

Dear Sir/Madam:

In the matter of the *Canada Labour Code (Part I-Industrial Relations)* and an application filed pursuant to sections 18 and 35 thereof by the Communications, Energy and Paperworkers Union of Canada, applicant; TeliPhone Corp., teliPhone Navigata-Westel Communication Inc. and 0865944 B.C. Ltd., employers. (29781-C)

A panel of the Canada Industrial Relations Board (the Board), composed of Ms. Elizabeth MacPherson, Chairperson, and Messrs. Richard Brabander and John Bowman, Members, considered the above-noted application.

I-Nature of the Application

On January 18, 2013, the Communications, Energy and Paperworkers Union of Canada (CEP or the union), made application to the Board under section 35 of the *Canada Labour Code (Part I-Industrial Relations)* (the *Code*), for a declaration that TeliPhone Corp., teliPhone Navigata-Westel Communication Inc., and 0865944 B.C. Ltd. (the respondents) are a single employer for the purposes of the *Code*.

II-Facts

The union's application flows out of a certification order that was issued by the Board in June 2010, following the sale of a portion of the business of Saskatchewan Telecommunications to 0865944 B.C. Ltd. The certification order identified 0865944 B.C. Ltd. as "... a wholly-owned subsidiary of Navigata Communications 2009 Inc." The parties went on to negotiate a collective agreement with a term of September 18, 2011 to August 31, 2014. The cover page of the collective agreement also identifies 0865944 B.C. Ltd. as a wholly-owned subsidiary of Navigata Communications 2009 Inc.

On November 30, 2012, a corporate entity known as 9191-4200 Quebec Inc. entered into an Asset Purchase Agreement (APA) with Navigata Communications 2009 Inc. for the purchase of the shares of 0865944 B.C. Ltd. and another subsidiary known as Navigata Communications Ltd., as well as certain assets of Navigata Communications 2009 Inc. The transaction closed on December 4, 2012. Also on December 4, 2012, the new owners met with the union and gave verbal notice of lay-off to 56 bargaining unit employees, but immediately called back 29 of those employees and negotiated individual contracts of employment with each of the employees who were called back. On December 7, 2012, written notices of lay-off were issued to the 27 employees who had not been recalled.

On December 11, 2012, TeliPhone Corp. acquired all of the outstanding shares of 9191-4200 Quebec Inc. On December 19, 2012, 9191-4200 Quebec Inc. changed its name to teliPhone Navigata-Westel Communication Inc. The company remained a wholly-owned subsidiary of TeliPhone Corp.

On December 11, 2012, the union filed an application with the Board under section 44 of the *Code*, seeking a sale of business declaration and successor rights as a result of the sale of 0865944 B.C. Ltd., as noted above. The union subsequently filed this application for a declaration of single employer pursuant to section 35 of the *Code*. On May 23, 2013, the Board issued an order finding that a sale of business had occurred within the meaning of section 44 of the *Code* and that TeliPhone Corp. was the successor employer. On the same date, the Board requested further submissions from the parties regarding the union's single employer application. The Board requested information on the activities of each of the corporate entities, the manner in which they are associated or related, and submissions regarding the labour relations purpose, if any, that would be served if the application was granted. The parties provided further submissions which have been considered by the Board in reaching its decision.

Section 16.1 of the *Code* provides that the Board may decide any matter before it without holding an oral hearing. Having reviewed the parties' written submissions, and the materials provided with those submissions, the Board is satisfied that the documentation before it is sufficient for it to decide this matter without an oral hearing.

III-Positions of the Parties

A-The Union

The CEP submits that its application should be granted as the circumstances meet the test for a single employer declaration, as set out in *Murray Hill Limousine Service Ltd. et al.* (1988), 74 di 127 (CLRB no. 699) (*Murray Hill*). The five criteria set out in that application require that there be two or more enterprises; that all be within federal jurisdiction; that the enterprises be associated or related; that at least two of the companies are employers; and that the enterprises are under common control or direction.

The union acknowledges that even when these five criteria are met, there still must be a labour relations purpose for the Board to grant the application. In this case, the union submits that the requested declaration is required in order to protect the union's collective agreement and bargaining rights. The union provided a recent example of an advertisement from the employer for the position of Data Entry Clerk, in which the employer is described as both TeliPhone Navigata-Westel and TeliPhone Corp. The union submits that a single employer declaration will avoid the erosion of the union's collective bargaining rights and ensure sound labour relations.

The union noted the respondent's submission that the application should be denied on the basis that the bargaining unit employees were working from a Burnaby location at the time this application was filed. The union indicated that the employees only worked at the Burnaby location for a short period of time and have since been moved to an office in Vancouver. The union also submits that the scope of the certification order is not a factor to be considered by the Board in dealing with a single employer application.

B-The Respondents

In their initial submission responding to the union's single employer application, the respondents took no position as to what order the Board should issue. In their most recent submission to the Board, the respondents submit that there is no labour relations purpose for the Board to grant the declaration sought by the union. They submit that 0865944 B.C. Ltd., the employer named in the previous certification order, is still in existence and that teliPhone Navigata-Westel Communication Inc. is now in the same position that Navigata Communications 2009 Inc. was with respect to the union's previous certification order and collective agreement.

The respondents submit that there has been no creation of any complex corporate arrangements that would "conceal the relationship established under the Collective Agreement". The respondents further note that the bargaining unit employees were working at a location in Burnaby, British Columbia, at the time the union's application was made, and that the wording of the union's certificate did not include a Burnaby location. The respondents submit that, for this reason, the Board lacks the jurisdiction to grant the application sought.

IV-Analysis and Decision

This is an application for a single employer declaration under section 35 of the *Code*, which reads:

35.(1) Where, on application by an affected trade union or employer, associated or related federal works, undertakings or businesses are, in the opinion of the Board, operated by two or more employers having common control or direction, the Board may, by order, declare that for all purposes of this Part the employers and the federal works, undertakings or businesses operated by them that are specified in the order are, respectively, a single employer and a single federal work, undertaking or business. Before making such a declaration, the Board must give the affected employers and trade unions the opportunity to make representations.

(2) The Board may, in making a declaration under subsection (1), determine whether the employees affected constitute one or more units appropriate for collective bargaining.

In *Murray Hill*, the Board determined that five criteria must be met in order for the Board to make a single employer declaration. These criteria are:

- there must be two or more enterprises or businesses;
- they must be under federal jurisdiction;
- they must be associated or related;
- at least two, but not necessarily all of them, must be employers;
- the enterprises must be subject to common control or direction.

The union submits that all five of these criteria are met on the facts of this case. The respondents do not dispute this in their submissions. The information supplied to the Board by the respondents confirms, and the Board has no difficulty in finding, that there are two or more enterprises or businesses. As the respondents provide telecommunications services, they are within federal jurisdiction. The organization chart provided demonstrates that the businesses carried on by the respondents are associated or related. The evidence before the Board also indicates that at least two of the enterprises, TeliPhone Corp. and teliPhone Navigata-Westel Communication Inc., are employers. The evidence also indicates that all of the enterprises are under the common control and direction of TeliPhone Corp. and its principals.

Having determined that the five criteria have been met, the Board must then go on to determine whether there is a labour relations purpose for issuing a single employer declaration in the circumstances of this case.

In considering the labour relations purpose issue, the Board noted in *Murray Hill*:

The remedy under section 133 [now section 35] must be guided by reasons related to the conduct of sound labour relations. The purpose of the provision is not to exempt a union from recruiting members and obtaining the membership of the employees that it wishes to represent but rather to ensure that a group of employees who have joined a union do not have this action made meaningless by manoeuvres or simply by the subtleties of the business world.

(page 146)

In *Kindersley Transport Ltd. and Quill Transport Ltd.*, 2008 CIRB 409, the Board described the labour relations purpose for granting a single employer application as follows:

[49] Nonetheless, the main objectives of a single employer declaration are to protect established bargaining rights and to minimize adverse effects from corporate reorganization or corporate creation on those bargaining rights.

In the Board's opinion, the evidence in this case supports the union's contention that this is a situation where a single employer declaration is necessary to protect the existing bargaining unit from being eroded or eliminated as a result of the complicated corporate structure implemented following the sale of the business previously operated by 0865944 B.C. Ltd. Members of the bargaining unit have been laid off and some have been recalled. Both TeliPhone Corp. and teliPhone Navigata-Westel Communication Inc. have been acting as the employers of the bargaining unit members, although neither has accepted any responsibility arising from the union's collective agreement. The respondents state that the previous employer, 0865944 B.C. Ltd., is still in existence, suggesting that this entity still holds responsibility for the collective agreement that it negotiated with the union. Yet in information supplied by the respondents to the Board on April 2, 2013, they state that the numbered company "... has no offices or work locations nor does it have any employees."

The Board finds that the issue of whether the scope of the certification order specifically included employees working in the Burnaby office is not relevant to the issue of whether or not a single employer application should be granted. It is also a moot point, given that none of the bargaining unit employees currently work out of the Burnaby location, having been relocated to an office in Vancouver. Vancouver is clearly within the scope of the existing certification order.

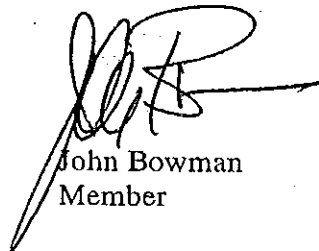
Section 35 of the *Code* was expressly designed to prevent employers from evading their collective bargaining obligations through the use of multiple corporate entities. The Board has consistently applied this provision of the *Code* in order to ensure that employees' rights to collective bargaining are not eroded by corporate restructuring (see for example, *Murray Hill*; *Certen Inc.*, 2003 CIRB 223; *Transport Besner Inc.*, 2004 CIRB 285; and *Global Television Network Inc.*, 2005 CIRB 313). In the circumstances of this case, where the union's certification and collective

agreement is under threat of erosion or elimination as a consequence of the sale of business and subsequent corporate restructuring, the Board finds that there is a clear labour relations purpose for granting the declaration sought by the union.

The Board therefore declares, pursuant to section 35 of the *Code*, that TeliPhone Corp., teliPhone Navigata-Westel Communication Inc., and 0865944 B.C. Ltd. are a single employer for the purposes of the *Code*. A Board order to this effect is attached.

For the reasons cited above, the application is granted.

This is a unanimous decision of the Board, and is signed on its behalf by



John Bowman
Member

c.c.: Mr. Ken Chiang (CIRB-Vancouver)

Canada Industrial Relations Board



Conseil canadien des relations industrielles

Order No.: 10462-U

Supercedes: 10435-U

IN THE MATTER OF THE*Canada Labour Code*

- and -

Communications, Energy and Paperworkers Union of Canada,

applicant,

- and -

TeliPhone Corp.,
Mississauga, Ontario,teliPhone Navigata-Westel Communication Inc.,
Mississauga, Ontario,0865944 B.C. Ltd.,
North Vancouver, British Columbia,

employers.

WHEREAS the Canada Industrial Relations Board (the Board), by order no. 10435-U dated May 23, 2013, certified the Communications, Energy and Paperworkers Union of Canada as bargaining agent for a unit of employees of TeliPhone Corp.;

AND WHEREAS, the Board has received an application from the applicant union, pursuant to section 35 of the *Canada Labour Code (Part I-Industrial Relations) (the Code)*, seeking a declaration that TeliPhone Corp., teliPhone Navigata-Westel Communication Inc. and 0865944 B.C. Ltd. are a single employer and a single federal work, undertaking or business for all purposes of the *Code*;

AND WHEREAS, following investigation of the application and consideration of the submissions of the parties concerned, the Board has granted said application;

Canada

Order No.: 10462-U

NOW, THEREFORE, it is declared by the Canada Industrial Relations Board that:

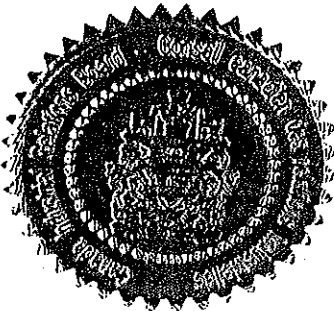
- (a) pursuant to section 35 of the *Canada Labour Code* and for all purposes of Part I thereof, TeliPhone Corp., teliPhone Navigata-Westel Communication Inc. and 0865944 B.C. Ltd. are a single work, undertaking or business; and
- (b) the Communications, Energy and Paperworkers Union of Canada is the certified bargaining agent for a unit comprising:

"all employees of TeliPhone Corp., teliPhone Navigata-Westel Communication Inc. and 0865944 B.C. Ltd. working in North Vancouver, Vancouver, Victoria, Fort St. John, Squamish, Kelowna, Kamloops, Prince George, Terrace, and Williams Lake, British Columbia, in Toronto, Ontario, and in Calgary, Alberta, excluding sales, sales support and management employees."

Board. **ISSUED** at Ottawa, this 16th day of July, 2013, by the Canada Industrial Relations


Elizabeth MacPherson
Chairperson

Reference: File No. 29781-C



Canada Industrial Relations Board



Conseil canadien des relations industrielles

N° d'ordonnance : 10462-U

Remplace : 10435-U

CONCERNANT LE*Code canadien du travail*

- et -

le Syndicat canadien des communications, de l'énergie et du papier,

requérant,

- et -

TeliPhone Corp.,
Mississauga (Ontario),teliPhone Navigata-Westel Communication inc.,
Mississauga (Ontario),0865944 B.C. Itée,
Vancouver-Nord (Colombie-Britannique),

employeurs.

ATTENDU QUE le Conseil canadien des relations industrielles (le Conseil), par ordonnance n° 10435-U datée du 23 mai 2013, a accredité le Syndicat canadien des communications, de l'énergie et du papier à titre d'agent négociateur d'une unité d'employés de TeliPhone Corp.;

ET ATTENDU QUE le Conseil a reçu du syndicat requérant une demande, en vertu de l'article 35 du *Code canadien du travail (Partie I – Relations du travail)* (le Code), visant à obtenir une déclaration selon laquelle, aux fins de l'application de la Partie I du Code, TeliPhone Corp., teliPhone Navigata-Westel Communication inc. et 0865944 B.C. Itée constituent un employeur unique et une entreprise fédérale unique;

ET ATTENDU QUE, après enquête sur la demande et examen des observations des parties en cause, le Conseil a fait droit à la demande;

Canada

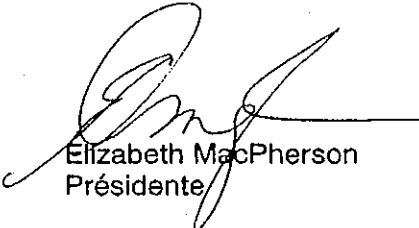
N° d'ordonnance : 10462-U

EN CONSÉQUENCE, le Conseil canadien des relations industrielles déclare que :

- a) TeliPhone Corp., teliPhone Navigata-Westel Communication inc. et 0865944 B.C. Itée sont un employeur unique et entreprise fédérale unique en vertu de l'article 35 dudit *Code* et aux fins de l'application de la Partie I du *Code*; et
- b) le Syndicat canadien des communications, de l'énergie et du papier est l'agent négociateur accrédité d'une unité comprenant :

« tous les employés de TeliPhone Corp., teliPhone Navigata-Westel Communication inc. et 0865944 B.C. Itée qui travaillent à Vancouver-Nord, Vancouver, Victoria, Fort St. John, Squamish, Kelowna, Kamloops, Prince George, Terrace et Williams Lake (Colombie-Britannique), à Toronto (Ontario) et à Calgary (Alberta), à l'exclusion des employés des ventes, du soutien commercial et des cadres ».

DONNÉE à Ottawa, ce 16^e jour de juillet 2013, par le Conseil canadien des relations industrielles.


Elizabeth MacPherson
Présidente

Référence : n° de dossier 29781-C

