



Reasons for Decision

Communications, Energy and Paperworkers Union of
Canada,

applicant,

and

Global Television Network Inc.,

employer.

Board Files: 22170-C, 25183-C and 26541-C
CIRB/CCRI Decision No. 407
April 25, 2008

The Board, composed of Ms. Louise Fecteau, Vice-Chairperson, and Messrs. Daniel Charbonneau and Patrick J. Heinke, Members, considered the above-noted applications. These majority reasons for decision were written by Ms. Louise Fecteau and Mr. Patrick J. Heinke. Mr. Daniel Charbonneau dissented from the majority decision in one of the three applications cited above (file no. 22170-C).

Appearances

Mr. Daniel J. Rogers and Ms. Debra L. Burton, counsel for the Communications, Energy and Paperworkers Union of Canada;

Mr. E. W. Olson, Q.C., and Mr. Keith D. LaBossiere, counsel for Global Television Network Inc.

[1] Hearings on the application concerning the bargaining unit structure (file no. 22170-C) 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, regarding the application related to the bargaining unit structure

(file no. 22170-C). Following a formal request by both parties, the Board agreed to adopt an “informal approach” in order to simplify the procedure. The Communications, Energy and Paperworkers Union of Canada (the CEP or the union) and Global Television Network Inc. (Global or the employer) agreed and suggested to the Board that their witnesses would testify separately. The employer’s evidence was heard on January 23, 24, and 25, 2007, and the union’s on February 20, 21 and 22, 2007. By proceeding in that manner, the witnesses were not cross-examined. Oral arguments and responses were heard in the presence of both parties on May 1 and 2, 2007.

[2] The witnesses for the union who testified before the Board were:

- Mr. Rob Lungair, (National Representative of the Communications, Energy and Paperworkers Union of Canada)
- Mr. Kevin Hagglund (Kelowna)
- Mr. Mark Cameron (Vancouver)
- Mr. Bob Sumber (Calgary)
- Mr. Paul Saulnier (Halifax)
- Ms. Linda Xavier (Calgary)
- Mr. Bill Nazer (Winnipeg)
- Mr. Sean O’Shea (Toronto)
- Mr. Dave Bryan (Halifax)

[3] The witnesses for the employer who testified before the Board were:

- Ms. Chris McGinley, Senior Vice-President, Station Operation
- Mr. Bob Pruden, Vice-President, Labour Management and Strategy
- Mr. Don Wright, Vice-President, Labour Relations, Broadcast Division

[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.

I - Background and Facts

[5] The three applications noted above were consolidated pursuant to section 20 of the *Canada Industrial Relations Board Regulations, 2001*. A bottom-line decision was issued on the consolidated applications on November 6, 2007 (*Global Television Network Inc. et al.*, November 6, 2007 (CIRB LD 1695)), with reasons to follow. These are the reasons for that decision.

A - Bargaining Unit Structure - File No. 22170-C

[6] On April 27, 2001, the CEP filed an application pursuant to sections 18, 18.1 and 35 of the *Canada Labour Code (Part I - Industrial Relations)* (the *Code*) asking the Board to issue a declaration that the various respondents, generally referred to as Global, constitute a single employer and a single federal work, undertaking or business for the purposes of the *Code*.

[7] The CEP is currently certified to represent the employees of Global who make up the following 13 bargaining units:

- CHEK Victoria
- CHAN Vancouver (BCTV)
- CHBC Kelowna
- CICT Calgary
- CITV Edmonton
- CISA Lethbridge
- CFSK Saskatoon
- CKND Winnipeg
- CIII Toronto / Ottawa
- CIHF Saint John, New Brunswick
- CIHF Dartmouth (News)

- CIHF Halifax
- CHCH Hamilton

[8] On March 4, 2005, the Board issued *Global Television Network Inc. et al.*, [2005] CIRB no. 313, which granted a single employer declaration for 12 of the above-listed bargaining units. (When the CEP filed its initial application, it was not certified to represent the employees included in the CHCH Hamilton bargaining unit.) The Board also determined that regional bargaining units would exist under the single employer.

[9] Both parties filed applications for reconsideration of the original panel's decision. In *Global Television Network Inc. et al.*, [2006] CIRB no. 351; and 2006 CLLC 220-022, a reconsideration panel of the Board upheld the original panel's decision to issue a single employer declaration and to review the bargaining unit structure under section 35 of the *Code* in *Global Television Network Inc. et al. (313)*, *supra*. The parties later agreed on a corporate name for the common employer, which reads as follows: CH Television, a division of CanWest MediaWorks Inc. including CH Vancouver Island and CHBC and Global Television, a division of CanWest MediaWorks Inc., including Global BC, Global Calgary, Global Edmonton, Global Lethbridge, Global Saskatoon, Global Winnipeg, Global Ontario, and Global Maritimes.

[10] In its decision *Global Television Network Inc. et al. (351)*, *supra*, the reconsideration panel nevertheless concluded that the manner in which section 18.1(2) of the *Code* was applied constituted an error in law and that the parties had to be given a realistic opportunity to negotiate the bargaining unit structure.

[11] Following that reconsideration decision, the parties entered into negotiations with the Board's assistance, but they were unable to agree on the bargaining unit structure. The matter was therefore referred back to the present panel for a determination under section 18.1(3) of the *Code*.

[12] Further to a case management conference held on October 24, 2006, in Calgary, it was determined that the Board would first hear evidence on the structure of the bargaining units, considering the circumstances that have arisen since the single employer declaration was issued

in 2005. It was also determined that the Board would render a decision on that issue before adjudicating any other matters that may still be in dispute, such as bargaining unit inclusions and exclusions and the applicable collective agreements.

[13] In the bottom-line decision *Global Television Network Inc. et al. (LD 1695)*, *supra*, the majority of the Board determined, with reasons to follow, that it would be appropriate to create three separate regional bargaining units.

[14] The dissenting Member was of the opinion that a single bargaining unit would be appropriate for collective bargaining.

B - CHCH Hamilton - File No. 25183-C

[15] The Board was also seized of an application filed by the union on July 12, 2005, pursuant to sections 18, 18.1 and 35 of the *Code*, requesting that the television station CHCH Hamilton be included in the proceedings regarding its application for a single employer declaration, which was filed after the decision on the application for reconsideration was issued (Board file no. 25183-C).

[16] In its bottom-line decision, the panel unanimously granted the application to include CHCH Hamilton in the proceedings (see *Global Television Network Inc. et al. (LD 1695)*, *supra*), with reasons to follow.

C - Application for Interim Orders - File No. 26541

[17] On October 12, 2007, the union filed an application for interim orders under sections 18.1(3), 18.1(4) and 19.1 of the *Code* (Board file no. 26541-C).

[18] The application for the interim orders was unanimously dismissed, with the exception of the union's new documentary evidence, in the bottom-line decision *Global Television Network Inc. et al. (LD 1695)*, *supra*, with reasons to follow.

II - Analysis and Decision - CHCH Hamilton - File No. 25183-C

[19] The union filed an application requesting that the television station CHCH Hamilton be included in the proceedings regarding its application for a single employer declaration because it was not certified to represent the employees at that station when the initial application was filed (file no. 22170-C). The employees of CHCH Hamilton joined the CEP after the initial application was filed.

[20] The Board concludes that the five-fold test for the applicability of section 35 of the *Code* — enumerated in *Murray Hill Limousine Service Ltd. et al.*, (1988), 74 di 127 (CLRB no. 699), and explained in detail in *Global Television Network Inc. et al. (313)*, *supra*—has been met in this matter. All stations, including CHCH Hamilton, are determined to be “associated or related” and operated under “common control or direction.”

[21] This panel of the Board is also satisfied that a valid labour relations purpose exists for including CHCH Hamilton in the single employer declaration issued on March 4, 2005.

[22] The evidence on file fully supports the conclusion that CHCH Hamilton and the other stations included in the declaration all operate as a single employer, within the meaning of section 35 of the *Code*.

[23] The application requesting that the television station CHCH Hamilton also be included in the proceedings is therefore granted. This is a unanimous decision of the Board.

III - Analysis and Decision - Application for Interim Orders - File No. 26541-C

[24] On October 12, 2007, the union filed an application seeking the following five interim orders under sections 18.1(3), 18.1(4) and 19.1 of the *Code*: (1) to adduce further evidence of the events that occurred subsequent to the conclusion of the hearing on the bargaining unit structure on May 2, 2007; (2) an immediate cease and desist order against the single employer to prevent it from implementing any operational changes announced; (3) to grant the union leave to give notice to bargain in relation to all existing bargaining units and to require the employer to meet as a single

employer with the union in order to negotiate all matters related to the announced intended changes; (4) to amend, as necessary, the expiry dates of the collective agreements; (5) to ensure, if appropriate, that the union has a full opportunity to negotiate with the employer all matters related to the announced operational changes.

[25] It should be noted that on October 10, 2007, only two days before the application for interim orders was filed, the union wrote to the Board urging it to issue a decision in files nos. 22170-C and 25183-C.

[26] In the exceptional circumstances of the present matter and pursuant to section 16(p) of the *Code*, the Board agreed to consider the union's new documentary evidence after the conclusion of the hearing in May 2007. However, the additional documentation did not affect the Board's decision on the bargaining unit structure (file no. 22170-C).

[27] The evidence presented by the union was related to layoffs that the employer had foreseen (about 130 unionized employees, according to the union) as a result of its using of digital technology to create four broadcast centres to serve its entire network. The union sought an interim order that the employer be enjoined from implementing the staffing changes until the union and the employer had an opportunity to engage in collective bargaining in relation to those changes. The union also alleged that the implementation of the broadcast centres would dramatically increase the level of interconnectivity, which, it claims, would validate its submissions regarding the need for a single bargaining unit.

[28] Both parties had a chance to discuss those issues following the Board's bottom-line decision determining the bargaining unit structure, issued on November 6, 2007 (*Global Television Network Inc. et al.*(1695), *supra*). They are now in a position to meaningfully negotiate those changes, to conclude technological changes and layoff provisions, and to reach an agreement on the three collective agreements to be in force.

[29] The interim relief sought by the union will not further the objectives of the *Code* at this point, and it is not required to protect the integrity of section 18.1 of the *Code*.

[30] The union submitted that section 18.1 was added to the *Code* on the theory that an agreement fashioned by the parties would better reflect their realities and thus be more likely to foster sound labour relations. Having determined the number of bargaining units appropriate for collective bargaining in this case, the Board strongly urges both parties to hold meaningful talks on all remaining issues, as intended under the provisions of section 18.1 of the *Code*.

[31] The application for interim orders is therefore dismissed, with the exception of the union's new documentary evidence. This is a unanimous decision of the Board.

IV - Bargaining Unit Structure - File No. 22170-C

A - Positions of the Parties

[32] Before continuing with the positions of the parties, the Board believes that it is important to state that, at the hearing, the parties agreed on important aspects of the evidence regarding certain issues, such as job postings and the operational and organizational changes at Global. The parties submitted a document to the Board entitled "Agreed Stipulation of Facts," which reads as follows:

Operational Changes

1. Since the conclusion of the hearings before the Original Panel in May 2003, the Employers have undergone a number of operational changes.
2. The Master control functions previously performed at Global Winnipeg and Global Regina were transferred to Global Calgary. That announcement was made February 12, 2004.
3. The Traffic functions previously performed at Global Winnipeg and Global Regina were transferred to other Global television facilities pursuant to an announcement made February 12, 2004. The traffic functions previously performed at Global Winnipeg were transferred to Global BC. The layoffs that resulted did not affect bargaining unit members.
4. The Employer gave notice of layoff to eight (8) bargaining unit employees at Global Winnipeg. Those layoffs were related to the transfer of master control.
5. The master control functions previously performed at CH Victoria were transferred to Global Calgary. That announcement was made August 25th, 2004 and was effective November 27, 2004. There were 12 layoffs of bargaining unit members as a result of this transfer.

6. Since November 27, 2004, master control functions for all Western stations (with the exception of CHBC Kelowna) have been performed in Calgary.
7. The traffic functions previously performed at CHBC Kelowna were transferred to Global BC in Vancouver. That announcement was made September 2, 2004 and was effective December 3, 2004. As a result of this transfer, four (4) full-time and two (2) part-time bargaining unit members were laid off.
8. The programming functions previously performed in Calgary, Kelowna and Winnipeg were transferred to Toronto. That announcement was made in March 29th, 2005 and was effective August 31, 2005. The Calgary announcement is at Tab 60 of the Union's book of documents.
9. No bargaining unit members were laid off in Kelowna or Winnipeg as a result of the programming functions being transferred to Toronto. Two bargaining unit employees in Calgary were laid off as a result of the transfer of programming functions to Toronto.
10. The VTR, master control and traffic functions previously performed in the Maritimes were transferred to Toronto. That announcement was made January 9, 2006.
11. The Employer gave notice of layoff to eleven (11) bargaining unit employees at Global Maritimes. Those layoffs were related to the transfer of VTR, master control and traffic functions.
12. The effect of the centralization of master control was that, at that time, all master control functions (with the exception of CHBC Kelowna) were operated from two locations: Toronto and Calgary.
13. The master control functions previously performed in Toronto were then transferred to Global Calgary. That announcement was made March 2006 and the move was implemented over the summer of 2006 coming fully on line August 31, 2006.
14. With the transfer of master control functions from Toronto to Calgary, master control functions for all stations (except Kelowna) were centralized in Calgary.
15. The implementation of the "S4M" traffic software system was announced November 30, 2005. That system was originally intended to "go live" in September 2006. As of today's date, there has only been limited implementation although plans continue to fully implement the system.
16. The Employer advised the traffic employees at Global Edmonton in a December 2005 meeting that all 22 traffic employees would be given formal lay-off notices in February 2006, with their last day on the job being August 31, 2006. In December 2005, Global BC advised its non bargaining unit traffic employees that all traffic jobs would be eliminated and some new sales jobs would be created in BC.
17. After the layoffs of traffic employees in Halifax referred to above, the Employer posted a "Sales Assistant" position in Halifax. As well, during the meeting in Edmonton referred to in para. 16, the Employer announced that once the traffic layoffs take effect, two Sales Assistant positions may be created in Edmonton.
18. The successful applicant for the "Sales Assistant" position in Halifax was the former Traffic Manager in Halifax.

Organizational Changes

19. On February 7, 2005, CanWest MediaWorks Inc. announced the creation of two positions: a vice-president of Eastern stations and a vice-president of Western stations. The announcement in this regard is attached to the Union's documents at Tab. 68.

20. On May, 5, 2005, CanWest MediaWorks Inc. announced the appointment of Don Wright to the role of Vice President, Labour Relations, Broadcast Operations. The announcement in this regard is attached to the Union's documents at Tab 70.

21. On August 21, 2006, CanWest MediaWorks Inc. announced the appointment of Troy Reeb to the newly-created position of "Vice-President, News Operations, Global News and CH News". The announcement in this regard is attached to the Union's documents at Tab 71.

22. On August 30th, 2006, CanWest MediaWorks Inc. announced that Global BC and CH Kelowna General Manager Roy Gardner agreed to take on an expanded role, which includes CH Vancouver Island. The announcement in this regard is attached to the Union's documents at Tab 73.

23. In August 2006, CanWest MediaWorks Inc. announced the appointment of Chris McGinley to the newly-created position of "Senior Vice-President, Station Operations". The announcement in this regard is attached to the Union's documents at Tab 72.

Job Postings

24. The Employer has recently created two new excluded positions: "Manager, Digital Asset Management" and "Director, Technology and News Design". Both positions are located at Global BC.

Other Issues

25. In December 2005, CanWest MediaWorks Inc. announced that its Global stations would be re-branded effective February 2006. The announcement in this regard is attached to the Union's documents at Tab 75.

26. CanWest MediaWorks Inc. recently created a company-wide "intra-net". The announcement in this regard is attached to the Union's documents at Tab 36.

27. CanWest Global Communications Corp. publishes a company-wide newsletter called "CanWest Connections".

B - Additional Evidence From the Union

[33] The union submitted that a single bargaining unit was an appropriate unit because the Board declared Global Television Network Inc. to be a single employer. The union referred the Board to the original panel's decision *Global Television Network Inc. et al. (313)*, *supra*, of March 4, 2005, and it commented on the centralization of various functions since the union filed its initial application in 2001. The union also referred the Board to the reconsideration decision *Global Television Network Inc. et al. (351)*, *supra*, issued in March 2006, in which the reconsideration panel commented on the development of a centralized network.

[34] By way of its submissions and the testimony of its witnesses, the union presented evidence of how Global has further centralized its functions and decision-making process. The union alleged that

all programming decisions are now made centrally and it presented evidence that Global's administration and finance have become increasingly centralized. The union described how the employer's information technology has also become centralized and how the traffic function has evolved from each station having its own traffic department to a service that was centralized in stages and ultimately phased into one department. Ms. Linda Xavier, Operator of Master Control in Calgary, explained to the Board how the master control functions and how it centralizes programming, commercials and promotions from coast to coast. She explained the contact with and interaction between master control in Calgary and every other station across the network, through e-mails, telephone calls and the intercom system. She also described the master control intercom system, which facilitates interactive hourly discussions with local stations about newscasts.

[35] Mr. Paul Saumier, Feed Co-ordinator, described the daily conference calls involving local stations and Global National. Mr. Saumier added that all decisions made during a call are fed to master control, which is centralized in Calgary (except Kelowna).

[36] Mr. Sean O'Shea, News Anchorman and President of CEP Local 722-M, explained how national news reporting operates. He stated that the coverage of major news events is co-ordinated with the various Global and CH stations across the country. He explained that, as the Toronto Feed Co-ordinator for local news, he participates in a daily conference call with Global stations nationwide (except for BC, because of time zone constraints). After the conference call and depending on the news activity at the various stations, he then finalizes the local news content for Toronto.

[37] Mr. O'Shea submitted that the news departments at the Hamilton and Toronto stations are not in competition with one another, and that they cooperate with each other on a regular basis.

[38] Mr. Lumgair, a national CEP representative, described the union's structure as decentralized, with bargaining taking place at each individual station. He also described how, over time, the CEP has negotiated template agreements, which bear more similarities than differences, with stations across the country. While it recognized that the level of benefits and pay scales might vary from station to station, the union was prepared to address the employer's concerns in those areas at the

bargaining table. Mr. Lumgair went on to describe how the employer's behaviour has changed since Global acquired the Western International Communication (WIC) stations in 2001. For example, he stated that local management is no longer dealing with grievances. Rather, the national employer now directs local management to dispose of issues being grieved. In effect, the union submits that local management no longer makes independent labour relations decisions.

[39] Similarly, Mr. Lumgair maintains that the union's experience has been that the employer's bargaining mandate comes from beyond the local station. Mr. Lumgair submits that the employer's agenda — which includes issues such as no harm language, wages, pensions and benefits — comes from senior and national management. In the past, labour relations have been conducted at the local level, but the union maintains that since 2005, Mr. Don Wright has been the spokesperson for all stations. The union maintains that the current bargaining relationship is grossly imbalanced to the point that it is unhealthy, and it submits that its collective bargaining history with the employer supports the need for a single bargaining unit.

[40] The union described the evolution of the employer's organizational structure over time and noted that there have been more changes and further consolidation since the organizational chart was created. The union referred the Board to various announcements regarding responsibility for Global programming. The union described how Global has evolved into an organization that makes decisions at a high level and that has a corporate vision. The union is of the view that this situation is no longer consistent with a multiple bargaining unit structure, and it gave recent examples of high-level planning and the ongoing evolution of the corporate vision. The union contends that so much has been centralized that few decisions are still made at the local level and that only minor administration issues are decided at the local level, such as shift-scheduling, leaves of absence, local events and charitable functions, and local news content.

[41] The union maintains that a bargaining unit structure based on individual stations — or even small groups of stations—is no longer appropriate for collective bargaining. It argues that the organizational structure of the employer has become increasingly concentrated and centralized, from individual stations to small regional centres to an east/west bi-regional structure—which has also become more centralized in the last year.

[42] The union submitted many examples of how Global is now organized and centralized. It maintained that the multiple bargaining units no longer “match” the employer’s structure or operations. The union maintained that the *Code* provides for reviewing a bargaining unit after single employer declarations, mergers, or other major changes have been made, and it is asking the Board to consider the appropriateness of a bargaining unit structure in light of the changes made at Global.

[43] In summary, the union is of the view that the changes that have occurred in this case justify creating a single bargaining unit, which would foster more effective labour relations and restore the balance between the structure of the employer and that of the bargaining units.

[44] The union submits that there are a number of reasons for the Board to prefer larger units, including the fact that rationalizing the bargaining units tends to support and facilitate the lateral mobility of employees, administration efficiency and convenience in bargaining, a common framework of employment conditions and increased industrial stability.

[45] Considering work transfers resulting from the consolidation of traffic and master control operations, the union maintains that the employees affected are not able to make lateral moves to follow the work transferred to another location and to a different bargaining unit governed by a separate collective agreement. Aside from layoffs, the union submits that the multiplicity of bargaining units is a barrier to employees who are simply seeking new career opportunities within the Global Network. Mr. Bill Nazer, a technician at the Global Winnipeg station, testified that he was offered a job at a Kelowna station but that he refused it when he was advised that he would have to forfeit his seniority. The union submits that a single bargaining unit would make lateral moves easier for employees because it would enable the union to effectively negotiate the issues that are hindering work transfers.

[46] The union maintains that it is entirely feasible to amalgamate all the separate collective agreements because, even though they reflect how local stations were organized and the interests of the specific individuals who negotiated them, their structure and content deal with similar or identical issues in the broadcast industry.

[47] The union argues that the Board's jurisprudence clearly supports its position that a single bargaining unit is the most appropriate structure for the following reasons:

- a) it emphasizes the Board's strong preference for large, broad-based bargaining units;
- b) it reflects the administrative structure of the employer;
- c) it reflects the wishes of the employees;
- d) it will provide a more effective and realistic bargaining structure than the one that presently exists or any other structure proposed by the employer.

[48] The union argues that the new reality is that employees in Vancouver or Calgary now share the same community of interest with the employees in Halifax and their colleagues down the hall and, in some circumstances, they have more in common with employees elsewhere in the country than with the employees at the same station. It adds that work is created, distributed and broadcast through joint efforts across the country. It maintains that full integration is apparent whether one examines news, public service announcements, prime time programming or promotions. The union argues that both the applicable legal principles and the evidence before the Board support the conclusion that the only appropriate bargaining structure for this employer is a single bargaining unit.

C - Additional Evidence from the Employer

[49] Although the Board has issued a declaration of single employer, the employer submits that a single employer declaration does not require the Board to impose a single bargaining unit. The employer maintained that there was no evidence that reconfiguration of the current bargaining units would foster harmonious labour relations.

[50] Mr. Don Wright has been the National Vice-President, Labour Relations - Broadcasting, since 2005, when that position was created. In his testimony, he described to the Board the history of Global's operations at each station from coast to coast. Global has 16 stations across the country, 12 of which are affected by this application. Each of these 12 stations has one CEP union local except for Toronto, which has one in Toronto and one in Ottawa (but both are covered by

one certificate). The Halifax station has separate certificates and collective agreements for news employees and operations employees. Victoria, Vancouver, Kelowna, Calgary, Edmonton and Lethbridge were all acquired from WIC in August 2001. It broadcasts from two primary sources: Global and CH. Each station is individually licenced by the Canadian Radio-Television and Telecommunications Commission (CRTC); no network licence exists. Mr. Wright explained that the CRTC requires each station to handle local programming. He described the history of each of the 12 stations (and CHCH Hamilton in file no. 25183-C) covered by the application (see also *Global Television Network Inc. et al. (313), supra*).

[51] Mr. Wright advised that 13 bargaining units (12 bargaining units plus CHCH Hamilton) have been certified at various times through separate certification processes. He added that each of those bargaining units has achieved a considerable degree of labour relations stability over an extended period of time. By way of example, he added that local management was responsible for their own collective agreement. His role is restricted to providing advice to the Station Manager regarding grievances, disciplinary matters and the interpretation of the collective agreement, if requested, but the station management always has the final decision.

[52] Mr. Wright explained that local stations produce their own local newscasts. Each station has a local management team with three areas of responsibility: local news programming, local community relations and local revenue generation. He submitted that, in order to sell local advertising, each station must produce local programs. Mr. Wright maintained that local programming is very important because it allows each station to connect with its respective community. Local programming commitments vary significantly from 42.5 hours in Vancouver to 9.25 hours in Saskatoon. He submitted that if a station does not produce local programs, it cannot sell local advertising. Mr. Wright maintained that local programming gives the station the right to request that its signal be inserted over American stations airing the same program at the same time. He explained that, contrary to the union's position, revenue from local advertisers is very important to the stations and that revenue from locally produced programs, particularly newscasts, accounts for more than 25 percent of total station revenues.

[53] The employer explained that Global National is a separate news management entity with a specific mandate to cover national news rather than local news. It has separate news gathering services with reporters in various parts of the country who are dedicated to covering breaking news stories and other news items.

[54] Mr. Wright submitted that each station's news director has complete autonomy over the local news content. He maintained that the Global National news program is inserted into local station programming. He stated that the *Global National* news program is coordinated with local station programming through a daily telephone call between Global National and the local stations, during which the inclusion of certain news stories in the local newscasts is discussed. The final decision on what is or is not shown on a local newscast is at the sole discretion of each news director and station.

[55] With respect to the collective agreements, the employer claimed that each local agreement is different. For example, it submitted that vacation accruals vary from station to station. Part-time pools were used in certain locations, while some stations arranged for independent contractors. Lay-off provisions also vary, with different applications for severance pay and notice periods. The criteria for filling vacancies differs from station to station, as do the provisions for bumping and displacing. Since each station is managed according to an approved yearly budget, wage rates and terms and conditions of employment are subject to local conditions and vary from station to station.

[56] According to the employer, a single bargaining unit would result in serious monetary consequences, concession bargaining and acrimonious labour relations.

[57] As to the union's concerns about the lack of provisions regarding the transfer of work, the employer argued that the union never proposed "follow the work" language. It cited the recent examples of Kelowna in 2002 and Edmonton, Calgary and Saskatoon in 2003. The employer alleges that, in those cases, the union made no attempt to introduce "follow the work" language during the negotiations of the collective agreement. The employer believes that even if work functions are transferred in the future, the union will maintain the concept of local seniority. It argued that a single bargaining unit would have no impact on the union's position.

[58] The employer made the following arguments regarding the expected outcome of the certification of a single bargaining unit:

- a) negotiating in a single bargaining unit would be much more difficult than negotiating in separate units;
- b) the ability of unions to offer local protection or to determine their own interests would be lessened;
- c) technological changes and any effect they may have on jobs would not be addressed any differently than they are today;
- d) “follow the work” provisions can be as conveniently bargained in on any model;
- e) a national strike would be no more effective in shutting down stations than a local strike would;
- f) benefits or pension plans negotiated for a single bargaining unit rather than for multiple ones would, in fact, prove more difficult.

[59] The employer described for the Board what it called “the Global business model” and the differences between the various stations that Global owns. For example, the employer argued that its three stations in Alberta (CICT, CITV, CISA) are licensed and managed separately; they have different markets, cultures, strengths and weaknesses; and they have separate and distinct collective agreements. The same situation exists in British Columbia, where the employer owns three other stations.

[60] The employer also submitted that the centralization of work functions over the years has increased the local community of interest because the employees who remain at the local level are focussed on producing local programming. The employer argued that the differences in the collective

agreements support the premise that the local community drives the working conditions and, ultimately, the local community of interest.

[61] The employer maintained that the numerous differences between the stations owned by Global support the lack of a general community of interest and that the Board should consider that aspect when determining the bargaining unit structure. The employer referred to its conventional broadcasting competitors CTV and CHUM. It maintained that both competitors are certified locally, except for CTV's Edmonton and Calgary stations. The employer maintained that the Board has to consider that factor because its decision could place Global at a significant competitive disadvantage—in a competitive industry that is already under significant economic pressure—if it was forced to develop a national structure for its labour relations.

[62] The employer is of the opinion that any centralized decisions that have an effect on local stations can be made under a multiple bargaining unit structure or, at least, that those decisions would be the same for either single or multiple bargaining units.

[63] In summary, the employer submitted that a review of the bargaining unit structure would have to promote effective bargaining and the most harmonious labour relations. It maintained that, even if the Board prefers larger bargaining units, there is no specific requirement or presumption in favour of larger units in this case. The employer submitted that the parties have a long and healthy history of collective bargaining that has established harmonious labour relations and concluded collective agreements without any labour disruptions. It argued that a Board decision to impose one or two bargaining units would immediately cause conflict between the parties over major issues, such as the scope of the bargaining units.

[64] Also, the employer believes that the employees at each station continue to have a community of interest with their coworkers in the station. The employer is of the view that industry practice is to maintain local units, that no lateral mobility between stations currently exists, and that there is no operational need for such mobility.

[65] Although the employer is of the view that any further reconfiguration of the bargaining units would create significant industrial instability and labour relations difficulties, it proposed a merger of units in Winnipeg and Saskatoon and also a merger of units in Calgary and Lethbridge. The employer submitted that the stations in Saskatoon and Winnipeg serve similar-sized markets and, although the stations in Calgary and Lethbridge serve very different-sized markets, they are in close geographic proximity. Lastly, the employer proposed an amalgamation of the stations in the Maritimes. The employer maintained that the Toronto and Hamilton stations are completely different, and that they are very competitive. Despite the fact that they occasionally share some news stories, an intense rivalry exists between them. The employer also maintained that the scope of each bargaining unit is completely different; in fact, the scope of the Toronto agreement applies to news staff only. The employer submitted that a decision to amalgamate the bargaining units in the Maritimes with that in Toronto would immediately place the parties in conflict over the scope and compensation, among other issues.

D - Analysis and Decision

[66] The Board has well-established criteria for reviewing bargaining units. It takes into account a certain number of factors and assesses the weight to be given to each of them. Those factors include the community of interest, the viability of the proposed units, industry practice, previous collective bargaining between the parties, the organizational structure of the employer, and the Board's general preference for larger bargaining units (see *BCT.TELUS et al.*, [2000] CIRB no. 73; and 69 CLRBR (2d) 184; and *Expertech Network Installations Inc. et al.*, [2002] CIRB no. 182; and 85 CLRBR (2d) 124).

[67] The evidence on file clearly shows that the employer has evolved in recent years and that its network is more centralized, which has a significant impact on how it operates its stations. The employer's decisions concerning centralization, synergies and the movement of resources are made on a broader scale and, in this case, those decisions have a substantial impact on the stations.

[68] Regarding the operational changes, the master control functions previously performed at Winnipeg and Regina, for example, were transferred to Calgary in February 2004, which resulted

in the layoff of eight bargaining unit employees in Winnipeg. The master control functions previously performed at CH Victoria were transferred to Calgary in November 2004, which resulted in the layoff of 12 bargaining unit members.

[69] The master control service for all relevant stations (except for Kelowna) is now based in Calgary. The employer admitted in its presentation that, since then, there has been some dialogue between people in master control in Calgary and the television stations where Calgary performs master control service.

[70] Also, the progressive centralization of traffic functions in the last few years (traffic software - S4M) has increased the employer's cost savings and there is no longer any "traffic work" to be done. That centralization has caused members and non-members of the bargaining units to be laid off.

[71] In terms of organizational changes, the employer announced the creation of two important positions on February 7, 2005: Eastern Vice-President and Western Vice-President.

[72] On May 5, 2005, the employer announced the appointment of Mr. Don Wright as Vice-President, Labour Relations, Broadcast Operations. On August 21, 2006, it appointed Mr. Troy Reeb to the newly created position of Vice-President, News Operations, Global News and CH News. On August 30, 2006, the employer announced that Global BC and CH Kelowna General Manager, Mr. Roy Gardner, had agreed to take on an expanded role that included CH Vancouver Island.

[73] The employer explained that it put in place strategic plans to provide the synergies, centralization and efficiencies it requires to stay profitable and competitive. In the Board's view, the realities in the private broadcasting sector have changed dramatically over the last decade and the pace of change seems to have accelerated in the last few years.

[74] The union argued that considering the technological and organizational evolution of the employer, the bargaining units must change to keep up with the employer's technological and organizational progress. It maintained that the current multiplicity of bargaining units no longer "matches" the employer's structure or operations and that the structure is disconnected from the

employer's modern reality. It is asking the Board to determine a single unit as the bargaining unit structure.

1 - Review of the Relevant Case Law

[75] In *BCT.TELUS et al., supra*, the Board outlined its general approach to determining appropriate bargaining units as part of a restructuring process:

[17] “ ... The tests for determining whether a unit is appropriate for collective bargaining take into account the interests of both the employees and their employer. Without claiming to make an exhaustive list of these factors, we would note, *inter alia*, the community of interest among the employees, the method of organization and administration of business, the history of collective bargaining with the employer and in the industry in question, whether the employees are interchangeable and the interests of industrial peace. The tests may have different weight, depending on the individual case, particularly in terms of whether it is an application for certification or an application for review. In the first situation, the Board must allow the employees to have access to collective bargaining. In the second, it must examine the existing bargaining structure in order to make the bargaining process and the application of the collective agreements more effective. However, it must always try to balance what are often divergent interests in determining viable bargaining units and in order to ensure effective bargaining and the most harmonious labour relations possible.”

(pages 9; and 192-193; also in *Quebec North Shore & Labrador Railway Co. (1992)*, 90 di 100; and 93 CLLC 106,20 (CLRB no. 978))

[76] In *Télébec Ltée (1995)*, 99 di 1 (CLRB no. 1133), the Board's predecessor, the Canada Labour Relations Board (CLRB), dealt with the restructuring of bargaining units and stated the following:

From the Board perspective, the question of redefining units is generally viewed in a different light. It is first and foremost considered in the context of the fundamental objectives of the *Code* that are fulfilled with regard to a given employer. This question is also influenced by a host of factors whose importance depends on the characteristics of the business, its employees and, of course, the industry in which it operates. The present context, in which at least two of the certification applications raise questions of the **structure** of the units and of the appropriateness of each unit, increases the need to consider both the realities of the business and its particular environment before deciding the merits of reviewing the existing units.

...The objectives of the *Code* admittedly do not change whether we are dealing with the creation of one or more new units or with the reorganization of existing units: in any case, the objective is to encourage the signing of a collective agreement to provide a framework for collective labour relations.

In that sense, the Board's role is to provide, through the structure of bargaining units, an institutional framework within which bargaining can take place and which most accurately reflects the situation of the parties, having regard to the result sought.

It stands to reason that this task differs somewhat, depending on whether one is starting from scratch or whether there are already existing units. The emphasis will be, in the first case, on access to the collective bargaining process, and in the latter case, **on the proper functioning of the structure** (*Island Medical Laboratories Ltd. et al.*, no B308/93, September 21, 1993 (BCLRB)). ...

...

In that sense, the main purpose of this exercise is not to put the existing units on trial, but rather to try to inject more rationality into a bargaining structure that essentially reflects a very particular historical evolution. Conversely, it would be difficult for the Board to use the changes that could occur in the industry as a pretext for refusing to examine the appropriateness of the proposed units at this time.

(pages 11-12; emphasis added)

[77] In *TVA Group Inc.*, [2000] CIRB no. 67, the Board considered and applied the principles for determining a bargaining unit in the broadcasting sector:

[81] The principles governing bargaining unit determination are well established and have been reiterated in countless decisions. Among the goals the Board attempts to achieve is to establish units that take into account both the employees' and employer's interest such that balance in that respect is achieved. More specifically, units should provide the employer to the greatest extent possible with the flexibility to manage its operations in a more effective and efficient manner while at the same time providing employees with the best means of protecting their rights under the *Code*, as well as the greatest amount of flexibility in furthering their careers. Ultimately, the Board seeks to establish units that are viable and that allow for effective collective bargaining and harmonious labour relations (see *Canada Post Corporation, supra*; *Quebec North Shore & Labrador Railway Co.* (1992), 90 di 110; and 93 CLLC 16,020 (CLRB no. 978); *Canadian Museum of Civilization, supra*; and *Canadian Pacific Limited* (1976), 13 di 13; (1976) 1 Can LRBR 361; and 76 CLLC 16,018 (CLRB no. 59)).

[82] There are no specific guidelines provided by the *Code* to govern every situation. However, over the years the Board has enunciated a policy of favouring larger, more comprehensive units and has developed a list of factors it considers relevant for the purpose of bargaining unit determination. The usual criteria and in particular those that favour an all-employee unit or the creation and maintenance of larger bargaining units include administrative efficiency and convenience in bargaining, the enhancement of lateral employee mobility, the facilitation of a common framework of employment conditions, and increased industrial stability. Other factors considered are the community of interest amongst employees, the viability of the bargaining unit (s), the history of certifications and negotiations, the size of the employer's operation, its method of organization and administration, the structure of bargaining units generally in the particular industry.

(pages 23-24)

[78] In that decision, the Board also considered the evolution of technology in the broadcasting sector and made the following comments:

[89] Each of the parties presented evidence that described TVA's operations and the various functions involved. As well, each party presented the particular facts that constituted the basis of its position.

A number of subjects predominated, namely the evolution of technology and its impact, the need to remain competitive,...

[90] TVA, as other television networks, has experienced enormous changes since its inception. It has gone from using heavy and cumbersome equipment to small, compact equipment that is easily portable. In many instances, film has been replaced by video and new equipment has emerged for editing functions. Advances allow for more sophisticated editing to be carried out by editors and have facilitated off-line editing. Computers are commonplace at TVA and assume importance in almost every aspect of its operations.

(*TVA Group Inc., supra*, pages 25-26)

[79] There is no doubt that the Board generally prefers an all-employee unit. In that application for review of the bargaining unit structure under section 18 of the *Code*, the Board applied a different threshold but considered that criterion in the broadcasting sector. The Board nevertheless emphasized that some factors may sometimes favour smaller bargaining units:

[83] While the Board favours an all-employee unit or the creation and maintenance of larger bargaining units, the Board nevertheless create less than all encompassing units or fragment an existing employee complement where there are compelling reasons to do so. The factors that favour smaller units include a diverging community of interests, geographical factors, specific statutory provisions, the likelihood that a larger unit will not be viable, and an interest in enabling employees to obtain representation.

(*TVA Group Inc., supra*, pages 23)

2 - Determination of the Bargaining Unit Structure

[80] As mentioned above, in *Global Television Network Inc. et al. (351), supra*, a reconsideration panel of the Board concluded that the manner in which section 18.1(2) of the *Code* was applied constituted an error in law and that the parties had to be given a realistic opportunity to negotiate the bargaining unit structure.

[81] Following that decision and as prescribed by the *Code*, the present panel gave the parties a considerable amount of time to reach an agreement on the bargaining unit structure that would best serve their common interests. The Board also made the members of the present panel available to help the parties reach an agreement. Unfortunately, they could not agree on a bargaining unit structure. Regrettably, that is an indication that they need to work on their relationship. As a result,

both parties must now accept that the Board will exercise its powers under section 18.1(3) of the *Code*, because it must now determine the new bargaining unit structure.

[82] When reviewing the structure of bargaining units under section 35(2) of the *Code*, the Board's mandate is to bring together units more appropriate for collective bargaining, since a review gives the parties concerned an opportunity for a comprehensive overview of their industrial relations. The Board must carefully balance the interests of the employer and those of the affected employees.

[83] In the particular circumstances of this case, the Board must take a balanced and analytical approach, address the concerns raised by the parties, give due consideration to its own policies and experience, and consider the applicable factors in order to determine the appropriate bargaining unit structure. The Board has carefully looked at the submissions of the parties and considered the history of local collective bargaining over the years.

[84] In light of all of the evidence and submissions before the Board, it is worth noting the following elements:

- The collective agreements at the three stations in British Columbia (CHAN Vancouver (BCTV), CHEK Victoria and CHBC Kelowna) are similar to one another; the three stations were all acquired from Western International Communication, and they have one regional general manager.

- The three stations in Alberta (CICT Calgary, CITV Edmonton, CISA Lethbridge) are Global stations and they were all acquired from Western International Communication. The collective agreements for CICT Calgary and CISA Lethbridge are similar. Alternatively, the employer submitted that those two stations could be merged into a single bargaining unit. CITV Edmonton and CICT Calgary are successful stations in similar growing markets.

- The stations located east of Alberta (CFSK Saskatoon; CKND Winnipeg; CIII Toronto/Ottawa; CHCH Hamilton; CIHF Saint John, New Brunswick, and CIHF Dartmouth (News); CIHF Halifax) share similarities. Alternatively, the employer submitted that CFSK Saskatoon and CKND Winnipeg could be merged into a single bargaining unit. It also accepted in its submissions that having the

three Maritime stations in one bargaining unit makes sense. The provisions of the collective agreement for CIII Toronto/Ottawa are similar to those for the Maritime stations. The manager at CHCH Hamilton is also Vice-President of all the Maritime stations.

[85] The majority of the panel acknowledges an obvious need to rationalize the employer's bargaining structure in this case. Nevertheless, the evidence submitted does not lead the majority to conclude that a single bargaining unit would favour sound and healthy labour relations at this time. The history of collective bargaining, the regional differences in working conditions and classifications, and the diverging regional community of interests are factors that militate in favour of more than one bargaining unit.

[86] Although the Board generally favours broad-based bargaining units, there is no hard and fast rule requiring the establishment of a national bargaining unit for a national single employer. The specific facts of each case determine how the bargaining units are to be structured. In the end, the Board must assess how best normal labour relations can be fostered (*Transport Route Canada Inc., CNX/CN Trucking* (1984), 57 di 36; 9 CLRBR (NS) 110; and 84 CLLC 16,056 (CLRB no. 478).

[87] Furthermore, as the majority of the Board stated in *Société Radio-Canada*, [2005] CIRB no. 307, harmonious labour relations begin with the exchange of information and with dialogue. When dealing with an application filed under section 18.1(1) of the *Code* and applying a different threshold than the one applicable to the present matter, the majority of the Board made the following comments in its dismissal of an employer's application to consolidate four bargaining units into one:

[87] It is utopian to believe that the creation of a single bargaining unit would solve all the problems the SRC has complained about. Sound labour relations begin with the exchange of information and dialogue. Sustainable success is achieved at the bargaining table. That is a principle set out in the *Code* and encouraged by the Board. ...

(page 30)

[88] The majority of the present panel has carefully reviewed the parties' respective positions on the structure of the bargaining units, taking into account all of the appropriate factors, and the majority is of the opinion that three separate regional bargaining units, which combine the current

13 bargaining units, are appropriate for collective bargaining. The three new bargaining units will merge the current bargaining units as follows:

(1) British Columbia: CHAN Vancouver (BCTV), CHEK Victoria and CHBC Kelowna

(2) Alberta: CICT Calgary, CITV Edmonton, CISA Lethbridge

(3) East of Alberta: CFSK Saskatoon; CKND Winnipeg; CIII Toronto/Ottawa; CHCH Hamilton; CIHF Saint John, New Brunswick, and CIHF Dartmouth (News); CIHF Halifax

[89] The creation of three bargaining units will establish a balanced restructuring of local labour relations, given the current employer's organization and the employees' community of interest. That structure will prevent a drastic disruption in the organization of the parties' labour relations and will maintain a balance with the employer's technological and organizational progress.

[90] In the particular circumstances of this case, three separate bargaining units would be a more appropriate structure for collective bargaining and it would more likely result in a successful bargaining relationship for the future. The present reconfiguration geographically rationalizes the 13 stations that make up the three bargaining units. Contrary to the employer's position—which claims that the *status quo* should be maintained for industrial stability—the majority of the panel is of the view that the new structure will give the parties an opportunity to resolve significant labour relations issues in light of the operational and technological changes that have occurred in the last few years. The three units will inject more rationality into the bargaining structure and will promote more realistic and healthier labour relations between the parties.

[91] Having determined the number of bargaining units appropriate for collective bargaining, the Board is confident that the parties can reach an agreement on the remaining issues (scope of the bargaining units, inclusions and exclusions, and collective agreements). Should the parties require assistance in reaching an agreement, the Board offers its facilitation services to help them in resolve any issues that may arise.

[92] The parties have 90 days from the date of these reasons for decision to reach a final agreement on the remaining issues. The parties should communicate with the Board as soon as they reach an agreement. However, the Board retains its jurisdiction to determine any question that may arise and any remaining issues pursuant to sections 18.1(3) and 18.1(4) of the *Code*.

Louise Fecteau
Vice-Chairperson

Patrick J. Heinke
Member

Dissent of Mr. Daniel Charbonneau, Member

[93] I have given considerable thought to the majority decision and, with due respect, I do not agree with part of that decision, therefore I must dissent.

[94] The only issue I wish to address in my dissent is the bargaining unit structure at the employer, which arises from the single employer declaration issued in Board file no. 22170-C. I agree with the majority with respect to the issues raised in Board files 25183-C and 26541-C.

[95] I agree with the statement in the majority decision that there is “an obvious need to rationalize the employer’s bargaining structure.” But, contrary to the majority, I do not agree that the creation of three bargaining units will provide for a balanced restructuring of local labour relations, given the current employer’s organization and the employees’ community of interests. I am of the view that a silo-style bargaining unit structure is not appropriate and that the bargaining units should be merged into a single bargaining unit for the following reasons.

[96] The Board's general approach when determining an appropriate bargaining unit structure, as outlined in *BCT.TELUS et al.*, [2000] CIRB no. 73; and 69 CLRBR (2d) 184, is referred to extensively in the majority decision . Therefore, there is no need to reiterate it here.

[97] The Board has repeatedly confirmed its preference for all-employee units, because they provide for greater employee mobility, greater employer flexibility and administrative convenience and greater industrial stability than fragmented bargaining structures.

[98] In *Canada Post Corporation* (1988), 73 di 66; and 19 CLRBR (NS) 129 (CLRB no. 675), the CLRB conducted a comprehensive review of the bargaining unit structure at Canada Post and set out a number of principles that have been frequently cited in subsequent cases. In relation to its preference for large units, the Board stated:

What we established as our principal objective is to ensure that the configuration of bargaining units that we determine allows and provides for employees the greatest benefit while employed with the Corporation, to alleviate to the extent possible their considerable fears with regard to job security, and to permit the greatest amount of flexibility to employees in furthering their careers within the organization without being artificially restricted. This panel adheres to the philosophy that favours the formation of large bargaining units and looks with disfavour on the notion of the artificial fragmentation of bargaining units. Maintenance of that philosophy was an additional objective.

(pages 91; and 154)

[99] Clearly, the Board is sensitive to the need to structure bargaining units so as to benefit employees. In my view, employee and employer interests alike favour larger units. In its evaluation of an appropriate bargaining unit structure, the Board also ensures that the structure reflects the evolution of the employer's organizational structure (see *Island Tug and Barge Limited and Canadian Merchant Service Guild*, [2001] CIRB no. 112).

[100] Both parties have referred the present panel to two previous decisions rendered by the Board in this matter, namely *Global Television Network Inc. et al.*, [2005] CIRB no. 313, and the reconsideration of that decision in *Global Television Network Inc. et al.*, [2006] CIRB no. 351; and 2006 CLLC 220-022.

[101] In *Global Television Network Inc. et al. (313)*, *supra*, the original panel issued a single employer declaration and decided to review the bargaining unit structure under section 35 of the *Code*. The original panel also stated that the various bargaining units at CanWest were to merge into two bargaining units. While the reconsideration panel of the Board upheld the original panel's decision to issue a single employer declaration and to review the bargaining unit structure under section 35 of the *Code*, it concluded that the manner in which section 18.1(2) of the *Code* was applied constituted an error of law, because the parties had not been given a realistic opportunity to reach an agreement on the bargaining unit structure. Therefore, the original panel's conclusion that the bargaining units should be merged into two bargaining units was nullified. Because the parties were unable to reach an agreement on the bargaining unit structure, the matter was referred to the Board for a determination under section 18.1(3) of the *Code*.

[102] Although the part of the original panel's decision in *Global Television Network Inc. et al. (313)*, *supra*, concerning the appropriate bargaining unit structure was nullified, I believe that the factors considered by the original panel, when it identified a compelling labour relations purpose to justify the changes to the bargaining unit structure, are still relevant in this case.

[103] In that decision, the original panel identified the location of the master control and traffic functions as a determinating factor in the organization and administration of the stations, and it found that the more integrated the operations were, the greater the community of interests for the employees affected. The original panel also identified the common or coordinated management in human resources and labour relations matters—combined with the shared technology—as significant factors in justifying a review of the bargaining unit structure. At the time of that decision, the centralization was partly done, mostly on a regional basis.

[104] The original panel noted that the changes in the location of the master control and traffic functions would affect the terms and conditions and the job security of the bargaining unit members at the stations that were involved in the centralization. Consequently, the original panel declared:

[192] ... When the master control functions are [considered in combination with the commonalities in the human resources services and labour relations guidance that flow between and among certain

stations, the more the Board is compelled to identify a better labour relations model than the silo-style units that presently exist.

(Global Television Network Inc. et al. (313), supra, page 81)

[105] In *Global Television Network Inc. et al. (351), supra*, the reconsideration panel made the following comments on the impact of the network's continued centralization :

[50] ... This centralization has an impact on specific employees. It also reveals an ability in the corporations to collectively reassign a station's bargaining unit work, not just in response to market pressures, but also in response to collective bargaining pressures at the individual stations. This ability to reassign work is something that would not be an issue between independently owned stations, but is an issue once common control and direction is established.

(pages 21; and 143,225)

[106] Thus, both the original panel and the reconsideration panel have noted the impact of the employer's centralization on the employees. Also, both the original panel and the reconsideration panel indicated that a review of the bargaining unit was necessary. In other words, both panels of the Board were of the view that the silo-style bargaining unit structure was no longer viable in this case.

[107] In the Agreed Stipulation of Facts submitted by the parties and reproduced at paragraph 32, pages 8 to 10, of the majority decision, certain facts indicate that Global has further centralized its various functions since the union filed its initial application for a single employer declaration and a bargaining unit review in 2001.

[108] The master control functions previously performed in the Maritimes, Toronto, Winnipeg, Regina and Victoria are now performed in Calgary. The traffic functions previously performed in Kelowna and Winnipeg are now performed in British Columbia, and those previously performed in the Maritimes have been transferred to Toronto. The programming functions previously performed in Calgary, Kelowna and Winnipeg are now centralized in Toronto. The facts also show that a number of Vice-President positions were created at CanWest in 2005 and 2006, indicating further centralization of decision-making powers, which are now given to more senior positions.

[109] Both unionized and non-unionized employees have been affected by those changes. For example, the Agreed Stipulation of Facts indicates that 20 bargaining unit employees were laid off when the master control functions were centralized and transferred to Calgary. Under the present structure, the only way a member of a bargaining unit could follow transferred work would be for that employee to resign from his or her station and apply at the station where the work was sent. The employee would then be ranked at the bottom of the seniority list, because he or she would be a member of a different bargaining unit. Seniority is a very sensitive issue for the bargaining agent.

[110] The employer submitted that it was willing to discuss the matter of transfers with the union, but the union maintained that the offer, presented in October 2006, was made too late. The union also submitted that proposing to negotiate a transfer agreement under the structure with 13 bargaining units was an empty offer. In my view, the union cannot properly represent the interests of its membership with a silo-style bargaining unit structure. It would be difficult for the union to implement a transfer agreement because of the restrictions that come with silo-style bargaining unit structures and with the union's responsibility to the employees in each of those bargaining units.

[111] In my opinion, creating three bargaining units will only result in a silo-style bargaining unit structure of three bargaining units instead of thirteen, and it will still isolate the employees in those three units from any possible job transfers. According to the majority decision, all of the master control functions will fall under the Alberta bargaining unit, except the master control functions performed in Kelowna; some of the traffic functions will be divided between the British Columbia bargaining unit and the East of Alberta bargaining unit. The programming functions for the National News, located in Vancouver would thus fall under the British Columbia bargaining unit, and the programming functions located in Toronto would fall under the East of Alberta bargaining unit. In my view, the structure with three bargaining units will pose the same problems regarding work transfers and seniority rights as the previous silo-style structure with 13 bargaining units.

[112] The Board must ensure that a bargaining unit will be effective and that it has a legitimate objective. Considering the employer's rapid operational and organizational changes—which indicate even further centralization—and the impact those changes may have on the job security of the employees in the various bargaining units, I believe that the silo-style bargaining unit structure must

also evolve to keep up with the employer's operational and organizational changes and provide greater flexibility.

[113] The employer alleges that it would be much more difficult to negotiate a collective agreement for a single bargaining unit than for separate bargaining units because the union would try to pursue the highest common denominator in collective bargaining for its employees. The employer is also concerned that, if there were a single bargaining unit, collective bargaining would be on a "collision course," and that the union would likely go on strike. The union will try to achieve the best work conditions for its membership, but that is not a factor that the Board takes into account when reviewing the bargaining unit structure. The union has a mandate to try to obtain the best work conditions for its membership, whereas the employer usually tries to keep costs as low as possible. I believe that the differences in work conditions for employees in the different bargaining units are not insurmountable issues, and that they can be addressed in collective bargaining, as challenging as that may be at first.

[114] For all these reasons, I am of the view that all the bargaining units should be merged into a single bargaining unit.

Daniel Charbonneau
Member