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File 8591

Via Fax

Ms. Joanne Boyer
Canada Industrial Relations Board
4th Floor - 240 Sparks Street
Ottawa, Ontariof
K1A 0X8

Dear Sirs/Madames:

Re: **IN THE MATTER OF the *Canada Labour Code* (Part I- Industrial Relations) and applications filed pursuant to Sections 18, 18.1 and 35 of the *Code* by the Communications, Energy and Paperworkers Union of Canada, applicant, and Global Television Network Inc., Global Communications Limited, CanWest Interactive Company (2846551 Canada Inc.), CanWest Television Inc., CanWest Global Communications Corp., CanWest Broadcasting Ltd., CHEK owned and operated by Global Communications Limited, CHAN (BCTV) owned and operated by Global Communications Limited, CHBC owned and operated by Global Communications Limited, CICT (Global Calgary) owned and operated by Global Communications Limited, CITV (Global Edmonton) owned and operated by Global Communications Limited, CISA (Global Lethbridge) owned and operated by Global Communications Limited, CFSK (Global Saskatchewan) owned and operated by CanWest Television Inc., CKND (Global Winnipeg), a Division of CanWest Television Inc., CIII (Global Ontario) owned and operated by Global Communications Limited, CIHF (Global St. John) owned and operated by Global Communications Limited, CIHF (Global Halifax) owned and operated by Global Communications Limited, employers (22170-C)**

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AND IN THE MATTER OF the *Canada Labour Code (Part I - Industrial Relations)* and an application filed pursuant to sections 18, 18.1 and 35 thereof by the Communications, Energy and Paperworkers Union of Canada, applicant, and Global Television Network Inc., Global Communications Limited, CanWest Interactive Company (2846551 Canada Inc.), CanWest Television Inc., CanWest Global Communications Corp., CanWest Broadcasting Ltd., CHEK owned and operated by Global Communications Limited, CHAN (BCTV) owned and operated by Global Communications Limited, CHBC owned and operated by Global Communications Limited, CICT (Global Calgary) owned and operated by Global Communications Limited, CITV (Global Lethbridge) owned and operated by Global Communications Limited, CFSK-TV, a Division of CanWest Television Inc., CKND Television, a Division of CanWest Television Inc., CIII (Global Ontario) owned and operated by Global Communications Limited, CIHF (Global St. John) owned and operated by Global Communications Limited, CIHF (Global Halifax) owned and operated by Global Communications Limited, and CHCH Hamilton, a Division of Global Communications Limited, employers. (25183-C)

We are in receipt of the letter dated October 22, 2007 from counsel for the Employer, which sets out the Employer's response to the Union's application for interim relief and application to adduce new evidence.

Further to the Board's letter of October 22nd, 2007, please accept this letter as the Union's reply to the Employer's submissions.

General Comments

The bulk of the Employer's response is little more than a reiteration of their previous submissions, and as such the Union has repeatedly addressed, in detail, each of the Employer's allegations. Indeed, all of the issues raised by the Employer were dealt with in full in the course of the hearings which concluded in May 2007. Having been invited to reply, however, the Union will do so.

We will state, at the outset, that the Union disputes the allegation that the Union has misrepresented any facts. The Union misrepresents nothing. Each of the Union's statements is fully sustained by the evidentiary record duly before the Board, or, in relation to more recent events, supported by the sworn evidence of Mr. Murdoch. The fact remains that, in the time since the common employer application was filed in 2001, the Employer's operations have evolved precisely as the Union has said they would, and as the Employer said they would not. The facts speak for themselves. Perhaps the Employer insists its position was "technically" accurate "at the time". We remind the Board, however, that throughout these proceedings, this Employer has been very reluctant to shed light on its "plans", so it was left to the Union to do so. That "light" revealed plans for the sort of future which has now become the reality.

Just as the Employer's organizational structure has evolved, so, too, has its position before this Board. The manner in which the theory of the Employer's case has shifted over the years to suit the evolving reality is remarkable. In 2001, the Employer asked this Board to conclude that each local

station was an independent, self-sufficient "silo" of activity with little or no interconnection. Six years later, so much has been centralized that such a theory is no longer sustainable. In 2006, a revised theory was advanced: the Employer was now said to operate on the basis of a "Local Economic Business Model". And now, the theory's latest incarnation: the impending changes are consistent with the Local Economic Business Model because "[l]ocal news will continue to be assigned, gathered, edited and anchored at the local level". Indeed, in many locations, that is all that will remain of what were, at one point, free-standing stations. In other words, the Employer now resists a single unit on the theory that because every function which can conceivably be centralized has been removed from the auspices of the individual station, the stations are so "local" that a single unit is inappropriate. It is a fundamentally self-serving proposition. The contrast to the Employer's initial theory that stations constitute independent "silos" of activity is telling. Of course, the latest theory also ignores the fact that each of the those activities that used to form each station are still being performed, just on a centralized basis.

With that, we turn to address the Employer's specific allegations.

The Union's 2001 seniority principle is irrelevant to the present need to negotiate

The Employer claims there would be no utility to bargaining an ability for employees to "follow the work", pointing to the Union's alleged "stated intention to maintain the concept of local seniority". What the Employer neglects to say is that it has gleaned this "stated intention" from a Union pamphlet, produced six years ago, which set out for its members what the Union's bargaining position might be should a single unit be created. The Employer knows that, and we have addressed this issue on numerous prior occasions. To suggest that there is no labour relations purpose which could be advanced by negotiating in relation to the layoff of an anticipated 250 employees, based on a 2001 leaflet outlining what position the Union might advance, flies in the face of reason.

The Employer's suggestion that negotiations would not be productive because the precise details of the changes are not yet known also misses the point. Bargaining with the Union is an opportunity to negotiate the way in which those changes may be implemented in a manner which minimizes the impact on employees; such discussions are clearly most fruitful at the early stages before final decisions are made. The fact remains that there exists every reason to bargain in relation to the impending restructuring, and no reason not to. We also note the irony in the Employer chastising the Union for not seizing the alleged "offer" to bargain in the current bargaining unit structure while simultaneously maintaining that such bargaining is not necessary in any case.

The Employer's "offer" to bargain is meaningless

The Employer claims it is not necessary to negotiate the impact of the impending restructuring and consequent layoffs. Alternatively, the Employer argues that even if such discussions ought to take place, an order to that effect is unnecessary as, it claims, it has "reiterated that [it is] more than willing to sit down with the Union and negotiate the circumstances and conditions under which members might be entitled to 'follow the work'".

That statement is misleading. The "offer" to which the Employer refers relates to comments first made in the Employer's legal submissions to this Board filed in November 2006 in the course of these proceedings, not a genuine offer extended directly to the Union. To suggest that an offer has been made and refused is, with respect, disingenuous. Further, even if such an offer had been extended in good faith, it is simply not feasible within the present structure of 13 distinct bargaining units – where there can be no consequences if the Employer simply says "no" the Union – to engage in meaningful discussions on a national level. This is precisely why the interim relief sought is necessary. Lastly, it is not only "follow the work" issues which should be negotiated. While this is crucial, issues around training, severance, and seniority should also be open to negotiation on a system-side basis.

Work Functions are not being eliminated

The Employer submits that negotiations are unnecessary as the effect of the restructuring is that most, if not all of the work functions will cease to exist; thus, it argues that there is no work to "follow". This submission is fundamentally flawed in at least two respects.

First, it is simply not the case that "most" work functions will "cease" upon the implementation of the restructuring. It is important to understand that the recent announcement actually has two aspects: (1) the implementation of digital technology, and (2) the centralization of broadcasting functions into four broadcast centres. Those two aspects are not mutually dependent. In other words, it is entirely possible to move to digital technology without centralizing functions; digital technology can be (and, in Vancouver already has been) implemented in isolation. The decision to centralize is not a necessity of the technology, it is a business decision.

The changes which relate directly to the migration to the digital technology, *i.e.* those which relate to the recording, storing, access, and transmission of information, will in fact cause functions to cease to exist (resulting in the loss of VTR positions). However, broadcasting local newscasts from four central broadcast centres is simply a centralization of functions and does not mean that those functions disappear. There is a whole range of functions associated with "broadcasting" which will by necessity continue to exist, including Producers, Switchers, Directors, Audio, Graphics, Engineering, Camera and lighting control. Centralizing the broadcasting of newscasts does not do away with the need for any of those functions; all remain integral to the broadcasting. All that changes is the location from which those functions are performed. Had the Employer, for instance, chosen to implement the digital technology without establishing broadcast centres, those broadcasting functions, to the extent that those functions previously existed, would continue to exist at the local level.

Second, the degree to which functions will cease to exist is in some respects moot, as the need to bargain with the Employer in relation to the impending changes is by no means restricted solely to negotiating the ability to "follow the work". For those employees who cannot, for whatever reason, "follow the work", there are a range of other remedial measures which can and should be taken to mitigate the impact of the layoffs, including possible retraining, and, of course, the issue of an

adequate severance allowance. Thus, whether the work functions are transferred or cease to exist, there remains an overarching need to enter into meaningful discussions with the Employer to bargain the myriad issues that inevitably arise in the wake of layoffs of this magnitude.

Indeed, the Employer appears to tacitly acknowledge that the issue is not restricted to "following" work, as it argues that the various collective agreements contain technological change and layoff language which will be "used to deal with the Announcement". It then goes on, however, to argue that the existence of such mechanisms somehow negates the utility of bargaining, stating that an agreement reached under a single bargaining unit would "provide no greater benefit to the Union or its members". The Union takes exception to this statement. First, it is not for the Employer to decree what is, or is not, best for the Union or its members. Second, this statement overlooks the reality that revisions to the Collective Agreements are likely, and it is simply not reasonable to presume that the Union would not seek any enhancements to these existing provisions, should it have the opportunity to do so in the context of a single unit. If the Employer has already concluded that the result of bargaining on such issues could not lead to any "greater benefit", all that this establishes is a lack of willingness on the part of the Employer to enter into good faith negotiation. Surely the Board will not entertain the Employer's intransigence as a reason to refuse otherwise interim relief that is otherwise appropriate.

Further, we submit that the Employer's reiteration of the Union's purported intention to maintain "local seniority" in this context is illogical. The Employer argues that the ability to "follow the work" in relation to the 50 positions to be created is negated by the Union's position on retaining local seniority. First, as argued above, the "intention" to which the Employer refers is merely a position that the Union said, some six years ago, that it would advance in bargaining. Second, and moreover, what the Employer neglects to tell the Board is that the principle which the Union said it would advance is one in which employees had mobility between the various stations but could not use their existing seniority to bump an incumbent. However, the Employer itself says that these 50 positions are "new staff roles", and thus by definition, there would exist no incumbents to bump. For that reason, the Union's seniority position simply has no application to this situation.

The Employer's Allegations Regarding "Industrial Stability" are Self-Serving

The Employer's response submissions are replete with references to "industrial stability", "disharmony", and "conflict", which it holds out as inevitable consequences of a single bargaining unit structure. This is simply a reiteration of the Employer's earlier submission that fashioning a single bargaining unit for this single employer will "inevitably" lead to conflict. As we have argued previously in response, such a sweeping assertion is completely devoid of factual foundation and amounts to little more than fear-mongering.

This argument is not only baseless but is essentially tautological. What the Employer says, in essence, is this: we will not agree to the Union's proposals if they are made in the context of a single bargaining unit; because we will not agree, there will be conflict; because there will be conflict, the Board should not create a single unit. It is very much a self-fulfilling prophecy. What the argument clearly overlooks is that where there is a labour dispute, both sides must bear some responsibility for

that failure to agree. The Employer's theory is premised on the obviously flawed assumption that it "cannot" agree to any proposal the Union might make in national bargaining – an assumption which suggests that the Employer has pre-determined its position with respect to bargaining and has preemptively refused to bargain in good faith. Surely the Board will not refuse the Union the opportunity to bargain in relation to the impending layoffs because the Employer blindly adheres to the belief that it cannot ever agree with the Union.

We continue to submit that there is a dire need to permit the parties to negotiate in relation to the impact of the planned restructuring and we respectfully ask that the interim relief sought in the Union's application be granted.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Yours truly,

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Cc: Clients
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