

**IN THE MATTER OF A COMPLAINT OF UNFAIR LABOUR PRACTICE
PURSUANT TO SECTION 97 OF THE *CANADA LABOUR CODE***

BEFORE THE CANADA INDUSTRIAL RELATIONS BOARD

B E T W E E N:

CANADIAN MEDIA GUILD

Complainant

- and -

THE CANADIAN BROADCASTING CORPORATION

Respondent

The Complainant states that the Respondents have violated the *Canada Labour Code* and hereby submits this Complaint with respect to such violations to the Canada Industrial Relations Board for determination.

The Complainant states that the Responding party has violated Sections 50, 94 and 96 of the *Canada Labour Code*.

1. Name, address, telephone number and facsimile number of the Complainant:

Canadian Media Guild
144 Front Street West
Toronto, Ontario
M5J 2L7

Tel: 416-591-5333

Fax: 416-591-7278

Attention: Mr. Glenn Gray, Staff Representative

2. Name, address, telephone number and facsimile number of a contact person for the Complainant:

Same as Above, and

WATSON & ASSOCIATES

Labour Lawyers

3555 Lakeshore Blvd. W.

Toronto, Ontario

M8W 1P4

Tel: 416-253-1967

Fax: 416-253-7660

Attention: Ms. Cynthia D. Watson, Legal Counsel

3. Name, address, telephone number and facsimile number of the Respondent:

The Canadian Broadcast Corporation

P.O. Box 8478

Ottawa, Ontario

K1G 3J5

Attention: Ms. Michele Sparling, Director of Industrial Relations, Human Resources

and:

Heenan Blaikie

P.O. Box 185

Suite 2600

South Tower, Royal Bank Plaza

Toronto, Ontario

M5J 2J4

Tel: 416-360-3528

Fax: 416-360-8425

Attention: Mr. Henry Dinsdale, Legal Counsel

4. The Complainant states that the Respondents have violated sections 50, 94 and 96 of the *Canada Labour Code*.

5. The Complainant relies upon the following material facts in support of its complaint:

- a) The Complainant, Canadian Media Guild (“CMG”) is a recognized trade union within the meaning of the Canada Labour Code.

- b) The Complainant, CMG, represents employees employed by the Respondent, Canadian Broadcasting Corporation (“CBC”) and as such holds exclusive bargaining rights with respect to its bargaining unit.

- c) The Respondent, CBC, is Canada’s national public broadcaster pursuant to the Broadcasting Act.

- d) The CBC has a history wherein it attempts to communicate and consult directly with bargaining unit members on matters that affect collective agreement issues without any input from the Union’s exclusive bargaining agent. Invariably such attempts to improperly communicate directly with bargaining unit employees occur as the Union is about to embark on or is actively engaged in negotiations for a renewal collective agreement.

- e) The CBC initiated such a project initiative in or about May, 1993.
Notwithstanding the Union’s request at the time for Union input, the CBC forged ahead with its program as initially developed. As a result, the Union had no choice but to file a Complaint at the then Canada Labour Relations Board. Such Complaint was filed July 23, 1993. After a difficult, protracted and costly hearing

a decision issued in that matter dated December 23, 1994.

f) The Board decided in that case that:

“We have no doubt that the Employer knowingly included items in the OFC program that were designed to elicit comments and information from rank and file employees with respect to issues that required direct discussion with the Union as their exclusive bargaining representative. We are satisfied as well, as demonstrated by the emphasized portion of Exhibit 87 above that the Employer implemented the program in the fashion it did, at least in part, to circumvent the requisite direct discussion with the Union.”

g) The Board went on to discuss the importance of consultative processes in the changing workplace environment but found as follows:

“In the prevailing circumstances at the CBC, it is understandable why the Employer sought to establish a process that would facilitate the kind of broad based employee involvement it hoped to achieve. However, in a union environment, the Employer cannot institute an employee participation program - such as OFC was - which focuses on areas that are directly the concern of the Union and the collective agreement, or on the bargaining table, without involving the Union itself in the establishment and conduct of the process. To be successful, any consultative program to be implemented by the employer in a unionized workplace must involve the union in a meaningful way.”

h) It should be noted that the issue of lack of genuine Employer consultation with the Union and employees has been a concern of the Union expressed many times including the collective bargaining process.

i) In or about January, 2000, the CBC again embarked on a course of direct communication with bargaining unit members, announcing a program which

paralleled that followed by the CBC in 1993, notwithstanding that the Board had already declared such to be unlawful.

- j) In both cases, the Union consistently raised its concerns about the lack of consultation with or input from the Union and offered alternatives requesting that the Union be involved in the options being explored. Such requests went unheeded. Rather, the CBC unilaterally and without consultation with or input from the Union forged ahead with its proposed consultation and communication programs. The programs adopted and implemented failed to identify any role for the Union or the recognized legitimate consultation mechanisms (i.e. joint committees) available to the parties through the collective agreement or otherwise. In fact, the Employer has steadfastly refused to recognize any legitimate role for the Union.
- k) Once again, the parties have embarked on negotiations for renewal of current collective agreements.
- l) Once again, the CBC has embarked on a campaign of direct communication and consultation with bargaining unit members on issues that are collective bargaining and collective agreement issues and/or which will potentially affect the negotiations between the parties.
- m) Immediately prior to commencing negotiations, the CBC issued a bulletin directly to bargaining unit members providing a copy of a “major CBC study” outlining the

purported need for “profound change”. Therein CBC advised that it intends to unilaterally implement a “national dialogue”, establishing “leadership teams” focusing on themes which are in part collective bargaining and collective agreement issues and/or which could potentially affect the negotiations between the parties. Again, there was no recognized role for the Union. There was no input sought from nor prior notice to the Union with respect to the implementation of this project. The project again parallels the project introduced in 1993 and declared unlawful by this Board.

- n) The CBC forged ahead and unilaterally introduced the program. Therein they communicated directly with bargaining unit members on issues including collective bargaining and collective agreement issues. The materials also threaten employees “security”.
- o) The CBC has engaged in employee surveys, communicating directly with bargaining unit members in so doing. Notwithstanding assurances to the Union that such surveys would not be used for any industrial relations purpose, the CBC has used such information in bargaining against the Union and has communicated purported survey results and information directly to bargaining unit members to rationalize its bargaining proposals.
- p) Additionally, the CBC has issued communiques directly to bargaining unit employees on issues which are currently on the table in negotiations. Adding insult to injury, the CBC has misrepresented the facts to bargaining unit members

therein on key issues in dispute between the parties and currently on the table in bargaining.

- q) The CBC has held “captive audience” meetings with bargaining unit members, addressing issues currently on the table in negotiations. Thereat the CBC is urging employees to “trust them” on issues which are currently in dispute between the parties in negotiations.
- r) The CBC is improperly posting the Union’s bargaining proposals on its website.
- s) The CBC is improperly setting out purported agreements reached on individual issues on the table between the parties in the current ongoing negotiations.
- t) The CBC has issued an ongoing series of communiques directly to bargaining unit employees purporting to be “negotiation updates” and purporting to give play by plays of the ongoing bargaining sessions. Therein the CBC effectively campaigns directly to bargaining unit members on key issues in dispute between the parties, particularly on issues which the Union has indicated at the bargaining table that it is not open to consider.
- u) The CBC has issued “Negotiations Updates” directly to bargaining unit members wherein they actively encourage discussion “throughout the organization”, including direct discussion with bargaining unit members, about issues that are currently on the table at negotiations. Therein, they also set out inflammatory

material escalating concern about the viability of the CBC, effectively describing the CBC as “fragile” and “precarious”. They threaten bargaining unit members that concessions are necessary if they intend to “survive”.

- v) The CBC not too subtly referenced the possibility of a strike or lockout from its earliest communiques issued directly to bargaining unit members, in conjunction with inflammatory communications suggesting its need for concessions sought thereby creating a climate of fear amongst the union membership.
- w) The CBC is engaging in direct communications with bargaining unit members, specifically designed to intimidate and threaten thereby setting a tone wherein employees are led to believe that concessions are necessary.
- x) Such inappropriate communications undermine the trade union in the eyes of the membership, undermine the Union’s legitimate role as exclusive bargaining agent, and undermine the Union’s ability to effectively negotiate on behalf of its members.

6. The Complainant requests the following relief:

- i) A Declaration that the Respondent CBC has violated and continues to violate the Canada Labour Code.
- j) An Order that the Respondent forthwith cease and desist such violations of the

Canada Labour Code.

- k) An Order prohibiting the Respondent from initiating any further consultation process and/or communications with bargaining unit members without prior full and meaningful input from the Union.
- l) An Order directing the Respondent to bargain exclusively with the Complainant.
- m) An Order directing the Respondent to cease bad faith bargaining and begin the process of good faith bargaining.
- n) A posting and mailing to all bargaining unit employees appropriate in the circumstances.
- o) Such other relief as counsel may advise and the Board see fit to grant.

Dated at Toronto on this 19th day of November, 2004.

Cynthia D. Watson
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