

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

CNN AMERICA, INC. AND TEAM VIDEO SERVICES, LLC,
JOINT EMPLOYERS

and

Case 5-CA-31828

NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES &
TECHNICIANS, COMMUNICATIONS WORKERS OF AMERICA,
LOCAL 31, AFL-CIO

and

CNN AMERICA, INC. AND TEAM VIDEO SERVICES, LLC,
JOINT EMPLOYERS

and

Case 5-CA-33125
(formerly 2-CA-36129)

NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES &
TECHNICIANS, COMMUNICATIONS WORKERS OF AMERICA,
LOCAL 11, AFL-CIO

**CNN AMERICA, INC.'S RESPONSE IN OPPOSITION TO AND REQUEST TO
STRIKE THE GENERAL COUNSEL'S MOTION TO BIFURCATE AND
TO EXPEDITIOUSLY SUSTAIN THE ALJ'S RULINGS**

CNN America, Inc. ("CNN") opposes the General Counsel's "Motion to Bifurcate Consideration of Respondent CNN's Request for Special Permission to Appeal and to Expeditiously Sustain the Administrative Law Judge's Rulings That the General Counsel's Subpoena Duces Tecum Be Enforced Requiring Production to the General Counsel of Respondent CNN's Payroll Records and Production to the ALJ of the Documents Listed on the Respondent CNN's Second Revised Privilege and Redaction Logs for In Camera Review by the ALJ" ("Motion") and requests that the Motion be stricken in its entirety.

I. INTRODUCTION

In December of 2007, CNN requested special permission from the Board for an interlocutory appeal of the denials by Administrative Law Judge Arthur Amchan of CNN's Petitions to Revoke two dramatically overbroad and oppressively burdensome "trial" subpoenas that had been served on CNN several months prior to the trial, and that had been enforced in their entirety by Judge Amchan prior to trial. One of the subpoenas had been served by Counsel for the General Counsel, and the other had been served by Charging Party National Association of Broadcast Employees & Technicians, Communications Workers of America, Local 31 ("Local 31"). CNN's appeal is still pending before the Board, and the enforceability of the two subpoenas remains unresolved.¹

The trial of these proceedings has nonetheless progressed more or less according to the schedule set (and periodically revised) by Judge Amchan. Even in the absence of enforceable subpoenas, CNN has produced to the General Counsel and the Charging Parties literally *hundreds of thousands* of relevant documents. These documents included more than 2,000 communications between CNN management and in-house counsel Lisa Reeves and/or Scott Porter in which counsel did not render any legal advice. For a small universe of documents involving requests for legal advice to in-house or outside counsel, and the provision of such advice, CNN asserted the attorney-client privilege and listed these documents on a privilege log. After considering in good faith the General Counsel's arguments about proper application of the

¹ On March 20, 2008, the Board granted CNN's Request for Special Permission to Appeal Judge Amchan's ruling that all documents reviewed by a witness in the last six months must be turned over to the other party, overturning that order as a misconstruction of Federal Rule of Evidence 612. The Board specifically noted in footnote 3 of that order that it would address in a separate order CNN's request for Special Permission to Appeal the denials of its petitions to revoke the subpoenas in question.

attorney-client privilege to communications involving in-house counsel, CNN revised its original privilege log and produced even more documents; at this time CNN is designating only 118 documents as entirely privileged and 137 redacted documents as partially privileged.

Despite these limitations on CNN's claims of privilege, Judge Amchan nevertheless ordered CNN to provide to him each and every privileged document identified in this case for his review. CNN has refused to comply with this wholesale assault on its claims of privilege, which would require disclosure of legal advice rendered in this case to the trier of fact. Instead, CNN suggested that the Board's remedy, should it desire access to these documents, lay in a district court, based upon the controlling holding in *NLRB v. Detroit Newspapers*, 185 F.3d 602 (6th Cir. 1999). Indeed, in response to the General Counsel's claim that it needed to exhaust administrative remedies by placing this question before the Board (a misplaced position for the reasons discussed below), CNN offered on the record to waive any claim that the General Counsel had failed to exhaust administrative remedies so as to expedite final resolution of this issue in district court.

CNN's extensive production also contained thousands of documents regarding the salaries and earnings of employees involved in this proceeding. Despite this extensive production, when the General Counsel argued that it needed certain ambiguously described "payroll records," CNN offered to meet and confer with the Board and the Charging Parties to understand what specific records were needed, and agreed that it would endeavor to provide the relevant records once such an understanding had been reached. The General Counsel has never deigned to respond to this offer. CNN also has provided lists of employees that are on payroll as of certain dates as requested by the Board, and has offered to meet and confer surrounding these lists. Again, the General Counsel has never responded to this offer. So far, aside from its

generic demands for unspecified “payroll records,” *not one time during the hearing has the General Counsel needed a document that it did not have already or which CNN did not agree to produce.*

Given that the Board already has – or will be provided – every document it could possibly need to litigate this case, it is difficult to understand what action the General Counsel wants the Board to take. It appears that the General Counsel has no interest in actually obtaining the payroll information it claims that it needs, and is impatient with the pace of the Board’s appeal proceedings. It therefore wants to “bifurcate” the single request for “payroll records” from the other 242 requests in its still-unenforceable subpoena, and get an expeditious ruling “sustaining” Judge Amchan’s ruling that the subpoena is enforceable to the extent of this one request. But CNN has appealed the enforceability of the General Counsel’s subpoena in its entirety. Unless and until the Board rules the General Counsel’s subpoena is enforceable, the General Counsel’s request to enforce one paragraph of the subpoena is procedurally improper and should be denied.

Second, the General Counsel apparently is reluctant to follow the correct procedure for seeking enforcement of Judge Amchan’s ruling that CNN must produce to him for *in camera* review every single one of the documents listed on its privilege log. Because the General Counsel lacks any good faith basis for challenging CNN’s assertions of privilege, let alone any basis for its wholesale assault on every single claim of privilege CNN has made in this case, and because only a district court judge has power and authority to issue a ruling on the privileged status of documents sought by a Board subpoena, CNN has refused to comply with Judge Amchan’s order. As Judge Amchan himself instructed the General Counsel, the proper course of action for the General Counsel, if it wants to try to enforce the order, is to institute proceedings

in the district court. The Board's rules and regulations provide no mechanism for the General Counsel to seek an order from the Board "sustaining" the ruling in its favor by Judge Amchan. Such an order is not necessary for the General Counsel to pursue enforcement in district court of the order requiring *in camera* review, and even if it were, CNN has agreed not to make any exhaustion of remedies argument in district court. Indeed, unless the Board rules that the General Counsel's subpoena is enforceable, the privileged documents are not responsive to any proper request, and CNN bears no obligation to provide a log of the privileged documents, much less turn each and every one of them over to the fact-finder for an unwarranted and prejudicial review. The General Counsel's request for an order "sustaining" Judge Amchan's order for an *in camera* review therefore should be rejected.

The General Counsel's Motion is unnecessary, procedurally improper, and misstates the facts about the progress of the proceedings in this matter. The Motion should not be granted, and indeed, it should be stricken from the Board's record.

II. ARGUMENT

A. The Board Should Not "Bifurcate" And Enforce Only The Paragraph Of The General Counsel's Subpoena Seeking Production Of Payroll Records.

1. No Procedure Exists For "Bifurcating" And Enforcing A Single Paragraph Of A Subpoena Which Is The Subject Of A Pending Appeal Before The Board.

Prior to the start of trial in these proceedings, on August 4, 2007, the Board served Subpoena Duces Tecum No. B-522050 ("NLRB Subpoena") on CNN. That subpoena contained 243 separate requests for production of hard copy documents and electronically stored information, accompanied by 19 pages of detailed instructions requiring production of virtually every form of information available from CNN for as long as a decade. On October 27, 2007, Local 31 served CNN with Subpoena Duces Tecum No. B-441992 ("Local 31 Subpoena") that

in many respects mirrored the subpoena issued by the General Counsel. (These two subpoenas are collectively referred to as “the Subpoenas”). In accordance with applicable NLRB procedure, CNN filed a timely Petition to Revoke each of the Subpoenas, but Judge Amchan denied CNN’s petitions. CNN then filed with the Board a request for special permission to appeal the denial of the petitions to revoke, pursuant to 29 C.F.R. § 102.26. CNN’s appeal on the enforceability of the Subpoenas remains pending.

As set forth in CNN’s Memorandum of Law in Support of Appeal of Denials of Petitions to Revoke Subpoenas, filed on December 6, 2007, the Subpoenas should be revoked in their entirety. CNN explained in that Memorandum why the Subpoenas – and in particular, the inappropriate and overly burdensome instructions for the production of electronically stored information – could not be enforced in any respect. CNN specifically objected to Item 8 of the NLRB Subpoena, which calls for the production of “payroll records,” on the grounds that CNN does not maintain the information sought by the General Counsel in a single “payroll record” and CNN had already produced the information the General Counsel sought for the Washington, D.C. and New York bureaus, sorted by name and position (job classification), on June 16, 2005. (See Objections and Comments to Request No. 8, Exhibit K to Exhibit 1 to CNN’s Memorandum of Law in Support of Appeal of Denials of Petitions to Revoke Subpoenas.) CNN will not repeat its arguments here.²

While the Board is considering CNN’s arguments on the enforceability of the Subpoenas, both as a whole and as to the individual requests, it is improper for the General Counsel to

² The General Counsel had a full opportunity to brief its opposition to CNN’s Request for Special Permission to Appeal when that document was filed. The instant Motion is nothing more than an inappropriate attempt to submit additional argument to the Board on a matter that already has been fully briefed, and should be stricken for that reason.

request that the Board “bifurcate” CNN’s appeal and rule on the validity of only one of the 243 requests in the NLRB Subpoena.³ Permitting bifurcation in this manner would allow parties to request inefficient, piecemeal rulings on pending motions and appeals, and would give the General Counsel free reign in this case to present more than 200 other “bifurcation” motions which the Board would apparently be asked to resolve without deciding the lynch-pin issue underlying each: the enforceability of the subpoenas themselves. Indeed, the General Counsel could file such a motion every time it decides that one of its subpoena requests deserves immediate attention. *See Community Health Servs.*, 342 N.L.R.B. 345, 348 (2004) (expressing the Board’s concern for efficient casehandling, conservation of the Board’s resources, and avoiding harassment of or prejudice to respondents), *aff’d*, 483 F.3d 683 (10th Cir. 2007).

“Bifurcation” is not a mechanism contemplated by the Board’s Rules and Regulations. Section 102.26 of the NLRB Rules and Regulations, cited by the General Counsel as the section pursuant to which it filed its Motion, sets forth the procedure for appealing a ruling of an Administrative Law Judge to the Board on an interlocutory basis. The rule requires a request for special permission to appeal, which must be granted by the Board before it even considers the substance of the appeal. Direct appeals are not permitted. Moreover, it defies logic that an “appeal” by the General Counsel could be allowed when the underlying ruling at issue – Judge Amchan’s denial of CNN’s petition to revoke the NLRB Subpoena – was resolved in favor of the NLRB and against CNN. One surely cannot “appeal” a favorable ruling. *Cf. NLRB v. Brotherhood of Utility Workers, Inc.*, 612 F.2d 598, 604 (1st Cir. 1980) (respondents could not be expected to except to that which favored them; pro tanto they had prevailed), *citing NLRB v.*

³ In its Motion, the General Counsel argues that Paragraph 170 also calls for the “payroll records” that it seeks. (Memorandum in Support of General Counsel’s Motion, p. 41.) CNN does not read Paragraph 170 that broadly.

Allied Prods. Corp., Richard Bros. Div., 548 F.2d 644, 653 (6th Cir. 1977). Likewise, Section 102.26 contains no provision for obtaining a ruling on a particular issue already pending as part of another party's request for special permission to appeal. Nor does the rule contemplate a request for an expedited ruling on a discrete issue subsumed within a pending appeal. It naturally follows that this is not permitted because it is not provided for in the rules.

Despite the General Counsel's invocation of Section 102.26, that rule provides no authority for the General Counsel's Motion to "bifurcate" the request for "payroll records" from the rest of CNN's appeal and to "sustain" Judge Amchan's ruling that the NLRB Subpoena is enforceable as to that single request. Accordingly, the instant Motion should not be considered by the Board. See *Association of Cmty. Orgs. for Reform Now (ACORN)*, 338 N.L.R.B. 866, 867 (2003) (not considering arguments made in a reply brief filed by the general counsel because the filing of such a document is not provided for in the Board's Rules and Regulations); *Ryder Student Transp. Servs.*, 333 N.L.R.B. 9, 10 (2001) (same). The General Counsel cites no other authority for the proposition that a single subpoena request can be severed and ruled on more quickly than the larger appeal in which it is subsumed, merely because the General Counsel would like that ruling expeditiously. Unless and until the Board determines that the NLRB Subpoena is enforceable, the General Counsel may not seek an order requiring that CNN provide "payroll records."

2. The General Counsel Misstates The Facts Surrounding Its Request For Payroll Records And CNN's Response.

Even though the enforceability of the NLRB Subpoena remains unresolved, CNN has nevertheless sought to provide the General Counsel with the personnel and payroll-based information that is relevant to the claims in this matter. In its Motion, the General Counsel

mischaracterizes the good faith conduct by CNN with respect to the production of this information.

Request number 8 of the NLRB Subpoena to CNN demanded:

All electronically stored personnel information and documents that show full and complete payroll records from September 1, 2003 until present for all employees hired and/or transferred into the CNN New York, New York and/or Washington DC bureau workforce under the Bureau Staffing Project and/or for all TVS employees and/or freelancers in the TVS-NY and/or TVS-DC bargaining units, which indicate job classification, job description, hire date, rehire date, termination date, orientation date(s) and/or training date(s), salary and/or wage rate, pay differentials, benefits, hours worked, overtime, and/or union membership or dues deduction for all employees and/or freelancers in the TVS-NY and/or TVS-DC bargaining units.

In its Petition to Revoke, CNN objected to this request because it is an unwarranted invasion of the privacy of the persons whose "personnel information" was demanded in its entirety, and because it is overbroad and therefore calls for the production of irrelevant information. Moreover, at the time the Board served this request, CNN had already produced to the General Counsel payroll records it compiled for the Washington, D.C. and New York bureaus, sorted by name and position (job classifications). To re-produce that same information in electronic form or to produce the underlying documentation from which the information was laboriously gathered would be unduly burdensome. CNN had also provided the Board a summary of the benefit programs available to all CNN staff which has been introduced into the record. (See CNNA Exs. 87 and 88, attached hereto as Exhibits A and B respectively.) Finally, CNN pointed out that the General Counsel's request sought information from CNN regarding Team Video employees whom CNN did not employ and for whom CNN did not have any personnel or payroll information.

Notwithstanding its objections to this particular request, in an effort to provide the General Counsel with pertinent information about the employees at issue, CNN provided the General Counsel and the Charging Parties with lists of employees who were hired and employed as of the date the General Counsel states is the relevant date for this matter. The General Counsel claimed it needed "payroll records" to establish the exact date on which each person on the list was hired. In response, CNN explained that its payroll system is automated and that it cannot provide "payroll information" without understanding what information is being sought so that it can make appropriate requests of its system. CNN offered to explain to the General Counsel how it created the list of hires, and to demonstrate the process of creating the list. The General Counsel refused this offer, insisting that they wanted the "payroll records," whatever that might mean. The General Counsel has continued to demand that CNN produce "payroll records" as requested in Paragraph 8, without specifying what records it seeks.

CNN has engaged the General Counsel in dialogue about this issue, in an attempt to understand precisely what additional information is needed and thereby resolve this issue. During these discussions, CNN communicated to the General Counsel and the Charging Parties that payroll information is stored in electronic format, in a massive payroll system database. CNN cannot, of course, dump out the entire contents of the database for every employee – including the tens of thousands of employees with no connection to this case – and provide it to the General Counsel. In light of the difficulty in providing pertinent computerized "payroll records," in January 2008, CNN offered to stipulate to the accuracy of lists of hires it had provided. CNN further met with Counsel for Local 31 and offered to meet with the General Counsel and both Charging Parties to work out this issue and provide information required to verify the hiring lists. That offer was repeated to counsel for Charging Party Local 11 in New

York. Despite these offers, the General Counsel has failed to indicate the slightest willingness to take up CNN's offer. (*See* April 8, 2008 Trans. at 10366-67.⁴) On April 8, 2008, a discussion was held on the record in which counsel for CNN again offered to stipulate to the accuracy of the employee lists provided to the General Counsel and to sit down with the General Counsel to explain how the lists were created.

We have always been willing to explain and to show how this stuff was derived. I don't intend to go into...I don't intend to go through how our electronic payroll system works. It's not a problem for us to sit down and stipulate with the board. We have half a day tomorrow, we are happy to do it. We have a short day on Friday, we are happy to do it. We are happy to show you how we reached these lists, we are happy to put the lists into evidence as a joint exhibit or a stipulated exhibit. We offered to do this literally months ago during the January recess. And we worked hard on this. We have a set of stipulations this thick with who was hired which will materially aid this case. We don't have to listen to this stuff. And I've gotten no phone calls back.

(April 8, 2008 Trans. at 10367.)

The General Counsel did not respond to these renewed offers, merely reiterating the demand for unspecified "payroll records." (April 8, 2008 Trans. at 10369-70.) At this point in the proceedings, CNN has now provided the General Counsel with the employee lists, complete applicant files, offer letters showing dates of hire and salary at the time of hire, and personnel files for all hires that contain all subsequent salary, pay raise and promotion information. Yet the General Counsel persists in insisting that CNN produce "payroll records" of some unspecified sort. It is disingenuous for the General Counsel to characterize CNN's behavior as anything but forthcoming.

⁴ Cited excerpts from the hearing transcript are attached at Exhibit C.

B. The Board Should Reject The General Counsel's Request That It "Sustain" Judge Amchan's Order Requiring CNN To Turn Over Privileged Documents For In Camera Review.

On February 22, 2008, the General Counsel, without providing any factual basis for doing so, raised a blanket challenge to the privilege designations of every document on CNN's privilege log. In response, CNN undertook another good faith review of the documents remaining on the log (which amounted to fewer than 1% of the total number of documents produced by CNN). CNN affirmed that these documents were in fact protected by the attorney-client privilege and/or attorney work product. At the invitation of Judge Amchan, CNN also submitted a brief addressing the application of the attorney-client privilege to communications involving in-house counsel. Subsequently, at the General Counsel's request and despite opposition from CNN, Judge Amchan ordered CNN to produce every single document listed on CNN's privilege log to him for an *in camera* review. CNN has not complied with this order, because it is legally improper, and because undertaking such a review would plainly prejudice Judge Amchan – the fact-finder in these proceedings – and call into question his ability to conduct an impartial review of the facts and legal issues in this case. Instead, as discussed above, CNN suggested that the General Counsel proceed to district court and offered to waive any claim of failure to exhaust administrative remedies in any such proceeding. (April 7, 2008 Trans. at 9916.)

Rather than doing this, the General Counsel seeks an order from the Board "sustaining" Judge Amchan's ruling. As explained above in Section A.1., the Board Rules and Regulations provide no procedure for a party to seek an order from the Board "sustaining" a favorable ruling by an Administrative Law Judge. If the General Counsel wants to try to enforce Judge Amchan's order for an *in camera* review of privileged documents, the General Counsel must initiate proceedings in district court. The General Counsel has the power to take such action, and

need not waste the Board's time and resources by obtaining an unenforceable order purporting to require CNN to comply with Judge Amchan's ruling. Only a district court has the authority to issue such an enforceable order, and the General Counsel's attempt to secure one from the Board should be rejected.

1. Judge Amchan's Order Requiring *In Camera* Submission Of Privileged Documents For His Review Is Improper.

CNN has already submitted a brief explaining why the documents remaining on its privilege log are appropriately designated as privileged, and why a wholesale *in camera* review of those documents by the finder of fact is not warranted. See CNN America, Inc.'s Memorandum of Law Regarding the In-House Counsel Attorney-Client Privilege, attached as Exhibit M to General Counsel's Motion. Judge Amchan's order is improper and unsustainable. CNN will not repeat its arguments here, however, because only a district court – and not the NLRB – has authority to resolve the privilege dispute and order CNN to produce privileged documents.⁵

2. The District Courts Have Exclusive Authority To Enforce Board Subpoenas And To Rule On Privileges Applicable To Documents Sought Pursuant To A Board Subpoena.

The General Counsel must turn to a district court, and not to the NLRB, to seek enforcement of the *in camera* production ruling. Pursuant to the National Labor Relations Act, only the district courts have authority to enforce NLRB subpoenas. See *NLRB v. International Medication Sys. Ltd.*, 640 F.2d 1110, 1116 (9th Cir. 1981) (“Congress granted the district courts

⁵ The General Counsel argues that the Board should take up the privilege issue so that there will be an “agency record” for the district court that ultimately rules on the issue. (See Motion, p. 38.) But because the parties briefed this issue for the Administrative Law Judge, there is already an agency record. Repeating those same arguments to the Board will add nothing of substance to the agency record.

exclusive authority to compel compliance with NLRB subpoenas.”) Judge Amchan recognized this when he instructed the General Counsel to go into district court for enforcement of his order. (April 11, 2008 Trans. at 10846.)

As part of that exclusive authority, the district courts must make rulings on any privilege applicable to documents sought through a Board subpoena, and the district courts cannot delegate that authority to an Administrative Law Judge. The Sixth Circuit opinion in *NLRB v. Detroit Newspapers*, 185 F.3d 602 (6th Cir. 1999), is precisely on point. In that case the respondent filed a petition to revoke a subpoena issued by the Board, claiming that the material sought was protected by the attorney-client privilege or the work product doctrine. The Administrative Law Judge denied the petition, and later ordered the respondent to produce the documents for an *in camera* review. The respondent refused to comply with the order, however. The NLRB then went directly to the district court to seek to enforce the order, but the district court dismissed the matter and delegated back to the Administrative Law Judge the task of resolving the dispute over privilege assertions. The Court of Appeals reversed, concluding that an Article III district court is not permitted to delegate to an Article II court the exclusive authority given to it by Congress to enforce NLRB subpoenas, and may not abdicate the responsibility to make privilege rulings. *Id.* at 605. As the court explained, “Congress specifically reserved to the federal courts the authority to provide for enforcement of subpoenas. We believe it is implicit in the enforcement authority Congress has conferred upon the district court . . . that the district court, not the ALJ, must determine whether any privileges protect the documents from production.” *Id.* at 605-06; *see also International Medication Sys., Ltd.*, 640 F.2d at 1115-16 (challenges to agency subpoenas must be resolved by the judiciary before compliance can be compelled); *Cudahy, Inc.*, 288 N.L.R.B. 968, 974 n. 5 (1988) (according to

Board member Cracraft, district court subpoena enforcement was “the appropriate and customary procedure for resolving” disputed privilege issues and to enforce an Administrative Law Judge’s order to produce documents claimed by respondent to be privileged).

In an effort to avoid the controlling decision in *Detroit Newspapers*, the General Counsel cites a number of cases allegedly supporting its argument that an Administrative Law Judge may conduct an *in camera* review of privileged documents.⁶ (Motion, p. 27.) But although an Administrative Law Judge may have conducted such a privilege review in those cases, in not one of the cited cases did the court or agency actually consider and decide the issue of whether the Administrative Law Judge possessed the *authority* to do so.⁷ Further, none of the cited cases, no matter how expansively they could be interpreted, support the notion that an Administrative Law Judge can make enforceable rulings on the privileged status of documents reviewed *in camera*. See *Raleys & Indep. Drug Clerks*, 348 N.L.R.B. No. 25 (Sept. 29, 2006) (Board never commented on or considered the legitimacy of the Administrative Law Judge’s *in camera* review of the documents); *Tri-Tech Servs.*, 15-CA-16707 (July 17, 2003) (although Board suggested *in dicta* that an Administrative Law Judge might conduct an *in camera* review, ultimately the District Court decided the issue of privilege); *Cudahy, Inc.*, 288 N.L.R.B. 968 (1988) (Board did not address propriety of Administrative Law Judge’s *in camera* review); *Community Hosps. of Cent. Ca.*, 335 N.L.R.B. 1318 (2001) (Board did not discuss or mention the ALJ’s ruling that

⁶ The General Counsel asserts that *Detroit Newspapers* is not controlling authority. (See Motion, pp. 34-35.) But in the absence of any other authority directly on point, this Circuit Court of Appeals decision should be followed by the Board.

⁷ The closest case the General Counsel found for its position is *Brink’s, Inc.*, 281 N.L.R.B. 468, 470 (1986), in which the Board stated that “[i]nstead of allowing the Petitioner not to produce the documents, the hearing officer should have conducted an *in camera* inspection of the documents to determine whether any of them were subject to the attorney-client privilege.” But *Brink’s* was decided thirteen years prior to the controlling decision in *Detroit Newspapers*.

privileged documents should be submitted to the ALJ for an in camera review).⁸ Thus, none of the cases cited by the General Counsel provide support for applying any rule other than the one handed down in *Detroit Newspapers* – that only a district court has authority to review privileged documents *in camera* and decide issues of privilege.

3. The Concept Of “Exhaustion Of Administrative Remedies” Does Not Apply In These Circumstances.

Even assuming for the sake of argument that Administrative Law Judge Amchan is not prohibited by the holding in *Detroit Newspapers* from reviewing CNN’s privileged documents *in camera*, it would be a waste of the agency’s time and resources to sustain his ruling to this effect.

⁸ The General Counsel cites cases from different contexts for the general notion that an agency official can make preliminary privilege rulings. These cases, cited on pages 37 and 39-40 of General Counsel’s Motion, are unpersuasive for a wide variety of reasons. For example, *Herman Brothers Pet Supply, Inc. v. NLRB*, 360 F.2d 176 (6th Cir. 1966), is superseded by subsequent case law and statute. See *Trinidad Logistics Co.*, 2002 N.L.R.B. LEXIS 384, at *4-5 (June 4, 2002) (Herman superseded by subsequent law). The Board did not approve of or even mention the ALJ’s *in camera* review in *Chromalloy Mining and Minerals*, 238 N.L.R.B. 688 (1978). The court in *Office of Thrift Supervision v. Vinson & Elkins, LLP*, 124 F.3d 1304 (D.C. Cir. 1997), did not uphold an agency’s right to an initial privilege determination, but rather held that the scope of the work product privilege is not reduced simply because it is the government requesting the information. *EEOC v. Lutheran Social Servs.*, 186 F.3d 959, 965 (D.C. Cir. 1999), does not stand for the proposition asserted by the General Counsel, but rather that “expertise as to [attorney-client and work product] privileges resides in the federal courts.” The General Counsel’s citations to *Upjohn Co. v. United States* 449 U.S. 383 (1981), and *In re Boileau*, 736 F.2d 503 (9th Cir. 1984), actually undercut the General Counsel’s argument because in these cases the initial privilege determinations were made in federal court. The remaining cases cited by the General Counsel, *United States v. AT&T*, No. 74-1698 (D.D.C.), *In re Amoxicillin Patent & Antitrust Litigation*, MDL No. 328 (D.D.C.), *Southern Pacific Comm’n Co. v. AT&T*, No. 78-0545 (D.D.C.) and *In re Microsoft Corp. Antitrust Litigation*, MDL No. 1332 (D.Md), are unpublished and unavailable decisions that are merely cut and pasted from the resume of the special master in the *Vioxx* case. See *In re: Vioxx Products Liability Litigation*, 501 F. Supp. 2d 789, 792 (E.D. La. 2007). Other cases mentioned by the General Counsel are so far afield that CNN wonders why they were cited. See *United States v. Smith*, 123 F.3d 140 (3d Cir. 1997) (court discussed the legality of denying access to sealed sentencing memorandum used during a grand jury hearing); *Reisman v. Caplin*, 375 U.S. 440 (1964) (addressing the legality of compelling accountants to appear and produce audit reports, work papers and correspondence).

Because only a district court may enforce a subpoena, any ruling that the Board or Judge Amchan might make that certain documents must be produced by CNN and reviewed by the ALJ is not enforceable; the General Counsel would have to go into district court to force CNN to comply with such a ruling. The entire request that the Board “sustain” Judge Amchan’s order for an *in camera* review is pointless and a waste of valuable agency resources. The parties will end up in the district court, which is exactly where Judge Amchan and CNN have told the General Counsel to bring this matter. There are no further administrative remedies for the General Counsel to “exhaust” – Judge Amchan issued an order requiring CNN to produce documents for *in camera* review, CNN refused to comply with that improper order, and the Board has no enforcement power to provide the General Counsel with the remedy it seeks. Indeed, CNN has agreed to waive any exhaustion of administrative remedies argument, making the entire issue moot.

The General Counsel nonetheless argues that administrative remedies have not been exhausted, and a district court does not yet have jurisdiction over this dispute, because the Board has not issued a ruling on the propriety of Judge Amchan’s order regarding *in camera* production of documents, and there has been no finding of “guilt” on the part of CNN for refusing to comply with that order. The General counsel cites *NLRB v. Duval Jewelry Co.*, 243 F.2d 427 (5th Cir. 1957) (*see* Motion at 33, n.35.), but the reliance on this case is badly misplaced. First, this case was overruled by the Supreme Court – and not on “other grounds,” as the General Counsel’s citation states, but on directly relevant grounds. In the Supreme Court’s decision, *NLRB v. Duval Jewelry Co.*, 357 U.S. 1 (1958), the Court reversed the lower court’s holding that the Board – and not a hearing officer such as an Administrative Law Judge – must rule on the enforceability of a subpoena before the General Counsel could seek to enforce it in district court.

Id. at 7-8. When a hearing officer considers and denies a respondent's petition to revoke a subpoena, and the respondent still refuses to comply with the subpoena, the General Counsel may go to district court to seek to enforce the subpoena; no further proceedings are required before the district court may exercise its jurisdiction over the matter. *Id.* The General Counsel's citation to *Lewis v. NLRB*, 357 U.S. 10, 13 (1958), is similarly wrong. The Court in *Lewis* again rejected the argument that the Board had no authority to delegate the power to rule on petitions to revoke subpoenas, and allowed district court enforcement proceedings to take place following the trial examiner's denial of the petitions to revoke. Likewise, in this case, the Administrative Law Judge has ordered CNN to produce documents to him for review, and CNN has refused. Under the holdings of *Duval* and *Lewis*, the General Counsel now has the ability to proceed in district court, and no further "exhaustion" is required.

4. The General Counsel Has Authority To Initiate District Court Enforcement Proceedings, And Need Not Seek An Order From The Board "Sustaining" Judge Amchan's Ruling.

The National Labor Relations Act provides that, in the case of a party's refusal to obey a Board-issued subpoena, "any district court of the United States . . . upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered." 29 U.S.C. § 161(2) (2000) (emphasis added). The General Counsel has the power to make an "application by the Board" for an enforcement proceeding under Section 161(2). See *NLRB v. International Medication Sys., Ltd.*, 640 F.2d 1110, 1115-16 (9th Cir. 1981) ("When the respondent refused to comply with the subpoena, the general counsel could have sought judicial enforcement."); *Raleys & Indep. Drug Clerks*, 348 N.L.R.B. No. 25, 147-48 (Sept. 29, 2006) (the General Counsel went directly to the district court to "trigger[] an ancillary enforcement proceeding.") No case decision, statute, or rule suggests that the General Counsel must make an

intermediate filing with the Board, or somehow obtain Board “approval” or “authority” before proceeding to district court.

The General Counsel egregiously mis-cites a Ninth Circuit decision, *Wilmot v. Doyle*, 403 F.2d 811 (9th Cir. 1968), for its assertion that a federal district court has no jurisdiction to enforce a Board subpoena without approval from the Board, because the General Counsel has no “statutory authority to seek to judicially enforce Board subpoenas.” *Wilmot* involved an instance in which the respondent (a union local) sought to go into district court to enforce a subpoena issued by the Board on its behalf. The trial examiner, and not the Board, attempted to initiate the district court proceedings on behalf of the union. The Ninth Circuit held that this procedure was improper. According to NLRB Rule 102.31(d), the General Counsel (and not the trial examiner) must initiate such proceedings in the name of the Board but on relation of the private litigant. *Id.* at 815. The Board had no authority under the Act to delegate that responsibility to the trial examiner. *Id.* However, the Ninth Circuit court noted that “*the Board conferred upon the General Counsel the authority to institute subpoena enforcement proceedings ‘in the name of the Board.’*” *Id.* at 813 n. 4 (emphasis added). Thus, *Wilmot* actually *defeats* the General Counsel’s argument that it does not have authority in the name of the Board to seek district court enforcement of Judge Amchan’s ruling.

Even if the General Counsel did not by regulation have the authority to initiate district court enforcement proceedings without first obtaining sign-off from the Board, it now has that authority pursuant to a delegation made by the Board in December of 2007. As explained in NLRB Release R-2653, dated December 28, 2007, “Anticipating a loss of two members when Congress adjourns in January, the National Labor Relations Board has unanimously decided to temporarily delegate to the General Counsel authority on all court litigation matters that

otherwise would require Board authorization.” Accordingly, the General Counsel cannot protest that it has no authority to pursue enforcement proceedings in district court.

C. **The General Counsel Has Not Been Hindered In The Presentation Of Its Case In Chief.**

The General Counsel claims that CNN’s refusal to comply with Judge Amchan’s order to turn over privileged documents for *in camera* review, and the General Counsel’s lack of access to payroll records, have “severely hindered” the presentation of the Board’s case in chief. (Motion, p. 3.) That is simply untrue. The trial proceedings in this matter have not been delayed. Except for the payroll information that CNN has offered to work with the General Counsel to provide, there has not been a single instance in the trial where the General Counsel needed a document to present its case but which it did not already have or which CNN did not agree to produce.

The General Counsel also asserts that, absent compliance by CNN with Judge Amchan’s rulings, the Board will not be able to rest its case in chief, thereby delaying closure of the record and a decision by Judge Amchan. (Motion, p. 3.) However, Judge Amchan has made clear that he will not hold open the record or put off issuing a decision merely because the General Counsel thinks it is entitled to production of more documents than the hundreds of thousands already provided. He instructed the General Counsel that, if the Board believes there is information it still needs from CNN, it should go to district court and try to get it. The General Counsel has elected not to institute such proceedings, and having made that election, cannot point to CNN as the cause of any alleged “delay.”

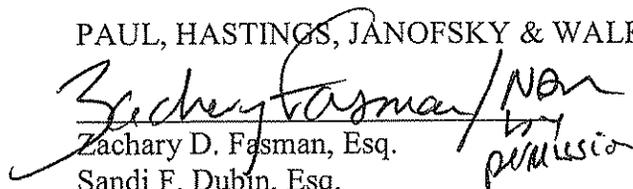
III. CONCLUSION

The Motion filed by the General Counsel is procedurally improper, unnecessary, and a misrepresentation of the state of the trial proceedings. Accordingly, CNN respectfully requests that the Board deny the Motion and strike it in its entirety.

DATED: April 28, 2008

Respectfully submitted,

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One CNN Center
Atlanta, GA 30303

**COUNSEL FOR RESPONDENT
CNN AMERICA, INC.**

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

CNN AMERICA, INC. AND TEAM VIDEO SERVICES, LLC,
JOINT EMPLOYERS

and

Case 5-CA-31828

NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES &
TECHNICIANS, COMMUNICATIONS WORKERS OF AMERICA,
LOCAL 31, AFL-CIO

and

CNN AMERICA, INC. AND TEAM VIDEO SERVICES, LLC,
JOINT EMPLOYERS

and

Case 5-CA-33125
(formerly 2-CA-36129)

NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES &
TECHNICIANS, COMMUNICATIONS WORKERS OF AMERICA,
LOCAL 11, AFL-CIO

AFFIDAVIT OF SERVICE

Karen C. Davis being duly sworn, deposes and says as follows:

1. I am over 18 years of age, am not a party to this proceeding, and am employed by the law firm of Paul, Hastings, Janofsky & Walker LLP, 875 15th Street, N.W., Washington, D.C. 20005.
2. On the 28th day of April, 2008, I filed, by hand delivery, an original and eight copies of CNN America, Inc.'s Response In Opposition to and Request to Strike the General Counsel's Motion to Bifurcate and to Expediently Sustain the ALJ's Rulings, with exhibits attached thereto, with the National Labor Relations Board, c/o Executive Secretary Lester A. Heltzer, 1099 14th St. N.W., Washington, D.C. 20570-0001.

3. On the 28th day of April, 2008, I served three true and correct copies of CNN America, Inc.'s Response In Opposition to and Request to Strike the General Counsel's Motion to Bifurcate and to Expediently Sustain the ALJ's Rulings, with exhibits attached thereto, by hand delivery, on the following:

Judge Arthur J. Amchan
NLRB - Division of Law Judges
1099 14th Street, N.W.
Washington, D.C. 20570

4. On the 28th day of April, 2008, I served one true and correct copy of CNN America, Inc.'s Response In Opposition to and Request to Strike the General Counsel's Motion to Bifurcate and to Expediently Sustain the ALJ's Rulings, with exhibits attached thereto, by overnight mail, on the following:

Peter Chatilovicz, Esq.
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815 Connecticut Avenue, N.W.,
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Attorneys for Team Video Services, LLC

Brian Powers, Esq.
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Meyer, Suozzi, English & Klein, P.C.
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Communications Workers of America, District 2
c/o Mark Wilson, Esq.
17000 Science Drive, Ste. 210
Bowie, MD 20715

National Association of Broadcast Employees
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Carol A. Baumerich, Esq.
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National Labor Relations Board
Region 5 – Washington Resident Office
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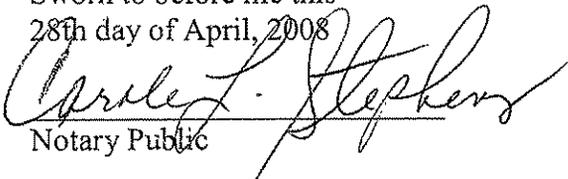
Regional Director Wayne R. Gold, Region 5,
National Labor Relations Board, Region 5
Office,
103 South Gay Street,
8th Floor
Baltimore, MD 21202

Dorothy C. Foley, Esq.
Allan Rose, Esq.
National Labor Relations Board
Region 2 – New York Resident Office
26 Federal Plaza – Room 3614
New York, NY 102789



Karen C. Davis

Sworn to before me this
28th day of April, 2008



Notary Public

Carole L. Stephens
Notary Public, District of Columbia
My Commission Expires 2-14-2010

EXHIBIT A



An AOL Time Warner Company



Benefits and Beyond

Be a part of the AOL Time Warner Mission:

To become the world's most respected and valued company by connecting, informing and entertaining people everywhere in innovative ways that will enrich their lives.

CNNA Exhibit
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TURNER

HEALTH/WELFARE BENEFITS

AOL Time Warner Group Health Plan – Provides comprehensive point-of-service ("POS") or HMO medical coverage to benefits-eligible employees. Benefits vary based on programs available in specific geographic areas. Medical coverage includes prescription, mental health/substance abuse and vision benefits. Eligible dependents include spouse, same sex domestic partner and children up to age 21 (can be extended to age 26 with proof of full time student status).

Dental Insurance – TBS offers one dental plan, the Aetna Freedom-Of-Choice, which provides coverage for preventative and restorative care. Eligible dependents include spouse, same sex domestic partner and children up to age 21 (can be extended to age 26 with proof of full time student status).

Basic Life Insurance – TBS provides benefits-eligible employees life insurance in the amount of 2x covered compensation, up to a \$1,000,000 maximum, at no cost.

Group Universal Life Insurance ("GUL") – GUL is an optional term life program that allows the purchase of additional life insurance for yourself, spouse, same sex domestic partner and children.

Basic Accidental Death & Dismemberment ("AD&D") Insurance – TBS provides benefits-eligible employees AD&D insurance in the amount of 2x covered compensation, up to a \$1,000,000 maximum at no cost.

Short-Term Disability ("STD") Coverage – TBS provides benefits-eligible employees STD benefits that continue base salary if work is missed due to illness, injury or maternity for an extended period of time. Benefits may commence as of fifth day of absence and provide 100% of base salary for as long as medically unable to perform duties of own job, up to a maximum of 13 weeks.

Basic Long-Term Disability ("LTD") Insurance – TBS provides benefits-eligible employees a LTD program at no cost that ensures a continuing monthly income during a prolonged illness or injury. If deemed medically unable to perform the duties of own job after qualification period (13 weeks), LTD benefit provides 60% of the first \$100,000 of annual earnings.

Supplemental LTD Insurance – Provides 60% salary continuation to eligible employees with base pay exceeding \$100,000 and up to \$500,000 if medically unable to perform duties of own job for an extended period due to illness or injury.

Flexible Spending Accounts ("FSA") – TBS offers two FSAs. The Health Care FSA allows benefits-eligible employees to set aside up to \$5,000 annually on a pre-tax basis to reimburse qualified health care expenses like medical insurance deductibles or co-pays that are out-of-pocket expenses. The Dependent Care FSA allows benefits-eligible employees to set aside up to \$5,000 annually on a pre-tax basis to reimburse certain dependent care expenses like day care.

Transportation Reimbursement Account ("TRA") – The TRA allows you to set aside pre-tax dollars from your salary to be used for reimbursement of certain commuting expenses such as mass transit and parking costs.

Business Travel Accident ("BTA") – The company provides BTA coverage at no cost that will pay a benefit if you die or are seriously injured in an accident while traveling on company business. BTA coverage is equal to ten times your base pay, up to a \$750,000 maximum when traveling in a non-war zone or \$1,000,000 if traveling in a war-zone.

International SOS Travel Assistance – International SOS Assistance provides travel assistance services to Turner employees, spouses and children, while traveling on business or pleasure. The services include emergency medical treatment, telephone advice and referrals, full-scale evacuations by private air ambulance and other travel assistance, subject to program guidelines.

WWW.TURNERJOBS.COM

Effective 5/1/02

CNNA-PROD0024835

FINANCIAL BENEFITS

ADL Time Warner Savings Plan – Generous 401(k) plan offered by the Company. After three months of employment, regular full-time and part-time employees can contribute from 2% to 15% of eligible compensation on a pre-tax basis. After one year of service, TBS matches 160% on the first 4% of employee contributions. You vest (earn ownership rights) to the employer matching contribution over five years of service. The Plan offers a diverse choice of investment options with daily investment valuation.

Stock Options – Annually, the company may allocate stock options to eligible employees and new hires. AOL Time Warner stock options represent a component of the Company's overall employee rewards program. Stock options directly link employee rewards to the overall performance of AOL Time Warner – through the potential increase in value of its stock. As overall Company performance improves, the potential value of stock options increase.

Employee Stock Purchase Plan ("ESPP") – Any employee may purchase AOL Time Warner Inc. Common Stock through regular and convenient payroll deductions. TBS will pay all administrative fees associated with stock purchases made through the ESPP.

WORK/LIFE BENEFITS

Turner Work/Life Solutions – Confidential and complimentary program provided by TBS to help you achieve better balance between your work and family life. The three components of this program are:

Employee Assistance Program: Provides up to eight counseling visits per event per year at no charge for issues relating to work stress, marital/relationship problems, family and parenting, anxiety or depression, anger management, alcohol/drug dependencies, coping with change, and grief/bereavement.

Life Resources: Provides free child and elder care referrals by evaluating your current situation, assessing your needs and exploring your options. Life Resources customer care consultants can also send you packets loaded with information on adoption, college issues such as funding and scholarships, teen issues, child development, preparing for parenthood, and much more.

Legal and Financial Consultation Services: Attorneys and financial consultants are available to consult with you by phone or in-person on services such as family law, injury related matters, real estate matters, budget planning, debt consolidation, saving for retirement and purchasing a car. The phone and initial in-person consultation are complimentary. Discounts are available for additional services rendered.

Tuition Reimbursement Program – After one year of service, active, full-time domestic benefits-eligible employees may receive reimbursement for 50% of qualifying expenses, up to \$5,000 per calendar year. Active, part-time domestic benefits-eligible employees may receive reimbursement for 50% of qualifying expenses up to \$3,000 per calendar year.

AOL Time Warner Academic Award Program – Established to encourage and reward the academic performance for children of AOL Time Warner employees, the program provides scholarships ranging from \$2,000 - \$5,000 towards the cost of post-secondary education. Scholarships may be used for undergraduate courses at accredited colleges and universities or any other approved institution of higher learning, including vocational-technical schools.

Adoption Assistance – Employee reimbursement for certain adoption-related expenses, up to a maximum of \$5,000 per adopted child.

Turner Athletic Club – On-site, full-service fitness center located at the CNN Center in Atlanta. Members have access to an expanded cardio area featuring numerous treadmills, stairmasters, rowing equipment, bikes and elliptical cross trainers; squash courts; indoor heated pool; indoor track and state of the art free weight and strength training equipment. TAC offers a wide variety of classes to accommodate all fitness levels.

Effective 5/1/02



Back-Up Child Care Reimbursement – TBS provides eligible employees up to \$250 annual reimbursement (five days of up to \$50 per day for children through age 12) when regular child care facility or provider is not available. Eligible expenses include childcare during business travel, during overtime work situations, in the event regular facility is unavailable or child is ill and cannot attend regular day care.

Turner Second Generation – NABYC accredited company-owned childcare center available to Atlanta based employees. Care is available for children from six weeks through a GA Pre-K classroom. TSG is open 6:30am - 7:30pm (11:30 p.m. for periodic emergency backup care support with 48 hour notification), Monday through Friday. Tuition assistance is available for qualified employees earning less than an established minimum family income.

AOL Time Warner Children's Center – Backup childcare facility available to New York based TBS, Inc. employees or employees traveling to New York on business. Access to no cost backup care subject to availability.

ConSern Education Program – Program is designed to create and provide alternatives for affordable education for Turner employees and family members including, spouse, children, brothers, sisters, nieces, nephews and grandchildren. Offers numerous financing options and services to meet needs.

MetPAY – Personal property insurance program allows employees to obtain quotes and coverage for auto, home and other types of insurance. Enrollment provides access to special group rates and hassle free payment options.

Lunch and Learn Education Seminars – Hour-long interactive workshops on a wide range of topics including stress management, parenting, financial planning, health and nutrition. Facilitated by a subject matter expert, who makes a brief presentation, answers questions and guides the discussion.

Wellness Screenings – Periodic on-site wellness screenings including mammograms, flu shots, cholesterol, bone density and allergy. As well as access to on site Red Cross blood drives.

Anniversary Gifts – Employees may select a service award when they reach the following milestones: 5, 10, 15, 20, 25 and 30 years of employment.

DISCOUNTS AND OTHER PROGRAMS

Insider's Advantage – The premier provider of exceptional discounts to AOLIW employees, friends and family members. Products and services may include savings on hotels, resorts, airfare, electronics, jewelry, food, entertainment, furniture and more!

Professional Development Center – Company wide training available to all employees (i.e. computer training, management training and other professional development courses).

Matching Grant Program – The Time Warner Foundation matching Grant program supports two categories: Education and Art & Culture. Eligible individuals may contribute to either one or both categories; the foundation will match each dollar on a one-for-one basis up to a total of \$500 per employee per year.

Paid Time Off – Generous paid time off bank based on length of service.

Sports Tickets – Vouchers available to Atlanta-based employees for Braves, Hawks and Thrashers tickets.

www.turnerjobs.com – Visit our website to learn more about the Company and our full-time opportunities, trainee programs, internships, and temporary staffing programs.

This document presents the highlights of benefits covering regular employees. (Detailed provisions, including eligibility and coverage, may differ for some employees.) It does not contain all details. Official information on benefit or program provisions may be found in the various applicable plan documents, insurance contracts, Summary Plan Descriptions and Human Resource Policy Manuals.

EXHIBIT B

Turner New Employee Orientation

YOUR BENEFITS

CNNA Exhibit
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CNNA-PROD0015455

Who is Benefits Eligible?

- Regular employee
 - Work at least 312 hours per quarter
- Part-time employee
 - Work at least 312 hours per quarter
- Eligible dependents
 - Spouse
 - Same-sex domestic partner
 - Children under the age of 21 (26 if enrolled as a full-time student)
- Coverage effective one month after date of hire

Making Benefit Elections

- Enroll within first month of employment
- Utilize Benefits OnLine
 - Interactive enrollment application available via employeeConnection
 - Access using your social security number, birth date and birth year
 - Print confirmation statement
 - Employment data must be entered into HRIS system for access
 - Don't be alarmed—approximately two to three weeks after DOH
 - If no access after one month—submit manual enrollment form to TBS Employee Benefits department
- Select primary care physician (PCP) via Benefits Online or by calling insurance carrier's member services number

Changing Your Elections

- Life Status Change (LSC)
 - LSC benefit election changes must be submitted within 60 days of the qualifying event by utilizing Benefits Online via Orbit
 - Marriage or divorce
 - Establishment or termination of same sex domestic partner relationship
 - Birth or adoption of child
 - Death of dependent
 - Change in dependent status of a child
 - Gain or loss of insurance coverage
 - Relocation

- Open enrollment
 - Each fall you may change your benefit elections to be effective the following January 1

Benefits Options

- Medical
 - Prescription, Mental Health/Substance Abuse and Vision
- Dental
- Flexible Spending Accounts
- Life Insurance
- Accidental Death and Dismemberment (AD&D)
- Disability Coverages
- 401k
- Company Stock
- Work/Life

Medical Options

- Time Warner Group Health Plan
 - Point of Service Plan (POS)
 - Health Maintenance Organizations
 - EPO= self-insured national HMO
 - HMO= insured regional HMO
 - United Healthcare members can view, print and download their Explanation of Benefits (EOB) online by logging in or registering at www.myuhc.com
 - Vision Service Plan (VSP) vision benefit bundled with both medical options

POS Plan

IN-NETWORK BENEFITS

- Visit primary care physician
- Receive HMO-style benefits
 - Co-pay = \$15
 - After co-pay, most care covered 100%
 - Covers treatment of illness and injury except for specified wellness care
- Mental Health/Substance Abuse
 - Co-pay = \$15, co-insurance 90%
 - 50 annual outpatient visits

OUT-OF-NETWORK BENEFITS

- Visit physician of your choice
- Receive indemnity-style benefits
 - Deductible = \$350/ind. and \$700/family
 - After deductible, pays 70% R&C
 - Covers treatment of illness and injury except for specified wellness care
- Mental Health/Substance Abuse
 - Separate deductible, co-insurance 50% of reasonable and customary
 - 50 annual outpatient visits

HMO/EPO Plans

- In-network benefits only
- Utilize contracted network of physicians and hospitals
 - Primary care physician (PCP coordinates healthcare)
 - Benefits may vary by Insurance Carrier
 - Review Time Warner Health Programs Fact Book

• EPO: Co-pay = \$10. Specialist co-pay \$15

• After co-pay, care covered 100%

• HMO: Varies by local insurance carrier

■ Mental Health/Substance Abuse

- EPO: In-network benefits only. co-pay = \$15.
 - Inpatient = 50 days per year.
 - outpatient = 50 annual visits per year
- HMO: Varies by local insurance carrier

Refer to Time Warner Health Program Fact book for further information

Prescription Benefits

POS and EPO programs only	
Deductible	\$50/150
Coinsurance	80%
Retail – 30 days Brand Generic	\$20 min/\$40 max \$10 min/\$40 max
Mail Order – 90 days Brand Generic	no deductible \$40 \$20

Access 55 Medical Option

- For employees leaving the company who would like to extend coverage until they are Medicare-eligible
 - Age 55 to 65
 - Minimum ten years of service
 - Employees pay full cost of coverage
 - No company subsidy
 - One-time enrollment opportunity upon termination

Vision Coverage

- Bundled with medical coverage, Vision Service Plan (VSP)

IN-NETWORK BENEFITS

- Vision exam per calendar year
 - Co-pay = \$15
- Lenses per calendar year
 - Co-pay = \$15
- Frames every other calendar year
 - Co-pay = \$15
 - \$130 maximum allowance
- Contacts every calendar year
 - Co-pay = \$30 (medically necessary)
 - \$105 allowance for elective contacts
- VSP Lasercare Program
 - Laser surgery discount only at VSP network surgical center

OUT-OF-NETWORK BENEFITS

- Vision exam per calendar year
 - Reimburse up to \$45
- Lenses per calendar year
 - Max reimbursement \$125
- Frames every other calendar year
 - Reimburse up to \$45
- Contacts every other calendar year
 - Reimburse up to \$210 (medically necessary)
 - \$105 allowance for elective contacts

MetLife Dental Plan

IN-NETWORK BENEFITS

- Annual Deductible
 - 0%
- Preventative
 - 100%
- Restorative
 - 80%
- Major
 - 60%
- Orthodontia
 - 50% (\$1500 lifetime max)
- Calendar Year Max
 - \$1,500 (non-ortho)

OUT-OF-NETWORK BENEFITS

- Annual Deductible
 - \$50 individual
 - \$150 family
- Preventative
 - 80% (subject to R&C)
- Restorative
 - 80% (subject to annual deductible; R&C)
- Major
 - 50% (subject to annual deductible; R&C)
- Orthodontia
 - 50% (\$1500 lifetime max)
- Calendar Year Max
 - \$1,500 (non-ortho)

Flexible Spending Account (FSA)

- Allow before-tax deduction of non-reimbursed health care expenses

Health Care FSA

- Typical expenses
 - Deductibles and co-payments
 - Charges above R&C
 - Other non-reimbursed health care
- Eligibility
 - You and your IRS-eligible dependents
- 2004 annual maximum is \$5,000
 - Annual election pre-funded by TBS

Dependent Care FSA

- Typical expenses
 - Nursery schools, pre-kindergarten and day care
 - In-home care
- Eligibility
 - Children under age 13
 - IRS eligible (including parent living with you)
- 2004 annual maximum is \$5,000

Healthcare FSA

- Over the Counter (“OTC”) Reimbursement
- Requires manual submission of FSA claim form

Eligible

- Cold & allergy medicine
- Pain relievers, i.e. aspirin
- Antacids
- Other drugs that treat medical conditions

Ineligible

- Dietary Supplements
- Items that merely promote general health, i.e. vitamins

FSA Administration

- Automatic claim rollover
 - Deductibles, copays, coinsurance
 - All programs except regional HMOs
- Submit claim
- Reimbursed TAX FREE
- IRS Rules For FSAs:
 - "Use it or lose it"
 - Forfeited funds return to the Plan
 - No "mix-and-match"
- Elect FSA Amounts Carefully!
 - Consult your tax advisor

Transportation Reimbursement Account (TRA)

- Pre-tax reimbursement of commuting expenses
 - \$100/month mass transit
 - Buses, trains and van pool used to and from work
 - Eligible cities include: Boston, Columbus OH; Los Angeles, New York, Philadelphia, San Francisco
 - \$190/month parking
 - Worksite or mass transit parking expense associated with commute
- Elections
 - Open enrollment
 - Mid-year changes
 - One change per period effective the following day
 - January 1-April 30
 - May 1-September 30
 - October 1-December 31

Life Insurance

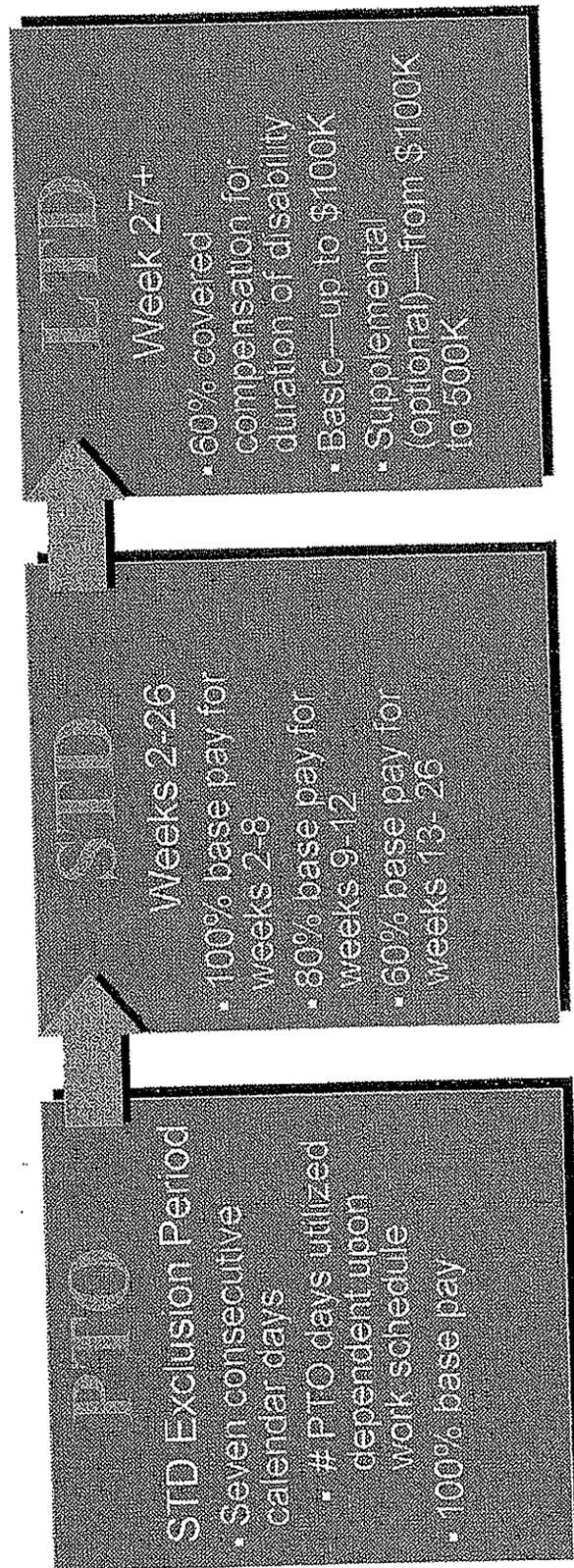
- Basic Life Insurance
 - Generous company-paid benefit
 - 2x covered compensation
 - \$1 million maximum
- Optional Group Universal Life Program
 - Employee pays full cost of GUL coverage
 - Individual term life policy
 - Employee, spouse/domestic partner and child
 - Enrollment materials mailed to your home address
 - Enroll within 60 days of solicitation
 - Questions—call Marsh@WorkSolutions at 800-557-0742

Accidental Death & Dismemberment (AD&D)

- Basic AD&D Insurance
 - Generous company-paid benefit
 - 2X covered compensation
 - \$1 million maximum

IDM Program Design

- Absence management program customized to TBS culture that integrates administration of Short-Term Disability, Long-Term Disability and Family Medical Leave Act



Long-Term Disability (LTD)

- Basic LTD
 - Company-provided benefit
 - Covers up to \$100,000 covered compensation
 - Base salary + bonus and commissions paid in previous year
 - 60% income continuation
 - Same occupation coverage
 - 26-week exclusion period
- Basic LTD premium taxation election
 - Employee pays income tax on company-paid basic LTD premium
 - Benefit taxation changes to an after-tax basis
 - Three-year IRS look back
 - Consult your tax advisor
 - Voluntary election at time of hire
- Supplemental LTD
 - Voluntary coverage on covered compensation between \$100,000-\$500,000
 - 60% after-tax income replacement
 - Same occupation coverage
 - Pre-existing conditions
 - LTD coverage not available for the first year of employment for illness or injury treated in six months prior to hire

IDM Administrative Procedures

- Employee
 - Notification of disability onset
 - TBS manager
 - Unum client service # 866-860-2059
 - Notify manager/HR of return to work
- Unum Provident
 - Validate claim with health care provider
 - Determine benefit duration
 - Manage all aspects of claim administration

Claims Administration Outside IDM Scope

- Worker's Compensation (Risk Management)
- Jury Duty
- Military Leave
- Personal Leave
- Bereavement Leave

Time Warner Savings Plan

- 401(k) Plan
- Eligibility
 - Three months of service—employee contributions
 - 2%-20% before-tax employee contribution
 - One year of service—company-matching contributions
 - 160% company match on first 4% of employee contributions
- TBS rehire or Time Warner transfer
 - Contact TBS Employee Benefits to inquire about immediate eligibility
- Rollovers immediately eligible
 - From another qualified plan by calling Fidelity at 800-354-3435
- Enrollment materials will be mailed to home address

Employee Stock Purchase Plan (ESPP)

- Immediately eligible to participate
 - Enroll at any time
- Monthly Time Warner stock purchase
 - Change ESPP payroll deduction at any time
- TBS pays Salomon Smith Barney administrative fees associated with stock purchases made through ESPP payroll deductions
 - Review account online at www.Benefitaccess.com or contact Salomon Smith Barney at 800-367-4777

Time Warner New Hire Stock Option Program

- Financial stake in the future of Time Warner
 - Corporate performance impacts stock price, potentially enhancing stock options value
- Number of options allocated determined by:
 - Position grouping/level of job responsibility
 - Salary level
- Quarterly new hire stock option administration
 - Grant date and price determined by timing of new hire information keyed into HRIS system
- "Sharing Success" brochure and personalized new hire stock option program provisions
 - Mailed to employee home address within first 60 to 90 days of hire
- **STOCK OPTION INFORMATION IS CONFIDENTIAL!**
 - Considered compensation—do not discuss with other employees

Turner Work/Life Solutions

- Available to employees and members of their household
 - 1-800-888-2273 or www.magellanassist.com
- Employee Assistance Program
 - Confidential free counseling/support with personal issues
 - Up to eight visits per event per year
- Life Resources
 - Complimentary child and elder care referrals
 - Adoption, college, parenting and other educational information
- LawLine Legal Services and Financial Consultation Program
 - Free initial consultation
 - Assistance with issues such as debt management, financial planning, estate planning, civil cases and real estate
 - Discounts available for additional services

Adoption Assistance

- Receive up to \$5,000 per adoption
- Up to eight weeks paid leave for primary caregiver
- Submit claim to TBS Employee Benefits Department
 - Apply within 90 days of finalized adoption

Backup Childcare Assistance

- Reimburse child care expenses when regular child care is unavailable
 - Up to \$50 per day
 - Up to five days per calendar year
 - For children 12 and under
 - Submit claims to TBS Employee Benefits Department

Tuition Reimbursement Program

- May be eligible to participate in one year
 - Active, full-time and part-time domestic benefits-eligible employees
- Applicants must acquire Management and Benefits approval prior to enrollment
- Must complete and submit grades prior to reimbursement
 - Reimburse up to 50% of qualifying expenses
 - Full-time employees—\$5,000/calendar year
 - Part-time employees—\$3,000/calendar year

ConSern Education Program

- Obtain affordable student loans
 - Available to you and your family members
 - Borrow up to \$20,000 annually for education-related expenses
 - Rates based upon credit worthiness
 - No application fee
- On-line college and scholarship search
- Federal Loan Assistance
- 800-SOS-LOAN (800-767-5626)
- www.consern.com
 - Password = sosloan

Workplace 529 College Savings Plan

- Savings vehicle maintained under IRS section 529
- After-tax contributions grow tax-free if assets used for qualifying expense
- Use the proceeds at most accredited colleges and universities nationwide
- Fidelity UNIQUE College Investing Plan
 - Sponsored by the State of New Hampshire and managed by Fidelity Investments
- Convenient after-tax payroll deductions (\$50 monthly minimum)
 - \$30 annual account fee and \$1,000 start-up minimum waived
- Choose from a variety of investment options
- Request Workplace Enrollment kit through 800-544-2270 or www.fidelity.com/goto/workplace529.com

Time Warner Children's Center

Time & Life Building, 1271 Avenue of the Americas

- Backup childcare facility available to New York based TBS, Inc. employees
 - Children ages six months to twelve years
- Hours of Operation
 - 8:30 a.m-6:00 p.m, M-F
 - 212-522-6500
- Employees must register for the service
 - Process takes approximately one week
 - Access to no-cost backup care subject to availability

MetPay

- MetPay is a personal property insurance program that allows employees to obtain quotes and coverage for auto, home and other types of insurance
- Enrollment provides access to special group rates and option for payroll deduction
- For additional information contact
 - 800-438-6381
 - www.metpay.com

Worker's Compensation

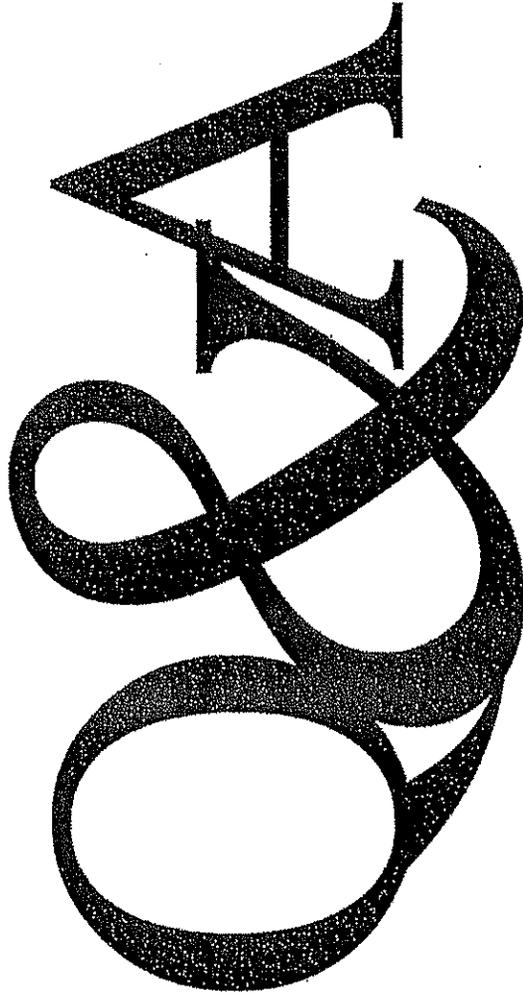
- Worker's compensation is income continuation if an employee is injured at work—the employer may pay medical and rehabilitation expenses within the limits of the law
 - All medical treatment should be administered by a licensed physician approved by the Company
 - Employees should report all work related injuries and incidents immediately to their supervisor and to Risk Management within 24 business hours
 - LA, NY, DC offices should report accidents or injuries to their local Human Resource Department
 - Contact Risk Management at 404-827-4838

Business Travel Accident

- Company-provided benefit if seriously injured or death while traveling on company business
 - 10x annual earnings
 - Non-war zone areas, \$750,000 maximum
 - War zone areas, \$1,000,000 maximum
 - Must be benefits eligible

Worldwide Emergency Travel Assistance

- Worldwide Emergency Travel Assistance
 - Can be used domestically—100 miles from home address
 - 800-523-6586 or collect 215-245-4707—24/7/365
- Medical Benefits
 - Information on closest English-speaking hospital or doctor
 - Medical review of local facilities
 - Medical evacuation if local facilities inadequate
 - Repatriate if needed after release from hospital
 - Transport family member if hospitalized
 - Ship prescription replacement does not pay medical bills
- Personal Benefits
 - Travel emergency
 - Assistance with embassy or consulate
 - Theft
 - Legal
 - Translator
 - Evacuation if civil/political unrest or natural disaster



CONTACT INFORMATION

- TBS Employee Benefits Department
 - 404-827-2006
 - 877-827-2006 (toll free)
 - Email: TBS.Employee.Benefits@Turner.com
 - Instant Message: TBSBenefits (AOL Screen name)

EXHIBIT C

BEFORE THE NATIONAL LABOR RELATIONS BOARD

-----x
In the Matter of:

CNN AMERICA, INC. AND TEAM VIDEO
SERVICES, LLC, JOINT EMPLOYERS,

Respondents,

-and-

Case No.
5-CA-31828

NATIONAL ASSOCIATION OF BROADCAST
EMPLOYEES & TECHNICIANS,
COMMUNICATIONS WORKERS OF AMERICA,
LOCAL 31, AFL-CIO,

Charging Party.

CNN AMERICA, INC. AND Team Video
SERVICES, LLC, JOINT EMPLOYERS

Respondents,

-and-

Case No.
5-CA-33125
(Formerly
2-CA-36129)

NATIONAL ASSOCIATION OF BROADCAST
EMPLOYEES & TECHNICIANS,
COMMUNICATIONS WORKERS OF AMERICA,
LOCAL 31, AFL-CIO,

Vol. 46

Charging Party.

-----x

The above-entitled matter came on for
hearing pursuant to Notice, before ARTHUR J.
AMCHAN, Administrative Law Judge, at National
Labor Relations Board, 120 West 45th Street,
New York, New York, on Monday, April 7, 2008
at 9:30 a.m.

1 case isn't going to finish up until sometime
2 in 2009 the way things are going.

3 What about Mr. Fasman's point, what
4 is it that prevents you from going to District
5 Court.

6 MS. FOLEY: It's my understanding
7 that the people who are handling the District
8 Court work have said that we must exhaust our
9 remedies before the board.

10 MR. FASMAN: I don't think that is
11 right, Judge. There is no exhaustion
12 requirement. If they want to go into District
13 Court while the special appeal is pending
14 before the board, we are not going to raise an
15 exhaustion defense.

16 MS. FOLEY: Very good.

17 JUDGE AMCHAN: That takes care of
18 that.

19 Let me see if I can split the baby --

20 MS. FOLEY: I'm not finished yet,
21 Judge. Going into District Court is the first
22 step.

23 The second step is getting the
24 records and having time to review them. We
25 also would need that. So it's not simply

BEFORE THE NATIONAL LABOR RELATIONS BOARD

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CNN AMERICA, INC. AND TEAM VIDEO
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NATIONAL ASSOCIATION OF BROADCAST
EMPLOYEES & TECHNICIANS,
COMMUNICATIONS WORKERS OF AMERICA,
LOCAL 31, AFL-CIO,

Vol. 47

Charging Party.

-----x

The above-entitled matter came on for
hearing pursuant to Notice, before ARTHUR J.
AMCHAN, Administrative Law Judge, at National
Labor Relations Board, 120 West 45th Street,
New York, New York, on Tuesday, April 8, 2008
at 9:30 a.m.

1 MR. WILLNER: Cutting was offered by
2 January 8th.

3 MS. RINGEL: If we can get the
4 payroll records, we will know who was hired.

5 MR. FASMAN: 500 Pearl Street.

6 We keep hearing about personnel
7 records. We proposed months ago extensive
8 stipulations -- if I may -- we proposed
9 extensive stipulations to Mr. Powers and Mr.
10 Peterson and to the board with lists of
11 employees who were hired and hire dates, on X
12 date and on Y date.

13 The first date and then the date that
14 we say was the appropriate date of the
15 substantial representative conflict.

16 The board has had those for months.
17 Mr. Powers has had those for months, Mr.
18 Peterson has had those for months.

19 We have offered to show the board and
20 Mr. Peterson and Mr. Powers the backup
21 documentation as to how those lists were
22 compiled.

23 We have had no one saying sure, let's
24 do that.

25 You may recall there was some

1 colloquy off the record, I was talking to Mr.
2 Peterson about that before the hearing one
3 day, because I had been talking to Brian
4 Powers about that.

5 We have always been willing to
6 explain and to show how this stuff was
7 derived. I don't intend to go into -- so Ms.
8 Ringel can laugh -- I don't intend to go
9 through how our electronic payroll system
10 works. It's not a problem for us to sit down
11 and stipulate with the board. We have half a
12 day tomorrow, we are happy to do it. We have
13 a short day on Friday, we are happy to do it.
14 We are happy to show you how we reached these
15 lists, we are happy to put the lists into
16 evidence as a joint exhibit or a stipulated
17 exhibit.

18 We offered to do this literally
19 months ago during the January recess. And we
20 worked hard on this.

21 We have a set of stipulations this
22 thick with who was hired which will materially
23 aid this case. We don't have to listen to
24 this stuff.

25 And I've gotten no phone calls back.

1 documents that in fact, the board has and has
2 had for months, Mr. Cutting was offered a job
3 on January 8th, 2004 and he started on January
4 17, 2004.

5 Mr. Diaconu was offered a job in
6 December as an engineer and he declined the
7 offer on January 13, 2004.

8 Those documents were produced, the
9 board has them.

10 That should answer Your Honor's
11 question.

12 JUDGE AMCHAN: I'm not getting into
13 all this stuff about the payroll records, can
14 you check to see what Mr. Willner says is
15 true.

16 MR. FASMAN: Give them Bates numbers.

17 JUDGE AMCHAN: I'm just asking about
18 the two people.

19 MS. RINGEL: Whatever he is referring
20 to, we can look at.

21 The issue is if they have documents
22 that are payroll documents that have this
23 information, obviously we have asked for them.
24 I'm not sure what Mr. Fasman's crack was about
25 laughter, I haven't been laughing, just for

1 the record.

2 MR. FASMAN: Except for that.

3 MS. RINGEL: I beg your pardon?

4 JUDGE AMCHAN: We don't need this.

5 If you can work out the stipulations with
6 regard to all these other people, that's fine.

7 If not, whatever happens, happens.

8 I'm just asking about these two
9 folks. Looking at 270, CNN 270 which is the
10 orientation, Mr. Cutting, as I recall, is on
11 it.

12 MR. FASMAN: He is.

13 JUDGE AMCHAN: Would it be possible
14 for you to check, and if it's clear that Mr.
15 Cutting was hired, then I can draw a line
16 through his name on the complaint.

17 If they're correct that Mr. Diaconu
18 was offered a job and turned it down, if
19 you're satisfied that is not in contest, if
20 there is some issue about it, you don't
21 stipulate. But if it's something that is not
22 in dispute, tell me and my scorecard will be
23 complete.

24 MR. FASMAN: Here are the Bates
25 numbers, Judge.

BEFORE THE NATIONAL LABOR RELATIONS BOARD

-----x
In the Matter of:

CNN AMERICA, INC. AND TEAM VIDEO
SERVICES, LLC, JOINT EMPLOYERS,

Respondents,

-and-

Case No.
5-CA-31828

NATIONAL ASSOCIATION OF BROADCAST
EMPLOYEES & TECHNICIANS,
COMMUNICATIONS WORKERS OF AMERICA,
LOCAL 31, AFL-CIO,

Charging Party.

CNN AMERICA, INC. AND TEAM VIDEO
SERVICES, LLC, JOINT EMPLOYERS

Respondents,

-and-

Case No.
5-CA-33125
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2-CA-36129)

NATIONAL ASSOCIATION OF BROADCAST
EMPLOYEES & TECHNICIANS,
COMMUNICATIONS WORKERS OF AMERICA,
LOCAL 31, AFL-CIO,

Vol. 50

Charging Party.

-----x

The above-entitled matter came on for
hearing pursuant to Notice, before ARTHUR J.
AMCHAN, Administrative Law Judge, at National
Labor Relations Board, 120 West 45th Street,
New York, New York, on Friday, April 11, 2008
at 10:00 a.m.

1 from 1957, and a supreme court case from 1958?

2 MS. FOLEY: Yes.

3 JUDGE AMCHAN: Do you want to hear
4 my somewhat arrogant response?

5 MS. FOLEY: I do.

6 JUDGE AMCHAN: They are a bunch of
7 old cases from two circuits. Totally
8 different circumstances than we have here.
9 That is, you have a deadlocked board that
10 either is unable or unwilling to rule on the
11 special appeal, and I am left with the option
12 of holding the record open until sometime in
13 2009 or '10 or deciding this case that has
14 been pending for four and a half years.

15 I think the situation is sufficiently
16 distinguishable and general counsel ought to
17 seek enforcement anyway. In addition to which
18 CNN has not filed a special appeal with regard
19 to my ruling on the privilege log. And I know
20 that, other things being equal, you don't like
21 to do things piecemeal, but I just think this
22 is an extraordinary situation.

23 And if I get reversed, I get
24 reversed, but I have no intention of holding
25 this case open until sometime next year.