

APPENDIX "A"

1. The Complainant, the Canadian Media Guild ("the Guild"), states that the Responding Party, Alliance Atlantis Communications Inc. ("AAC") has violated sections 94(1)(a), 94(3)(a)(i) and 94(3)(e) of the *Canada Labour Code* by denying otherwise universal employee wage increases to all members of the Complainant's bargaining unit.

Complainant

2. The Guild is certified by order of the Canada Industrial Relations Board to represent a bargaining unit of employees at AAC described as follows:

all employees in the Operations Department of the Broadcasting Division of Alliance Atlantis Communications Inc., 121 Bloor Street East, Toronto, excluding supervisors and those above the rank of supervisors, freelancers and casual employees and those working in an administrative, managerial or confidential capacity.

CIRB Order No. 9011-U, dated December 13, 2005.

3. There is no collective agreement in place between the parties and notice to bargain pursuant to the *Canada Labour Code* has not yet been given.

Facts

4. We note by way of background, that AAC has opposed the Guild's presence at AAC from the beginning, including challenging the application for certification itself and the membership evidence that was filed by the Guild. As a result of the employer's actions during the organizing campaign and subsequent to the filing

of the application for certification, the Guild filed two unfair labour practice complaints with the Board. AAC also filed a complaint against the union arising from allegations that it made concerning the union's conduct. The unfair labour practice complaints filed by the parties were subsequently withdrawn by mutual agreement (Board File Nos. 25233-C, 25358-C and 25355-C). The Board ultimately ordered a representation vote among the members, which was held on December 7, 2005 and resulted in the employees in the unit selecting the Guild to be their exclusive bargaining agent. By the time the vote was held, exactly five (5) months had passed since the Guild had filed its application for certification.

5. During the month of February 2006, it came to the union's attention that AAC would be issuing salary increases and bonuses to its employees; there was, however, some confusion on the part of employees as to whether or not members of the Guild's bargaining unit would receive the increases and bonuses. Ms. Jacquelyn Saad, Senior Vice President, Human Resources at AAC advised Mr. Keith Maskell, Staff Representative with the Guild, that the announced wage increases would not be paid to any employees who were members of the Guild's bargaining unit. Ms. Saad took the position that AAC could not extend the wage increases to bargaining unit members because it had yet to negotiate a collective agreement with the union, and it could not presume that the wage increases would be in accordance with any terms that might be negotiated in collective bargaining.

See e-mail correspondence from Jackie Saad to Keith Maskell, dated February 22, 2006, attached hereto as Exhibit 1.

6. Although Ms. Saad took the position that AAC's decision to deny wage increases to bargaining unit employees was made out of deference to the collective bargaining process, AAC has in fact proceeded with other matters that could also

be the subject of bargaining without seeking the Guild's consent. AAC has included bargaining unit members in the bonuses that were awarded at the same time as the wage increases. AAC has also applied its recently announced Retirement Savings Program to both bargaining unit and non-bargaining unit members. For the record, the Guild takes no issue with these two benefits being extended to its bargaining unit members.

7. In two separate e-mail messages, Mr. Maskell advised Ms. Saad that the union would not object to its members receiving the same increases that were being awarded to all other employees, and that the union specifically consented to the employer doing this. Mr. Maskell further advised Ms. Saad that the union believed that AAC would be discriminating against its members if it were to refuse the increases despite the union's consent. Despite the union's consent to the increases, AAC has continued to refuse to give the wage increases to bargaining unit members.

See e-mail correspondence from Keith Maskell to Jacquelyn Saad, dated March 9 and March 13, 2006, attached hereto as Exhibit 2.

8. AAC has never officially notified its employees that it would not be paying the wage increase to its unionized employees. In fact, on or about March 6, 2006, AAC held a company-wide general meeting at which it announced that bonuses and wage increases would be paid out to "everyone". The failure of AAC to communicate its position on the wage increase to members of the bargaining unit has led to confusion on the part of employees, and as a result, the Guild has received inquiries from its members concerning the issue.
9. AAC has taken the position that it was the union's responsibility to communicate to its members that they would not be receiving the wage increase. AAC has

also stated that the union's alleged failure to communicate the employer's decision to deny its members the wage increase is the cause of any existing confusion among members concerning their eligibility for the wage increase and has implied that the union was somehow acting underhandedly by keeping this information away from its members. AAC has posted Ms. Saad's e-mail correspondence exchange with Mr. Maskell on this issue, as a bulletin for all union members to see, including Ms. Saad's position that the union was somehow at fault for not formally communicating AAC's decision to withhold the wage increases from its members.

10. It should be noted that while AAC has taken the position that it was the union's responsibility to deliver the bad news to its members with respect to the employer's denial of the general wage increase, AAC did not hesitate to communicate directly to Guild members with respect to the employer's decision to include them in the new company Retirement Savings Program.

See e-mail correspondence and attachment from Jacquelyn Saad to Keith Maskell, dated March 6, 2006 attached hereto as Exhibit 3.

11. AAC's attempt to blame the union for its own failure to advise bargaining unit members that they would not be receiving the wage increase has created the false impression that the union was deliberately withholding information from its members, and has resulted in the union being questioned about this issue. The union has also received other inquiries from members looking for an explanation as to why they are being denied the wage increase that is being granted to all other employees. There is a general perception among the unit members that they are being punished for unionizing. The denial of the wage increase to its unionized employees, combined with its attempt to assign responsibility to the union for communicating this decision to employees has raised questions in the

unit about the union's representation on this issue, and has in fact damaged the union in the eyes of its membership.

Complaint

12. The union submits that the employer, AAC, has since the beginning of the organizing campaign engaged in a course of conduct that was intended to and that did send the message to employees that it did not want them to unionize. AAC's denial of the general wage increase to its employees who are members of the Guild's bargaining unit sends a clear anti-union message to employees, and can only be viewed as a reprisal for their decision to unionize and discrimination on that basis contrary to section 94(3)(a) of the *Code*. The union further submits that AAC's conduct also constitutes a violation of section 94(3)(e) of the *Code*.
13. In addition, the perception of the bargaining unit members that AAC's denial of the wage increase is a reprisal for their decision to unionize, is undermining the union's ability to represent its members, contrary to section 94(1)(a) of the *Code*. Furthermore, the employer's attempt to blame the union for AAC's own failure to communicate its decision to deny the wage increase to bargaining unit members, has further undermined the union's ability to represent its members contrary to section 94(1)(a).
14. We note that at this time only the Operations Department at AAC is represented by the Guild, and that a significant portion of the workplace remains non-unionized. As word gets out to non-unionized employees at AAC, they will no doubt also perceive this as a reprisal for unionizing, which could have a chilling effect on any attempts on their part to exercise their rights to unionize under the

Code. This effect is clearly foreseeable by the employer. We submit that the employer's actions in this respect are contrary to section 94(3)(e) of the *Code*.

15. Pursuant to section 98(4), we note that the onus is on the employer to prove that its actions do not constitute a violation of section 94(3) of the *Code* as alleged.

Relief Sought

16. The Complainant seeks the following relief:
- (i) A declaration that AAC has violated the *Code*;
 - (ii) An order directing AAC to cease and desist from violating the *Code*;
 - (iii) An order directing AAC to cease and desist from denying pay increases to members of the bargaining unit that are being offered to all other non-unionized employees;
 - (iv) An order requiring AAC to post the Board's decision at the workplace in a place visible to all the affected employees, and to distribute the Board's decision to all of its affected employees via all the communications systems it has at its disposal to contact employees;
 - (v) An order that AAC include the following statement with its posting and distribution of the Board's decision: "The Canada Industrial Relations Board has ruled that Alliance Atlantis Communications violated employees' rights under the *Canada Labour Code* by denying the March 2006 general wage increase to its unionized employees and has ordered

us to pay the increase to these employees.”

(vi) Such further and other relief as the Complainant may request and the Board considers just and equitable in the circumstances.

17. The Complainant reserves the right to make further submissions in support of this application.
18. The Complainant requests that the Board convene a hearing at its earliest convenience so that it may call evidence and make further submissions in support of its application.

ALL OF WHICH is respectfully submitted this 21st day of March 2006.