

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