


**Canada Industrial Relations Board • Conseil canadien des relations industrielles**

C.D. Howe Building, 240 Sparks Street, 4th Floor West, Ottawa, Ontario K1A 0X8  
 Édifice C.D. Howe, 240, rue Sparks, 4<sup>e</sup> étage ouest, Ottawa (Ontario) K1A 0X8  
 Fax/Télécopieur: 613-995-9493

**Our Files: 26611-C / 26612-C**

Document No.: 253799

November 12, 2008

CIRB Letter Decision no. 2001

**BY TELECOPIER**

Rogers Bobert  
 Barristers & Solicitors  
 1210 - 1140 West Pender Street  
 Vancouver, British Columbia  
 V6E 4G1                      **604-681-1475**

Attention: Mr. Daniel J. Rogers

Thompson Dorfman Sweatman LLP  
 Barristers & Solicitors  
 CanWest Global Place  
 2200 - 201 Portage Avenue  
 Winnipeg, Manitoba  
 R3B 3L3

Attention: Mr. Keith D. LaBossiere **204-934-0587**  
 \_\_\_\_\_ Mr. E.W. Olson, O.C. **204-934-0534**

Dear Sirs:

In the matter of the *Canada Labour Code (Part I - Industrial Relations)* and an application for reconsideration filed pursuant to section 18 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 Edmonton) owned and operated

-2-

by Global Communications Limited, CISA (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, respondents. (decision on bargaining unit structure) (26611-C)

---

In the matter of the *Canada Labour Code (Part I - Industrial Relations)* and an application for reconsideration filed pursuant to section 18 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 Edmonton) owned and operated by Global Communications Limited, CISA (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, respondents. (decision denying interim relief) (26612-C)

---

The Board consisting of Mr. Douglas G. Ruck, Q.C., former Vice-Chairperson, Mr. Graham J. Clarke and Mrs. Judith F. MacPherson, Q.C., Vice-Chairpersons, examined the above-cited application.

Section 16.1 of the *Canada Labour Code (Part I - Industrial Relations)* (the *Code*) provides that the Board may decide any matter before it without holding an oral hearing. Having reviewed all

-3-

of the material on file, the Board is satisfied that the documentation before it is sufficient for it to determine this application without an oral hearing.

## **I - Background**

On November 6, 2007, the Board issued a bottom line decision in *Global Television Network Inc. et al.*, (CIRB LD 1695) (hereinafter LD 1695) advising the parties that it had decided to combine 13 existing bargaining units into three separate regional bargaining units. One member of the panel dissented.

The Board advised that full Reasons for Decision would follow.

On April 25, 2008, the Board issued its full reasons in *Global Television Network Inc.*, [2008] CIRB no 407 (hereinafter Global 407).

The Applicant, the Communications, Energy and Paperworkers Union of Canada (CEP), applied for reconsideration of these two decisions.

While an application for reconsideration was made initially following the release of LD 1695, the Board provided the parties with appropriate time, following the release of Global 407, to file further submissions. The Board has considered all of the parties' submissions.

## **II - Facts**

The original panel held extensive hearings into the bargaining unit structure at the Global Television Network (Global). Hearings were held on January 22, 23, 24, 25 and 26, 2007, on February 20, 21 and 22, 2007, and on May 1 and 2, 2007, in Vancouver, British Columbia.

-4-

The parties, with the Board's consent, agreed between themselves to follow an informal approach whereby the CEP and Global had their witnesses testify separately. This meant that there was no cross-examination in the case.

As set out in Global 407, the original panel reviewed the long history of this case, which included several previous decisions of the Board. The decision reviewed an Agreed Stipulation of Facts put forward by the parties and summarized as well portions of key additional *viva voce* evidence put in by both the CEP and Global.

The original panel reviewed the Board's relevant case law on restructuring units and then determined, in a majority decision, that three bargaining units, rather than the pre-existing 13, would be appropriate for collective bargaining.

### III - Reconsideration

A reconsideration panel does not sit in appeal of the original panel. A reconsideration panel will also defer to the original panel's findings of fact given it heard the oral evidence and listened to the parties' legal arguments.

The Board's jurisprudence and its *Regulations* established the areas in which a reconsideration panel may intervene:

44. The circumstances under which an application shall be made to the Board exercising its power of reconsideration under section 18 of the Code include the following:

- (a) the existence of facts that were not brought to the attention of the Board, that, had they been known before the Board rendered the decision or order under reconsideration, would likely have caused the Board to arrive at a different conclusion;
- (b) any error of law or policy that casts serious doubt on the interpretation of the Code by the Board;
- (c) a failure of the Board to respect a principle of natural justice; and
- (d) a decision made by a Registrar under section 3.

-5-

The CEP at paragraph 5 of its application for reconsideration raises the second ground for reconsideration in support of its application i.e. section 44(b): an error of law or policy that casts serious doubt on the interpretation of the *Code* by the Board.

Section 45 of the *Regulations* requires an applicant to set out, with supporting argument, not only what specific error of law or policy allegedly occurred, but also why the error casts serious doubt on the original panel's interpretation of the *Code*. This two-pronged test demonstrates that an error of law or policy, even if one occurred, does not necessarily mean that the original panel's decision will be overturned on reconsideration.

#### **IV - Analysis and Decision**

The CEP raises four arguments in support of its position that this reconsideration panel should reconsider the original decision:

- a) The Board erred in law in making findings of fact that are unsupported by the evidence;
- b) The Board erred in law and policy when it applied the legal tests to the facts and determined the appropriate bargaining unit structure;
- c) The Board erred in law and policy by ignoring the labour relations consequences of a three bargaining unit structure; and
- d) The Board erred in law and policy by abdicating its responsibility to create an appropriate bargaining unit structure and instead left the parties to create that structure.

**a) The Board erred in law in making findings of fact that are unsupported by the evidence.**

The CEP argued generally under this first heading that the Board made an erroneous finding of fact that there existed a regional community of interests which supported the creation of three regional bargaining units. The CEP's application alleged, *inter alia*, that the Board:

-6-

- i. mischaracterized certain witnesses' job titles;
- ii. failed to consider evidence about the employees' community of interest and;
- iii. failed to mention the evidence of a particular witness, Mr. Bob Sumner.

The CEP further alleged the Majority committed other errors such as:

- i. overlooking the evidence of Mr. Paul Saulnier, Mr. Mark Cameron and Mr. Bill Nazer and;
- ii. failing to mention in the decision video evidence tendered by the CEP during the hearing which, in the CEP's view, would have demonstrated that there were no regional or geographic community of interests.

The CEP argued that there was conflicting evidence between Global and the CEP that the Board failed to consider and resolve, such as:

- i. the control over local news content;
- ii. the cooperation between various Global stations;
- iii. the degree of contact between Calgary Master Control and other stations; and
- iv. the CEP's evidence contesting Global's position that its business model supported a silo-style bargaining unit structure;

The CEP argued that the Majority's failure to mention explicitly this evidence demonstrated that it failed to give it any consideration. In the CEP's words:

While it may not be necessary for a panel to recite each piece of evidence entered, it is incumbent upon adjudicators to consider evidence that is inconsistent and to resolve those conflicts, particularly where the evidence pertains directly to the very issue upon which a decision is based.

The CEP further alleged the Majority failed to consider Global's future evolution when fashioning the new bargaining units. The CEP argued the Majority ignored certain evidence that Global was becoming "increasingly centralized, interconnected and integrative".

-7-

The CEP argued that the above evidentiary issues constituted errors of policy and law which required a reconsideration panel to intervene.

Despite the CEP's able and extensive submissions, the reconsideration panel is not convinced that the Majority committed an error of law or policy that cast serious doubt on its interpretation of the *Code*.

It is evident that the CEP believes that its evidence ought to have been preferred to that of Global on many points. The CEP no doubt genuinely believes that such a preference would have obliged the Board to find that one bargaining unit was appropriate rather than the 13 put forward by Global.

We do not agree that a decision's lack of explicit reference to a particular piece of evidence means that a panel therefore ignored that evidence. Neither does it follow that the decision would have been different had that evidence been mentioned explicitly.

Paragraph 4 of Global 407 is explicit that the Board considered all the voluminous evidence put before it but was not about to reproduce every item:

[4] The parties submitted numerous documents and case law to support their respective positions. Considering the volume of the evidence and the parties' agreement on the facts submitted during the hearing—which showed that important changes have occurred at Global in the last few years—these reasons for decision will not address in detail every piece of evidence or argument presented; rather it will address only the parties' main arguments and key issues.

Labour boards are not courts. While they have to follow the dictates of procedural fairness, it is essential that this Board issue its decisions in a timely manner. Its role is not to produce long decisions that constitute an entire transcript of what occurred before the Board during the hearing.

The Majority highlighted the evidence that persuaded it to arrive at its conclusion that three bargaining units were appropriate. The Minority would have found differently and created one

-8-

overall bargaining unit at Global. The Minority referred explicitly to the evidence it found persuasive for its point of view.

The difference in content between the Majority and the Minority does not demonstrate that either ignored evidence. There is a significant difference between the Majority not being persuaded by some of the CEP's evidence as opposed to the Majority ignoring that evidence.

The parties' submissions in this reconsideration application are clear that they have distinctly opposing views on many things. The Majority's decision took into account these various views even though it did not recount every fact in its decision.

The reconsideration panel is not as well placed as the original panel in terms of weighing the actual evidence and the final arguments of the parties. Reconsideration is not a forum in which the parties relitigate the case. We agree with the respondent Global that a large part of the CEP's submissions seek to reargue the original case. That is simply not a basis for reconsideration.

**b) The Board erred in law and policy when it applied the legal tests to the facts and determined the appropriate bargaining unit structure**

The CEP argued that the Majority failed to apply past Board case law properly when it determined the appropriate bargaining structure.

The CEP does acknowledge at paragraph 34 of its application that the Majority referred to the established jurisprudence. However, the CEP argued the Majority limited itself to using only three of several relevant factors to arrive at the three bargaining unit model.

The CEP has not convinced the reconsideration panel that the Majority incorrectly limited its analysis. Indeed, the Majority described some of the familiar factors that the Board uses in determining appropriate bargaining units. That determination is more art than science. It goes to the

-9-

very expertise of a labour board. The Board always considers many factors and highlights some of the factors that it found particularly convincing in its decision.

However, explicitly referring to only certain factors does not mean that the Majority ignored the other factors. Indeed, the factors this Board considers are merely guidelines and are not necessarily applicable in all cases.

At paragraph 46 of the application for reconsideration, the CEP writes: "The applicant submits that there is virtually no evidentiary basis for the Board's conclusion that a single bargaining unit was not appropriate in the circumstances".

It is evident the CEP believes the Board should have fashioned only a single bargaining unit. Global disagreed as well with the three bargaining unit conclusion and insisted that the Board should have left intact the original 13 bargaining unit structure. These differences of opinion are genuinely held, but they do not constitute, for either party, a ground for reconsideration.

There is no "correct" scientific answer for the creation of bargaining units. Rather, it is a determination the Board makes based on the evidence and on an extensive labour relations background.

The CEP may suggest that the Majority focussed excessively on the history of collective bargaining or that the British Columbia stations and two of the Alberta stations were purchased from one employer. However, even if those facts were persuasive to the Majority, that does not give rise to reconsideration. Rather, the CEP's argument demonstrates only a disagreement with the Majority's conclusion and attempts to reargue the case *de novo*.

**c) The Board erred in law and policy by ignoring the labour relations consequences of a three bargaining unit structure**

-10-

The CEP argued that “the three bargaining units found by the majority of the Original Panel to be an appropriate bargaining structure will not create ‘effective bargaining’ and ‘harmonious labour relations’ within the meaning of the Board’s jurisprudence.” The CEP then lists some of the problems it feels will result from the three bargaining units.

The CEP also submitted that the Minority correctly foresaw the future challenges and that its reasoning should be preferred.

The CEP further suggested that the fact neither the CEP nor Global asked for a three bargaining unit structure demonstrated the Majority’s errors.

During a bargaining unit review, the Board is not bound to choose between the parties’ views on the appropriate structure. In this particular case, the CEP argued in favour of a single national bargaining unit. Global argued that the 13 existing bargaining units remained appropriate.

The Board heard evidence and argument and determined that three bargaining units were appropriate. Labour boards were created in order to apply labour relations expertise to these types of determinations. Even among experts, as the Majority and Minority decisions demonstrate, there is not always unanimity about the best bargaining structure. However, a difference of opinion of this type is far removed from an error of law or policy as that phrase is used in section 44(b) of the *Regulations*.

**d) The Board erred in law and policy by abdicating its responsibility to create an appropriate bargaining unit structure and instead left the parties to create that structure**

This argument by the CEP is similar to the previous one. The CEP alleged the Majority cobbled together “a compromise bargaining structure sought by neither party...”. In the CEP’s view, this demonstrated that the Board abdicated its responsibility to create an appropriate bargaining unit structure.

-11-

In the reconsideration panel's view, while the CEP can disagree with the Majority's decision, we have not been convinced that this shows the majority "abdicated its responsibility". The Majority was tasked with considering all of the evidence to determine an appropriate bargaining structure for the parties. The Majority resolved the case and decided on the appropriateness of three bargaining units. While neither party agreed with the Majority, the Majority came to the determination, in its discretion, that it felt the evidence demanded. Rather than abdicating its responsibility, the panel came to a decision as it was required to do.

#### **V - Conclusion**

The reconsideration panel has extensively considered the parties' submissions.

We have not been convinced that there was an error of law or policy that would give rise to reconsideration. Indeed, on reading the submissions, it is clear the CEP disagrees fundamentally with the Majority's conclusions.

However, given that a reconsideration panel does not sit in appeal of the original panel, there is no ground to intervene in this case. We have not been convinced that there has been an error of law or policy as is required for reconsideration under the *Regulations*.

This reconsideration application is therefore dismissed.

This is a unanimous decision of the Board and it is signed on its behalf by



Graham Clarke  
Vice-Chairperson

c.c.: Mr. Robert Lumgair 604-685-5078  
Mr. Harvey K. Farysey (CIRB - Vancouver)