A Report

regarding a

Section 41 Inquiry into

Labour Relations

in the

British Columbia Film Industry

Prepared by Michael Fleming

Associate Chair, Adjudication

British Columbia Labour Relations Board

March 5, 2012

REPORT

I. INTRODUCTION

1 On February 4, 2008, the provincial Minister of Labour and Citizens' Services directed the Board to conduct a Section 41 review into the B.C. Film and Television industry (the "Section 41 Inquiry"). In her letter, the Minister indicated her view that the industry was "facing various challenges and factors that threaten industrial stability".

2 I was constituted as a panel of the Board to conduct the Section 41 Inquiry and initiated that process on February 28, 2008. A number of individuals have been helpful in this process, but in particular I would like to thank Elena Miller, the Board's senior staff lawyer, for her valuable work and insights throughout this process.

3 The parties have been assisted by their legal counsel, many of whom took an active role and have been very helpful. Counsel included:

> Barry Y. Dong, for the Canadian Affiliates of the Alliance of Motion Picture and Television Producers ("AMPTP"); Bruce Laughton, Q.C., for the B.C. and Yukon Council of Film Unions (the "Film Council"); Donald J. Jordan, Q.C., for the Canadian Media Production Association (formerly B.C. Producers' Branch of the Canadian Film and Television Production Association) ("CMPA"); David Duncan Chesman, Q.C., for ACFC West - The Association of Canadian Film Craftspeople ("ACFC"); Shona A. Moore, Q.C., for the Union of B.C. Performers ("UBCP"); M. Patricia Gallivan, Q.C., for the Directors Guild of Canada - B.C. District Council ("DGC-BC"); The late Laura Parkinson and Sebastien Anderson, for the 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 ("IATSE 891"); Anthony Glavin, for the International Photographers Guild of the Motion Pictures & Television Industries ("IATSE 669"); and Leo McGrady, Q.C., for Teamsters Local Union No. 155 ("Teamsters 155").

4 This report is intended to provide a summary of the process, the various Board decisions during it, its outcomes, and to provide further directions necessary to complete the Section 41 process. Also attached are letters I wrote to the parties during the Section 41 process providing more detail than is set out in the report. I am also attaching several Board decisions provided through the Section 41 process for the sake of completeness.

The Parties:

5 The Film Council is comprised of IATSE 891, IATSE 669 and Teamsters 155. It negotiates master and supplemental collective agreements with AMPTP and CMPA that cover employees who are members of its constituent unions and administers those collective agreements between rounds of bargaining.

6 IATSE 891 has more than 5000 members and is the largest IATSE local in Canada representing technical, artistic and allied crafts in B.C. and the Yukon.

7 IATSE 669 represents camera crews and unit publicists who work on all forms of motion picture and television production.

8 Teamsters 155 represents eight divisions of workers. While it represents primarily drivers, it also represents catering, animal handlers, animal wranglers, mechanics, marine personnel and miscellaneous workers.

9 UBCP represents 5000 performers including professional actors, stunt people, singers, dancers, voices and background persons (extras).

10 DGC-BC represents creative and logistical personnel including directors, production managers, and those employed in various assistant director and location departments.

11 ACFC represents craftspeople in 23 departments ranging from accounting to animal wranglers.

12 AMPTP negotiates and administers industry wide collective agreements on behalf of 350 motion picture and television producers in North America.

13 CMPA represents screen based media companies engaged in the production of English language television programs, feature films and new media content in Canada.

II. BACKGROUND

14 This is not the first Section 41 inquiry into the B.C. film and television industry (the "B.C. industry"). In 1995, the Minister of Labour directed the Board to conduct a Section 41 inquiry into the B.C. industry in response to instability concerns resulting primarily from a competition between UBCP and the Alliance of Canadian Cinema, Television and Radio Artists ("ACTRA") and a proliferation of *ad hoc* collective bargaining resulting from the growth of the B.C. industry. In *British Columbia and Yukon Council of Film Unions*, BCLRB No. B448/95 ("B448/95") the Board directed the creation of the Film Council made up of IATSE 669, IATSE 891 as well as Teamsters 155, as a means of enhancing labour relations stability in the B.C. industry. The Board also provided recommendations and guidance to the parties to facilitate the negotiation of Master collective agreements.

15 The purpose of the Section 41 process is to secure and maintain industrial peace, promote conditions favourable to the settlement of disputes and attract production work in the B.C. industry: B448/95 and *Sugar Mountain Productions Ltd. (Out Cold, A.K.A. Ten to One)*, BCLRB No. B268/2002, para. 23 ("*Sugar Mountain*").

16 During the 1995 Section 41 process, American and Canadian producers agreed to engage in a form of industry collective bargaining. In B448/95, the Board concluded the Film Council would have the exclusive jurisdiction to represent employees in the areas of work of the Film Council constituent unions on feature films with a "below the line" labour cost of $4.0 million (Canadian). The Film Council's exclusive jurisdiction also included one hour dramatic productions for NBC, ABC and CBS. Movies of the week were not included. In establishing the threshold for the exclusive zone, the Board recognized the challenges in clearly delineating it: para. 27.

17 The essential elements of the existing collective bargaining regime - Master agreements, main and side table bargaining, enabling, including all unions and the producer associations - were established at that time. That structure reflected a significant enhancement of co-ordination and a rationalization of bargaining processes in the B.C. industry, which improved its competitive position and ability to secure production work.

18 B448/95 contemplated three stages for the Section 41 inquiry as well as a limited ongoing role by the Board to review the mechanisms established through that Section 41 Inquiry.

19 In 1997, the Board concluded the second and third stages of the Section 41 inquiry initiated in 1995. The Board was not persuaded that UBCP and DGC-BC should be included in the Film Council at that time.

20 Although the 1995 Section 41 inquiry resulted in a number of significant improvements, concerns regarding stability issues in the industry remained. On November 17, 2003, Mr. Justice Tysoe was appointed by the Minister of Skills, Development and Labour as an Industrial Inquiry Commissioner pursuant to Section 79 of the *Labour Relations Code* (the "Code") with respect to ongoing labour relations challenges in the B.C. industry.

21 In his February 27, 2004 report (the "Tysoe Report"), Mr. Justice Tysoe identified a number of non-labour relations factors impacting the competitive position of the B.C. industry. Those included factors such as non-labour production costs, tax credits, the availability of infrastructure (studio and post production facilities), climate, time zone, and the value of the Canadian dollar.

22 In terms of labour relations factors, Mr. Justice Tysoe identified the main concerns as relating to a proliferation of grievances and jurisdictional disputes in the B.C. industry. Mr. Justice Tysoe also identified concerns relating, in part, to certain identified aspects of UBCP's approach to labour relations at the time.

23 Mr. Justice Tysoe encouraged the film unions to improve their communication as a means of enhancing the competitive position of the B.C. industry. While beyond the

scope of his terms of reference as Industrial Inquiry Commission, Mr. Justice Tysoe found merit to the suggestion that steps should be taken to address concerns regarding the ability of unions to achieve meaningful collective bargaining outcomes once certified (p. 39).

24 Mr. Justice Tysoe concluded that UBCP had acknowledged the concerns raised about it and had provided assurances that its approach would change. On that basis he concluded it was not necessary to make any specific recommendations to deal with the concerns associated with some of UBCP's practices. However, Mr. Justice Tysoe did suggest it may be useful to monitor the progress in making the anticipated changes (pp. 40-41).

25 Mr. Justice Tysoe provided five recommendations dealing with labour relations matters including a recommendation that the Film Council, AMPTP and CMPA negotiate Supplemental Master Agreements for productions outside the exclusive zone. The parties were able to agree on the implementation of four of the recommendations but were unable to agree on the implementation of one.

26 On February 7, 2005 the Minister appointed Arbitrator Vincent L. Ready as an Industrial Inquiry Commissioner under Section 79 of the Code to deal with that one unresolved issue. On July 14, 2005, Mr. Ready provided a report with recommendations for a process to resolve that issue which was ultimately resolved.

III. CURRENT SECTION 41 INQUIRY

Observations

27 The B.C. industry has matured over the last 15 years and is now the third largest in North America after Los Angeles and New York. It has grown from a total production value of $430 million in 1995 to more than one billion dollars in 2010 and now employs more than 30,000 people. The 2010 figure reflects a drop over the previous several years. The B.C. industry is project based, with a broad range of unionized employees who are recognized for the quality of their work and skills, working on production after production. Each new production is a separate employer for labour relations purposes.

28 One of the most important and well recognized features of the industry is its extremely mobile nature. In that regard, the industry is highly globally competitive. Producers have a wide range of choices in terms of locations where a particular production may be shot. That is underscored by the fact that, with the possible exception of the growing post production and visual effects segment, producers do not have significant capital investment in B.C. Studios do not generally own sound stages or equipment in B.C.

29 The existing infrastructure and skilled workforce has been developed and built up by British Columbians who are not part of the decision making process regarding where a particular production will be made.

30 As noted in *Sugar Mountain*, if B.C. does not provide a competitive and attractive environment for productions, productions will be done elsewhere (para. 27). This creates a sometimes delicate balance between ensuring the attractiveness of the B.C. industry for investment by producers and ensuring the fruits of the industry are shared with the members of B.C. film and television unions. By and large, the B.C. industry has been successful in achieving that balance. However, not surprisingly, that exercise is not without its challenges.

31 The B.C. industry has not only developed an extensive infrastructure but also mechanisms such as the Motion Picture Production Industry Association of British Columbia ("MMPIA") and Actsafe, which enhance the competitive position of the B.C. industry. MMPIA is made up of representatives of a wide spectrum of industry stakeholders with a focus on allowing the B.C. industry to speak with one voice regarding common issues and to enhance the competitive position of the B.C. industry. Actsafe is an organization made up of producers and unions to promote workplace health and safety in the B.C. industry.

32 The B.C. industry is facing both challenges and opportunities flowing from technological change, changing economies and market conditions. There is an ongoing need to be responsive to those changes in order to continue the growth and sustainability of the B.C. industry.

33 Throughout the Section 41 Inquiry, the parties have consistently expressed their willingness to explore ways to improve existing relationships and dispute resolution mechanisms in order to enhance the competitiveness, stability and sustainability of the B.C. industry.

34 The process in this Section 41 Inquiry has been largely an incremental, consultative one utilizing an interest based, problem solving approach in which the parties have had as much input as practicable into both the design of the process and its outcomes. The Board's role has been largely facilitative. I have provided decisions, orders and directions only where necessary to move the process forward.

35 The outcomes are, by and large, a product of the parties' efforts to achieve practical solutions to identified issues and to improve labour relations and dispute resolution processes in the B.C. Industry. Their candour and willingness to try to resolve issues have ensured any success this process may have engendered.

IV. ISSUES

36 Following the initiation of the Section 41 process, with the benefit of consultations with the parties, on June 6, 2008, I provided a letter to the parties identifying three issues of significance to the parties and the industry for the purposes of the Section 41 Inquiry. In summary, those issues were described and commentary provided in that letter (Appendix 1) as follows:

Issue 1

The changed approach to labour relations issues of the UBCP and the response of the producers and other unions to it.

37 This issue arose from UBCP having changed the way it functioned as bargaining agent in terms of its approach to collective bargaining, the administration of the collective agreement and its approach to its relationships with producers and others. More specifically, UBCP had adopted a stricter adherence to the letter of the collective agreement as well as more reliance on grievance procedures and conducting an accounting at the end of a production (audit) as a means of protecting its members' interests, whom it viewed as being among the most vulnerable in the B.C. industry.

38 Producers and other unions expressed concerns that UBCP had become isolated from others in the B.C. industry and that relationships in the industry had soured as a result. Producers expressed a concern that they found it increasingly difficult to resolve problems quickly and informally with UBCP.

39 As noted in my June 6, 2008 letter, some parties expressed the concern that UBCP may be prepared to act to the detriment of the B.C. industry as a whole in pursuing its individual bargaining and strategic objectives.

Issue 2

The collective bargaining approach of CMPA and the response of the Film Council to it.

40 This issue related to a perception, by at least some in the B.C. industry that, in light of the competition between ACFC and the Film Council, some CMPA members were using the Film Council supplemental collective agreement as a starting point with ACFC in order to obtain lower rates and inferior terms and conditions. That concern was exacerbated by the fact CMPA does not "bind" its members to the collective agreement it negotiates with the film unions.

41 One response to that perception had been for the Film Council to file a significant number of applications for certification for productions in the non-exclusive zone for which ACFC also asserted a pre-existing voluntary recognition collective bargaining relationship. That situation raised stability concerns for at least some in the industry. Those concerns flowed from the potential impact on the security and predictability of labour costs based on voluntary recognition agreements and were said to be driving producers away from working in B.C.

42 A related concern for the unions was that where a union was successfully certified, that almost never resulted in a collective agreement being achieved, given the fact many productions are completed in a matter of weeks, or even days.

Issue 3

The line between the exclusive and non-exclusive zones in the industry.

43 As noted above, under the 1995 Section 41 inquiry, the Film Council was given exclusive jurisdiction to represent employees on feature films with a below the line labour cost of $4.0 million (Canadian).

44 Some were of the view that the rationale for the line should be revisited and, in any event, it had not been adjusted since 1995 and, it should be at the very least in order to account for inflation.

V. PROCESS AND MEASURES TO ADDRESS THE ISSUES

45 Some parties had identified the expansion of the existing Film Council to include the DGC-BC and UBCP as a means of addressing stability related concerns. However, both DGC-BC and UBCP strongly objected to being "forced" into the Film Council because they saw their interests as being distinct from the "crew" unions and were very concerned their interests would be overwhelmed in the Film Council. I came to the view that, if the 2008 round of bargaining was successful, an expansion of the Film Council as suggested may not be the best way of addressing the parties' interests and concerns regarding the need for an integrated, comprehensive and stable approach to labour relations in the B.C. industry.

46 By letter dated September 19, 2008 (Appendix 2), I indicated that, given the fact that bargaining was imminent, the parties needed to know whether the existing structure was going to change and, if so, how. While the expansion remained an option, even if found to be appropriate, it was evident it could not be implemented prior to bargaining. Accordingly, I proposed some interim measures to address stability concerns relating to the existing bargaining structure and processes, to be put in place during the 2008 round of bargaining. Following further consultations, supplemented by submissions from the parties in response to the proposed interim measures, in BCLRB No. B179/2008 (Appendix 3), I directed that the proposed measures be put in place for bargaining.

47 Once bargaining was successfully completed, and following further consultations, I proposed a framework for an outcome to deal with the three identified and related issues and invited submissions from the parties regarding that proposed framework. By letter dated December 1, 2009 (Appendix 4), I noted that, in light of the success in bargaining, an expansion of the Film Council may not be appropriate. However, it was critically important that an integrated, comprehensive approach be taken to labour relations in the B.C. industry as a means of enhancing its continued growth and success. To that end, I proposed the interim measures put in place in BCLRB No. B179/2008 be extended and apply presumptively going forward.

48 A recognized feature of the B.C. industry is that a production company is created for the sole purpose of producing the film, television movie or series. Each production company is a separate employer for each production: *Space Buddies Productions Inc.*, BCLRB No. B215/2009.

49 As was also noted in the December 1, 2009 letter, there is a general acceptance in the B.C. industry that voluntary recognition, as a means of achieving union representation, is the norm. However, it was also generally recognized that where certifications are obtained by unions, they were not resulting in meaningful collective bargaining, in the unique context of the B.C. industry.

50 Accordingly, I proposed that the Board and the parties develop a test for determining the existence of a valid voluntary recognition agreement ("VVRA") and where no VVRA was in place, the Board and parties develop a means to ensure a meaningful collective bargaining outcome was achieved where a certification was granted.

51 Following consultation and submissions from the parties I provided a decision, *Canadian Affiliates of the Alliance of Motion Picture and Television Producers*, BCLRB No. B47/2010 ("B47/2010") (Appendix 5). In that decision a number of observations regarding the Section 41 process to that point in time were made:

> Some parties expressed initial concern and apprehension about the Section 41 Inquiry and what it was intended to achieve. In particular, strong concern was expressed by some that the process was simply intended to force UBCP and DGC-BC into the Film Council.
>
> In my discussions with the parties, I was able to explore not only the issue of whether an expansion of the Film Council was appropriate, but also a variety of other issues relating to the effective functioning of labour relations in this industry.
>
> With the assistance of the parties, I was able to identify and invite the parties to address "various challenges and factors that threaten industrial stability", to use the language of the Minister's letter which initiated the Inquiry.
>
> Since the process began, I have had many productive and helpful discussions with representatives of the parties about those issues. I appreciate the candour, reasonableness and good faith the parties have brought to these discussions. I am satisfied the parties recognized and accepted that the issues which needed to be addressed through this process were broader than the question of expansion of the Film Council, and participated fully in discussing how to address and resolve these issues. (paras. 70-73)

52 I found that the scope of the Section 41 Inquiry encompassed a wide-ranging review of labour relations issues affecting the B.C. industry and that to properly carry out the Board's mandate under both Sections 2 and 41 of the Code, the process should

address the issues identified by the parties which were particularly relevant to the Minister's stated concerns in her direction to the Board to undertake the Section 41 Inquiry.

53 The following order and directions were put in place in B47/2010 to address the three identified issues:

> A. The Film Council, UBCP and DGC-BC will establish an association (the "Association") which will meet regularly and be of the nature and for the purposes set out in paragraph 92 of this decision. The Association shall also meet with the AMPTP, CFTPA and ACFC West for the same purposes. The Board is available to facilitate those meetings, as necessary.
>
> B. In future rounds of collective bargaining between the producer representatives (AMPTP and CFTPA) and the Film Council, UBCP and DGC-BC, the following requirements apply presumptively. The three unions are required to:
>
> - Identify common collective bargaining issues and co-ordinate bargaining with respect to those common 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.
> - Continue the practice of "safe harbour" arrangements established in previous rounds of collective bargaining, subject to a timely and successful application to the Board that the presumption in favour of continuing the practice is rebutted.
>
> C. Where a valid voluntary recognition agreement ("VVRA") is in place for a production, no application for certification may be made for the group of employees covered by the VVRA. Where no VVRA is in place, an application for certification can be made. If such an application for certification is granted, a collective agreement, the terms of which will be determined by the Board, presumptively applies. The parties will work with the Board through a consultative process to develop the test for determining when a VVRA is in place and the terms of the presumptive collective agreement.
>
> D. An industry working group (the "Working Group") comprised of representatives of the parties and facilitated by the Board will be established to explore, study and develop recommendations for

> more co-operative labour relations approaches in the B.C. industry. In that regard, the Working Group will adopt a best practices approach. The Working Group will also examine and make recommendations relating to the issue of whether the line between the exclusive and non-exclusive zones should be adjusted, and if so, how.
>
> E. AMPTP, CFTPA and UBCP will form a sub-committee of the Working Group, to examine and make recommendations regarding how to resolve the concerns of both relating to UBCP's approach to collective agreement administration, particularly with respect to what has been described as the "audit" approach. (B47/2010, paras. 122-126)

54 As noted in that decision, those orders and directions were intended as a package resolution to the issues raised in the Section 41 process (para. 121).

55 I remained seized to provide any necessary clarification or modification of those orders or to the extent to which any further proceedings or directions in respect to them may be necessary or appropriate.

56 I also remained seized of the matter to facilitate the process and to resolve any issues the parties were unable to resolve themselves.

57 This continues the limited review approach for the Board adopted in the original Section 41 inquiry as well as a monitoring function suggested by Mr. Justice Tysoe in respect to certain issues identified in the Tysoe Report.

58 It also reflects the Board's approach under Section 41 in other contexts. For example, in *Construction Labour Relations Association of B.C.*, BCLRB No. B90/2006, the Board concluded that its duties under Section 2 of the Code to encourage the practices and procedures of collective bargaining and to facilitate the expeditious resolution of disputes are heightened when the bargaining framework has been established by the Board under Section 41 of the Code: para. 34.

59 Those considerations apply equally in the B.C. industry.

60 In my view, going forward, there may be issues which arise that require some form of assistance or even intervention by the Board. In that regard, at the very least, the Board has the ability to ensure its orders or directions provided under this Section 41 process are effective or can be modified as necessary or appropriate.

61 Pursuant to the directions in B47/2010, a consultative process was initiated to develop a test for determining when a VVRA is in place and, where one is not, and a union is certified, how a meaningful bargaining outcome might be ensured in the unique circumstances of the B.C. industry.

62 Following consultations on that point, by letter dated July 23, 2010, a framework for the test for determining a VVRA and for determining the terms of the presumptive

collective agreement to be in effect upon certification should no VVRA be in place, was proposed.

63 Following further input by the parties, a solution to both issues was provided in *Canadian Affiliates of the Alliance of Motion Picture and Television Producers*, BCLRB No. B176/2010 ("B176/2010") (Appendix 6) which also includes the July 23, 2010 letter. More specifically, in summary, the following regime was established:

1. VVRA

- All relevant collective agreements (i.e., Master and Supplemental Master) are to be filed with the Board.
- A party seeking to rely on or to establish a VVRA will file a copy of a letter between the parties recognizing the voluntary recognition agreement (the "Letter") relating to a particular production with the Board, when it is signed.
- The Letter should clearly indicate the collective agreement to which the parties have agreed to be bound (and that a copy of the relevant collective agreement has been filed with the Board).
- The Letter must contain or incorporate collectively bargained rates of pay.
- Where a Letter has been filed and an application for certification for the same group of employees is subsequently filed with the Board for a specific production, the certification application will be held in abeyance pending an investigation by the Board regarding the validity of the Letter.
- A party wishing to hold up a Letter as a VVRA barring a subsequent certification application by another union, must be able to provide evidence that a majority of employees working on the production are either members of the union entitled to participate in a ratification process or have signed membership cards with the union.
- A union seeking to rely on a Letter as a VVRA will, at the Board's request, file evidence in the form of membership cards, dues payment information and employee call sheet information to establish a majority are either members or have signed cards for the union.
- If the Letter is found to be a VVRA, the application for certification will be barred. If it is not a VVRA, the application for certification will be processed expeditiously by the Board.

64 The process to establish the existence of a VVRA is intended to be administrative in nature and to provide an expeditious answer.

65 Those measures resolved most of the issues relating to more than 30 outstanding applications for certification that had been held in abeyance pending the conclusion of the Section 41 Inquiry.

66 However, several issues relating to membership evidence between ACFC and IATSE 891 arising in relation to several of those outstanding applications for certification remained unresolved. While ACFC and IATSE 891 were able to agree on the main elements of a solution to those issues, some aspects of it required an answer from the Board, which is reflected in a Board Order dated February 29, 2012 (Appendix 7).

2. Presumptive Terms of a Collective Agreement

67 Following the direction in B47/2010 that the parties work with the Board to determine the terms of the presumptive collective agreement, and based on the ensuing consultative process, B176/2010 dealt with the issue of the terms of the presumptive collective agreement where no VVRA is in place and a union is certified to represent employees on a particular production. In summary, in those circumstances, the relevant collective agreement for that union applicable to that production will presumptively apply upon certification being granted to that union.

68 The union will provide some evidence establishing on a *prima facie* basis which "tier" of the collective agreement applies to that production. The nature of the production and its budget will provide the basis for "slotting" the production into the appropriate tier. If a producer disagrees with the union's assertion of the appropriate tier, the Board, or a process developed by the parties, will resolve that disagreement by providing an expeditious answer if a mediated solution cannot be found.

69 The effective date of the collective agreement would be the date of the application for certification.

70 Finally on this issue, Justice Tysoe, in his report recognized the reality of the existence of both ACFC and IATSE 891 as competitors in the B.C. industry.

71 As noted in my letter of November 7, 2008 (Appendix 8), competition between the Film Council and ACFC for low- and mid-budget work is a recognized aspect of the B.C. industry. I expressed the view that competition would only become problematic if it were to result in a "race to the bottom". That was a course both unions expressed a keen and firm desire to avoid and I expect that will be reflected in the practices of both, going forward.

VI. JOINT CONSULTATIVE AND DISPUTE RESOLUTION PROCESSES

72 As was noted by the Board in *Sugar Mountain*, stability and attracting production work in the B.C. industry is enhanced by successful mid-collective agreement relations between the parties (para. 18). Pursuant to B47/2010, which in part directed the creation of an industry working group, on September 14, 2010 representatives of all the industry parties met and with the Board's assistance, agreed to examine ways to

improve existing dispute resolution and consultative processes. To that end, the parties agreed to establish an industry forum (the "Forum") to oversee the work of a working committee (the "Working Committee") which was tasked with investigating and making recommendations for improvements to existing dispute resolution and consultative processes, using a best practices approach with the Board's assistance.

73 The Working Committee completed its work in May, 2011 and by letter dated May 12, 2011 recommendations (the "Recommendations") were provided for the review and discussion by the Forum which met on May 17, 2011 for that reason.

74 The Recommendations were revised to reflect the discussions in the Forum meeting and by letter dated July 4, 2011 (Appendix 9), those revised Recommendations were provided to the parties for their consideration.

75 In summary, the Recommendations proposed the establishment of an Annual Industry Forum. The purpose of that mechanism would be to improve co-operative labour relations; ensure the resolution of issues or matters of general concern as well as improve dialogue and communication between all the parties.

76 The Recommendations proposed that joint consultative meetings of the parties be held at least annually in conjunction with the Annual Industry Forum. The purpose of the joint consultative meetings should be to pro-actively identify problems and mutually beneficial solutions; seek/provide information regarding specific topics and to explain/define policies or practices in order to promote understanding between the parties.

77 The Recommendations also proposed modifying existing dispute resolution mechanisms to provide consistency across the B.C. industry. In that regard, it was proposed that a trouble shooter be established to assist the parties in resolving issues including by way of mediation, recommendations, etc. The trouble shooter would also be available to assist the parties to deal with issues of potentially broader impact to the B.C. industry.

78 The Recommendations contemplated having the parties either sign a protocol or incorporate a document by reference into their collective agreements so as to ensure consistency across the industry.

VII. THE LINE BETWEEN EXCLUSIVE AND NON-EXCLUSIVE ZONES

79 B47/2010 directed the parties, through the working group process, to examine and make recommendations relating to the issue of whether the line between the exclusive and non-exclusive zones should be adjusted. After discussions with the parties, I came to the view this was a potentially contentious issue which would detract from the work of the Forum and Working Committee. Accordingly, I suggested a separate process to deal with that issue. Notwithstanding the fact that issue has not been resolved, in my view, it is time to bring the work of this Section 41 process to a conclusion.

80 In my view, the line was established to reflect the realities existing at the time of its creation. In creating it, the Board in 1995 noted the challenges in clearly delineating that threshold.

81 As a general comment, the $4.0 million (Canadian) figure was established in 1995 and has never been adjusted since that time. That, on its face would appear to raise some legitimate questions regarding whether it should be adjusted to reflect the impact of inflation and the passage of time. However, another view expressed by some in the industry is that changes in the B.C. industry such as the effects of technology, and other factors may be impacting labour costs so as to modify the impact of inflation and consequently, as a rough measure, the line should not be adjusted.

82 While some in the B.C. industry view the fact the line was set in 1995 at $4.0 million (Canadian) as giving the Film Council an unfair advantage, particularly in view of inflation over the past 15 years which results in more and more productions being captured, in my view, this issue is not causing any real or significant stability or other legitimate concerns at this juncture, particularly in view of the developments and outcomes described above. Accordingly, I believe the best approach is to leave the line as it exists at this time.

83 I would hope that a process could be developed, either under the auspices of the Board or an internal industry process (or some combination of the two) to review and resolve any future issues or concerns relating to the line between the exclusive and non-exclusive zones.

84 While the B.C. industry has grown, matured, made significant steps in developing ways of dealing with labour relations challenges through two Section 41 inquiries and the parties' own efforts, the B.C. industry will no doubt face new challenges in the future. In that regard, I believe that all parties accept the importance of enhancing the capacity of the industry to strengthen existing internal processes and to establish new ones where appropriate in order to deal with and resolve future labour relations challenges to minimize the need for any outside intervention.

85 To that end, I believe the parties also accept the utility of some form of neutral third party involvement to assist in identifying and resolving future labour relations issues in a co-operative manner through processes designed to reflect the unique nature of the industry.

86 Accordingly, while the second recommendation set out above contemplates a trouble shooter with two possible distinct roles, I recommend that the parties give further consideration to the establishment of an independent labour relations commissioner who could undertake the broader component of the trouble shooter role outlined above and assist the parties in dealing with issues of potentially broader impact for the industry. To that end, the labour relations commissioner could:

- On request, work informally with parties to identify and resolve issues of potentially broad impact.

- Where appropriate, assist parties to improve existing dispute resolution and consultation processes.

- Where appropriate, consult, investigate or engage in fact finding.

- Where appropriate, provide reports with recommendations.

VIII. CONCLUSION

87 While the B.C. industry has in the past, and will in the future face labour relations challenges, I believe the parties have shown a commitment to enhancing the competitiveness and sustainability of the B.C. industry.

88 It is my hope that the parties can continue to build on a strong labour relations foundation and continue to improve existing co-operative relations, internal dispute resolution and consultative mechanisms all of which I believe will contribute to the continuing growth and sustainability of the B.C. industry.

LABOUR RELATIONS BOARD

"MICHAEL FLEMING"

MICHAEL FLEMING
ASSOCIATE CHAIR, ADJUDICATION

BRITISH COLUMBIA

LABOUR RELATIONS BOARD

APPENDIX 1

June 6, 2008

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 (the "Film Council"), ACFC West, Union of B.C. Performers, Directors Guild of Canada - B.C. District Council ("UBCP")
(Section 41 Application - Case No. 57508/08)

As you know, I have been appointed to conduct a Section 41 inquiry into the current state of labour relations and collective bargaining in the British Columbia film industry. Further to that appointment, I asked, through counsel, to meet with each of the parties for informal discussions regarding the process, and regarding each party's issues, interests and concerns arising in relation to the Section 41 application.

I have now had the opportunity to meet informally with all of the parties. I would like to thank everyone involved for their candour and willingness to engage in discussions with me and share their views, issues, interests and concerns. I have found these discussions informative and enlightening.

With respect to process, I expressed to the parties that I would like to keep the process as informal as possible for as long as possible. I believe this will allow the parties to focus on an interest-based, problem-solving approach to the issues raised rather than a more traditional, positional approach. There was general consensus that an informal approach, for as long as possible, would be the most productive approach to take.

There was also general recognition that there may be issues that cannot be resolved or dealt with adequately by informal means, and that those issues might require a more formal process at some stage, such as an exchange of written submissions. There was also general recognition that certain issues were time-sensitive and would need to be addressed, one way or another, before the next round of bargaining.

With respect to the issues raised by the parties in my discussions with them, although a number of topics and concerns were raised, three issues emerged as being the most significant to the parties and the industry as a whole. These were sometimes expressed in terms of proposed solutions -- for example, "the Film Council should be expanded to add the UBCP and the DGC". However, rather than focusing on solutions at this stage, I encouraged the parties to focus on their interests and concerns.

The three issues could be described or characterized in a number of ways. For the purposes of further discussions, I would characterize them as follows:

1. The changed approach of the UBCP and the response of producers and other unions to it.

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2. The collective bargaining approach of the CFTPA and the response of the Film Council to it.
3. The line between the exclusive and non-exclusive zones.

I will attempt to summarize the views expressed with respect to each issue. In addition, I will offer some preliminary observations regarding the issues and how the parties may wish to address them. I appreciate the views of the parties may be expressed somewhat differently if a formal submission process becomes necessary.

1. The changed approach of the UBCP and the response of producers and other unions to it

In recent years the UBCP has changed the way it functions as a bargaining agent for its members. The change has been both in terms of its approach to collective bargaining and administration, and in terms of its approach to its relationships with producers and other unions.

UBCP describes the change to its approach to bargaining and administration as involving stricter adherence to the collective agreement and more thorough preparation for bargaining. UBCP acknowledges that dialogue with the other parties has become "strained" in recent years and that it has ceased to participate in a number of industry liaison groups, for a variety of reasons.

Producers and other unions express the view that UBCP has become isolated from the other parties in the B.C. industry, and that relationships have suffered as a result. Some are concerned the change in UBCP's approach is being driven by interests outside of the province. They perceive that UBCP is overly focused on its relationships with other North American performers' unions and insufficiently focused on its role as a member of the B.C. film industry.

Producers also expressed concern that they used to be able to solve problems informally with UBCP, but UBCP now appears unwilling to engage in the informal discussions that build and facilitate continuing relationships and constructive problem-solving.

Producers say that instead, UBCP insists on more formal methods of dispute resolution, such as grievances and audits. (I note that some concerns of a similar nature were also raised with respect to some others in the industry). Combined with the general lack of communication from UBCP, producers say the dependence on formal processes by UBCP is souring their relationship with UBCP.

Some parties expressed concern that UBCP may be prepared to act to the detriment of the B.C. industry as a whole in pursuing its individual collective bargaining objectives. For example, they fear a strike or a threat of a strike, or prolonged unproductive negotiations, or even a continuing poor relationship with producers, will cause productions to be made elsewhere than B.C.

UBCP denies that the motivation for the change comes from outside the province, or that it is indifferent to the relationships it has with other parties in the B.C. industry. It says that it wants good relationships with others in the industry, but it also wants to be respected.

UBCP is of the view that its members are the most vulnerable in the industry, and that it must be vigilant to protect their interests. It perceives that formal processes such as grievances and audits bring clarity and respect.

UBCP also believes its interests differ from other unions in the industry, who are more able to make the modifications that producers seek without fundamentally compromising the interests of their members.

UBCP says that they are willing to enable if producers present a "business case" for doing so; however, producers should no longer expect the union to acquiesce to unreasonable or unexplained requests.

UBCP says its changed approach emanates from the needs of its members for more forceful representation and greater respect from others in the industry.

It is my preliminary observation that some of the current difficulties between the UBCP and other parties could be alleviated by better communication. Increased dialogue would assist the parties in understanding and appreciating each others' concerns and interests.

Currently, in my view, the other parties do not fully understand UBCP's motivation for its changed approach, and UBCP does not fully appreciate the impact its changed approach is having on its relationships with the other parties.

Greater willingness to adopt a consultative, problem-solving approach may dispel some fears, moderate some views and approaches, and focus the parties on issues of true concern.

For example, it may well be that UBCP could actually serve the interests of its members more effectively by making greater use of informal problem-solving and dispute-resolution methods.

In my view, it would also serve the interests of UBCP's members for UBCP to cultivate more positive relationships with other parties and to participate and communicate more with the other members of the B.C. film industry. These steps would reduce the perception that UBCP is no longer a "team player" in the B.C. film industry.

A legitimate concern of the other parties is that UBCP give priority to its role as a full participating member of the B.C. film industry. All parties must be committed to the integrated, comprehensive labour relations approach required to ensure the continued growth and success of the industry in B.C.

Some other parties suggest that, in order to ensure that this critical interest is protected, UBCP should be included in the Film Council (along with DGC-BC).

DGC-BC says there is a general recognition that it has played a very positive role outside the current Film Council structure.

Proponents of expanding the Council say that UBCP and DGC-BC can be thought of as two of the five "craft" unions that make up the B.C. film industry. The other three -- the two IATSE locals and the Teamsters -- currently comprise the Council.

In many ways, it makes sense to include all five unions in a single Council. For example, inclusion would ensure that a decision on job action is made by a majority of those who would be affected by it.

In this industry, even a serious threat of a strike will cause producers not to proceed with productions. This would obviously affect all other parties.

However, UBCP and DGC-BC do not wish to be added to the Council, fearing that their interests would be overwhelmed by the three "crew" unions, whose interests they perceive as being significantly different from their own.

A number of options and arrangements may be possible to address these concerns. However, it is important that the bargaining structure be not only logical and fair, but also practical and workable. There may be some practical difficulties in expanding the Council in time for the next round of bargaining. Nevertheless, if the situation is not improved in other ways, it may be necessary to implement some form of expansion before the next round of bargaining.

If expansion is not deemed to be immediately necessary, the next round of bargaining will likely shed light on whether expansion of the Council would be appropriate in the long run. If bargaining under the current structure turns out to be problematic in a way that expansion of the Council would address, then that may be the appropriate outcome.

On the other hand, if bargaining under the current structure turns out to be functional, then expansion of the Council may not be the optimal method for addressing the parties' interests and concerns.

In the meantime, the parties could take steps to address various interests and concerns relating to this issue. I have some thoughts about steps the parties could take, both individually and collectively, and the parties will no doubt generate their own ideas.

To facilitate this process, I will continue to engage in discussions with the parties. Now that this issue has been identified, and views, interests and concerns summarized, discussions can begin to focus on potential solutions.

2. The collective bargaining approach of the CFTPA and the response of the Film Council to it

The CFTPA bargains alongside the AMPTP for the Master Agreement with the Film Council. However, unlike the AMPTP, the CFTPA does not bind its members to the Master Agreement.

The CFTPA also bargains a Master Agreement with ACFC and does not bind its members to that agreement either.

Recently, the Film Council negotiated a Supplemental Master Agreement with the CFTPA and the AMPTP to apply in the "non-exclusive" zone. The Supplemental Master Agreement includes tiered rates intended to address the CFTPA's concern that its members,

which operate primarily in the non-exclusive zone, do not typically have the same financial resources as do members of the AMPTP.

However, CFTPA continues not to bind its members to the Supplemental Master Agreement. That has given rise to Film Council concerns that members of the CFTPA are using the Supplement Master Agreement to "bargain down" the rates and terms in the industry. The Film Council is concerned that some CFTPA members take the Supplement Master Agreement to ACFC West, to obtain lower rates or inferior terms and conditions.

The Film Council expresses a concern that the CFTPA's unwillingness to bind its members, combined with the presence of ACFC West as a rival or alternative union in the non-exclusive zone, undermines the Film Council's ability to maintain wage rates and working conditions it has achieved for its members over the years.

One response of the Film Council to this situation has been to use its ability under the Code to apply for certification of productions in the non-exclusive zone that have voluntarily recognized ACFC West.

This response has in turn raised concerns expressed by both producers and by ACFC West that the certification applications are having a destabilizing effect on the industry. They are said to be driving away producers who are concerned about the security and predictability of their labour costs, based on voluntary recognition agreements.

All parties agree that voluntary recognition agreements, rather than certification, are the norm for the B.C. film industry. The Film Council is of the view that, nonetheless, it is entitled under the Code to apply for certification.

While certification of non-union productions generally appears to be seen as unremarkable, the controversy and concern arises in respect to applications for certification of productions for which voluntarily recognition agreements have already been secured.

The Film Council sees certification as a legitimate method for reflecting the wishes of its members under the Code. However, it concedes that certifications rarely result in collective agreements. The application is for certification of a production, and many productions are over in a matter of weeks or even days.

Once the production is over, the producer has little incentive to bargain a collective agreement. As a result, the Film Council is concerned employees are being denied meaningful access to collective bargaining as contemplated under the Code.

It is largely for this reason that voluntary recognition agreements are the norm in this industry. However, in the non-exclusive zone, producers have a choice of voluntarily signing with the Film Council (or one or more of its member unions) or ACFC West. The Film Council complains that producers are "choosing the union" in the non-exclusive zone, contrary to the principles that unionization should be a matter of employee (not employer) choice.

It must be noted, however, that since the Board created the "exclusive zone" in 1995, employees of producers falling within that zone also have no choice of bargaining agent – their union is the Film Council.

The Film Council questions why it should have to compete with a rival or alternative union (ACFC West), noting that in most North American jurisdiction, IASTE is "the" crew union, with no rival or alternative. The Film Council acknowledges NABET is an alternative crew union to IATSE in Ontario (as is AQTIS in Quebec).

ACFC expresses the view that it has spent years cultivating bargaining relationships with CFTPA members in the non-exclusive zone. It expresses concern that the Film Council's applications for certification are intended to drive it out of the industry.

ACFC and the CFTPA both say that ACFC is a legitimate and important member of the B.C. Film Industry and that its existence is crucial to the continued growth of domestic, non-studio-related productions.

ACFC expresses the view that for many years ACFC and the Film Council have been able to co-exist in the non-exclusive zone to the benefit of the British Columbia film industry as a whole. ACFC does not agree that its existence is a threat to industry standards, and sees its collective agreement as being comparable with the Supplemental Master Agreement.

It is of the view that it has long-established relationships with certain producers just as the Film Council has relationships with others, and that both should be allowed to co-exist and grow the industry as a whole.

ACFC expresses the view that voluntary recognition agreements are not currently adequately recognized and protected. It seeks a means by which it can establish the legitimacy of such agreements. This is also sought by CFTPA.

All parties appear to accept that very "low-budget" productions are likely to remain non-union. However, there is a range of "mid-budget" productions that fall within the non-exclusive zone, and these are the productions more likely to sign voluntary recognition agreements with either the Film Council or ACFC.

For the sake of stability, predictability and continued growth of the industry, some express the view that the "norm" of voluntary recognition agreements should be protected. Certification should be possible, at least where producers of mid-budget productions choose to operate non-union. In that case, certification should result in meaningful access to collective bargaining.

Where producers enter into voluntary recognition agreements with the Film Council, its members or ACFC, such agreements should be respected.

The concerns, interests and views raised by this issue are complex. In my view, further informal discussions with the parties would help clarify concerns and interests and assist in focusing on potential solutions.

3. The line between the exclusive and non-exclusive zone

The definition of the line between the exclusive and non-exclusive zones was set by the Board in 1995 and has not been adjusted since. All parties agreed that the film industry in British Columbia has changed radically since 1995. Some say the line should be increased while others

say it should be decreased, or another method altogether be found for describing the demarcation between the two zones. The issue raised is whether the line should be adjusted, either in terms of amount or description, or both.

General Comments

In my view, some additional comments might be useful at this juncture.

Section 2 of the Code provides the basic principles and objectives which guide this Section 41 process.

In *Forest Industrial Relations Limited*, BCLRB No. B312/2003, the Board commented that the legislative intent of Section 2 was to bring about a shift in labour relations to achieve the Section 2 objectives and, further, that:

> Section 2 constitutes a statutory recognition of the need to find ways of enhancing productivity, competitiveness and economic growth. In our view, Section 2 was intended to provide a legislative statement of the need for a broader discussion and development of approaches aimed at enhancing our productivity and competitiveness in today's increasingly globalized, highly competitive environment... (para. 43)

There is a general recognition in the B.C. film industry of the globally competitive nature of the industry.

Some important labour relations principles at the core of the current Labour Relations Code need to be kept in mind. The foundation for those principles is found in the Report of the 1992 Sub-Committee of Special Advisors (the "Committee"). In the Report the Committee noted that:

> ...while labour legislation should encourage the practice and procedure of collective bargaining and provide the necessary legal protection to those who seek it, it must also ensure that the institution of collective bargaining remains viable and fluid. To that end, it should encourage a more cooperative, co-determinative approach to workplace issues. (p. 12)

The Report went on to note that "...we also believe management and labour must engage in a more fluid and adaptable relationship than that envisaged by the traditional bargaining model, to achieve work place change and improvements on an ongoing basis that will be to the mutual benefit of the employers and employees in the Province." (p. 15)

The Board has expressly endorsed the development of a more co-operative labour relations approach (as posited by the Committee) as an alternative to the traditional adversarial model: see for example *Health Employers Association of British Columbia*, BCLRB No. B393/2004 (Leave for Reconsideration of BCLRB No. B415/2003) ("*HEABC*"), where the Board said:

> ...the legislature was clearly signalling that parties can no longer afford to ignore each other's concerns and issues as they arise during the term of the collective agreement. Rather, they are encouraged to engage in a form of continuous problem solving between rounds of collective bargaining. (para. 69)

In *HEABC* the Board noted the need to explore more problem-solving approaches to labour relations issues, endorsed co-operative participation as a desirable labour relations approach and consultative processes as mechanisms to deal with a wide range of issues relating to competitiveness, development of a skilled, flexible workforce, adapting to changes in the economy and other important issues.

That kind of approach was expressly endorsed by the Board in the context of the building trades sector of the construction industry in B.C., see: *Construction Labour Relations Association of British Columbia*, BCLRB No. B90/2006. In my view, it is of even greater weight or importance in the context of the B.C. film industry in B.C.

In my view, an approach with those kinds of characteristics can also serve to encourage and facilitate productive collective bargaining outcomes. I would encourage the parties to consider exploring the development (or enhancement) of processes designed to give effect to that approach.

Based on my discussions to date, there is common ground and considerable good will to attempt to achieve better, more productive labour relations, and to enhance the growth and success of the industry in BC. All parties have indicated a strong interest in finding solutions that will strengthen the industry.

My current view is that an incremental approach is best suited to deal with potential issues and concerns. However, the reality of time constraints relating to collective bargaining realities must be kept in mind, particularly with respect to the first issue. The process should focus on a timely problem-solving approach aimed at achieving a balance of the legitimate sometimes competing interests.

In that exercise it is critical for parties to be flexible and open to a range of possible means or mechanisms by which to address the balancing of those interests. To that end, I plan to continue to meet informally with the parties.

This industry is characterized by a great deal of creativity. I am optimistic that will be reflected in approaches, solutions or outcomes generated by the parties themselves through this process.

My office will be in touch with parties regarding arrangements for further discussions. In the meantime, I encourage the parties to themselves discuss issues, views, concerns and interests with each other.

Yours truly,

LABOUR RELATIONS BOARD

Michael Fleming
Associate Chair, Adjudication

MF/scn

Case No. 57508 June 6, 2008

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Case No. 57508 June 6, 2008

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BRITISH COLUMBIA

LABOUR RELATIONS BOARD

APPENDIX 2

September 19, 2008

By Fax

To Interested Parties

Dear Sirs/Mesdames:

Re: Canadian Affiliates of the Alliance of Motion Picture and Television Producers ("AMPTP") -and- B.C. Producers' Branch of Canadian Film and Television Production Association ("CFTPA") -and- B.C. and Yukon Council of Film Unions ("Film Council"), ACFC West ("ACFC"), Union of B.C. Performers ("UBCP"), Directors Guild of Canada - B.C. District Council ("DGC-BC")
(Section 41 Application - Case No. 57508/08)

This is further to my letter of June 6, 2008 and subsequent informal discussions I have had with the parties regarding the concerns and interests identified and discussed in that letter, particularly with respect to the first issue.

It is apparent that all parties are prepared to explore ways of improving relationships and developing better communication as well as more problem-solving approaches to issues that arise. I understand some concrete steps have been taken in that regard, which is a very positive development. I trust that such efforts will continue.

While that is a positive development, serious concerns remain about the existing structure of collective bargaining and, in particular, the potential for three separate strike votes, each of which would affect members of all three union groups (and the B.C. industry as a whole).

The producers and Film Council advocate the expansion of the Film Council to include DGC-BC and UBCP as a means of addressing those concerns. However, DGC-BC and UBCP oppose that solution.

Given that collective bargaining is to begin in the near future, the parties need to know whether the existing bargaining structure will change, and if so, how.

In my view, while expansion of the Film Council remains an option, even if it is found to be the appropriate outcome, it is unlikely to be successfully implemented in time for the upcoming round of bargaining.

Accordingly, in the absence of a change of that nature to the existing structure, in my view, some interim measure or measures are needed to address the stability concerns relating to the potential for three separate strike votes for the upcoming round of bargaining. These would include measures or an agreement by the Film Council, UBCP and DGC-BC to:

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- Identify common collective bargaining issues and co-ordinate bargaining with respect to those common issues.

- Advise each other during bargaining regarding progress on issues that are not common and are being bargained separately.

- Discuss with each other the overall progress of bargaining and positions taken during bargaining.

- 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 taken.

- Continue the practice of common expiry dates for collective agreements in this round of bargaining.

- Establish timely "safe harbour" arrangements for productions initiated prior to the conducting of a strike vote.

In addition, the unions should develop a mechanism which could address, in a co-ordinated manner, issues such as:

- training
- promotion of the B.C. industry
- enabling
- labour relations issues that arise between rounds of bargaining.

I understand there is already a mechanism in place to deal with health and safety issues.

In addition to those measures, the parties, including the producers, would also develop meaningful and effective consultation processes (with appropriate dispute resolution components) to address a wide range of issues that arise between rounds of bargaining.

These measures are not new to the parties. There has been at least some consultation and co-ordination measures among the five unions regarding bargaining in the past; there are currently common expiry dates for collective agreements; UBCP agreed to "safe harbour" arrangements in the last round of bargaining. As well, as I understand it, for a number of years prior to 1995, all five unions participated in a voluntary council. That forum has not operated since the formation of the Film Council in 1995. AMPTP and the unions have also, in the past, consulted with each other from time to time between rounds of bargaining.

Accordingly, I would not anticipate difficulty in principle in these measures forming the basis for an interim order. Nonetheless, I invite submissions from the parties with respect to how these measures could be appropriately implemented, whether they are sufficient, and whether there are other interim measures which would be more appropriate in the circumstances, or to which the parties could more readily agree.

Given the imminent commencement of bargaining, and in order to ensure as much focus as possible, it may make sense to deal with any development or implementation of the last two

mechanisms (if they are determined to be part of an appropriate interim order) after this round of bargaining is concluded.

Given the extent of informal discussions to date and the time pressures flowing from the commencement of bargaining, the parties will have an opportunity to provide submissions as follows:

- AMPTP and CFTPA may provide their submissions by the close of business Friday, October 3, 2008.
- The Film Council may provide its submission by the close of business Friday, October 10, 2008.
- ACFC may provide any submission it wishes to make by the close of business Wednesday, October 15, 2008.
- DGC-BC and UBCP may provide their submissions by the close of business Wednesday, October 22, 2008.

Yours truly,

LABOUR RELATIONS BOARD

Michael Fleming
Associate Chair, Adjudication

Interested Parties from page 4 onwards

Case No. 57508 September 19, 2008

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APPENDIX 3

BCLRB No. B179/2008

BRITISH COLUMBIA LABOUR RELATIONS BOARD

CANADIAN AFFILIATES OF THE ALLIANCE OF MOTION PICTURE AND TELEVISION PRODUCERS

("AMPTP")

-and-

B.C. PRODUCERS' BRANCH OF THE CANADIAN FILM AND TELEVISION PRODUCTION ASSOCIATION

("CFTPA")

-and-

B.C. AND YUKON COUNCIL OF FILM UNIONS

(the "Film Council")

-and-

ACFC WEST - THE ASSOCIATION OF CANADIAN FILM CRAFTSPEOPLE

("ACFC")

-and-

UNION OF B.C. PERFORMERS

("UBCP")

-and-

DIRECTORS GUILD OF CANADA - B.C. DISTRICT COUNCIL

("DGC-BC")

PANEL:	Michael Fleming, Associate Chair, Adjudication
APPEARANCES:	Barry Dong, for AMPTP Don Jordan, Q.C., for CFTPA Bruce Laughton, Q.C., for Film Council David Duncan Chesman, Q.C., for ACFC Shona A. Moore, Q.C., for UBCP M. Patricia Gallivan, Q.C., for DGC-BC
CASE NO.:	57508
DATE OF DECISION:	November 5, 2008

DECISION OF THE BOARD

1 By letter dated February 4, 2008, the Minister of Labour and Citizens' Services directed the Board to conduct a Section 41 review in the film industry. In that letter the Minister indicated her view that the film industry is "facing various challenges and factors that threaten industrial stability".

2 By letter dated February 20, 2008, I advised the parties that I had been constituted as a panel to conduct a Section 41 film inquiry (the "Inquiry"). I further indicated my intention to initiate that process by meeting informally with parties to solicit their views regarding the process by which the Inquiry was to be conducted and the key or central themes that it should address.

3 To that end, I met informally with the parties and on June 6, 2008, I provided them with a letter identifying three issues of significance to the parties and the industry as a whole. That letter also provided some preliminary observations and commentary regarding each of the three issues resulting from my informal discussions with the parties. Finally, it provided some general commentary and observations relating to the importance of developing a labour relations approach which best reflects the nature and optimizes the potential for the growth and success of the B.C. industry.

4 I had further informal discussions with the parties and by letter dated August 22, 2008 I encouraged the parties to explore solutions to the second issue identified in my June 6, 2008 letter based on several concepts posited in that letter for discussion purposes.

5 On September 19, 2008, I wrote another letter setting out my view that some interim measures are needed to address the stability concerns relating to the potential for three separate strike votes for the upcoming round of bargaining and inviting submissions from the parties in that regard. I have now had the benefit of reviewing and considering those submissions.

6 The interim measures proposed in my September 19, 2008 letter include measures or an agreement by the Film Council, UBCP and DGC-BC to:

- Identify common collective bargaining issues and coordinate bargaining with respect to those common issues.
- Advise each other during bargaining regarding progress on issues that are not common and are being bargained separately.
- Discuss with each other the overall progress of bargaining and positions taken during bargaining.
- 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 taken.
- Continue the practice of common expiry dates for collective agreements in this round of bargaining.
- Establish timely "safe harbour" arrangements for productions initiated prior to the conducting of a strike vote.

7 I invited submissions from the parties with respect to how these measures could be appropriately implemented, whether they are sufficient, and whether there are other interim measures which would be more appropriate in the circumstances, or to which the parties could more readily agree.

8 In general, the submissions of all the parties indicate that they accept that interim measures along the lines proposed are appropriate in the circumstances. In that regard, AMPTP and CFTPA did not address the first four which, in the view of CFTPA at least, relate to internal arrangements between the unions. AMPTP states that it supports consultative processes designed to resolve labour relations issues that cause uncertainty in the film and television industry, and effective dialogue prior to adversarial proceedings. CFTPA states that it supports the implementation of interim measures to address stability concerns prior to the upcoming round of bargaining, including the proposed interim measures.

9 DGC-BC states that it is agreeable to putting interim measures in place for the upcoming negotiations, and the Film Council's and UBCP's submissions likewise indicate that they do not oppose interim measures.

10 The three unions make specific submissions with respect to each of the measures, including the first four. (ACFC does not make submissions saying it is not directly affected by the proposed measures).

11 With respect to the first measure (identify common collective bargaining issues and coordinate bargaining with respect to common issues), all three unions are agreeable to it.

12 The Film Council submits that, from its perspective, it is not difficult to identify common issues, which could include matters such as the term of the agreement, procedures for bonds and zone extensions, payment of mileage, and the applicability of the agreement to digital media and safety.

13 DGC-BC states that, informally, the parties have always taken, and continue to take, a coordinated approach to the bargaining of common issues, and these issues are easy to identify.

14 UBCP says that it agrees with the three unions meeting to identify common issues. It notes that such meetings have been and will continue to be scheduled for the purpose of exchanging information concerning issues to be advanced by the three unions during collective bargaining. It adds that coordination of bargaining may include discussions on the timing of bargaining and the unions' approach to common issues.

15 With respect to the second measure (advise each other during bargaining regarding progress on issues that are not common and that are being bargained separately), UBCP states that it is prepared to provide the Film Council and DGC-BC with general updates on the progress of collective bargaining, to the extent that progress can be identified and disclosure of the progress can be made without prejudice to its duty to its members and its ability to proceed with effective bargaining. However, it does not support the imposition of a requirement to provide detailed progress reports on issues that are being bargained separately.

16 Without expressly stating opposition to this proposed interim measure, DGC-BC says that it does not see how discussing issues with the Film Council and UBCP that have no relevance or significance to them advances stability, and submits that it could serve to delay progress in bargaining.

17 The Film Council submits that this proposal, although simple to state, would be difficult to apply. It submits that progress in bargaining is often difficult to gauge and it is often unable to determine whether any progress has in fact been made.

18 With respect to the third measure (discuss with each other the overall progress of bargaining and positions taken during bargaining), DGC-BC says it has no objection to keeping the Film Council and UBCP apprised of the general progress it is making in

bargaining and any major issues that arise at the table. However, it states that the airing of details of positions taken during bargaining would not be productive.

19 Similarly, the Film Council says that it is concerned that its bargaining strategies and priorities not be widely disseminated, and that there is the potential for information to be miscommunicated and misinterpreted. It views such matters as confidential.

20 UBCP states that it shares the concerns expressed by the Film Council. It further says that it does not object to sharing information of this nature, provided the timing of such disclosure and the level of detail is consistent with its duties to its members and its ability to bargain effectively.

21 With respect to the fourth measure (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 taken), UBCP states that it recognizes that this consultation will enhance its ability to reach a decision informed by the perspectives of the unions with whom collective bargaining on common issues is being discussed and coordinated.

22 DGC-BC says that it has no objection to consulting with the other unions prior to a decision to conduct a strike vote in recognition of the fact that a strike by any one of the unions would impact the industry. The Film Council, noting the fact that a strike by one of the unions impacts the other unions, states that it believes consultation regarding a decision to conduct a strike vote would properly address stability concerns in the industry.

23 Having reviewed the submissions of the parties, I am satisfied that an interim order should be made with respect to the first four measures. All three unions indicate that they perceive no problem implementing the first measure and indeed it is something they would do in any case in bargaining. With respect to the second and third measures, I agree that the intention is that the unions provide each other with general updates on the progress of bargaining relating to issues that are not common to all, to the best of their ability and without undermining either their respective duties to represent members or their the ability to bargain effectively. In my view, a greater degree of cohesion on the union side is desirable but requires a measure of trust, respect and candour among them.

24 With respect to the fourth measure, the responses of the unions indicate that they understand and appreciate why this measure is necessary and ultimately beneficial to all three. As noted by both DGC-BC and the Film Council, a strike by one affects them all. By extension, any move towards a strike – notably, the decision to conduct a strike vote – similarly has an impact on all, and on the course of bargaining as a whole. Accordingly, such a decision should not be taken by one union without having first consulted with the others. UBCP states that it recognizes that such consultation will enhance its decision-making process. I find these views to be a positive development.

25 Turning to the fifth proposed measure (continue the practice of common expiry dates for collective agreements in this round of bargaining), AMPTP expresses the view that common expiry dates of the master agreements reduce labour instability and uncertainty.

26 CFTPA agrees that common expiry dates are an essential component of any order aimed at maintaining the stability of the B.C. film industry, and further submits that common expiry dates should be a cornerstone not only for this round of bargaining but also for future rounds.

27 The Film Council states that it supports the practice of common expiry dates for collective agreements and that any other approach would create uncertainty and would inhibit the "green lighting" of productions.

28 DGC-BC submits that common expiry dates provide greater stability to the B.C. film industry and that that practice should therefore continue.

29 UBCP submits that this matter need not be addressed as an interim measure at this time, noting that, with the exception of ACFC, all three unions are going into bargaining for renewal of agreements that all expire in the spring. UBCP states that it understands the intent of the proposed measure, but asserts that it should remain a matter for bargaining. It submits that the issue is best addressed by the Board after the next round of bargaining, when the Board can take into account the term of ACFC's collective agreement.

30 I appreciate the point made by UBCP that expiry date or term is ordinarily a bargaining matter. I also accept that the parties were able to bring about common expiry dates in the last round of bargaining without a Board order to that effect. Nonetheless, the benefits of common expiry dates to the parties and the B.C. industry as a whole are undeniable and significant.

31 UBCP does not indicate that it wishes to have a different expiry date from the other two unions, simply that it would prefer that this issue be left for bargaining and that its members have input into that decision. While I understand that wish, I find in the circumstances it is outweighed by the benefit to the industry of the certainty of knowing, going into this round of bargaining, that the practice of common expiry dates for collective agreements will continue for this round.

32 I accept CFTPA's point that the parties may wish to continue this practice beyond this round of bargaining. However, I do not find it is appropriate to impose such an order at this time. My focus is on interim measures that will assist and enhance the immediately upcoming round of bargaining. I do not find it necessary to make an order at this time that extends beyond the coming round of bargaining.

33 I am also not persuaded that any decision dealing with common expiry dates should be postponed until after this round of bargaining, to take into account the term of ACFC's agreement. What should happen after the current round of bargaining is completed is a matter that I intend to discuss with the parties at that time with the benefit of lessons learned from this round of bargaining.

34 Turning to the sixth proposed measure (establish timely "safe harbour" arrangements for productions initiated prior to the conducting of a strike vote), AMPTP submits that it is in the interests of the unions, their members, employees in the industry, producers, and the province that producers are able to continue to plan and bring production work to B.C. Labour relations stability and certainty is necessary to create and maintain this universally beneficial environment. Accordingly, "safe harbour" arrangements, which have been readily agreed to in the past, should be finalized and enforced by the Board as necessary. AMPTP says that as "safe harbour" arrangements have been agreed to in the past, confirmation of the availability of such agreements early would benefit all concerned.

35 CFTPA also supports the establishment of "safe harbour" arrangements for productions initiated prior to the conducting of a strike vote. CFTPA further submits that the interim order should provide that each collective agreement in the industry contain a "safe harbour" provision pursuant to which producers can be assured that, if their production has been budgeted for and commenced prior to a strike vote, they will be entitled to complete their production. CFTPA submits that the requirement to implement "safe harbour" provisions in the collective agreements should be imposed on all the parties.

36 DGC-BC submits that, although it has never before been asked to consider a "safe harbour" arrangement, conceptually, it has no objection to the establishment of appropriate and timely "safe harbour" arrangements for productions initiated prior to the conducting of a strike vote, provided that this requirement is applicable to all unions in the industry.

37 The Film Council submits that it believes that this matter should be addressed in the UBCP submission.

38 UBCP submits that while it has agreed to a "safe harbour" arrangement in the past, and it does not forestall agreeing to a "safe harbour" arrangement during bargaining, it submits that such an arrangement should not be required as a condition precedent to conducting a strike vote. Nor should it be required in every round during which there is a possibility of a work stoppage.

39 UBCP submits that an approach which would balance the industry's desire for stability with the union's right to bargain effectively would be to leave the issue of a "safe harbour" arrangement, in any round of collective bargaining, first to the parties to be addressed during bargaining, and if no agreement can be reached, to the discretion of the Board's Associate Chair, Mediation.

40 There is some attraction to leaving the negotiation of "safe harbour" arrangements to the parties at first instance, with the possible imposition by the Board in the event that agreement cannot be reached. However, once again, the overwhelming and undeniable benefit of "safe harbour" arrangements to the parties and the industry as a whole is such that I am satisfied that, for this round of bargaining, the parties should go into bargaining with "safe harbour" arrangements in place. Moreover, I am satisfied that not just UBCP, but all three unions should be required to agree to a "safe harbour" arrangement for this round of bargaining.

41 I am not persuaded that this should necessarily be the process for future rounds of bargaining, nor am I persuaded that "safe harbour" collective agreement provisions should be imposed on parties by the Board as an interim measure. It is open to the parties to negotiate such provisions into their collective agreements in this round of bargaining.

42 Having considered the parties' submissions, I am satisfied that I should order the interim measures set out above be implemented by the parties on or before December 5, 2008. To summarize, the three unions will:

1. Identify common collective bargaining issues and coordinate bargaining with respect to those common issues.

2. Provide each other with general updates on the progress of bargaining relating to issues that are not common.

3. 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.

4. Continue the practice of common expiry dates for collective agreements in this round of bargaining.

5. Establish (with AMPTP and CFTPA) "safe harbour" arrangements for productions initiated prior to the conducting of a strike vote.

43 AMPTP submits that, to give greater opportunity for these interim measures to succeed in the upcoming collective bargaining, the Board should closely monitor the consultative and bargaining processes, and the Board should be provided with advance notice of any intention to seek a strike mandate so that the Board's resources can be made available to the parties.

44 In response, UBCP submits that the existing mechanisms available in the *Labour Relations Code* are sufficient to provide the resources of the Board to the parties. It says additional provisions for monitoring collective bargaining are not necessary in light of the measures the Board is already putting into place.

45 Based on my discussions to date, I am confident that the parties will keep me informed as to the progress of both the implementation of the interim measures and the progress of the upcoming round of collective bargaining. At this stage I do not believe

it is necessary to make an order regarding monitoring of collective bargaining, as I expect to be kept advised through continuing informal discussions with all parties. I would further expect that the parties would advise me in advance of any intention to seek a strike or lockout mandate, and that the Board's resources could be made available in those circumstances.

46 If any party feels that the Board is not being kept appropriately advised during the course of bargaining, this issue can be revisited. However, given the nature of the communications I have had with all parties to date, I do not believe an order is necessary at this stage.

47 In my letter of September 19, 2008, in addition to the interim measures, I suggested that the unions should develop a mechanism by which they could address issues of common interest such as training, promotion and enabling in a coordinated manner between rounds of bargaining. I also suggested that the parties, including the producers should also develop meaningful and effective consultation processes, with appropriate dispute resolution components, to address a wide range of issues with the unions that arise between rounds of bargaining. I noted that, given the imminent commencement of bargaining, it made more sense to deal with the development and implementation of such mechanisms after this round of bargaining is concluded.

48 Generally, the parties reacted positively to these suggestions. As noted earlier, AMPTP says it supports consultative processes designed to resolve labour relations issues. However, it expresses the concern that consultative processes not be used to delay the resolution of industry issues.

49 CFTPA notes that, by Side Letter 4 with UBCP and Side Letter 5 with the Film Council, the parties have an alternative resolution mechanism to arbitration. CFTPA submits that, with some amendments, those side letters could be used as a starting point to establishing effective dispute resolution mechanisms for all parties.

50 The Film Council notes that it currently involves itself extensively in the promotion of the B.C. film industry and that it regularly meets with producers regarding enabling.

51 DGC-BC submits that developing a meaningful and effective industry consultative process should be a priority. It notes that each of the current agreements contains a provision for a consultative committee to deal with workplace issues, but understands my letter to be referring to a broader, industry-wide consultative process which would include the producers and the unions together at one table as opposed to individual processes under individual agreements. It says that it believes that a forum for effective communication between the parties with respect to the myriad issues that arise concerning the film industry in British Columbia would be appropriate.

52 UBCP says that it is committed to making the necessary time and resources available to revitalize the consultative committee process outlined in its collective agreement, and urges the producers to make the same commitment "to bring about a

concerted approach to resolving any relevant collective agreement issues that affect the parties during the life of the collective agreement".

53 UBCP also submits that it recognizes that disputes arising under the collective agreements in this industry should be resolved through a mechanism that can provide an answer to the parties more quickly and with less expense and formality than traditional arbitration. It notes that it and the CFTPA recently used Side Letter 4 to explore resolution of an existing dispute. It says it believes the parties would benefit from expanding their access to informal resolution, and further says that it "welcomes the suggestion advanced by the CFTPA and...is prepared to pursue an agreement on an amended form of dispute resolution mechanism based on Side letter No. 4 as amended by agreement in the general terms recommended by the CFTPA".

54 UBCP submits that this new alternative dispute resolution process be incorporated into the collective agreement, be binding on all parties to its master agreement, and be invoked by application by either party and provide for a binding determination by the arbitrator. UBCP further proposes that the parties agree, on a one-year trial basis, that all grievances referred to arbitration be referred to non-binding mediation first, giving the parties a structured opportunity to explore potential resolutions to the matter in dispute.

55 It is apparent to me that the parties have constructive ideas and proposals to share regarding both individual relationship and industry-wide consultative processes. It may be that they will discuss some of these ideas with each other in bargaining. Other ideas – particularly with respect to industry-wide mechanisms – may also be discussed once bargaining is completed. I will discuss these ideas and proposals further with the parties at that time.

56 In conclusion, the parties are directed at this time to take the steps necessary to implement the interim measures set out above in paragraph 42 of this decision on or before December 5, 2008. The first three measures are for the three unions to implement. The fourth measure would not appear to require action, simply compliance by all parties for this round of bargaining. The fifth measure must be implemented by the unions and the producers jointly.

57 To the extent the parties require clarification or encounter difficulty in implementing any measure, I am available to provide clarification or assistance.

58 If the parties are unable to reach agreement on any measure by December 5, 2008, I will issue an expeditious decision with respect to implementation of that measure. My decision will be based in part, on the extent to which a party (or parties) has made efforts to give effect to the measure.

59 Some parties raised a number of other matters in their submissions responding to my letter of September 19, 2008. Rather than address those matters in this decision, I intend to address them in a letter to the parties.

LABOUR RELATIONS BOARD

"MICHAEL FLEMING"

MICHAEL FLEMING
ASSOCIATE CHAIR, ADJUDICATION

BRITISH COLUMBIA

LABOUR RELATIONS BOARD

APPENDIX 4

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.

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 CFTPA 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

Case No. 57508 December 1, 2009

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.

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.

Case No. 57508 December 1, 2009

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

APPENDIX 5

BCLRB No. B47/2010

BRITISH COLUMBIA LABOUR RELATIONS BOARD

CANADIAN AFFILIATES OF THE ALLIANCE OF MOTION PICTURE AND TELEVISION PRODUCERS

("AMPTP")

-and-

B.C. PRODUCERS' BRANCH OF THE CANADIAN FILM AND TELEVISION PRODUCTION ASSOCIATION

("CFTPA")

-and-

B.C. AND YUKON COUNCIL OF FILM UNIONS

(the "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")

PANEL:	Michael Fleming, Associate Chair, Adjudication
APPEARANCES:	Barry Dong, for AMPTP Don Jordan, Q.C., for CFTPA Bruce Laughton, Q.C., for Film Council David Duncan Chesman, Q.C., for ACFC West Shona A. Moore, Q.C., for UBCP M. Patricia Gallivan, Q.C., for DGC-BC
CASE NO.:	57508
DATE OF DECISION:	March 17, 2010

DECISION OF THE BOARD

I. INTRODUCTION

1 This decision is the culmination of a process which began on February 4, 2008, when the Minister of Labour and Citizens' Services directed the Board to conduct a Section 41 review in the film industry (the "Inquiry"). In her letter, the Minister indicated her view that the industry is "facing various challenges and factors that threaten industrial stability".

I was constituted as the panel to conduct that inquiry. The process that unfolded from February through October 2008 is described in paragraphs 2-7 of BCLRB No. B179/2008, an interim decision I issued on November 5, 2008 (the "Interim Decision"). As noted in the Interim Decision, I met informally with the parties over a period of months to canvass their views regarding the process by which the Inquiry was to be conducted as well as the key issues or central themes it should address.

2 On June 6, 2008, I provided a letter identifying three issues of significance to the parties and the industry as a whole:

1. The changed approach of UBCP and the response of the producers and other unions to it.

2. The collective bargaining approach of CFTPA and the response of the Film Council to it.

3. The line between the exclusive and non-exclusive zones.

3 That letter went on to identify the interests and concerns of the parties and also to provide some commentary on each of those three issues, including suggestions about possible means by which the identified concerns might be addressed.

4 It also provided some commentary and suggestions regarding the development of a labour relations approach that might best reflect the nature of the B.C. film industry and optimize its potential for growth and success.

5 I then engaged in further consultations with the parties and on September 19, 2008, I proposed interim measures to be in place for the upcoming round of collective bargaining and invited submissions on those proposed measures.

6 After reviewing the submissions, I ordered interim measures to be put in place by way of the Interim Decision. In particular, UBCP, DGC-BC and the Film Council were directed to :

1. Identify common collective bargaining issues and co-ordinate bargaining with respect to those common issues.

2. Provide each other with general updates on the progress of bargaining relating to issues that are not common.

3. 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.

4. Continue the practice of common expiry dates for collective agreements.

5. Establish (with AMPTP and CFTPA) "safe harbour" agreements for productions initiated prior to the conducting of a strike vote.

7 The Interim Decision also encouraged the parties to develop meaningful and effective consultation processes with appropriate dispute resolution components to address a wide range of issues between rounds of bargaining, once that round of bargaining had been completed.

8 Following the Interim Decision, the parties agreed on safe harbour agreements and then successfully negotiated and concluded renewal collective agreements without a labour dispute, third party intervention or threat of a strike.

9 Following the ongoing consultative process and after collective bargaining was completed in October 2009, by letter dated December 1, 2009, I provided a proposed framework for an outcome dealing with the three issues identified in my letter of June 6, 2008. I invited submissions from the parties, noting the proposal was intended to be a package balancing the interests of all the parties.

10 With respect to the first issue, my December 1, 2009 letter underscored the importance of an integrated, comprehensive approach to labour relations in the industry. While I indicated I was not persuaded it was necessary to order the expansion of the Film Council, over the vigorous and sustained objections of both UBCP and DGC-BC, I found appropriate steps are needed to ensure an integrated, comprehensive approach to labour relations in the B.C. industry.

11 Accordingly, the letter proposed that the Film Council, UBCP and DGC-BC participate in an association or coalition, the purposes of which 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.

12 It also proposed that the group meet with ACFC West to discuss issues of common concern or interest.

13 The letter further proposed that the interim measures put in place by way of the Interim Decision be extended and apply presumptively in future rounds of bargaining.

14 Finally, the letter proposed that a working group (or groups) comprised of representatives of the parties and the Board be established to study the issue of enhancing consultative processes and developing more co-operative labour relations approaches. It proposed that the working group adopt a best practices approach examining existing examples and models and provide recommendations. I also urged the parties to ensure adequate resources are dedicated to that process to ensure its effective functioning and that recommendations formulated by it could be properly implemented.

15 In terms of the second issue, the letter proposed that, where a valid voluntary recognition agreement is in place, such an agreement should prevail over an application for certification. No application for certification should be made with respect to employees captured by a voluntary recognition agreement.

16 The letter proposed that the Board, with the parties' assistance, develop a test for determining when a valid voluntary recognition agreement is in place.

17 If no valid voluntary recognition agreement is in place, an application for certification could be made. If granted in accordance with the Board's usual criteria, a collective agreement would presumptively apply. The nature and terms of that agreement could be the subject of future discussions.

18 The letter proposed that once a producer interested in entering into a 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.

19 The letter noted that, for the sake of the stability of the industry, it is important that the Film Council and ACFC West communicate and understand each other's interests and concerns. In furtherance of that objective, the letter proposed that those two unions establish a working group, facilitated by the Board, if helpful, to discuss matters of shared interest and means to expeditiously resolve issues between them.

20 The letter suggested certain matters that could be discussed in such a working group.

21 Finally, in terms of the third issue, the letter proposed that a working group made up of representatives of the parties and the Board be created to make recommendations regarding whether the line between the exclusive and non-exclusive zones be adjusted and, if so, how.

II. SUBMISSIONS OF THE PARTIES

22 All six parties provided submissions in response to my December 1, 2009 framework proposal.

1. AMPTP

23 With respect to the first issue, AMPTP agrees with the proposal that the Film Council, UBCP and DGC-BC participate in an association for the purposes set out in my letter. It also agrees it would be beneficial for that organization to meet regularly with ACFC West to discuss issues of common concern and interest.

24 However, AMPTP expresses concerns about the willingness of UBCP to meaningfully participate in such a process. It suggests a requirement that UBCP initiate and confirm steps, schedules and particulars of such consultation meetings.

25 With respect to the proposal that the interim measures imposed in the Interim Decision be continued, AMPTP submits they should be extended and applied presumptively in future rounds of collective bargaining. It submits that the measures

provide the necessary stability and certainty to ensure production continuity, which benefits all components of the industry and the province of B.C.

26 AMPTP further submits that the Board should allow for a process of future review and revisiting of these matters in 2012, when the current collective agreements expire.

27 AMPTP says that the same considerations that caused the Board in 1995 to recommend a review of the structures and processes put in place at that time after two years, in *British Columbia and Yukon Council of Film Unions,* BCLRB No. B448/95 (the original Section 41 decision), remain relevant and valid today. AMPTP submits the Board and the parties should reconvene in 2012 and re-examine and assess the success of measures put in place by this decision, and make any necessary adjustments or changes at that time.

28 AMPTP says the Board's monitoring of the measures put in place will enhance the recommendations in terms of ongoing communication and consultation by the parties, resulting in more effective collective bargaining, consistent with Section 2 of the Code.

29 AMPTP further submits that UBCP should be required to adopt a complaint-driven process rather than its existing "audit-driven" process of administering its collective agreement. AMPTP says that this issue was identified in the 2003 Tysoe Report on the British Columbia Film Industry, and that the Report indicates UBCP assured AMPTP it would change its practice in this way; however, UBCP has not done so.

30 AMPTP agrees with the establishment of an industry working group to study the issue of developing more co-operative labour relations approaches, and agrees to commit the necessary resources to that process.

31 With respect to the second issue, AMPTP agrees with the proposed formation of a working group of representatives of the Film Council and ACFC West.

32 AMPTP further submits that the industry working group comprised of representatives of the parties and the Board be established for several purposes; i.e., to study the issue of developing more co-operative labour relations approaches and to make recommendations; to deal with the issue of the manner of certification and the nature and terms of the applicable collective agreement; and to make recommendations regarding whether the line between the exclusive and non-exclusive zones be adjusted and, if so, how.

33 AMPTP states that, in summary, it agrees with the recommendations outlined in the December 1, 2009 letter and suggests that the Board adjourn the current Section 41 process and reconvene with the parties in 2012 to assess the implementation of the recommendations and whether anything further needs to be done to ensure effective collective bargaining and labour stability in the industry.

2. CFTPA

34 CFTPA submits that, while the proposed framework sets out a positive path for moving forward, it lacks any ongoing mechanism for ensuring the working group functions effectively and delivers results in the best interests of the industry.

35 It expresses the concern that any working groups that are established may simply become a forum for talk but not produce any concrete changes or results.

36 CFTPA says the problems regarding the UBCP audit approach noted in the Tysoe Report have not been addressed and that the Board must play an active role including directing action in that regard.

37 CFTPA says the proposal regarding a requirement that a producer enter into a letter of intent reflects the existing reality in the industry. CFTPA expresses a serious concern regarding the suggested topics for discussion in any working group of the Film Council and ACFC West, such as that the monetary packages of their agreements be comparable, which may adversely affect existing practices such as enabling.

38 Finally, CFTPA says the notion of a default collective agreement being presumptively applicable upon certification is troubling because that would require production budgets to take into account that possibility.

3. Film Council

39 With respect to the first issue, the Film Council notes that all the parties currently participate in the Motion Picture Production Industry Association of B.C. ("MPPIA") which deals with issues like education, training, tax credits, government relations and the promotion of B.C. or a location. As well, the parties participate in the Safety and Health in Arts, Production and Entertainment ("SAFER") which promotes health and safety information, education and training in the industry.

40 The Film Council says any new organization should be approached cautiously so as to not duplicate or undermine the work of those organizations. Accordingly, the Film Council submits that an informal structure made up of UBCP, DGC-BC and the Film Council would be appropriate.

41 With respect to the extension of the interim measures described in the Interim Decision, the Film Council says its position has not changed from that articulated in submissions prior to the Interim Decision.

42 In terms of the proposal relating to certification and voluntary recognition agreements (the second issue), the Film Council says the "letters of intent" would not constitute a voluntary recognition or establish any right recognized by the Code. Representation rights are gained by either an application for certification or voluntary recognition by way of a union and employer entering into a collective agreement.

43 The Film Council acknowledges the shortcomings of the certification process as it applies in this industry, given the short time frame within which a production company exists, which renders any post-certification collective bargaining "illusory".

44 The Film Council says the process for achieving a collective agreement under Section 55 of the Code is also unlikely to result in meaningful bargaining outcomes.

45 The Film Council says that, in light of the existence of MPPIA and SAFER, it sees no need for a working group comprised of itself and ACFC West.

46 The Film Council says it is committed to continuing with collaborative and consultative approaches through MMPIA and SAFER but is cautious about establishing new organizations with redundant purposes.

47 The Film Council sees no purpose in revisiting the line between the exclusive and non-exclusive zones.

4. ACFC West

48 ACFC West says it is in general agreement with the course of action suggested in the proposed framework but with certain caveats.

49 ACFC West says further discussions and any necessary decision by the Board regarding the test for a valid voluntary recognition in the industry should be done expeditiously. To that end, ACFC West suggests discussions be completed by April 30, 2010 and any outstanding issues be adjudicated by the Board prior to May 31, 2010.

50 ACFC West says that it is prepared to participate with all members of the film community including its competitors toward the expansion of a stable non-exclusive sector of the industry.

51 It goes on to submit that any discussions or process involving itself and the Film Council should ensure that: any rules or protocols are bilateral; neither party should be required to divulge bargaining or organizing strategies to the other; and such discussions should not inhibit, infringe or impede either party's collective bargaining rights under the Code.

52 ACFC West says it is prepared to accept the Board's proposal regarding the third issue.

53 ACFC West supports the proposed framework regarding a collective agreement being presumptively in place upon certification with the caveat that the same time frames as those proposed for the test for a valid voluntary recognition should apply.

54 ACFC West says it does not support any delay in the process and urges that, in particular, the matter of a test for a valid voluntary recognition and the collective agreement to be presumptively in place upon certification be dealt with on an expedited basis.

5. DGC-BC

55 DGC-BC submits it is prepared to participate in an association or coalition with the Film Council and UBCP as proposed in my December 1, 2009 letter. However, it says it too is concerned about not undermining or duplicating the work of MPPIA and SAFER. Nonetheless, it says it is confident an association of the three unions can be structured so as to avoid those problems.

56 DGC-BC says it is prepared to continue the interim measures set out in the Interim Decision both into the next round of bargaining and presumptively in future rounds of bargaining.

57 DGC-BC strongly opposes the AMPTP suggestion that the Board continue its Section 41 mandate, and allow a review and revisiting in 2012, of any measures put in place.

58 DGC-BC says no allegations of any impropriety have been raised or directed at its conduct and it has behaved appropriately in its collective bargaining with the producers. It submits that the Section 41 application should not be used as a "sword of Damocles" hanging over DGC-BC indefinitely, as a threat that if it, or someone else does something producers may find objectionable, DGC-BC will be "forced" into the Film Council.

59 DGC-BC submits that it is prepared to participate in a working group to explore best practices in consultation and communication. Such a working group, however, should be informal and not be part of the Section 41 process.

60 DGC-BC takes no position with respect to the second issue and does not oppose the creation of a working group to make recommendations about whether the line between the exclusive and non-exclusive zones be adjusted.

6. UBCP

61 UBCP submits that under Section 41 of the Code, the Board's jurisdiction is limited to the issue of whether a council of unions should be certified for a unit appropriate for bargaining. It submits that, by my December 1, 2009 letter, I concluded an expansion of the Film Council was not appropriate. UBCP says that, in view of that conclusion, the Board has brought the Section 41 process to an end.

62 If the Board retains jurisdiction under Section 41, UBCP suggests that the parties' energies would be best utilized by focusing on the new framework for enhancing consultative processes proposed in my December 1, 2009 letter.

63 In that regard, UBCP accepts the importance of an integrated, comprehensive approach to labour relations in the industry. However, it too urges caution about the creation of another formal organization in addition to those that already exist in the industry.

64 UBCP says it participates in MPPIA and SAFER and meets informally with members of the Film Council and DGC-BC, but is committed to exploring mutually agreeable mechanisms to support and encourage consultation and co-operation between the unions particularly during periods of collective bargaining.

65 With respect to the extension of the interim measures, UBCP submits that it has no objection to the extension of the first three measures put in place in the Interim Decision on an interim basis. However, it does not support the fourth interim requirement of common expiry dates. While UBCP has historically negotiated collective agreements with an expiry date that coincides with that of other film industry collective agreements, it submits that is properly a matter for collective bargaining. UBCP submits the Board should not interfere with its ability to bargain the expiry date of any particular collective agreement.

66 UBCP says further that it opposes any order or direction from the Board that it be required, presumptively, to provide the producers with "safe harbour" arrangements. It submits the Board has no jurisdiction to make such an order or direction.

67 UBCP says such an order would remove UBCP's right to withdraw labour from a potentially large number of producers engaged in bargaining. It submits such a restriction can only result from bargaining; it cannot be imposed by the Board.

68 UBCP supports establishing a working group to study and make recommendations regarding enhancing consultative processes and developing more co-operative labour relations approaches. It submits that it is confident the group can be structured to not only ensure accountability but to "include in that structure an efficient and cost effective approach to addressing the important issues facing the industries which are not otherwise addressed through existing industry organizations".

III. ANALYSIS AND DECISION

69 In my view, this Section 41 process has provided an important opportunity to foster stable, efficient and effective labour relations in the film and television industry, and thereby to enhance B.C. as an attractive, competitive jurisdiction for film and television production work.

70 Some parties expressed initial concern and apprehension about the Section 41 Inquiry and what it was intended to achieve. In particular, strong concern was expressed by some that the process was simply intended to force UBCP and DGC-BC into the Film Council.

71 In my discussions with the parties, I was able to explore not only the issue of whether an expansion of the Film Council was appropriate, but also a variety of other issues relating to the effective functioning of labour relations in this industry.

72 With the assistance of the parties, I was able to identify and invite the parties to address "various challenges and factors that threaten industrial stability", to use the language of the Minister's letter which initiated the Inquiry.

73 Since the process began, I have had many productive and helpful discussions with representatives of the parties about those issues. I appreciate the candour, reasonableness and good faith the parties have brought to these discussions. I am satisfied the parties recognized and accepted that the issues which needed to be addressed through this process were broader than the question of expansion of the Film Council, and participated fully in discussing how to address and resolve these issues.

74 The framework proposed in the December 1, 2009 letter was the product of this extensive consultative process with the parties.

75 As noted in my letter, the proposed framework was intended to reflect a balancing of the parties' interests, as a package. That letter went on to comment that "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". (p. 2)

76 I also re-emphasized that, while the parties' views and suggestions regarding particular aspects or elements of the framework would be welcome, what was critical was that it be considered as a package.

77 In their submissions, the parties have understandably commented on those aspects or elements of the framework of particular concern or interest to their members or constituents. However, they have also indicated their response to the framework as a whole or a "package". While every party has expressed concern with respect to one or more aspects of the framework, no party has indicated that the framework as a package is unacceptable to them. This is not surprising, as the various issues, and the viability and acceptability of the proposals for their resolution, were discussed extensively with the parties before being proposed in the December 1, 2009 letter.

78 UBCP, however, questions whether the Board has jurisdiction to impose certain aspects of the framework to which it would not consent. In particular, it asserts the Board does not have jurisdiction to interfere with its right to bargain without restriction such matters as a common expiry date for collective agreements and safe harbour arrangements with producers.

79 UBCP submits that the scope of the Board's review of the industry instigated by the Minister's February 4, 2008 direction is "narrow", and that the Board's jurisdiction under Section 41 is "restricted to the issue of whether a council of unions should be certified for a unit appropriate for collective bargaining" and that the provision "does not clothe the Board with any general legal authority to impose other restrictions on a trade union's legal rights and obligations under the Code".

80 Accordingly, it submits, the only issue over which the Board has jurisdiction under the present Section 41 process is "whether a single bargaining unit comprised of members of the existing Film Council, the UBCP and the DGC-BC would be appropriate for collective bargaining and if so, whether the existing certification of the Film Council should be varied by substituting a new Film Council with an expanded membership". UBCP submits that I reached a decision on this issue in my December 1, 2009 letter, thereby bringing the Section 41 process to an end.

81 I do not agree with these submissions. First, I do not accept the scope of the Board's review of the industry is, or was intended to be, narrow. The Minister in her letter gave the Board a broad direction to "undertake a Section 41 review in the film industry", based on her view that "the film industry is currently facing various challenges and factors that threaten industrial stability". Consistent with this direction, the parties have participated through this Section 41 process in a thorough and wide-ranging review of labour relations issues affecting the B.C. industry.

82 Second, I do not accept that, under Section 41 of the Code, the Board's jurisdiction is restricted to the issue of whether the Film Council's existing certification should be expanded to include other film unions. Section 41 has been given a broad, purposive interpretation by both the Board and the Courts: see *Communication, Energy and Paperworkers Union of Canada v. British Columbia (Labour Relations Board)*, [1998] B.C.J. No. 1170, 42 C.L.R.B.R. (2d) 295 (B.C.C.A.), where the Court stated in respect to a challenge to the Board's broad interpretation and application of its jurisdiction in a previous Section. 41 inquiry into the film industry:

> Having regard for the purposes of the Code set out in s. 2, the specific powers granted by s. 41 to determine whether a Council of Trade Unions would be an appropriate bargaining agent, the broad ancillary powers conferred by s. 41(5), and the power to give declaratory opinions conferred by s. 143, I am satisfied that the Board's decisions were well within the ambit of its statutory powers. (para. 7)

83 While the question of whether the Film Council's existing certification should be expanded is undoubtedly a matter central to the present Section 41 Inquiry, I find the Inquiry is not restricted to that issue. The Board and the Court have interpreted the scope of Section 41 in light of its purpose, which is indicated by its opening words: "To secure and maintain industrial peace and promote conditions favourable to settlement of disputes...". That expression of the purpose of Section 41 is consistent with Code purposes set out in Section 2, all of which inform the Board's interpretation and application of its powers under Section 41.

84 In the present case, I find that, to exercise those powers consistently with the purposes of Sections 41 and 2 of the Code (and the Minister's direction), the Board should address and decide more than just the narrow question of whether to expand the Film Council's existing certification. To carry out its mandate under those provisions, the Board should address the issues which the parties themselves have helped to identify (and which are described in my June 6, 2008 and subsequent letters), as being

relevant to the Minister's concern that the industry is "facing various challenges and factors that threaten industry stability".

85 Third, in regard to UBCP's jurisdictional argument, I do not accept that my December 1, 2009 letter brings this Section 41 process to an end. I do not view my comments in that letter as constituting a "decision" that the Film Council should not be expanded through this Section 41 process. In any event, even if it could be viewed as such, there are clearly other related Section 41 issues which remain outstanding. All issues, including the expansion issue, will be addressed either through the framework for resolution which I proposed in that letter, or through a further process and decision making, as necessary.

86 Accordingly, I am not persuaded the Board lacks jurisdiction to impose the proposed framework for resolution. While I have worked through the mechanism of a broad consultative process to find a resolution which takes into account the various competing interests and concerns of the parties, I am aware that virtually every party could, like UBCP, point to aspects of the proposed framework to which they would not consent. I do not doubt that some of those matters could also be characterized as interfering with or limiting the rights of trade unions, employees or employers under the Code. Nonetheless, in my view the Board has jurisdiction to make such orders under and for the purposes of Section 41.

87 I would add that my view that the Film Council should not be expanded is based, in large measure, on my conclusion that the stability concerns giving rise to the Section 41 application can be better addressed by means other than the expansion, that is, through the measures set out in the proposed framework. My December 1, 2009 letter clearly indicates that the non-expansion of the Film Council is part of that package.

88 If I am wrong, and I am without jurisdiction to deal with matters beyond the issue of the expansion of the Film Council, then the issue of the expansion of the Film Council would have to remain a live one.

89 I do not understand any party to advocate such an outcome as it would effectively undo all the work and resources expended to date and may well require a litigated solution, which would not, in my view, be consistent with the best interests or success of the B.C. industry.

90 I note that, notwithstanding the jurisdictional issue it raises to the proposed framework, UBCP commits to working with all parties to develop a more productive and co-operative labour relations system and to work to implement a number of aspects of the proposed framework.

91 Turning to the parties' submissions on the specific measures to be put in place, I accept the concerns expressed regarding the need to ensure that the proposed association comprised of the Film Council, UBCP and DGC-BC not duplicate or undermine the important work done by MPPIA and SAFER.

92 Accordingly, I accept that any association of the three unions should be relatively flexible and informal. Nonetheless, a mechanism is needed to ensure that the three unions meet regularly with each other and, as a group, with the producers groups (AMPTP and CFTPA) and ACFC West from time to time. Bearing in mind the concern of not duplicating the work of MPPIA and SAFER, the purpose of those meetings are set out in my December 1, 2009 letter, i.e., to enhance communication, consultation and co-operation among the three unions; to enhance communication, consultation, and co-operation between producers and the unions regarding industry and labour relations issues; and to promote and enhance the competitive position of the BC film industry and expanding work opportunities within it.

93 As indicated in my December 1, 2009 letter, the Board would facilitate those meetings, or some of them, if necessary.

94 Turning to the collective bargaining measures put in place on an interim basis in the Interim Decision, and the proposal that they should be presumptively in place in future rounds of collective bargaining, no party objected to continuation of the first three measures, which require the Film Council, UBCP and DGC-BC to:

1. Identify common collective bargaining issues and co-ordinate bargaining with respect to those common issues.

2. Provide each other with general updates on the progress of bargaining relating to issues that are not common.

3. 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.

95 With respect to the fourth measure of continuing the practice of common expiry dates for the collective agreements of the three unions, while DGC-BC accepts that measure and the Film Council does not oppose it, UBCP says it should be a matter for bargaining between the parties.

96 As I noted in the Interim Decision there has been a history of common expiry dates in the industry. I also stated:

> I appreciate the point made by UBCP that expiry date or term is ordinarily a bargaining matter. I also accept that the parties were able to bring about common expiry dates in the last round of bargaining without a Board order to that effect. Nonetheless, the benefits of common expiry dates to the parties and the B.C. industry as a whole are undeniable and significant.
>
> UBCP does not indicate that it wishes to have a different expiry date from the other two unions, simply that it would prefer that this issue be left for bargaining and that its members have input into that decision. While I understand that wish, I find in the circumstances it is outweighed by the benefit to the industry of the certainty of knowing, going into this round of bargaining, that the

> practice of common expiry dates for collective agreements will continue for this round. (paras. 30-31)

97 Common expiry dates reflect the collective bargaining reality and practice of the parties. My views expressed above in deciding to put common expiry dates in place in the last round of bargaining continue to apply and, accordingly, I find it is appropriate that the fourth measure put in place as an interim measure in the Interim Decision be presumptively in place for future rounds of bargaining.

98 In the Interim Decision, all three unions were directed to negotiate safe harbour arrangements, the fifth interim measure which was imposed for the last round of bargaining.

99 DGC-BC accepts this measure being presumptively in place in future rounds of bargaining and the Film Council, while expressing some reservations, does not oppose it operating presumptively in future. UBCP says a Board direction to the effect that safe harbours will operate presumptively in the future is an undue intrusion into its collective bargaining rights. It says this matter should be left to the parties to deal with in bargaining.

100 In directing the unions to bargain safe harbour arrangements with the producers in the last round of bargaining, I noted the "overwhelming and undeniable benefit of safe harbour arrangements to the parties and the industry as a whole". (Interim Decision, para. 40).

101 Given the global, highly competitive nature of the film and television industry, the practical reality is that, in the absence of such arrangements, there would be significant disincentive for producers to bring productions to B.C. during the period prior to the expiration of a collective agreement. Those productions could simply be moved to other jurisdictions rather than face the risks associated with safe harbour arrangements not being in place.

102 UBCP does not deny that reality but, in essence, says it should be left to the parties to negotiate the terms of safe harbour arrangements themselves.

103 In view of this reality and the potentially detrimental effect on the B.C. industry of a failure to negotiate safe harbour arrangements, as well as the fact the parties have negotiated them in the past, they are a feature of the bargaining landscape in the B.C. industry. Having them presumptively in place in fact reflects the reality of the B.C. industry.

104 If a party is of the view they should not be in place during a particular round of bargaining, that party could apply to the Board for a declaration to that effect. That party would need to make application in a timely manner that is at least six months prior to the expiration of a collective agreement. The Board could then decide if the presumption is rebutted in the circumstances.

105 As noted above, presumptive safe harbour arrangements is part of a package framework for resolution of the issues raised by this Section 41 process. Another part of that package is the producers' commitment to developing meaningful consultative mechanisms with the unions.

106 As was noted in my December 1, 2009 letter and reinforced in the AMPTP's and CFTPA's submissions, there is a continuing concern by producers regarding aspects of UBCP's labour relations approach, in particular, what is described as the "audit" as opposed to complaints-based approach UBCP takes to collective agreement administration.

107 As also noted in my letter, UBCP believes its members are the most vulnerable in the industry and that it has to be vigilant to protect their interests. At the moment, it perceives that its current approach achieves that goal.

108 In my view, the consultative process discussed below provides a mechanism through which solutions to concerns of both sides relating to that issue can found.

109 Turning now to the second issue identified in my June 6, 2008 letter, having had the benefit of the extensive consultative process to date, including the parties' most recent submissions, I am satisfied the proposed measures with respect to voluntary recognition agreements and certification should be put in place for this industry.

110 That is, where a valid voluntary recognition agreement is in place, such an agreement should prevail over a subsequent application for certification. Accordingly, no application for certification should be made with respect to employees covered by a valid voluntary recognition agreement.

111 The Board, with the parties' input and assistance, will develop a test for determining when a valid voluntary recognition agreement is in place. This should be done in a timely way. Where no valid voluntary recognition agreement is in place, an application for certification can be made and dealt with in accordance with the Board's usual criteria.

112 Upon certification being granted by the Board a collective agreement would presumptively apply to that production. The terms of that collective agreement will be the subject of further discussion with the parties. The Board will retain the jurisdiction to determine the appropriate terms if the parties are unable to reach an agreement.

113 Finally, all parties endorse the establishment of an industry working group to explore, study and make recommendations for more co-operative labour relations approaches in the B.C. industry.

114 In that regard, the working group should adopt a best practices approach. In my view, the context of a working group and consultative process offers UBCP and the producers an opportunity to discuss their specific concerns (perhaps through a sub-group) relating to UBCP's approach to collective agreement administration and to explore solutions to those concerns.

115 The working group should also examine and make recommendations regarding whether the line between the exclusive and non-exclusive zones should be adjusted and if so, how.

IV. THE SECTION 41 PROCESS: CONCLUDING OR ONGOING?

116 I understand some parties' desire to formally conclude this Section 41 process at this time. I also appreciate the views of others that there should be some ongoing Board involvement and the ability to review the measures put in place by this process, and the progress the parties make in addressing the underlying issues.

117 The Board will have ongoing involvement in the development and implementation of the measures outlined in this decision. Otherwise, at least for the time being, the Board will cease the kind of broad consultative process it has been engaged in with the parties since the Minister's letter. That process has culminated in the issuance of this decision and the orders and directions contained in it.

118 I accept the importance of ensuring that the ongoing working group and consultative process produce effective results. While the focus going forward will be on consultation and problem solving, the Board retains jurisdiction to ensure it is effective and results can be achieved. To that end, it may be necessary for the Board, from time to time, to provide recommendations and directions to the parties or to decide certain issues which the parties are unable to resolve themselves.

119 With respect to AMPTP's suggestion that there be a Board review of progress in two years' time (2012), just before the next round of bargaining is to begin, I am not at this time prepared to either accept or reject this suggestion. Such a review may be either salutary or unnecessary, depending on the progress the parties are able to make in the interim and other factors that may emerge.

120 In saying that, I note that it should not be assumed that a progress review would necessarily be a negative thing. A review mechanism would be a natural component of any ongoing process such as the one contemplated here. A progress review should be an opportunity for the parties to identify not only on the problems and challenges that remain, but also the solutions and results that have been achieved. It is an opportunity for the parties to reflect on how their collective bargaining and relationships have changed or improved, as well as to discuss what further changes and improvements are needed, and decide how to implement them. A progress review offers an opportunity to continue to enhance the success and growth of the B.C. industry through dialogue and reflection.

V. CONCLUSION, ORDERS AND DIRECTIONS

121 I conclude that it is appropriate in the circumstances to make the following orders and directions under and for the purposes of Section 41 of the Code. These orders and directions are provided as a package resolution of the issues raised to date by this Section 41 process.

122 A. The Film Council, UBCP and DGC-BC will establish an association (the "Association") which will meet regularly and be of the nature and for the purposes set out in paragraph 92 of this decision. The Association shall also meet with the AMPTP, CFTPA and ACFC West for the same purposes. The Board is available to facilitate those meetings, as necessary.

123 B. In future rounds of collective bargaining between the producer representatives (AMPTP and CFTPA) and the Film Council, UBCP and DGC-BC, the following requirements apply presumptively. The three unions are required to:

- Identify common collective bargaining issues and co-ordinate bargaining with respect to those common 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.
- Continue the practice of "safe harbour" arrangements established in previous rounds of collective bargaining, subject to a timely and successful application to the Board that the presumption in favour of continuing the practice is rebutted.

124 C. Where a valid voluntary recognition agreement ("VVRA") is in place for a production, no application for certification may be made for the group of employees covered by the VVRA. Where no VVRA is in place, an application for certification can be made. If such an application for certification is granted, a collective agreement, the terms of which will be determined by the Board, presumptively applies. The parties will work with the Board through a consultative process to develop the test for determining when a VVRA is in place and the terms of the presumptive collective agreement.

125 D. An industry working group (the "Working Group") comprised of representatives of the parties and facilitated by the Board will be established to explore, study and develop recommendations for more co-operative labour relations approaches in the B.C. industry. In that regard, the Working Group will adopt a best practices approach. The Working Group will also examine and make recommendations relating to the issue of whether the line between the exclusive and non-exclusive zones should be adjusted, and if so, how.

126 E. AMPTP, CFTPA and UBCP will form a sub-committee of the Working Group, to examine and make recommendations regarding how to resolve the concerns of both relating to UBCP's approach to collective agreement administration, particularly with respect to what has been described as the "audit" approach.

127 The Board will facilitate this process as necessary and may resolve any issue the parties are unable to resolve themselves.

128 To the extent that any clarification or modification of these orders and directions are required, or any further proceedings or directions in respect to them or this Section 41 process are necessary or appropriate, I remain seized of the matter.

129 I thank the parties once again for their co-operation and input during this process, which I have found invaluable. I am confident they will be able to implement the orders and directions given in this decision in a positive, constructive manner that will address the issues raised, enhance labour relations in the B.C. film and television industry, and thereby contribute to the growth and success of the industry, to the benefit of the members of all parties, employees and employers alike.

LABOUR RELATIONS BOARD

"MICHAEL FLEMING"

MICHAEL FLEMING
ASSOCIATE CHAIR, ADJUDICATION

APPENDIX 6

BCLRB No. B176/2010

BRITISH COLUMBIA LABOUR RELATIONS BOARD

CANADIAN AFFILIATES OF THE ALLIANCE OF MOTION PICTURE AND TELEVISION PRODUCERS

("AMPTP")

-and-

CANADIAN MEDIA PRODUCTION ASSOCIATION
(formerly B.C. Producers' Branch of the
Canadian Film and Television Production
Association - CFTPA)

("CMPA")

-and-

B.C. AND YUKON COUNCIL OF FILM UNIONS

(the "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")

PANEL:	Michael Fleming, Associate Chair, Adjudication
APPEARANCES:	Barry Dong, for AMPTP Don Jordan, Q.C., for CMPA Bruce Laughton, Q.C., for Film Council David Duncan Chesman, Q.C., for ACFC West Shona A. Moore, Q.C., for UBCP M. Patricia Gallivan, Q.C., for DGC-BC
CASE NO.:	57508
DATE OF DECISION:	October 6, 2010

DECISION OF THE BOARD

I. INTRODUCTION

1 This decision addresses certain matters raised for further consultation and determination in a previous decision, BCLRB No. B47/2010 ("B47/2010").

2 In B47/2010, I stated that measures should be put in place with respect to voluntary recognition agreements and certifications for this industry (para. 109). I further stated:

> Where a valid voluntary recognition agreement ("VVRA") is in place for a production, no application for certification may be made for the group of employees covered by the VVRA. Where no VVRA is in place, an application for certification can be made. If such an application for certification is granted, a collective agreement, the terms of which will be determined by the Board, presumptively applies. *The parties will work with the Board through a consultative process to develop the test for determining when a*

> *VVRA is in place and the terms of the presumptive collective agreement.* (para. 124, emphasis added)

3 Further to that paragraph, I consulted with the parties regarding the test for determining when a VVRA is in place and what the terms of the presumptive collective agreement should be when no VVRA is in place and a union is certified to represent employees on a particular production.

4 By letter to the parties dated July 23, 2010, a copy of which is attached to this decision, I set out a rationale and framework for an outcome dealing with these two issues, and sought submissions from the parties. The parties provided helpful submissions which addressed the two issues. Several other issues were also raised.

5 This decision sets out a determination on the two issues of (a) the test for determining when a VVRA is in place in this industry; and (b) the terms of presumptive agreement when no VVRA is in place and a union is certified to represent employees on a particular presumption. It also sets out a process for the other issues raised.

II. THE TEST FOR A VVRA IN THIS INDUSTRY

6 In my July 23, 2010 letter to the parties, I proposed a test for determining a VVRA in this industry. I noted that the norm is for both producer associations and the unions to negotiate Master and Supplemental Master Agreements which are ratified. I also noted the practice is for parties to enter into a voluntary collective bargaining relationship by signing a letter of adherence or understanding or a similar mechanism (a "Letter"), agreeing to be bound by the terms of a particular collective agreement, sometimes with enabling. I proposed that a party seeking to rely on or establish a VVRA file a copy of a Letter relating to a particular production with the Board when it is signed.

7 I further proposed that, in addition to filing a Letter with the Board as evidence of the existence of a VVRA, a party wishing to hold up the Letter as a VVRA barring a subsequent application for certification must be able to provide evidence that the majority of employees working on the production are either members of the union entitled to participate in the ratification process for the collective agreement or have signed membership cards of that union.

8 All of the parties either agreed with the proposed test or did not express opposition to it. Some also made a number of useful suggestions and observations.

9 AMPTP sought clarification regarding whether it was sufficient that a party file only the Letter with the Board or whether both the Letter and the collective agreement which it incorporates should be required. AMPTP suggests that filing only the Letter should suffice. The Film Council agrees with this suggestion, as does DGC-BC. However, ACFC West notes that Section 51 requires the filing of the "collective agreement" with the Board, and suggests that both the Letter and the collective agreement which together comprise the collective agreement should be filed.

10 Section 51 of the Code requires that collective agreements be filed with the Board. Accordingly, it would be reasonable to expect that a copy of all relevant agreements (i.e., Master and Supplemental Masters) would be filed with the Board and would therefore be available on the Board's website. I am satisfied it is sufficient to file only the Letter with the Board, as long as the Letter clearly indicates the collective agreement to which the parties have agreed to be bound, and a copy of that collective agreement has been filed with the Board.

11 I agree with both the Film Council's and ACFC West's submissions that, in order to be held up as a bar to an application for certification, a voluntary recognition agreement must fall within the definition of a collective agreement under the Code.

12 In particular, ACFC West submits that the Board has found that an agreement which does not contain or incorporate collectively bargained rates of pay, is not a collective agreement. It submits that, in order to constitute a VVRA, a Letter must contain or incorporate collectively bargained rates of pay.

13 I agree with this submission. As noted by ACFC West, competition between ACFC West and the Film Council for work in the non-exclusive zone is a recognized aspect of the BC film industry. One important concern relating to that competition which has been raised in this Section 41 process is that it not lead to a "race to the bottom" in terms of wages and other working conditions. That is less likely to occur as long as both ACFC West and the Film Council continue to enter into voluntary recognition agreements based on collectively bargained rates of pay. While enabling is an accepted practice in this industry, I agree that it is not contemplated that either union would enter into a Letter which does not contain or incorporate rates of pay.

14 In summary, in order to constitute a VVRA in this industry, a Letter should be filed with the Board when it is signed for a particular production. The Letter must constitute a collective agreement under the Code and in particular must contain or incorporate collectively bargained rates of pay. One copy of the collective agreement it incorporates must also have been filed with the Board.

15 Where such a Letter has been filed covering employees of a given production, and an application for certification for those same employees is subsequently filed at the Board, the certification application will be held in abeyance pending an investigation of the validity of the Letter. A union seeking to rely on the Letter as a VVRA barring the application for certification will, at the Board's request, file evidence in the form of membership cards, dues payment information and employee call sheet information to establish that a majority of the employees are either members of the union entitled to participate in the ratification process for the relevant collective agreement or have signed membership cards for that union.

16 This process will be administrative in nature and is intended to provide an expeditious answer.

17 If the Letter is found to constitute a VVRA, the application for certification is barred. If not, the application will be processed expeditiously.

III. PRESUMPTIVE COLLECTIVE AGREEMENT

18 In my July 23, 2010 letter, I proposed that, where no VVRA is in place with respect to a particular production and a union applies to be certified by the Board to represent employees working on that production, if the application is granted, the relevant collective agreement for that union applicable to that production would presumptively apply.

19 Many if not most of the collective agreements have "tiers" for different production budget levels. In terms of which tier would apply, the union would provide some evidence establishing, on a *prima facie* basis, which tier applies. If a producer disagrees, it could provide evidence to rebut the union's asserted budget level. Any dispute regarding the appropriate tier would be resolved expeditiously by the Board, or some process agreed to by the parties. The effective date of the presumptive collective agreement would be the date of the application for certification.

20 CMPA sought clarification that the term "presumptive collective agreement" refers to the relevant collective agreement utilized by a union who has successfully applied for a certification for a production operating in a particular segment of the industry. For example, if the application for certification was made with regard to an employer producing a Low Budget Feature Film, the Low Budget Feature Film section of the collective agreement for the union applying for certification would apply.

21 I agree that this is how the presumptive collective agreement would be determined. I note that the Film Council also submits that the nature of the production – episodic, television or feature film – together with the budget level would be used to "slot" the production into the appropriate tier. That would seem to be a reasonable approach to be adopted.

22 I have confidence that the parties, who understand their industry and their collective agreements well, will not have trouble determining what the presumptive collective agreement is, once the basic relevant facts concerning a production are determined. To the extent that there is a dispute as to what the presumptive collective agreement is, the Board, or a process developed by the parties, will resolve that dispute expeditiously.

23 CMPA submits that the Board should clarify that, even where an application for certification is granted and a presumptive collective agreement applies, enabling should remain available to the parties. The Film Council agrees that the "enabling provisions of the collective agreement would continue to have full application as they form part of the collective agreement". ACFC West submits that, while the parties should be free to enable, it should be clear that they are not obligated to do so.

24 I do not understand CMPA's submission to suggest enabling should be obligatory. In any event, I agree that, consistent with the terms of the presumptive collective agreement, the parties are able to engage in enabling but are not obliged to do so. I further confirm that the terms of the presumptive collective agreement apply effective the date of the application for certification.

IV. OTHER ISSUES

25 CMPA notes that, in my letter of July 23, 2010, I indicated that the parties should negotiate a side letter relating to low budget Canadian domestic television production. CMPA further submits that the parties should also negotiate a side letter dealing with the category of long form and pilot television productions budgeted under $3 million. In response, ACFC West submits that, to the extent the issue arises with respect to it and not the Film Council, the issue could be discussed during collective bargaining scheduled for later this year.

26 I will arrange a meeting of the directly affected parties to discuss and explore solutions to these issues.

LABOUR RELATIONS BOARD

"MICHAEL FLEMING"

MICHAEL FLEMING
ASSOCIATE CHAIR, ADJUDICATION

July 23, 2010

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 letter is further to *Canadian Affiliates of the Alliance of Motion Picture and Television Producers et al.,* BCLRB No. B47/2010 ("B47/2010") which concluded in part that:

> Where a valid voluntary recognition agreement ("VVRA") is in place for a production, no application for certification may be made for the group of employees covered by the VVRA. Where no VVRA is in place, an application for certification can be made. If such an application for certification is granted, a collective agreement, the terms of which will be determined by the Board, presumptively applies. The parties will work with the Board through a consultative process to develop the test for determining when a VVRA is in place and the terms of the presumptive collective agreement. (para. 124)

I have now had discussions with the parties regarding the test for determining when a VVRA is in place as well as the terms of the presumptive collective agreement when no VVRA is in place and a union is certified to represent employees on a particular production.

In order to move this process forward to completion, I am providing a framework for an outcome dealing with both of those matters. This framework is the result of the extensive consultative process undertaken to date and is intended to achieve the balance and complete the process contemplated in B47/2010.

The parties will be given an opportunity to provide any submissions they may wish to make regarding the proposed framework for the test for a VVRA and the terms of the presumptive collective agreement.

Those submissions may also be supplemented by further discussions with the parties where appropriate.

1. Test for VVRA

As the parties know, both producer associations and all the unions negotiate Supplemental Master Agreements or Side Letters (the "Agreements") which are ratified by the members of each union. A number of the Agreements contain specific terms based on the budget of a particular production. Those budget specific terms are known in at least some of the Agreements as "tiers".

In the non-exclusive zone, Producers wishing to enter into a collective bargaining relationship with a union for a particular production generally do so by entering into a letter of adherence (or other similar mechanisms) agreeing to comply with the terms of particular Agreements (sometimes with enabling). In that way, the parties enter into a voluntary recognition agreement for a particular production.

With respect to the validity of such agreements, the Board has found that in this industry, voluntarily signed membership cards are evidence of an employee's wish to be represented by a union: see, for example, *Shavick Entertainment Inc.*, BCLRB No. B152/2000 (Leave for Reconsideration of BCLRB No. B258/99); *Mysts Productions Inc.*, BCLRB No. B242/2007.

In some circumstances in this industry, it is possible that on a particular production a majority of employees may not have been members of a union entitled to participate in the ratification process for one of the existing Agreements. That may create uncertainty regarding employee support for the purposes of a VVRA.

Accordingly, the following are proposed criteria for determining a VVRA in this industry:

1. Evidence that the parties have entered into Agreements.

2. Evidence that the majority of employees working on a specific production were either members of the union entitled to participate in the ratification process for those Agreements or have signed membership cards of that union (within a specific timeframe). The production "call sheet" may provide helpful information in this regard.

A voluntary recognition agreement meeting these criteria would result in a VVRA being presumptively in place and no application for certification would be made for the group of employees covered by the VVRA.

A union seeking to rely on or establish a VVRA should provide this information to the Board when the VVRA is entered into for a particular production.

2. Terms of the Presumptive Collective Agreement

I have noted in previous letters and decisions, and discussed with the parties, the recognized difficulty in achieving meaningful collective bargaining outcomes upon certification in the unique context of this industry. That difficulty includes the fact that Section 55 of the Code, which is intended as a mechanism for establishing a first collective agreement, is premised on an ongoing relationship between the parties. However, in this industry, each film production is the business of a separate employer and Section 35 of the Code has very limited potential application in these unique circumstances: see for example, *Space Buddies*, BCLRB No. B215/2009.

In my view, the following would address the unique circumstances of this industry and complete the process contemplated in B47/2010;

1. Where no VVRA is in place with respect to a particular production, a union may apply to be certified by the Board to represent employees working on that production. If the application is granted, the relevant Agreement to which that union is a party would presumptively apply.

2. In terms of which tier would apply, the union would provide some evidence establishing, on a *prima facie* basis, the budgetary level for the production for the purposes of which tier in the agreement should apply. If a producer disagrees, it could provide evidence to rebut the union's asserted budgetary level of the production.

3. Any dispute regarding the appropriate tier could be resolved by a process developed by the parties and with a review function by the Board if necessary, using an expedited dispute resolution process.

4. The effective date of the presumptive collective agreement would be the date of the application for certification.

Certain areas of potential concern in the existing tiers should be addressed. For example, the existing tiers in the Film Council Supplementary Agreement which are tailored to reflect the budgetary levels of a production reflected in the provisions dealing with feature films and home video/DVD do not appear to extend to Canadian domestic television productions. That would appear to mean that in that collective agreement, low budget domestic television productions would not have the same terms as others such as low budget film and home video/DVD, for example. The parties should negotiate a side letter dealing with that issue as soon as possible. If they are unable to do so, that matter could be addressed by the Board on an interim basis.

As an aside, I note that in the context of the original Section 41 in 1995, the Board provided certain directions regarding expectations relating to enabling which may also be applicable to the circumstances of a presumptive agreement.

Submission timeframe:

AMPTP and CFTPA – **Friday, August 13, 2010**.

The Film Council, DGC-BC, UBCP and ACFC West - **Friday, September 3, 2010**.

Yours truly,

LABOUR RELATIONS BOARD

Michael Fleming
Associate Chair, Adjudication

Interested Parties:

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APPENDIX 7

BRITISH COLUMBIA LABOUR RELATIONS BOARD

IN THE MATTER OF AN APPLICATION PURSUANT TO
THE *LABOUR RELATIONS CODE*, R.S.B.C. 1996, c.244

BETWEEN:

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

("IATSE 891")

AND:

ACFC WEST - THE ASSOCIATION OF CANADIAN FILM
CRAFTSPEOPLE

("ACFC")

BEFORE THE LABOUR RELATIONS BOARD)
MICHAEL FLEMING, ASSOCIATE CHAIR, ADJUDICATION)

WEDNESDAY, THE 29TH DAY OF FEBRUARY, 2012

O R D E R

WHEREAS the Labour Relations Board (the "Board") has received applications for certification from IATSE 891 and ACFC has asserted the existence of a valid voluntary recognition agreement ("VVRA") with respect to those productions which are the subject of the applications for certification;

AND WHEREAS in that context, issues arose between the parties regarding the validity of membership evidence which crystallized in relation to Mysts Productions Inc., Case No. 56797 ("Case No. 56797");

AND WHEREAS the parties recognize that voluntary recognition is the usual manner by which collective bargaining relationships are established in the B.C. film and television industry;

AND WHEREAS the undersigned was constituted as a Panel of the Board pursuant to Section 117 of the *Labour Relations Code* (the "Code") to conduct a Section 41 Inquiry into the B.C. film and television industry and also to deal with the issues arising between the parties in relation to Case No. 56797;

AND WHEREAS the parties wish to have their remaining differences resolved and have been able to resolve most, but not all, terms for resolution in light of the framework set out in BCLRB No. B176/2010;

AND WHEREAS the parties have been afforded an opportunity to provide submissions regarding the issues between the parties;

NOW THEREFORE PURSUANT TO SECTIONS 134 and 143 OF THE CODE THE BOARD MAKES THE FOLLOWING DECLARATIONS AND ORDERS;

1. In addition to the framework established in B176/2010, where an application for certification is made for a production, and a VVRA is asserted by a union with respect to that production (the "Employer"), membership in the union claiming the VVRA may be established by an individual: a) having maintained active membership in the union; or b) having made an application for membership in that union that meets the following criteria:
   (i) The membership application will not be provided by the Employer nor will it be provided with the Employer Start Pack or Deal Memo;
   (ii) The membership application has not been revoked and is dated prior to midnight of the date of the application for certification;

(iii) The membership application contains the statement: "In applying for a membership I understand that the union intends to apply to be certified as my exclusive bargaining agent and to represent me in collective bargaining";

(iv) The membership application was made within 36 months prior to the date of the voluntary recognition agreement.

2. Criteria 1(i), 1(ii) and 1(iii) will be effective from the date of this Order.
3. Criteria 1(iv) will be effective 21 months from the date of this Order to allow the parties an opportunity to make any modifications to their existing practices that may be necessary to ensure consistency with criteria 1(iv) above.
4. All outstanding litigation and issues between the parties relating to the above referenced applications for certification is concluded.

DATED AND EFFECTIVE at Vancouver, British Columbia, this 29th day of February, 2012.

LABOUR RELATIONS BOARD

"MICHAEL FLEMING"

MICHAEL FLEMING
ASSOCIATE CHAIR, ADJUDICATION

BRITISH COLUMBIA

LABOUR RELATIONS BOARD

APPENDIX 8

November 7, 2008

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 (the "Film Council"), ACFC West, Union of B.C. Performers, Directors Guild of Canada - B.C. District Council ("UBCP")
(Section 41 Application - Case No. 57508/08)

As indicated in my interim decision of November 5, 2008, some parties raised certain issues in their submissions beyond the proposed interim measures. In particular, CFTPA submits that any interim order aimed at addressing stability concerns in this round of bargaining must include a statement of principle confirming that the CFTPA and AMPTP are not employers and are not required to "bind" their members to the collective agreements they negotiate with the three unions (Film Council, DGC-BC and UBCP).

CFTPA says the importance of confirming this principle prior to bargaining is underscored by the position being taken by the Film Council, challenging CFTPA's presence at the bargaining table unless it agrees to bind CFTPA members to the collective agreement negotiated. CFTPA argues that such a challenge is contrary to the original Section 41 decision and to the principles raised in my letter dated August 22, 2008, notably emphasizing the importance of voluntary recognition in this industry.

CFTPA further submits that the Film Council's position is inconsistent with the *Code*, in that CFTPA has not been made an accredited employers' association pursuant to Section 43 of the *Labour Relations Code* (the "Code"). Therefore, CFTPA submits, the Film Council is not entitled to compel employers to confer exclusive bargaining authority on the CFTPA. CFTPA says that result would be contrary to the freedom of choice with respect to representation guaranteed in Section 4(2) of the Code.

Finally, CFTPA says that if the Film Council were permitted to insist that CFTPA bind its members to any collective agreement negotiated by CFTPA, this would represent an "insurmountable barrier" to ACFC's existence, contrary to the original Section 41 decision and the Tysoe Report. CFTPA submits that if the interim order does not address this issue, the upcoming round of bargaining will be "significantly hampered".

In response to these submissions, the Film Council submits that the CFTPA is seeking to have the Board issue some form of order prohibiting the Film Council from insisting at bargaining that CFTPA bind its members. The Film Council says that the status of CFTPA is a matter properly addressed at the bargaining table where the CFTPA would be required to "justify its participation in bargaining".

The Film Council further submits that, if the CFTPA or independent Canadian production companies are participating in bargaining, then they must agree to be bound by the outcome. It therefore submits that no interim order should be made with respect to the status of the CFTPA in the upcoming round of bargaining.

UBCP submits that it agrees with the Film Council "to the extent that the status of the CFTPA at bargaining is an issue that should be addressed at the bargaining table". It says, if the CFTPA or independent Canadian production companies wish to participate in bargaining then they must be bound by the outcome of bargaining. Accordingly, it too submits that no order regarding the status of the CFTPA should be made at this time.

ACFC states that it generally agrees with and adopts the CFTPA's submission on this issue. With respect to the Film Council's submission that CFTPA be required to "justify its participation in bargaining", ACFC submits that, to the contrary, CFTPA conducts itself consistent with the film industry's successful labour relations regime as established by the original Section 41 decision and as endorsed by the Tysoe Report. ACFC submits that it ought to be the Film Council that bears the onus of justifying a position contrary to that regime.

At this point, I do not find it appropriate to do more than provide the following comments with respect to the parties' submissions to date on this issue.

It appears that the Film Council may take a position in the upcoming round of bargaining to the effect that CFTPA (and any independent Canadian production companies who wish to participate in bargaining) should have to justify their participation in bargaining unless it agrees to "bind" its members to the resulting collective agreement.

CFTPA views this position as inconsistent with the Board's original Section 41 decision, the Tysoe Report and the Code. It notes that it is not an accredited employer association. CFTPA submits, and ACFC agrees, that binding the members of CFTPA to any agreement negotiated by CFTPA would threaten the continued viability of ACFC.

CFTPA seeks to have me confirm the principle that neither CFTPA nor AMPTP are employers (or, presumably, accredited employer organizations) and therefore neither are required to bind their members to the collective agreements they negotiate with the unions.

While the Film Council characterizes the CFTPA submissions on this issue as a request for an order, I do not see it as such. Nor would I be inclined to give an order on this issue at this stage. For one thing, bargaining has not yet begun and it is therefore unknown, or at least uncertain, what positions the Film Council will take in bargaining.

Having said that, it may be useful for me to provide some observations, and some statements of principle to guide the parties in their upcoming negotiations.

First, CFTPA is correct that neither it nor the AMPTP are accredited employer organizations under the *Code*, and there is therefore no obligation flowing from Section 43 of the Code for them to bind their members to the collective agreements they negotiate with the unions.

As a matter of practice, members of AMPTP adhere to the collective agreement negotiated by AMPTP. This has not been a practice of all members of CFTPA with respect to the Film Council in particular. Some members of CFTPA choose to enter into voluntary recognition agreements with ACFC rather than the Film Council for particular productions.

The current bargaining structure has been in place for the last four rounds of bargaining. CFTPA has never agreed to bind its members in those previous rounds of bargaining.

If members of the CFTPA were "bound" by the collective agreement negotiated with the Film Council, it would appear that they may no longer have the option of entering into voluntary recognition agreements with ACFC. ACFC and CFTPA fear that this would lead to the demise of ACFC in the industry. Accordingly, they are understandably concerned about the position they anticipate the Film Council will take on this issue in bargaining.

As well, members of CFTPA who were not prepared to accept that outcome might simply leave the organization which would appear to be problematic.

The Film Council has been candid in their discussions with me about their frustration with the fact that members of CFTPA do not adhere to the collective agreement CFTPA negotiates on their behalf, in the same way that members of AMPTP adheres to the collective agreement AMPTP negotiates.

The Film Council is particularly concerned that CFTPA does not require its members to adhere to the Supplemental Master Agreement that it negotiated with CFTPA for the "non-exclusive" zone in light of the Tysoe Report. It believes that members of CFTPA "shop" the Supplemental Master Agreement to ACFC, and that the competition between the two unions inevitably results in a "race to the bottom" in terms of wages and working conditions for members.

As I understand it, it is at least in part because of these concerns that the Film Council seeks to have CFTPA bind its members to the collective agreement(s) it negotiates.

In his Report, Justice Tysoe noted that the existence of ACFC has allowed British Columbia to retain low to mid-budget production work, and he stated that he agreed that "ACFC West is to be recognized as a viable alternative in the industry" (pp. 15-16). He further noted that representatives of IATSE 891 "indicated during the Inquiry that its members are prepared to be flexible in order to secure the low and mid-budget work" (p. 16).

Thus, competition between Film Council and ACFC for low and mid-budget work is a recognized aspect of the British Columbia film industry. It would only become problematic if it were in fact to lead to a "race to the bottom" in terms of wages and working conditions. While the Film Council has expressed that concern, nothing in my discussions with any of the parties, including ACFC, leads me to believe that the competition has actually taken that form.

ACFC has made it clear that they, no more than Film Council, wish to see a "race to the bottom" in terms of wages and working conditions. In their view, they have developed and served the low and mid-budget market for many years while Film Council was focused on high-budget work. They are not opposed to the Film Council competing with them for low and mid-budget work in the non-exclusive zone, and do not seek an "exclusive" zone of their own. They believe their success in securing voluntary recognition agreements with Canadian producers has arisen not because they offer lower wages or working conditions but rather because they have cultivated relationships and take a co-operative, flexible, approach to the collective bargaining relationship.

In particular, ACFC has indicated to me that it would not knowingly participate in an exercise of a producer "shopping" the Supplemental Master to it. It says that it enables productions when persuaded that it is appropriate to do so.

In my view, it would be useful to examine ways through which concerns between ACFC and the Film Council might be dealt with (for example, the issue of "shopping" and enabling practices).

I would also hope that the concepts, posited for discussion purposes, in my letter of June 6, 2008 relating to the second issue could provide a basis for discussions as they may, at least in part, address concerns giving rise to the issue relating to CFTPA binding its members to any collective agreement negotiated by CFTPA.

I will contact the parties regarding further discussions relating to these issues.

Yours truly,

LABOUR RELATIONS BOARD

Michael Fleming
Associate Chair, Adjudication

MF/sn
Interested Parties from page 5 onwards

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BRITISH COLUMBIA

LABOUR RELATIONS BOARD

APPENDIX 9

July 4, 2011

To Interested Parties

Dear Sirs/Mesdames:

Re: Canadian Affiliates of the Alliance of Motion Picture and Television Producers ("AMPTP") -and- Canadian Media Production Association ("CMPA") -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)

I write further to the May 17, 2011 meeting of the Forum in Vancouver to discuss the recommendations set out in my May 12, 2011 letter (the "Recommendations"). I am setting out a summary of the discussions of the Forum including, for the ease of reference, the Recommendations revised to reflect the discussions.

1. Consultative Processes

There was general support for the concept of an annual industry forum to coincide with the joint consultative meetings that occur annually.

There was a useful discussion regarding, and general support for, the concept of using the Forum to discuss certain matters of broader importance to the industry. Some examples raised in the meeting of the possible types of issues that could be discussed included the proposed B. C. Harmonized Sales Tax; residency requirements; foreign worker program, etc. There was also general support for the possibility of inviting guest speakers, such as representatives from the Canada Revenue Agency, to discuss and provide information regarding identified matters of interest to the industry.

There was general agreement that the concepts in my May 12, 2011 letter, supplemented by discussions at the Forum meeting, should be used to develop a draft protocol, a copy of which is enclosed. My preference would be to leave the completion of the Annual Industry Forum protocol as much as possible to the parties themselves using this draft as the basis for that exercise.

RECOMMENDATION

(i) Annual Industry Forum

- should occur annually in conjunction with the individual joint consultative meetings, unless there are no matters of general interest to discuss;

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- should pro-actively identify issues and craft solutions for matters of general concern, to the benefit of the industry as a whole;

- speakers or guests may be invited to provide views or information regarding topics of interest to the industry; review and discuss the state of labour relations in the industry; or discuss labour relations trends and developments of interest to the industry;

- may establish an ad hoc working group or groups to follow up issues requiring further discussion or action.

(ii) Joint Consultative Meetings

- should meet at least annually (in conjunction with the Forum), in a mutually agreeable location for formal as well as informal (i.e., social) interactions;

- should pro-actively identify problems and craft mutually beneficial solutions to them;

- should be used to discuss challenges arising on productions and endeavour to develop mutually beneficial solutions; to seek/provide information regarding specific topics as requested; and to explain/define policies or practices;

- should discuss issues with a view to reducing tension and promoting understanding between the parties.

In my view, the second aspect of this recommendation, which essentially sets out the purpose and general functioning of the joint consultative meetings, could simply supplement the existing collective agreement language, as the parties saw fit.

2. Dispute Resolution

The purpose of the Recommendation below is to provide a conceptual framework in order to ensure general consistency across the industry. The specific language giving effect to point (i) below would be dealt with by the parties to each collective agreement separately.

The parties should retain as much existing language in the relevant side letters as practicable but refine the existing trouble shooter/umpire provisions by combining them into a single trouble shooter role with the ability to provide a range of functions.

RECOMMENDATION

Trouble Shooter

(i) Issues specific to a collective agreement

- Available to assist the parties with the resolution of grievances or other issues arising between the parties;
- May investigate and consult with the parties;
- Parties would meet with the trouble shooter within clearly defined, and expedited, time frames;
- May mediate and work with the parties to develop a statement of undisputed material facts; assist the parties in defining (and narrowing) the issue or difference between the parties and in determining if the issue is serious enough to warrant further action;
- May have the parties exchange relevant documents or otherwise assist to expedite the process;
- May provide recommendations within clearly identified and expedited time frames;
- Any recommendation provided would not be relied upon in any other or subsequent proceedings between the parties unless by express agreement of the parties;
- If the issue involves a grievance, the grievance time frames should be held in abeyance, providing they have not expired prior to the involvement of the trouble shooter;
- Either party would have the ability to end the process and opt to have the matter proceed through the grievance process.

(ii) Issues with potentially broader impact

Upon request by the parties, the trouble shooter could determine his/her own procedures and assist the parties through one or more of the following ways:

- Make any necessary inquiries, define the issue and identify to the parties factors that may be contributing to the issue;
- Discuss the impact and possible ramifications of the issue if left unresolved;
- To work with the parties to facilitate a mutually agreeable solution;
- Provide a timely report which may include recommendations. Those recommendations may include changes or measures to improve practices or steps to resolve the issue;
- Provide assistance to the Annual Industry Forum or joint consultative committees;
- Costs to be shared by the parties.

Comment

In the May 17, 2011 Forum meeting, while merit was seen in the concept of potentially addressing broader issues in the manner set out in point (ii), there was also concern expressed regarding the ability to give it practical effect (i.e., beyond parties to a

specific collective agreement) given the fact that each collective agreement is separate and there is no industry document or structure in place that would contemplate or allow such an industry-wide process.

In my view, if the parties saw sufficient merit in this concept, it should be possible to address those concerns by having the parties either sign onto a protocol setting out the concepts described in point (ii) above, or incorporate a protocol setting out those concepts, by reference into their individual collective agreements.

I would ask that the parties reflect and consider these recommendations and advise me as to their acceptability as soon as possible.

Yours truly,

LABOUR RELATIONS BOARD

"MICHAEL FLEMING"

Michael Fleming
Associate Chair, Adjudication

MF/sn

Interested Parties

Members of the Film Forum (Via E-mail)