agent, Cynthia O'Rourke, Secretary-Treasurer