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December 8, 2008

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VIA HAND-DELIVERY

Lester A. Heltzer  
Executive Secretary  
National Labor Relations Board  
1099 14th St. N.W.  
Washington, D.C. 20570

Re: CNN America, Inc. & Team Video Services, LLC  
Case Nos. 5-CA-31828 and 5-CA-33125 (formerly 2-CA-36129)

Dear Mr. Heltzer:

On December 1, 2008, Administrative Law Judge Paul Buxbaum, who had been designated as a “special master” in these proceedings, issued his Report and Recommendations (“R&R”) on certain matters delegated to him by the National Labor Relations Board in its Order of May 30, 2008. *See* 352 N.L.R.B. No. 85 (May 30, 2008).<sup>1</sup> When Judge Buxbaum issued his R&R, the matter was transferred to and continued before the Board. *See* NLRB Rules and Regulations §§ 102.26, 102.31. Because Judge Buxbaum’s R&R closely resembles an administrative law judge’s final decision and recommended order to which exceptions may be filed pursuant to § 102.46 of the Board’s Rules and Regulations, on December 3, 2008, CNN asked the Board to treat the R&R as such a recommended order. CNN requested that, before the Board considers Judge Buxbaum’s recommendations, it be allowed to file exceptions and a supporting brief, just like any party who would be adversely affected by a recommended order.

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<sup>1</sup> As you may recall, in the May 30 Order, the Board granted CNN’s request for special permission to appeal the denial of its petition to revoke the 243-paragraph subpoena issued by the General Counsel and the “similar” subpoena issued by Charging Party Local 31. *See* 352 N.L.R.B. No. 85 (May 30, 2008). The Board concluded that CNN’s objections to the two subpoenas on the grounds of undue burden were “plausible,” and found that an administrative law judge appointed to serve as a special master could most effectively conduct the extensive analysis of that burden and assist the parties in resolving their disputes over the subpoenas. *Id.* slip op. at 2. The Board directed that, if the parties were unable to resolve their disputes, the special master was to make a report to the Board concerning the enforceability of the subpoenas. *Id.*

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On December 5, 2008, Counsel for the General Counsel filed an opposition to CNN's request, seeking to prevent CNN from stating its position on the inappropriateness of Judge Buxbaum's recommendations, or limiting CNN's right to respond to a few pages. There is no conceivable basis for such a request, or for treating Judge Buxbaum's order differently than any other order issued by an Administrative Law Judge. More fundamentally, CNN believes that due process requires that the Board be informed of CNN's views and consider them fully before making a decision to accept or reject Judge Buxbaum's recommendations. CNN is entitled to be heard on the matters of great significance addressed in the R&R, which include the limits of the Board's subpoena power and the sanctity of the attorney-client privilege and work product doctrine. While such issues may be distinct from the merits of the unfair labor practice charges in this proceeding, these important issues certainly cannot be relegated to "subsidiary" status, as the General Counsel contends. Indeed, CNN's petition for special permission to appeal raised a very significant issue to the Board and all litigants before the agency: the proper scope of an electronic discovery "trial subpoena," which in this case involved a trial subpoena containing 243 separate requests for documents and extensive electronic material. The Board has never addressed this issue, and CNN submits that it should do so here. CNN also notes that the enforceability of the subpoena has been briefed at great length by the General Counsel and Local 31, in response to CNN's petition for special permission to appeal, and before District Judge Richard Sullivan in *NLRB v. CNN*, No. M18-304 (S.D.N.Y. 2008). Indeed, CNN submits that the Board needs to understand the relationship between Judge Buxbaum's R&R and the pending civil action, something that is not apparent on its face, and cannot be argued within the minimal page limitations suggested by the General Counsel.

As a matter of public policy, the General Counsel of a federal agency should not be permitted to negate any party's right to be heard in an administrative proceeding. Indeed, aside from having to submit a response to CNN's submission, CNN sees no reason why the General Counsel should be allowed to object at all, much less to dictate to your office and the Board the type of briefing that should be allowed to a litigant before the agency. To be sure, every litigant would like to muzzle its opponent and prevent it from submitting an opposition to a favorable decision. To date, such naked self-interest has not been indulged by the Board or any other federal agency. Accordingly, CNN respectfully requests that the Board grant its original request, and that it be permitted to file on or before January 9, 2009, exceptions to Judge Buxbaum's R&R and a brief in support of the exceptions not in excess of 50 pages.

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Sincerely,

 by   
by permission  
Zachary D. Fasman  
of PAUL, HASTINGS, JANOFSKY & WALKER LLP

ZDF

cc: Dorothy Foley, Esq.  
David Biggar, Esq.  
Brian Powers, Esq.  
Keith Bolek, Esq.  
Ken Willner, Esq.  
Lisa Reeves, Esq.

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

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**

Constance L. Stallings 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 8th day of December, 2008, I filed, by hand delivery, an original and eight copies, and also sent one courtesy copy by facsimile, of a Letter In Reply to General Counsel's Opposition to CNN's Request For Permission To File Exceptions To Report And Recommendations Of The Special Master And Supporting Brief, as well as an E-File, with Lester Heltzer, Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570.

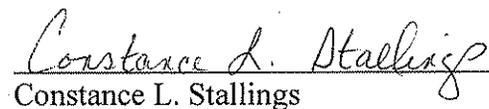
3. On the 8th day of December, 2008, I served one true and correct copy of a Letter In Reply to General Counsel's Opposition to CNN's Request For Permission To File Exceptions To Report And Recommendations Of The Special Master And Supporting Brief, by overnight mail, on the following and notified the same by telephone at the numbers below:

David Biggar, Esq.  
Gregory Beatty, Esq.  
National Labor Relations Board  
Region 5 – Washington Resident Office  
1099 14th Street, N.W., Suite 5530  
Washington, D.C. 20570-0001  
(202) 219-1524

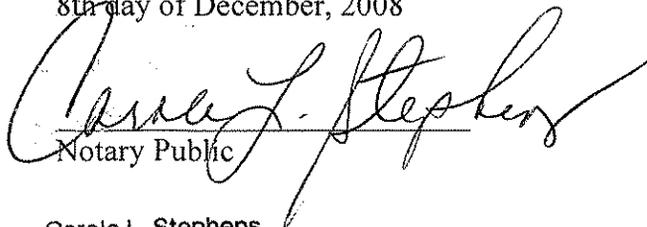
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Attorneys for NABET-CWA Local 52031

  
Constance L. Stallings

Sworn to before me this  
8th day of December, 2008

  
Notary Public

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