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November 27, 2007

File 8591

Via Fax (Original with attachment to follow by courier)

Mr. Tom Panelli
Canada Industrial Relations Board
Ste. 410 - 757 West Hastings Street
Vancouver, B.C.
V6C 1A1

Dear Sirs/Madames:

Re: Communications, Energy and Paperworkers Union of Canada -and- CH Television, a division of CanWest MediaWorks Inc. including CH Vancouver Island, CHBC, and CH Hamilton; 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

(Application for Reconsideration pursuant to Section 18 of the *Canada Labour Code*)

We are counsel for the Communications, Energy and Paperworkers' Union of Canada (hereinafter the "Union" or "CEP") and hereby apply pursuant to Section 18 of the *Canada Labour Code* (the "*Code*") for reconsideration of CIRB Letter Decision No. 1695 dated November 6, 2007.

The Letter Decision disposes of two applications filed by the Union: an application pursuant to Section 18.1(4) which followed an earlier common employer declaration, and an application for interim relief. The Union seeks reconsideration of the Board's decisions in relation to both of those applications. However, as explained below, we ask that part of our application be held in abeyance at this time.

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Reconsideration of the Decision in relation to the Section 18.1(4) Application

The Letter Decision of November 6, 2007 stated that:

> The Board was asked to proceed at the earliest possible time with its determination of the appropriate bargaining unit structure. As a means of expediting the process, the Board has decided to communicate its determination of this matter by way of this bottom-line decision, with full reasons to follow.

Section 45(2) of the *Canada Industrial Relations Board Regulations, 2001* (the "*Regulations*") provides that an application for reconsideration :

> . . . must be filed within 21 days after the date the <u>written reasons</u> of the decision or order being reconsidered are issued. [emphasis added]

It is the Union's position that the time within which an application for reconsideration must be brought begins to run from the date of the <u>reasons</u> for decision, not a bottom-line decision. The Board has indicated that there are "full reasons to follow", and thus we submit that the Union has until 21 days after the issuance of those forthcoming reasons to file a full application for reconsideration.

In the event that we are wrong in our view of the operation of Section 45(2) of the *Regulations*, the Union has opted to file this application for reconsideration of the Letter Decision. However, we ask that the Board hold this component of the instant application for reconsideration in abeyance pending the communication of the Board's full reasons for decision.

Decision in relation to the Section 19.1 Application

There remains considerable urgency in relation to the factual circumstances which prompted the Union's application for interim relief, and thus we ask that the Board proceed forthwith with the adjudication of our application for reconsideration of the decision denying the interim orders sought.

A. <u>The Parties</u>:

Applicant:

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Attention: Robert Lumgair
National Representative, CEP

Respondents:

CH Television, a division of CanWest MediaWorks Inc. including CH Vancouver Island, CHBC, and CH Hamilton; 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.

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B. Provision of the *Code* under which the Application is being made:

Section 18.

C. Description of any Order or Decision of the Board that is the subject of this application:

CIRB Letter Decision No. 1695 dated November 6, 2007.

D. Nature of the Application:

The CEP hereby applies pursuant to Section 18 of the *Code* for reconsideration of CIRB Letter Decision No. 1695 dated November 6, 2007 (hereinafter "the Letter Decision"). The Union seeks the following Orders:

1. an Order setting aside the Letter Decision and substituting an order that the appropriate bargaining unit for employees of CH Television, a division of CanWest MediaWorks Inc. including CH Vancouver Island, CHBC, and CH Hamilton; 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 (collectively, the "Single Employer") is a single bargaining unit; and

2. Orders (a) and (d) sought pursuant to the Union's application for interim relief dated October 12, 2007, as follows:

   (a) an immediate cease and desist order as against the single employer Global Television to prevent it from implementing any of the changes announced . . . before CEP has an opportunity under any resulting bargaining unit structure to negotiate fully and meaningfully in relation to those announced intentions;

   . . .

   (d) any such other order as may be appropriate to ensure that the CEP has a full and complete opportunity to meaningfully negotiate with this Employer on all matters related to the announced operational changes and all related matters, as those changes will significantly impact the lives of CEP members in all bargaining units from coast to coast.

E. Submissions of Fact:

The CEP represents employees at each of the above-named television stations. On April 27, 2001, the Union filed an application for a common employer declaration with respect to all of the respondent television stations. At the time, those employees fell within thirteen (13) separate bargaining units.

On December 3, 2004, the Board issued its "bottom line" decision, followed by full reasons on March 4, 2005. The Board declared the employers to be a common employer for the purposes of the *Code* and effectively fashioned three separate bargaining units: the Maritimes, Ontario, and the rest of Canada. Both parties filed applications for reconsideration.

On March 17, 2006, the Board issued its decision in relation to the parties' reconsideration applications. The common employer declaration with respect to all of the respondent employers was upheld, whereas the decision to fashion three bargaining units was set aside to permit the parties an opportunity to reach an agreement on that issue.

While negotiations in relation to the bargaining unit structure did take place, they were ultimately unsuccessful. The Union applied on June 14, 2006 for a determination of the appropriate bargaining unit structure per Section 18.1(4). The Union took the position that the appropriate bargaining unit structure for the Single Employer was a single bargaining unit. The Employer took the position that the appropriate bargaining unit structure for the Single Employer was the *status quo*; *i.e.* the existing thirteen-unit structure. Alternatively, it proposed two limited amalgamations: Winnipeg and

Saskatoon, and Calgary and Lethbridge (with the remainder of the units to remain separate).

Subsequent to the Section 18.1(4) hearings but prior to the Board's decision, the Employer announced a major organizational change and consequential layoffs, prompting the Union to file, on October 12th, 2007, an application for various interim orders. In summary, the Union sought leave to adduce evidence of the recent organizational announcement, and it also sought a cease and desist order as well as various orders permitting the Union to bargain as a single unit with respect to the impending changes. A copy of that application is attached as Attachment "1".

On November 6th, 2007, the Board rendered a decision with respect to both the Union's Section 18.1(4) application and its October 12th, 2007 interim application. According to the Letter Decision, the Board has:

> . . . determined that it would be appropriate to create three separate regional bargaining units, which would combine the following 13 current bargaining units:
>
> (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.

Thus, there are now three bargaining units: B.C., Alberta, and the rest of Canada.

In relation to the Union's application for interim relief, the Board allowed the application to adduce further evidence, but denied the balance of the orders sought, including the "cease and desist" order.

F. Reconsideration

The grounds upon which the Board will entertain an application for reconsideration are set out in Section 44 of the *Canada Industrial Relations Board Regulations, 2001*, as follows:

> 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.

The applicant Union alleges that in fashioning three "regional" bargaining units, the Board committed errors of law and policy which cast serious doubt on the interpretation of the *Code* by the Board. In particular, the Board failed to apply its own policy with respect to the appropriateness of bargaining unit structures, fashioning a structure inconsistent with the evidence and the well-accepted principles which have long guided the Board's decisions respecting bargaining structure appropriateness. Indeed, the Board's decision is not only inconsistent with Board policy and the evidence before the Panel, but the Board reached a patently unreasonable decision lacking any evidentiary foundation – an error of law going to jurisdiction.

G. Errors of Law or Policy

i. The Board erred in law and policy by fashioning a bargaining unit structure inconsistent with the evidence and the legal principles with respect to the appropriateness of bargaining unit structures.

The Board has already determined that the respondents constitute a single employer for the purposes of the *Code*. Despite that decision, the Board has now determined that there will be three separate bargaining units representing employees of that single employer. The Union says that the division of the employees of a single employer into three separate bargaining unit clearly runs counter to the Board's well-known preference for broad-based bargaining units. As noted in *Canadian National Railway Company* (1992), 88 di 139, the Board has long preferred one unit for one employer, for many reasons, including administrative efficiency and convenience in bargaining, enhancement of lateral mobility of employees, facilitation of a common framework of employment conditions, and increased industrial stability. The Union submits that the rationales for the Board's general policy are highly applicable to the facts of the instant case, and there is simply no reason, on the evidence, to depart from the preference for rationalized bargaining units.

Not only was there no reason to depart from the Board's usual practice, but there was every reason to apply that preference in this case. It is trite law that the factors the Board will consider in determining the appropriateness of a bargaining unit structure were set out in such cases as *BCT.Telus,* [2000] CIRB No. 73 and *Canada Post Corporation and CUPW,* 73 di 66; 19 CLRBR (NS) 129; CLRB Decision No. 675 ("*Canada Post*"), which enumerated the various factors relevant to the determination of bargaining structure appropriateness, including:

- community of interest;
- viability of the unit;
- employee wishes;
- industry practice or pattern;
- the history of collective bargaining with the employer;
- the organizational structure of the employer;
- the Board's general preference for broader-based units;
- overlap in the work performed by members of different bargaining units;
- common supervisory responsibility;

- operational contact between members of the various units;
- similarity of collective agreement provisions; and
- the existence of work jurisdiction disputes.

The Union says that the application of these well-accepted factors clearly supports a single bargaining unit for this Single Employer. In particular, the Union led evidence of a highly centralized organizational structure (including centralized labour relations management) and a strong community of interest between employees of the various stations, fostered by technological advances which have harmonized and integrated the work performed at multiple locations to such an extent that there is no longer any rational delineation between the work performed in one geographic locations versus another. The Union says that the application of the *BCT.Telus* factors to the evidence strongly supports a single bargaining unit. Thus, any departure from a single unit is inconsistent with the application of the *BCT.Telus* factors, inconsistent with the evidence before the Panel, or both. That departure is a serious error of law and policy.

ii. The Board erred in law and policy, and committed a jurisdictional error, by reaching a patently unreasonable decision without evidentiary foundation.

The Union submits that the evidence before the Panel supported the creation of a single unit for this Single Employer. Moreover, the Union submits that the particular "regional" structure fashioned by the Board in this instance lacks any basis in the evidence.

It is important to understand that neither party argued before the Panel that the law or evidence supported any "regional" structure, let alone the particular regional structure the Board has now created. While the Union argued that a single unit was the only appropriate structure, the Employer took the opposite position, arguing that all the *BCT.Telus* factors supported the retention of the thirteen-unit *status quo*. Although the Employer's alternative position suggested some very limited amalgamation might be possible (Winnipeg and Saskatoon, and Calgary and Lethbridge), neither party argued that three separate regional bargaining units would be in any way appropriate for collective bargaining.

Consequently, neither party led any evidence that would support the conclusion that bargaining units based on geographical regions would be appropriate. In particular, there was no evidence put before the Panel that would support a delineation between employees working at the B.C. stations versus employees at the Alberta stations, or between employees working in B.C. or Alberta compared to those working at stations located elsewhere in Canada. For example, no evidence was adduced that would support a conclusion that employees in Halifax shared a community of interest with employees of Winnipeg, but not with employees of Vancouver. Nonetheless, the Board concluded that it is appropriate to segregate employees of the Single Employer into "B.C.", "Alberta", and the "rest of Canada" for the purposes of collective bargaining.

While the Board is clearly not limited to making orders in accordance with those urged by the parties, the Board is obliged to reach decisions solely on the evidence before it. In this case, there

was simply no evidence to support the particular units fashioned. In drawing conclusions without evidentiary foundation, the Panel exceeded its jurisdiction. There can be no more serious error of law than this fundamental breach of the Board's obligations. In the circumstances, the Union submits that the Letter Decision must be reconsidered by the Board.

iii. The Board erred in law and policy by refusing to issue a cease and desist order pending negotiations in relation to the announced reorganization and layoffs.

In addition to its decision in relation to bargaining unit structure, the Letter Decision disposed of the Union's application for interim relief filed in the wake of an announcement of a major corporate restructuring, which is expected to cause approximately 250 layoffs. While the Board allowed the evidence in relation to the recent events, it refused to offer any interim relief, including the Union's request for an order enjoining the Single Employer from implementing the reorganization until such time as the parties have been afforded the opportunity to negotiate the labour relations impact of the planned restructuring and layoffs.

Without the benefit of full reasons for its decision, it is difficult to articulate the precise manner in which the Board's decision errs in law and policy. However, the Union submits that the decision to deny interim relief in such circumstances is inconsistent with the statutory objectives of Section 18.1 of the *Code*, and indeed threatens to undermine the integrity of the Board's Section 18.1(4) process. In that respect, we rely on the facts and submissions contained in our October 12th application (a copy of which is attached hereto). These are substantial errors which cast serious doubt on the interpretation of the *Code* by the Board, and the thus the Decision warrants reconsideration on that basis.

H. Conclusion

We submit that substantial grounds for Reconsideration exist. The Union thus applies pursuant to Section 18 for the Orders set out in Section "D" above.

We reiterate that the Union asks that its application in relation to the decision on bargaining unit structure be held in abeyance at this time; accordingly, it is our position that no further submissions from either party ought to be sought at this stage. In relation to our application for reconsideration of the decision denying interim relief, however, we ask that the Board consider our application forthwith.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Yours truly,

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