IN THE MATTER OF A SECTION 55 (6) REPORT

INVOLVING

AMAZON CANADA FULFILLMENT SERVICES, ULC

(the "Employer")

AND

UNIFOR, LOCAL 114

(the "Union")

APPEARANCES:	Keith J. Murray, for the Employer Colin Gusikoski, for the Union
MEDIATOR:	Mark J. Brown
DATE OF REPORT:	June 1, 2026
SUBMITTED TO:	Andres Barker, Associate Chair Mediation David Schaub, Director of Mediation

I. BACKGROUND

The Union was certified on July 10, 2025 by virtue of a remedial certification flowing from a Labour Relations Board Decision, 2025 BCLRB 131.

Following certification, the Union filed two unfair labour practice complaints. In 2026 BCLRB 49, the Board found a breach of the Code with the remedy still to be determined. The second complaint is still being adjudicated.

Other complaints have been filed as well.

I note at this juncture that I am not considering the allegations in the unfair labour practice complaints, only to say that the relationship between the Parties is fragile and adversarial. My conclusions are based on the Parties conduct during collective bargaining and mediation.

The Union served notice to bargain in October of 2025. The parties met in negotiations on approximately 11 days from October of 2025 to February of 2026.

I was appointed under Section 55 of the *Labour Relations Code* (the "Code") and joined the collective bargaining sessions in March of 2026. Mediation concluded after 5 days of mediation. On May 7, 2026, I advised the Parties that I could not issue recommendations to conclude a first Collective Agreement that I believed would likely be accepted by both Parties. I asked the Parties to submit their preferred method for concluding a Collective Agreement under Section 55 (6) of the Code.

II. YARROW LODGE PRINCIPLES

Section 55 (6) of the Code states:

If the first collective agreement is not concluded within 20 days of the appointment of the mediator, the mediator must report to the associate chair and recommend either of both of the following:

(a) The terms of the first collective agreement for consideration by the parties;

(b) A process for concluding the first collective agreement including one or more of the following:

  (i) Further mediation by a person empowered to arbitrate any issues not resolved by agreement and to conclude the terms of the first collective agreement;

  (ii) Arbitration by a single arbitrator or by the board, to conclude the terms of the first collective agreement;

  (iii) Allowing the parties to exercise their rights under this Code to strike or lock out.

The Labour Relations Board seminal case with respect to the application of Section 55 of the Code is *Yarrow Lodge Ltd.*, BCLRB No. B444/93 (*"Yarrow Lodge"*). The case sets out the history of the section's development and guiding principles.

The policies that underlie Section 55 are set out at pages 35 to 36:

1. First collective agreement imposition is a remedy which is designed to address the breakdown in negotiations resulting from the conduct of one of the parties. It is not simply an extension of the unfair labour practice remedies for egregious employer conduct.
2. The process of collective bargaining itself, to whatever extent possible, is to be encouraged as the vehicle to achieve a first collective agreement.
3. Mediators should be assigned early into the first collective agreement disputes in order to facilitate and encourage the process of collective bargaining and to educate the parties in the practices and procedures of collective bargaining.
4. The timing of the imposition of a first collective agreement (if it is deemed appropriate that one be imposed) should not be at the end of the negotiation process when the relationship has broken down and is irreparable, but rather should take place in a "timely fashion", after the mediator has identified "the stumbling blocks" in the dispute and what is needed in order to "avoid" an irreparable breakdown in the collective bargaining relationship.

In applying these principles, we now set out the following factors which the Board will employ in assessing the conduct of the parties in making its determination under Section 55(6)(b) – whether or not to impose a first collective agreement. The factors are as follows:

(a) Bad faith or surface bargaining;
(b) Conduct of the employer which demonstrates a refusal to recognize the union;
(c) A party adopting an uncompromising position without reasonable justification;
(d) A party failing to make reasonable or expeditious efforts to conclude a collective agreement;
(e) Unrealistic demands or expectations arising from either the intentional conduct of a party or from their inexperience;
(f) A bitter and protracted dispute in which it is unlikely the parties will be able to reach a settlement themselves.

The Board reviewed the above factors and then stated at page 39:

All of the above factors relate to the impugned conduct of one party or the other. However, in addition to these factors, the Board may refer the parties to first contract arbitration, unrelated to the impugned conduct of one party or the other. Where *one* party has accepted the recommendations for settlement contained in a mediator's report pursuant to Section 55(6)(a), the dispute may be referred to first contract arbitration. This exception shall be discussed under the heading of Mediator's Reports.

However, it should be emphasized that referral to first collective agreement arbitration will generally be on the basis of a causal connection between one of the impugned factors set out above and the breakdown in negotiations.

It must be emphasized that the purpose of Section 55 is for the parties to conclude their own collective agreement. In policy terms, the measure of the success of the application of Section 55 will be how few collective agreements are actually imposed.

Section 55(6)(a) allows the mediator to recommend terms of settlement for the consideration of the parties. However, as noted in *Yarrow Lodge* at page 41:

> However, as a matter of practice, recommended terms of settlement will only be provided where the nature of the dispute warrants it and where the parties have made sufficient disclosure to the mediator to permit the fashioning of recommendations that have a reasonable likelihood of acceptance by both parties.

In considering the options under Section 55(6)(b), the Board stated at pages 45 and 46:

> Parties who have made reasonable efforts to conclude a collective agreement, and it is clear that what is at issue is simply hard bargaining (a contest of strength over what the final terms and conditions of an agreement will be), will most often be referred to the strike/lockout option.
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> *   *   *
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> Indeed, where neither party falls within the impugned conduct set out, it is clear that the option recommended should invariably be strike or lockout. In other words, the breakdown has to be the result of one of the impugned factors. The Board will generally not interfere in collective bargaining which is simply and clearly a contest over what the proposed terms and conditions will be.

Although *Yarrow Lodge* is a 1993 decision, it has withstood the test of time. The Board has not departed from its general principles, nor should it, as it brings stability to the community as to what to expect when an application is made under Section 55 of the Code.

In a subsequent decision, *Bee-Clean Building Maintenance Incorporated,* 2020 BCLRB 114 ("*Bee-Clean*"), the Board followed the *Yarrow Lodge* principles and after setting out the impugned conduct factors noted above stated in part at paragraph 15:

> Since *Yarrow Lodge*, the Board has also held that binding arbitration is an appropriate forum for resolving first collective agreement disputes in circumstances where a strike or lockout would not be effective. For example, the Board has directed parties to binding arbitration: where all of the employees in the bargaining unit are laid off (*Multicultural Society of Kelowna*, BCLRB No. B28/2003); where prolonged job action at another of the employer's operations certified to the same union has not resulted in a collective agreement (*British Columbia Automobile Association*, BCLRB No. B358/99 (Leave for Reconsideration of Letter Decision dated July 26, 1999), (*"BCAA"*); or where essential services are in issue (e.g., *Deltassist Family and Community Services*, BCLRB No. B326/2002; *Everett Rest Home Ltd.*, BCLRB No. B117/2003; *CWS Industries (Mfg) Corp.*, BCLRB No. B19/2009; *Pro Vita Care management Inc.*, BCLRB No. B206/2009; *Osprey Care Inc.*, BCLRB No. B46/2010; *Stanford Place Holdings Ltd.*, BCLRB No. B95/2011.

The Code does not ensure that strikes/lockouts are effective. Some are more effective than others due the nature of the circumstances of the dispute. I conclude from *Bee-Clean* that the Board was not stating that in circumstances where a strike/lockout might be ineffective that arbitration would be ordered. Rather, the Board was setting out the unique circumstances from the cases cited where arbitration was ordered to be the appropriate forum for first collective agreement resolution.

In *Bee-Clean*, at paragraph 22, the Board stated that "the Board was explicit in *Yarrow Lodge*, that absent compelling reasons other wise, the recommended option for resolving the first collective agreement should invariably be strike or lockout". The compelling reasons inferred were the impugned conduct and other factors set out in *Yarrow Lodge*.

III. PARTIES ARGUMENTS

The Employer argues that absent compelling reasons, the recommended option should be strike/lockout. The Employer argues that good faith negotiations have occurred and that the Employer has explained in detail its operating methods and the reasons why the Employer wants to maintain them.

The Employer cites *Yarrow Lodge* and *Bee-Clean* arguing that there are no compelling reasons in the case at hand to depart from a strike/lockout recommendation.

The Employer argues further that the right to strike is constitutionally protected and that a mediator should only deviate from the default position of constitutionally protected Charter rights under truly compelling circumstances: see *SFL v. Saskatchewan,* 2015 SCC 4; and, *Re Westjet*, 2024, CIRB 1151.

The Employer argues that there are no compelling reasons to recommend interest arbitration. The Parties have met, exchanged proposals and discussed the proposals. The Employer is entitled to seek a collective agreement that aligns with its current operational model. The Union is entitled to attempt to change how the Employer operates and the Employer is entitled to say no. Where the Parties are pursuing their own self interest then strike/lockout should be the option that prevails.

The Employer argues further that none of the impugned conduct factors in *Yarrow Lodge* exist and therefore strike / lockout should be recommended.

The Union argues that arbitration by a single arbitrator should be recommended; or, in the alternative, further mediation by a person empowered to arbitrate outstanding issues.

The Union sets out the adjudicative and bargaining history between the Parties. With respect to the bargaining history, the Employer did not table a full monetary package until April 16th in mediation.

The Union asserts that the Employer "slow walked" negotiations by not tabling essential proposals such as a full monetary proposal in a timely manner. Furthermore, the Employer's union security proposal was a "poison pill" which could not be accepted by the Union. The Union argues further that the Employer's proposal that the Union agree to the reasonableness of the attendance policy and the productivity policy are provisions that are contrary to the Code. The Union argues that the Employer is engaged in surface bargaining.

The Employer responded to the Union's submission asserting that the Union's submissions was "replete with inaccuracies".

I do not intend to set out the Employer's version of events, other than to note that the Employer acknowledges that it tabled a comprehensive proposal package on December 3, 2025 which included "a number of monetary items, albeit reserving its position on some monetary items, including wages. This is entirely 'normal' in collective bargaining, and particularly in first contract bargaining". A wage proposal was not tabled until April 16th.

IV. RECOMMENDATIONS

I note at the outset that *Yarrow Lodge* is a longstanding case that has guided the community effectively for decades. I do not intend to depart from the principles set out in the case.

Furthermore, I do not intend to comment on the adjudicative history between the Parties, some of which is still playing out before the Board.

Also, I will not comment on the reasonableness of any proposals. However, I do comment on some proposals as to their impact on the success, or failure, in achieving an environment that is conducive to concluding a first collective agreement.

First collective agreement bargaining occurs in a unique labour relations environment. One of the purposes of Section 55 is not merely to resolve collective bargaining economic disputes, but to also facilitate the establishment of a viable collective bargaining relationship following certification.

I also note that if the Union was of the opinion that some Employer proposals were in violation of the Code, raising that issue now is not helpful. Not only is it not timely but I am not in a position to decide those arguments as a mediator assigned under Section 55 of the Code.

Lastly, I note at this juncture that I am not persuaded by the Employer's constitutional argument regarding the right to strike/lockout. Accepting it would essentially write out Section 55(6)(i) and (ii) from the Code. The Code contemplates other first collective agreement resolution methods besides strike/lockout.

The Parties have agreed to a significant number of collective agreement provisions over the negotiation period. I will not set out all the outstanding provisions below; but rather the ones that are creating the major stumbling block. I am not setting out the exact wording proposed for all provisions. Other outstanding proposals not referenced are ones that should easily fall into place if the major ones can be resolved.

Union Security and Dues Checkoff

The Union is proposing that all current employees will, as a condition of employment, become and remain members of the Union in good standing.

The Employer is proposing that all employees will be provided the option of taking out union membership but will be required to pay dues.

Not surprisingly this is a contentious issue, and while there may be middle ground, to this point neither party has considered tabling an amended proposal.

Hours of Work and Scheduling

The Employer has proposed that the distribution and/or selection of schedules shall be done in accordance with the Employer's polices which may be amended from time to time; and that the schedules can be changed on a permanent basis with 14 days notice.

The Union proposed that selection is by seniority, or as the Parties have agreed to "tenure" (same as seniority); and that 90 days notice is required for a permanent change.

Overtime and Extra Time

The Employer proposed that voluntary extra time be offered by its phone app as per current practice on a first come first served basis. The Union proposed a seniority assignment provision.

Vacations

The Union has proposed increased vacation for regular Employees with ten or more years of service. The Employer rejected the proposal.

Paid Time Off

The Union's proposal to increase paid time off was rejected by the Employer.

Heath and Safety

The Union proposed a work standards provision which was rejected by the Employer.

Productivity, Quality and Inactive Time

This is a contentious issue. The Employer proposed the following:

20.1 The Union acknowledges the current expectations for productivity, quality and inactive time are reasonable, particularly in the context of how the documented coaching and progressive discipline process is currently administered for same.

20.2 The Employer retains the right to modify the expectations and process, in a manner consistent with other fulfillment centres in the Province.

20.3 The Employer will notify the Union of any material change in the expectations or process for productivity, quality and inactive time, and upon request, will meet with the Union to explain such changes.

The Union has rejected the above and counters with its work standards proposal under health and safety.

Attendance Management

This is also a contentious issue. The Employer proposed in part:

21.4 (a) The Union acknowledges the current Attendance management program (including how points are administered and removed over time) represents a reasonable balance between the requirement to attend work regularly and the accommodation of employees who are sometimes unable to attend work for legitimate reasons.

(b) The Employer retains the right to modify the program, in a manner consistent with other fulfillment centres in the Province.

(c) The Employer will notify the Union of any material change in the Attendance management Program, and upon request, will meet with the Union to explain such changes.

The Union actually accepted the proposal subject to the acceptance of its work standards proposal.

Employee Definition

The Employer proposed maintaining a Temporary/Seasonal employee definition which would be for employees hired on fixed terms not the exceed 12 months. The Union countered with 6 months.

Health and Welfare Benefits

The Employer proposed that benefit and disability plans may be amended from time to time by the Employer in a manner consistent with other fulfillment centres. The Union proposed that carriers could be changed but that plans had to remain equivalent.

Wages and Term

The Union proposed:

October 30,2026 – 4% or the general wage increase given to other Employer facilities in the Lower Mainland whichever is greater.

October 30, 2027 – 3.5% or the general wage increase given to other Employer facilities in the Lower Mainland whichever is greater.

October 30, 2028 – 3.5% or the general wage increase given to other Employer facilities in the Lower Mainland whichever is greater.

Expiry October 2029.

The Employer proposed:

October 30, 2026 – 2.5%

October 30, 2027 – 2.0%

Expiry October 29, 2028.

As I noted above, I will not comment on the reasonableness of either Parties' proposals. However, I make the following general comments that influence my conclusion.

Parties may commence collective bargaining with any protocol agreements that they wish to agree upon. Some parties engage in comprehensive protocol agreements. In my experience the most effective is to simply table all proposals, address non-monetary items first to the extent possible, and then monetary items. Monetary items are normally dealt with as a package.

In the case at hand, the Parties commenced full package bargaining early on in the process, with the exception of the Employer not tabling a wage proposal well into the process.

Contrary to the Employer's Spokesperson asserting that the Employer's approach was "normal in collective bargaining, and particularly in first contract bargaining", (which may be his experience), with respect, I beg to differ. In my experience, wage proposals are tabled earlier than what was the case here. Until wage proposals are exchanged, parties cannot cost the impact on wage sensitive benefits. To the Union's credit, it actually agreed to some wage sensitive benefits without knowing the Employer's wage proposal. Furthermore, before mediation commenced, I met with the Parties' Spokespersons individually to ascertain the state of collective bargaining. In my meeting with the Employer I advised them to table a wage proposal; and did so on more than one occasion before they tabled it.

In my opinion, the delayed tabling of a wage proposal materially slowed the pace of bargaining and impeded meaningful discussions on other monetary and wage sensitive provisions. Until a wage proposal was exchanged, the Parties could not reasonably assess the overall economic framework of a potential collective agreement.

It is not unusual for an employer with more than one location, to want to maintain consistency in the way it operates all its workplaces.

It is typical for an employer to table a robust management rights clause to do so, subject to the other provisions of the collective agreement. Employers may make changes during the term of a collective agreement, relying on the its management rights, arguing that the changes are not in conflict with the terms of the collective agreement. A union may challenge the change attempting to argue that the change violates management rights in some fashion.

In the case at hand, the Employer is essentially arguing status quo for all important policies such as productivity, quality and inactive time, and attendance management. The Employer goes even further by proposing that the Union acknowledge that the current policies are reasonable; and further that the Employer retains the right to modify them consistent with other fulfillment centres with the Union only being notified with no right to challenge them.

The Employer is attempting to eliminate any challenge to the reasonableness of the policies, current and future, over and above what would typically be contained in a management rights clause. An employee's challenge could only relate to whether the policy was applied in an inconsistent manner on a case by case basis.

The Employer advised that it would "never" move off this proposal.

While the Union agreed to the attendance management proposal, it has not done so for the productivity ones. It does not agree that they are reasonable.

The Employer's proposal of status quo, and having the right to amend with essentially no challenge by the Union, neuters the Union from any input into these topics even though its members apparently have issues with them. The Employer's insistence that these provisions will be driven by other fulfillment centres essentially creates arbitral immunity and forces the Union to follow whatever the Employer implements in its non-union locations.

On monetary proposals, the Employer, other than wages, is also proposing status quo.

Interestingly, when the Union proposes a wage rate, or whatever other centres receive, the Employer says it will "never" agree to such a proposal.

On the one hand the Employer wants the Union to agree to provisions that are driven by what occurs in other centres; but on the other hand, it is not prepared to take the same approach with wage rates.

How does the Parties bargaining conduct affect my recommendation?

Yarrow Lodge dictates that the parties should wherever possible be left to negotiate their own collective agreement without the intervention of a third party. The normal resolution process if impasse is reached is strike/lockout – the economic weapon to influence parties to amend their positions.

The parties have agreed on many standard collective agreement clauses.

However, in the case at hand, I conclude that the Employer has engaged in impugned conduct. Its status quo approach on so many items, especially those like the productivity ones where it wants the Union to not only agree that current policies are reasonable, but even unknown changes are as well as long as they are implemented in other centres, is an uncompromising position without a reasonable justification.

As I noted above, the typical approach would be to maintain, under management rights, the right to set standards and modify them if necessary. It would be hard for the Union to disagree with such an approach in a first collective agreement, and perhaps in any agreement.

The Employer attempts to justify the proposals by arguing that any other approach would be the "tail wagging the dog". There are many collective agreements in sectors where not all of an employer's locations are unionized and the collective agreements do not contain such a provision as envisioned by this Employer. The Employer has said it will "never" agree to anything different.

On the other hand, when the Union proposes a comparison in wage rates to the other centres the Employer stated that it would "never" agree to such a proposal.

The Employer's collective bargaining approach on these issues materially contributed to the bargaining impasse. In particular, the Employer's insistence that the Union effectively waive the ability to challenge current and future workplace standards removed any meaningful collective bargaining from some of the most important workplace issues identified by the Union. This significantly impaired the Parties' ability to bridge their differences through the normal collective bargaining process.

I also conclude that the Employer's late tabling of a wage proposal in the face of being asked to do so on numerous occasions, fails to make a reasonable effort to conclude a collective agreement.

The Parties entrenched positions on several key issues, together with my view of the Employer's conduct in collective bargaining and the broader labour relations context arising from a remedial certification with an ongoing litigation history, leads me to recommend that the first collective agreement be resolved pursuant to Section 55(6)(b)(i) which is further mediation by a person with the power to impose the terms of the collective agreement.

I conclude that the strike/lockout option is not conducive to resolving matters for the above reasons. The entrenched positions noted above and the litigious adversarial relationship after the remedial certification establishes an environment where the normal strike/lockout resolution method adopted in most cases will not be conducive to achieving the purposes of Section 55 of the Code set out above.

"Mark J. Brown"

Dated this 1st day of June, 2026.