

**BRITISH COLUMBIA
LABOUR RELATIONS BOARD**

December 1, 2009

By Fax

To Interested Parties

Dear Sirs/Mesdames:

Re: Canadian Affiliates of the Alliance of Motion Picture and Television Producers ("AMPTP") and the B.C. Producers' Branch of Canadian Film and Television Production Association ("CFTPA") - and- B.C. and Yukon Council of Film Unions ("Film Council") -and- ACFC West - The Association of Canadian Film Craftspeople ("ACFC West") -and- Union of B.C. Performers ("UBCP"), -and- Directors Guild of Canada - B.C. District Council ("DGC-BC")

(Section 41 Application - Case No. 57508/08)

This is further to BCLRB No. B179/2008 and subsequent informal discussions I have had with the parties regarding the issues identified and discussed in my letter of June 6, 2008. That letter identified three issues of significance to the parties and the B.C. film and television industry, and some possible means of addressing them.

By letter dated August 22, 2008, I provided some concepts for addressing the second issue. By letter dated September 19, 2008, I proposed interim measures to be in place for the upcoming round of bargaining, and invited submissions on them. After receiving submissions, interim measures were put in place by way of BCLRB No. B179/2008.

Since the issuance of that decision, UBCP, DGC-BC, and the Film Council all successfully negotiated renewal agreements with AMPTP and CFTPA (the UBCP agreement is subject to ratification). Those agreements were reached without third party intervention, or threat of strike.

This is a positive labour relations outcome and reflects the parties' continued interest in and commitment to maintaining the competitiveness and attractiveness of B.C. as a major centre for film and television production in North America.

With bargaining completed, I believe the parties are prepared to move the Section 41 process forward and deal with the three issues relating to it. My June 6, 2008 letter characterized the three issues as being:

1. The changed approach of the UBCP and the response of producers and other unions to it;
2. The collective bargaining approach of the CFTPA and the response of the Film Council to it; and
3. The line between the exclusive and non-exclusive zones.

In order to move this process towards completion, I believe it would be useful to propose a framework for an outcome to deal with those issues.

The proposed framework is the result of the extensive consultative process undertaken to date and is intended to reflect a balance as a package. I would expect that not every party will be completely satisfied with every aspect of it. However, in my view, it is important to find a way to balance the interests of the parties in a comprehensive manner.

After setting out the proposed framework, the parties will be given an opportunity to provide written submissions. I am particularly interested in hearing from the parties about whether the framework as a whole provides an acceptable balance and outcome to the Section 41 process.

Issue 1

In my June 6, 2008 letter, I expressed the view that an integrated, comprehensive approach to labour relations in this industry is required to ensure its continued growth and success. I noted that some parties suggested that, in order to ensure that approach was given effect, UBCP and DGC-BC should be included in the Film Council. I further noted that, while there is a legitimate argument and rationale for including all five unions in a single council, both UBCP and DGC-BC are strongly opposed to being forced into the Film Council, at least in part because they see their collective bargaining interests as being very different than the current members of the Film Council.

I further stated that the next (i.e., just completed) round of bargaining would likely shed light on whether an expansion of the Film Council would be appropriate. I noted that, if bargaining was successful, an expansion may not be the best way of addressing the parties' interests and concerns relating to the need for an integrated, comprehensive and stable approach to labour relations in the industry.

In my view, the just completed round of bargaining reveals that the essential features of the existing structure, i.e., the three unions negotiating and administering their own collective agreements, is functional. Accordingly, I am not persuaded that expansion of the Film Council, over the vigorous and sustained objections of both UBCP and DGC-BC, would be appropriate or strengthen the labour relations climate and the competitiveness of the B.C. industry.

Having said that, I also believe it is critically important that an integrated, comprehensive approach is taken to labour relations in this industry. In my view, some concrete steps are needed to ensure that approach prevails.

Historically, UBCP, DGC-BC, and the current members of the Film Council participated in a voluntary association that dealt with a number of important industry matters. That association played an important role in the evolution and growth of the B.C. industry. However, it has not been functioning for some time now.

In my view, it would be beneficial for the Film Council, UBCP and DGC-BC to participate in an association or coalition. Its purposes would include to:

- enhance communication, consultation, and co-operation among the three unions;
- enhance communication, consultation, and co-operation between producers and the unions regarding industry and labour relations issues; and

- provide a forum for a comprehensive, integrated approach to promoting and enhancing the competitive position of the B.C. film industry and the expanding of work opportunities within it.

As well as meeting regularly among themselves and with producer associations, the group should also meet regularly with ACFC West to discuss issues of common interest or concern. Those meetings could be facilitated by the Board if necessary.

For the just-completed round of bargaining the parties had in place the interim measures imposed in BCLRB No. B179/2008. Those included a requirement that UBCP, DGC-BC and the Film Council would:

- Identify common collective bargaining issues and co-ordinate bargaining with respect to those issues;
- Provide each other with general updates on the progress of bargaining relating to issues that are not common;
- Consult with each other when a decision to conduct a strike vote is a real possibility and before a final decision to conduct a strike vote is made;
- Continue the practice of common expiry dates for collective agreements; and
- Establish, with AMPTP and CFTPA, "safe harbour" arrangements for productions initiated prior to the conducting of a strike vote.

In BCLRB No. B179/2008, I described the positions of the parties regarding the proposed interim measures. Having carefully considered those positions and with the benefit of ongoing discussions with the parties, I propose that those interim measures be extended and apply presumptively to future rounds of bargaining.

All the parties have indicated their willingness to improve relationships, communication, and develop more problem-solving approaches to deal with issues arising in the B.C. industry.

Having said that, my June 6, 2008 letter noted some challenges that should be addressed. More specifically, in that letter I noted that producers had expressed a concern that UBCP appeared to have become less willing to engage in informal discussions to resolve issues. I also noted the producers' concern that UBCP now insists on more formal methods of dispute resolution such as grievances, payroll reviews, and audits. I noted that the producers said that, combined with difficulties in their ability to communicate with UBCP, UBCP's apparent reliance on formal processes is souring the relationship.

I also noted that UBCP is of the view that its members are the most vulnerable in the industry and that it had to be vigilant to protect their interests. UBCP perceives that formal processes such as grievances and payroll reviews bring clarity and respect. I also understand UBCP's view to be that the methods it uses to administer its collective agreements are necessary to properly protect its members' interests.

While the parties all have labour management committee provisions in their collective agreements, I believe that all parties are interested in enhancing consultative processes and developing more co-operative labour relations approaches. In my view, a working group (or groups) comprised of representatives of the parties and the Board should be established to study the issue including adopting a best practices approach examining existing examples and models and provide recommendations for implementation of such a process.

In my view, such a working group between UBCP and producers could help those parties to better understand each other's concerns and interests and find mutually beneficial solutions.

The parties should commit to ensuring adequate resources are dedicated so that the working group process can function effectively and that recommendations can be properly implemented. The purpose of this proposal is to enhance communication but, more importantly, provide a means by which changes that can improve the relationship can be implemented.

Issue 2

In my June 6, 2008 letter, I noted the Film Council had concerns about the fact CFTPA does not bind its members to the Supplemental Master Agreement and that, in part, resulted in the Film Council deciding to file a number of applications for certification with respect to productions that had voluntary recognition agreements with ACFC West. I also noted that these applications had raised significant stability concerns for both producer associations and ACFC West.

I noted that there is a general acceptance that voluntary recognition is the norm for union representation in the B.C. industry. I noted that all parties agree that certification of non-union productions was generally seen as unremarkable. However, controversy and concern arose in respect to applications for certification for productions with existing voluntary recognition agreements with ACFC West.

I also noted the Film Council's concern that certification seldom resulted in collective agreements as many productions are over in a matter of weeks (or even days) and once a production is finished, a producer has little incentive to bargain a collective agreement.

In my August 22, 2008 letter, I noted that, while the Film Council relies upon the right to apply for certifications, it acknowledges that certifications do not result in meaningful collective bargaining in the unique context of the B.C. industry. That letter further noted the parties' general acceptance of the importance of voluntary recognition as the method for achieving that outcome (i.e., meaningful access to bargaining).

In my August 22, 2008 letter, I proposed that, with the exception of very low budget productions (which would normally be expected to operate largely non-union) and productions that fall in the exclusive zone, voluntary recognition agreements should prevail over any application for certification for a group already covered by that voluntary recognition.

Where a producer chooses not to enter into a voluntary recognition agreement with a union, and a certification is granted with respect to that production, a method or process would be needed to be developed to ensure an expeditious and meaningful bargaining outcome.

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I noted this concept raised a number of questions which required further discussion among and with the parties. Having now had those discussions, the following is proposed with respect to this issue.

Voluntary recognition is recognized as the norm in the industry and voluntary recognition agreements should be respected and protected. In particular, where a valid voluntary recognition agreement is in place, such an agreement should prevail over an application for certification. That is, no certification application should be made with respect to employees captured by the voluntary recognition agreement.

This framework requires a test for determining when a voluntary agreement is in place. The Board, with the parties' assistance, should develop that test.

If no valid voluntary recognition agreement is in place an application for certification could be made and could be granted in accordance with the Board's usual criteria. Upon certification being granted, a collective agreement, which may or may not be an industry standard agreement, would presumptively apply. The nature and terms of that agreement could be the subject of further discussions.

In my August 22, 2008 letter, I noted there is a concern that some independent producers attempt to "bargain down" the industry standard agreement negotiated between the two producer associations and the Film Council. That process has been referred to by some as "shopping".

In order to provide more clarity in this regard, it would be expected that, once a producer interested in entering into a collective bargaining relationship with a union enters into negotiations with that union, the producer should sign a "letter of intent" and negotiate in good faith with that union. That producer should not negotiate with another union unless or until those negotiations are unsuccessful.

As noted in my letter of November 7, 2008, the Film Council and ACFC West are competitors, and that competition is a recognized characteristic of the B.C. industry. Such competition only becomes problematic if it results in instability or a "race to the bottom" in terms of wages and working conditions. In my November 7, 2008 letter, I noted that both unions have expressly stated they have no interest in such an outcome.

While ACFC and the Film Council are competitors, they also objectively share interests and concerns. For the sake of the stability of the industry it is important that they communicate and understand each other's interests and concerns. In my view, better communication could reduce misunderstandings and issues that raise stability concerns.

Accordingly, I propose the Film Council and ACFC West commit to establishing a working group, facilitated by the Board if that would be helpful, to discuss matters of shared interest and means to expeditiously resolve issues between them.

Among issues to be discussed could be the potential for an agreement that monetary packages in their respective agreements be comparable and that neither would negotiate a monetary package that would significantly undermine the monetary package of the other.

Issue 3

As noted in my June 6, 2008 letter, the line between the exclusive and non-exclusive zone was established in 1995 and has not been adjusted since. This is an issue that would benefit from further consideration. I propose that it be addressed by the creation of a working group made up of representatives of the parties and the Board which would be tasked with making recommendations regarding whether the line should be adjusted and, if so, how.

Summary

As noted earlier, the parties' views regarding the framework proposed in this letter are welcome. The intent, as much as possible, is to achieve an acceptable balance of the various interests and concerns and provide a workable solution to them so as to enhance the competitive position of the B.C. industry. While I welcome views and suggestions regarding particular aspects or elements of the framework, it should be considered as a package. I am particularly interested in the parties' views regarding the framework as a whole.

As I have noted in my earlier letters to the parties, this industry is characterized by creativity. While there are challenges and issues which need to be addressed through this Section 41 process, it is important to bear in mind that the labour relations component of the industry has a number of positive features. In particular, I have been struck by the extent to which the parties and their counsel have been able to bring a sophisticated, problem-solving approach to the resolution of issues. Their co-operation and input throughout this process has been invaluable.

AMPTP and CFTP A may provide their submissions by the close of business Wednesday, **December 16, 2009**. The Film Council and ACFC West may provide their submissions by the close of business Wednesday, **January 6, 2010**. DGC-BC and UBCP may provide their submissions by the close of business Wednesday, **January 20, 2010**.

Yours truly,

LABOUR RELATIONS BOARD



Michael Fleming
Associate Chair, Adjudication

MF/sn

Interested Parties shown overleaf

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Interested Parties:

British Columbia and Yukon Council of Film Unions
#310-B - 555 Brooksbank Avenue
North Vancouver BC V7J 3S5
ATTENTION: Tom Adair

Laughton & Company
Barristers and Solicitors
Suite 1090 - 1090 West Georgia Street
Vancouver BC V6E 3V7
ATTENTION: Bruce Laughton, Q.C.

✓ ACFC West - The Association of Canadian
Film Craftspeople
#108 - 3993 Henning Drive
Burnaby BC V5C 6P7
ATTENTION: Greg Chambers

Gowling Lafleur Henderson LLP
Barristers & Solicitors
2300 - 1055 Dunsmuir Street, P.O. Box 49122
Vancouver BC V7X 1J1
ATTENTION: David Duncan Chesman, Q.C.

Canadian Affiliates of the Alliance of
Motion Picture and Television Producers
600 - 666 Burrard Street
Vancouver BC V6C 2X8
ATTENTION: Don Cott

Harris & Company
Barristers & Solicitors
Suite 1400, Bentall 5, 550 Burrard Street
Vancouver BC V6C 2B5
ATTENTION: Barry Dong

B.C. Producers' Branch Council
Canadian Film and Television Production Association
600 - 736 Granville Street
Vancouver BC V6Z 1G3
ATTENTION: Tracey Wood

Taylor, Jordan, Chafetz
Barristers and Solicitors
Suite 1010 - 777 Hornby Street
Vancouver BC V6Z 1S4
ATTENTION: Donald J. Jordan, Q.C.

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Union of B.C. Performers
300 - 856 Homer Street
Vancouver BC V6B 2W5
ATTENTION: Mercedes Watson

Moore & Company
404 - 195 Alexander Street
Vancouver BC V6A 1N8
ATTENTION: Shona A. Moore, Q.C.

Directors Guild of Canada,
B.C. District Council
430 - 1152 Mainland Street
Vancouver BC V6B 4X2
ATTENTION: Crawford Hawkins

Lawson Lundell
Barristers & Solicitors
1600 Cathedral Place
925 West Georgia Street
Vancouver BC V6C 3L2
ATTENTION: M. Patricia Gallivan, Q.C.

International Photographers Guild of
The Motion Picture & Television Industries
(I.A.T.S.E. 669)
217 - 3823 Henning Drive
Burnaby BC V5C 6P3
ATTENTION: Rob McEwan

Fiorillo Glavin Gordon
Barristers and Solicitors
510 - 2695 Granville Street
Vancouver BC V6H 3H4
ATTENTION: Anthony Glavin

Teamsters Local Union No. 155
490 East Broadway
Vancouver BC V5T 1X3
ATTENTION: Bruce Scott

McGrady & Company
Barristers and Solicitors
P.O. Box 12101
1105 - 808 Nelson St
Vancouver BC V6Z 2H2
ATTENTION: Leo McGrady, Q.C.

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Motion Picture Studio Production Technicians,
Local 891 of the International Alliance of
Theatrical Stage Employees, Moving Picture
Technicians, Artists and Allied Crafts of the
United States and Canada
(I.A.T.S.E. 891)
1640 Boundary Road
Burnaby BC V5K 4V4
ATTENTION: Ken Anderson

Victory Square Law Office LLP
Lawyers
400 - 198 West Hastings Street
Vancouver BC V6B 1H2
ATTENTION: Sebastien Anderson