DECISION OF THE TRIAL BOARD

Between
Lori Ruggles, Robert Jones, Delores Pilsl, Laura Stewart, Bryant Boyd, Mira Quintin, Noble Purba-Booth; Judy Venn; Perry Pasqualetto; Elizabeth Fletcher, Christopher Stephens, Hans Hiene, Calvin Gray, Nonie Kostner, and Dale Warner
(The "Accusers")

and

Bruce Bell, President, Telecommunications Workers Union
(The "Accused")

Heard before a Telecommunications Workers' Union Trial Board comprised of Executive Council members as follows:

Ivana Niblett (Chair); Sandi Mutter (Recording Secretary);
Sherryl Anderson, Betty Carrasco, Dave DiMaria, Marjorie Shewchuk, Tricia Watt, Mimi Williams, Ron Williams, Maria Zonni

Heard: June 23, 2006; July 20 – 23, 2006
Decision: August 6, 2006 (43 pp)

Counsel: Jessica Bowering (for the Accused)

The matter before this Trial Board involves charges laid by sixteen delegates of the Telecommunications Workers Union ("TWU" or "the Union"). Following the filing of the charges, one of those delegates requested his name be removed from the charges and from that time forward, his name was stricken from the record, leaving the fifteen delegates named above (Ruggles et al).

Charges were laid under Article XVIII, Section F of the *Telecommunications Workers' Union Constitution*. This article reads:

> "Section F: DERELICTION OF DUTY
> 1. A charge against an officer for dereliction of duty may be brought by any five members of the Local in good standing if the person sought to be removed is an officer of the Local or by any ten (10) Convention Delegates if the person sought to be removed is a salaried officer of the Union.
> 2. Proceedings shall be instituted by the filing of the charge with the Secretary-Treasurer of the Union and in the event the Secretary-Treasurer is the officer so charged proceedings shall be instituted by the filing of the charge with the President and by furnishing the charged officer with a copy of the charge.
> 3. Such charge shall be in writing signed by the accusers and shall specify the acts or omissions alleged to constitute the dereliction in duty.
> 4. The charge shall be referred to the Trial Panel of the Local in case the person sought to be removed is a Local Officer and to the remaining member of Executive Council in case the person sought to be removed is a member of the Executive Council. The Trial Board in each case shall hold a hearing to hear and determine the charges no later than 15 days from the date of the filing of the charge. At such hearing the accusers and the accused officer shall be given an opportunity to be heard, to introduce evidence, to examine and cross-examine the witnesses and the accused officer shall have the right to be confronted with the witnesses and evidence against them and may be represented by a member of the Union as counsel.
> 5. The Trial Board in each case shall render a decision on the charge within 15 days of the completion of the hearing.
> 6. The Trial Board in each case has all the powers in trying cases of dereliction of duty as it has when trying offenses under Section C. The verdict of the Trial Boards shall contain a summary of facts found and the reason for the decision and recommend a penalty if any.
> 7. Appeals.
> There shall be an appeal in the case of decision of the Local Trial Board to the Executive Council and in the case of a decision of the Executive Council to the Canadian Labour Congress Ombudsperson."

Section C states:

> "Section C: PENALTIES
> 1. Upon a verdict of guilty of any charge the Trial Board may impose a penalty of expulsion, suspension, fine (not to exceed $1,000.00), public reprimand or admonishment by the President, special remedial action appropriate to cure the offence or other penalty appropriate to the offence or any combination

thereof, and the Trial Board shall determine when any such penalty has been satisfied. Pending satisfaction of a penalty, except expulsion, a penalized member shall be denied the right to attend meetings and any benefits they may receive as a member in good standing.

2. Any imposed fines shall be collected from the member by the Secretary of the Local concerned and shall be paid into Local funds within 30 days. Failure to pay the fine within 30 days from the date such fine was imposed shall invoke automatic suspension.
3. Expulsion shall mean expulsion from the Union with loss of all benefits."

June 23, 2006

The Trial Board convened at 1550*h* with both parties present. Both parties agreed to adjourn and reconvene the trial at a later date. Date availability for reconvening was not determined at that time. The matter was adjourned without the charges being read, to be reconvened at a place and time to be announced.

July 20, 2006

The hearing reconvened at 1340*h* on Thursday, July 20, 2006 at the Best Western Kings Inn Conference Centre in Burnaby, British Columbia. Present were Bruce Bell; his legal counsel, Jessica Bowering; Vice President Peter Massy, acting as counsel, and former Vice President Neil Morrison, acting as counsel. Presenting on behalf of the Accusers were Lori Ruggles and Perry Pasqualetto, with Elizabeth Fletcher; Laura Stewart; Bryant Boyd; Delores Pilsl; and Judy Venn also in attendance as accusers.

Following the reading of the *TWU Harrassment Policy*, the Trial Board advised the parties that the proceedings would be closed with only the Accusers, Accused and Counsel present. There would be no observers and witnesses would be limited in their attendance to the period during which they were providing testimony. Witnesses that were among the accused / accusers would be prohibited from being present until after their testimony was heard. The proceedings were to be taped and transcripts would be provided to all parties.

THE ABSENCE OF THE ACCUSED

Upon the disposition of the preliminary matters, the Accused and Counsel declined to participate in the proceedings, with the exception of an observer/counsel, Neil Morrison, present throughout.

A plea of "Not Guilty" was entered on the Accused's behalf following the reading of each allegation. The Trial Board did consider submissions by the Accused's legal counsel (delivered in the course of the Preliminary Objections) and afforded them the appropriate weight in view of the fact that the submissions were unsubstantiated, unsworn and not subject to cross-examination.

WITNESS LIST

Perry Pasqualetto – *Affirmed*

Elizabeth Fletcher – *Affirmed*

- Seniority - August 5th, 1980.
- Involved for 25 years in numerous Locals, holding Executive positions
- Member of the Political Action Committee
- Political Action Coordinator.
- Served as an Executive and a Shop Steward in Prince George, Kelowna, and Vancouver
- Held Local positions of Counsellor and Vice-President.
- Currently a Convention Delegate
- Attended the 2006 TWU Convention as a Delegate.

Laura Stewart –*Affirmed*

- Member of the TWU Tactical Committee starting in 2001
- Currently a Convention Delegate
- Attended 2006 TWU Convention as a Delegate

Bob Marcus – *Affirmed*

- With the company for the past 25 years
- Involved in the union for the past 22 years as a Shop Steward
- Convention Delegate for past 12 years
- Participant in grievances and arbitrations.
- Currently a Convention Delegate
- Attended 2006 TWU Convention as a Delegate

Jeff Morris – *Sworn in on the Bible*

- Hired by the company in May 1994
- Started as a sales representative and has been part of the Sales Channel handling portfolios, products and services.
- Shop Steward and Secretary-Treasurer for Local 1.
- Union involvement moved him over to Local 23
- Currently in Local 50

Delores Pilsl – *Sworn in on the Bible*

- Started at TELUS Mobility in January 1996
- 5 years as a Vice President of local 213 and other positions within the local.
- Attended shop steward training
- Previously an alternate delegate
- Convention delegate for the past 2 years.
- Currently a Convention Delegate
- Attended 2006 TWU Convention as a Delegate

George Doubt – *Sworn in on the Bible*

- Started at BC Tel in 1973
- Involved in the TWU as a shop steward in 1976/78.
- Involved in Local 8, Kamloops
- Shop Steward and virtually all offices in Local 3 Nanaimo, except Secretary-Treasurer,
- Elected as a Business Agent for the Interior 1997, re-elected a number of times
- Elected Business Agent in Burnaby in 2005. Resigned in July 2005
- TWU Political Action Officer

Lila Hackett – *Sworn in on the Bible*

- Started with company in 1971
- Some of the years spent at Local 23
- Most of her career has been with Local 50
- Shop Steward, Counsellor, and President for Local 50 for over ten years
- Previously was an Alternate Business Agent
- Member of last Bargaining Committee
- Currently a Business Agent
- Attended 2006 TWU Convention as a Delegate

THE ALLEGATIONS

The Trial Board considered each charge on its own as to whether it happened based on the evidence brought forward and then deliberated on the overall charge of dereliction of duty.

Allegation #1

That the President wrongly and improperly advised the 2005 Convention Delegates that the TWU was not in danger of an imposed collective agreement (a PACCAR situation).

Summary of Evidence

The Trial Board considered the evidence before it and heard the sworn testimony of Lila Hackett. We were directed to Bruce Bell on transcripts of the 2005 Convention tapes assuring delegates that the TWU was keeping an eye on the PACCAR situation *(Monday, March 7, 2005 – Tape 3A).* That the matter was of pressing concerns for the delegates was clear in that the matter was raised again on each of the two following days.

Introduced into evidence were *[1989] 2 S.C.R. Canadian Association of Industrial, Mechanical and Allied Workers, Local 14 v. Paccar of Canada Ltd. (Canadian Kenworth Company Division)* and CIRB Dec. No. 141 *ADM Agri-industries Ltd. V. Syndicat national des employes des les Moulins Maple Leaf (de l'Est) Limitee (CNTU),* along with a legal opinion from Shortt, Moore & Arsenault dated December 5, 2002. This legal opinion advised the TWU that they were arguably protected from a PACCAR situation by virtue of paragraph 54 of CIRB Decision 108. The Trial Board referred to the pertinent section of that decision.

Ms. Ruggles directed the Board to CIRB Decision 1291 and noted that when it came time to argue the case for an unfair labour practice complaint, the TWU's legal counsel made no mention of paragraph 54 of CIRB Decision 108. However, the Trial Board found that there was apparently a subsequent legal opinion provided to the TWU that was not before us as evidence. An exchange between the President and a 2005 convention delegate leads us to that conclusion:

> "Kelly Gray – Local 35: I anticipate when we go out again we're going to get questions about what about the fear of being PACCAR'd because we seem to be in the perfect position for it.
>
> Bruce Bell - Vice President: Yeah, so I think what Brother Gray is referring to is. We had legal advice that said we had to have a strike vote. … So, and what we had we had the view that like you say you need to have a strike vote and that was to protect against the company changing the terms and conditions. Which folks call a PACCAR, so that's the slang for it. Happens to be a case that was out here in British Columbia. It was a provincial case. It was in I believe in the 80s late 80s so quite a while ago. But, always watching out for that coming in from out there. So, anyways the legal advice was we needed to have a strike vote. That legal advice has changed and that was just recently and the advice is that if they change the terms and conditions. In other words, a PACCAR. Then you can withdraw your services ….

> Kelly Gray – Local 35: I think you answered it. If the answer is they PACCAR really isn't on with us; it's a lockout and we can react to that. So, that's fine."

Trial Board Decision

The core of the accusers' argument was that the President provided false assurances regarding the possibility of the TWU facing a PACCAR situation. The Trial Board found that the evidence put before us did not support this allegation. This is not to say that the President didn't provide false assurances. From the evidence before us, it appeared that the President was following legal counsel. That legal counsel may very well have been wrong and so too might have been the President, however, there was no evidence before us that he did so through any ill intent or in an improper fashion. This was a unanimous decision of the Trial Board that the allegation is unsubstantiated.

Allegation #2

That the President misrepresented certain facts to Members of Executive Council and others that were key to the Executive Council's decision with respect to the bias charges against the Canadian Industrial Relations Board, which resulted in an unproven complaint that damaged the reputation of the TWU in the eyes of the Board and undermined the union's relationship with them at a time when their assistance and good will was vital. We also believe Brother Bell's delayed request for an arbitrator and the poor timing of his bias accusations compromised the TWU's position that the Board should move ahead on their decision to settle binding arbitration upon the parties. The President also improperly and wrongly advised the delegates regarding this issue, which influenced the support the delegates had for him and for the dispute.

Summary of Evidence

The Trial Board heard the sworn testimony of witness George Doubt, who has been a member of the TWU since starting employment with BCTel in 1973 and has held various positions within the unit from Shop Steward to Local Secretary-Treasurer to Business Agent. Mr. Doubt is currently employed as a Mass Market Service Technician in Kamloops, B.C.

Asked by Ms. Ruggles to provide observations around the events leading up to the labour dispute, Mr. Doubt testified that in 2000, the TWU had established a bargaining position which was the TWU agreement plus 56 enhancements, that the company had some issues and things were essentially unchanged up to January 2004. He testified that on January 28, 2004, the CIRB made a ruling that required Telus to offer binding arbitration to the TWU. On January 30th Executive Council met and after long debate determined to accept the company's offer of binding arbitration. He testified that discussions between the Bargaining Committee and the company followed and that, "it was reported to Executive Council that the matters of discussion were the names of the possible arbitrators and the terms of reference those arbitrators could use. Those were the reasons given to the Executive Council by Brother Bell for there not being an agreement on the details of going forward on binding arbitration. … On February 16th the company filed for a review of the

binding arbitration decision."

Mr. Doubt testified that at the 2004 convention, where he ran for President against Rod Heibert, "bargaining, which was now tenuous, was a major issue at the convention and a major issue in the election campaign." According to Mr. Doubt's testimony, the Executive Council met on March 9th where they learned about the allegations of bias against Warren Edmondson and the entire CIRB. At that meeting, the Executive Council also had discussions regarding the binding arbitration decision, TELUS' request for a review of the decision. They also decided to request at that time that the CIRB appoint an arbitrator.

Ms. Ruggles questioned Mr. Doubt about the matter of bias. His testimony corroborated the statements he was heard to make at the 2005 Convention, quoted above, regarding the accusation of bias. He stated, "There was a great deal of discussion about how to go forward at that time. We had legal counsel at Executive Council – Morley Shortt was there. What Mr. Shortt had indicated was that on the strength of an affidavit from Hodges, we would be able to require and subpoena other information that would be pertinent and would support the case that Mr. Edmondson and the Board were biased." *(page 5, Trial Board Hearing Transcripts)*

Ms. Ruggles introduced into evidence a copy of the *'Request for an order that the Canada Industrial Relations Board Recuse itself from the Application for Reconsideration'* filed by the TWU on March 24, 2004 (CIRB File No. 24220-C). It is here that Mr. Bell's accusation of bias is found, reproduced here in part:

> "13. On or about February 20, 2004, Mr. Bruce Bell, a Vice-President of the TWU met with Mr. Tom Hodges, one of the mediators and conciliators appointed pursuant to the Code regarding the bargaining between the TWU and TELUS.
>
> 14. Mr. Hodges had called Mr. Bell on February 20, 2004 and requested that he drive him to the airport.
>
> 15. On the drive to the Airport Mr. Bell and Mr. Hodges made small talk. When they got out of the car, Mr. Hodges "patted down" Mr. Bell.
>
> 16. Mr. Hodges informed Mr. Bell that the Chairperson of the Board had indicated that he was not in favour of the Decision and would overturn it if a reconsideration application was brought by TELUS.
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> 17. Mr. Bell had a subsequent conversation with Mr. Hodges on March 13, 2004. While some of the statements differed from those expressed on February 20, 2004, Mr. Hodges made statements to Mr. Bell during this March 13, 2004 discussion which indicate actual bias on behalf of the Chair of the Board, Mr. Warren Edmondson. The sworn affidavit of Mr. Bell is attached with this submission.
>
> 18. Mr. Edmonson is reported to have stated to various representatives of the

> Board that he had a problem with Ms. Pineau and that the Decision was wrong and that if it got in front of him it would not stand."

Ms. Ruggles drew Mr. Doubt's attention to paragraph 39 of the Request:

> "In the event that the Board is not prepared to recuse itself on the basis of the facts set out in the affidavit of Bruce Bell, the Applicant seeks:
>
> a. An oral hearing in which this application will be heard;
>
> b. An order that the Respondent provide all necessary documentation including but not limited to:
>
> i) Phone records for cell phone and other phones for the month of January and February, 2004 between:
> (A) Mr. Lewis and Mr. Edmondson;
> (B) Mr. Panelli and Mr. Edmondson;
> (C) Mr. Lewis and Mr. Bedard; and
> (D) Mr. Panelli and Mr. Bedard.
>
> ii) Any memorandum, written communication, or electronic communications referencing any discussions between the Mr. Lewis, Bedard, and Panelli regarding any reconsideration motion to be brought by TELUS; and
>
> c. An order that the Warren Edmonson, Steven Bedard, William Lewis, Tom Hodges and Tom Panelli attend at the hearing of this matter to provide testimony or, alternatively an order pursuant to section 16 of the Code that the Applicant be entitled to summons Misters Edmonson, Bedard, Lewis, Hodges and Panelli to the hearing of this application;
>
> d. In the alternative, a full statement be delivered to the parties from Warren Edmondson and Tom Panelli detailing each and every conversation any of them have had in respect to those matters referred to in the affidavit of Bruce Bell."

Ms. Ruggles introduced into evidence the *Reply of TELUS Communications Inc. in relation to its application pursuant to section 18 of the Code for review of Orders issued on January 17, 21, 26 and 28, 2004 in relation to Board File Nos. 23742-C and 24160-C1*, dated March 1, 2004. Noting the date it was created and that Shortt and Company faxed it on March 8, 2004, Mr. Doubt read from this document at paragraph 94:

> "Despite the discussions that were taking place respecting binding arbitration, both within and outside mediation, TCI and the TWU were unable to reach an agreement on the outstanding issues. TCI understood from its discussions with the TWU and the mediators that the TWU would not be in a position to agree on any details of the

> binding arbitration prior to the TWU's convention scheduled for March 1st, 2004."

Mr. Doubt reiterated that from January 31st through to March 9th, Executive Council had been told that the two issues holding up binding arbitration were the name of the arbitrator and the terms of reference. He testified that it became his belief after seeing the above referenced document (entered into evidence as the Heenan Blaikie document). He said,

> "was – and I believe today still – that the reason to put off binding arbitration until after convention was for political advantage and to have the bargaining, as I said, up in the air and in a tenuous state at convention for political purposes. … It was prepared on the first day of the TWU convention. I didn't see it until after the convention was over. I wanted to know if other people on the Bargaining Committee were aware of the TWU's position was no details would be agreed to before our convention was over. I asked Sister Hope Cumming if she was aware that this was the TWU's position. She was a vice president of the union and a table officer involved with bargaining. She was not aware of it. She said that she had seen that statement for the first time.
>
> The company's submission goes on to say that by February 13th 2004 and possibly earlier, the mediators were alerting the TWU to an upcoming deadline for reconsideration and noted that the lack of progress on binding arbitration was putting TCI into a box due to the approaching deadline of February 16, 2004 for filing the application (indistinguishable). On February 13th, 2004, Bruce Bell, chief negotiator for the TWU, contacted Steve Bedard, chief negotiator for TCI, to discuss outstanding issues around binding arbitration. In that same conversation, Bedard advised that TCI would be filing its reconsideration application. On that day legal counsel for TCI informed the TWU's legal counsel that a reconsideration application would be filed on behalf of TCI."

Mr. Doubt went on to testify that the delay in naming an arbitrator resulted in TELUS filing for reconsideration because "they had no option other than to do that." He noted that at the next meeting after the convention, March 9th, the Executive Council agreed to go with an arbitrator named by the CIRB and agreed that any terms of reference would be set by the arbitrator, as set out in to legislation. He testified that the Executive Council decided at that meeting to assemble a bias application and request a binding arbitrator. Ms. Ruggles asked Mr. Doubt if he found it inconsistent that we were accusing the entire Board of bias, and at the same time requesting an arbitrator from them. Mr. Doubt agreed: "My concern was – I think I used the language at the time – that we were poking the Board in the eye with a sharp stick and we were going to have to rely on their decisions in the future when we could be angering them."

Ms. Ruggles entered the August 18, 2004 *CIRB Decision 1128, the Ruling on the Apprehension of Bias Application* into evidence and Mr. Doubt read from page 10 of that document, "In the present matter, the evidence produced by the TWU is not, in the Board's opinion, reliable. The Board is reluctant to consider double, triple and quadruple hearsay. Cogent and tangible evidence is needed in order to establish a reasonable apprehension of bias exists".

Mr. Doubt testified that this matter was next discussed at the Executive Council meeting on

September 15th. According to Mr. Doubt,

> "Brother Bell made a motion that the TWU seek a judicial review of the August 18th decision. As he said at Executive Council, that this was when we'd get the affidavit from Mr. Hodges. That surprised me because in my experience judicial reviews will consider things like errors in law, failures to follow the procedures of natural justice and so the rules vary from one court to another, from one tribunal to another they might sometimes consider evidence that wasn't available after due diligence at the first hearing. But it surprised me that an affidavit from Mr. Hodges would be considered at a judicial review, and I asked and I think others on Executive Council agreed that it would be good to see the actual wording of the application before we went ahead with it. So that motion was tabled at the September 15th Executive Council meeting, and it was brought up again the next day at the Executive Council meeting. I've got that document here, the application to the Federal Court of Appeal."

The document, *Notice of Application for Judicial Review*, dated September 16, 2004 was entered into evidence. Mr. Doubt testified:

> "It's worth reading the entire document but on page 5 – I want to point out Page 5, paragraph 30 … Basically outlines the reasons why the TWU feels that the Board erred. Item A – Failed to observe the principles of natural justice and procedural fairness; B – Erred in law; C – Has acted in a perverse and capricious manner; and D – acted contrary to law. And after paragraph 32, there's a list of supporting material, and nowhere in that supporting material is there a mention of an affidavit from Mr. Hodges."

His testimony continued:

> "What Executive Council was told on the afternoon of September 15th was that an affidavit from Hodges would be part of this application. When we saw the documentation on September 16th we were told there had been a mistake, that there was no affidavit from Hodges yet, but if we won the Federal Court appeal we would be at another hearing and that's when the affidavit from Mr. Hodges would come forward…. What continually changed was the date we might see an affidavit from Mr. Hodges. Everything else remained consistent throughout, but the question on when the affidavit from Mr. Hodges would appear kept changing."

Delores Pilsl testified that she had raised the issue of the bias charge as a delegate to the 2005 Convention. Ms. Ruggles entered into evidence *Canada Labour Code, Part I – Industrial Relations* and had Ms. Pilsl read Sections 119, 119.1 and 87:

> "No member of the Board or a conciliation board, conciliation officer, conciliation commissioner, officer or employee employed by the Board or in the public service of Canada or person appointed by the Board or the Minister under this Part shall be required to give evidence in any civil action, suit or other proceeding respecting information obtained in the discharge of his duties under this Part." [119]

> "For greater certainty, the following may not be disclosed without the consent of the person who made them:
>
> (a) notes or draft orders or decisions of the Board or any of its members, or of an arbitrator or arbitration board chairperson appointed by the Minister under this Part; and
>
> (b) notes or draft reports of persons appointed by the Minister under this Part to assist in resolving disputes or differences, or of persons authorized or designated by the Board to assist in resolving complaints or issues in dispute before the Board." [119.1]
>
> "No report of a conciliation commissioner or conciliation board, and no testimony or record of proceedings before a conciliation commissioner or conciliation board, are admissible in evidence in any court in Canada, except in the case of a prosecution for perjury."[87]

Ms. Ruggles asked Ms. Pilsl if that information from the *Canada Labor Code* had been shared with her or known to her previously. She responded, "No. I believe that everyone left convention with the understanding that if push came to shove and we ended up in court that this gentleman would testify on our behalf."

Perry Pasqualetto introduced into evidence tapes from that convention. On those tapes, we heard several delegates express concerns about the bias charged filed by the TWU and we heard several members of Executive Council speak to the issue and corroborated Mr. Doubt's and Ms. Pill's recollection of these events:

> George Doubt: "As I said, I voted in favour of making that bias complaint. And I did that after listening to Brother Bell's information. I did that on the strength of the suggestion that there would be an affidavit coming forward from a person that was more directly involved than Brother Bell, and on the strength of our legal advice which said that with that information, we would be able to subpoena and compel other information to come forward. I voted in favour of the judicial review because I believe that the CIRB handled it wrongly and they made their decision incorrectly."
>
> Karen Whitfield: "Karen Whitfield, Business Agent. I also voted in favour of it. You know we all did – it was a unanimous decision of the Executive Council and, as you heard, of the Bargaining Committee before us. It was a very difficult decision. Yes, it was based on what we all knew to be hearsay evidence … So that's what we did. Now, we knew it was hearsay and we heard that we may at a later point still get an affidavit from this other person, but that was unwilling to just come forward at the beginning and give it. But that he would if it got to a point where he absolutely had to…."
>
> John Carpenter: "Well how do you beat that? Brother Carpenter, Business Agent.

The question was asked why of Executive Council – why we made that decision. Just to answer you directly. We decided unanimously in favour of that decision based on information that Vice President Bruce Bell provided to us. We were assured that there would be an affidavit signed. And today, to this day, I still have not seen that affidavit. So, just so that you are aware, my decision as made based on the legal opinion of our lawyer. And the fact that we were going to have that affidavit."

Bruce Bell: "Brother, Brother, if I may, that's incorrect information. I never could guarantee an affidavit from the federal mediator, Tom Hodges. He never said that, he said – and I've repeated this to Executive Council and others. He said that if he ever got on the stand, he wouldn't lie. Now, Tom Hodges has had a lot of pressure put on him at federal mediation from his superiors. Including trying to fire him. I've tried to get an affidavit from him from a long time. I haven't been able to do that. He never said he would do one. He said if it got there, he wouldn't be lying, he'd be supporting it. My affidavit when I put it in, I read it to him per every word, every word I put in my affidavit he agreed with. Okay, there was some changes, I had notes from meetings I'd had with him. And I put my affidavit together with the help of legal. And then I read it to him, every word and he agreed with everything I put in my affidavit. He agreed with it. And said if it came to go to court he would be there and support that. I never got an affidavit from him and he never said he would give me one. Okay, so that isn't correct information. I've never said that, because it's not true."

Trial Board Decision

The Trial Board divided this allegation into three parts and decided as follows:

2a) **That the President misrepresented certain facts to Members of Executive Council and others that were key to the Executive Council's decision with respect to the bias charges against the Canadian Industrial Relations Board, which resulted in an unproven complaint that damaged the reputation of the TWU in the eyes of the Board and undermined the union's relationship with them at a time when their assistance and good will was vital.**

The Trial Board found that the evidence put before us supported this allegation. We believe that the evidence was clear, cogent and convincing that members of Executive Council based their decision to pursue a bias charge against the Canadian Industrial Relations Board on the promise that an affidavit supporting the allegation would be forthcoming.

2b) **We also believe Brother Bell's delayed request for an arbitrator and the poor timing of his bias accusations compromised the TWU's position that the Board should move ahead on their decision to settle binding arbitration upon the parties."**

The Trial Board found that the evidence put before us was clear, cogent and convincing and supported this allegation. The Board was compelled by undisputed documentary evidence that

Mr. Bell delayed responding to the Company's overtures, leaving them no choice but to file for an application of reconsideration of the ruling because of the CIRB's deadlines.

2c) **The President also improperly and wrongly advised the delegates regarding this issue, which influenced the support the delegates had for him and for the dispute.**

The Trial Board found that the evidence put before us did not substantiate this allegation.

Allegation #3

That the President, as the Principal Officer of the Union and the Chief Negotiator failed to adhere to TWU General Policy #43 that stipulates that the Tactical Committee must involve the membership from the first day that contract proposals are exchanged and shall continue throughout the bargaining process. The President also failed to uphold the mandates of the union in that strategies put in place by convention (such as Project Solidarity) were not properly implemented and the failure to follow those mandates negatively impacted the bargaining power and readiness of the membership.

Summary of Evidence

The Trial Board considered the sworn testimony of Laura Stewart, a member of the TWU Tactical Committee since 2001. Ms. Stewart read into evidence *TWU General Policy #43:* "The Tactical Committee shall begin involving the membership from the day the contract proposals are exchanged with the Company, and the involvement shall continue on a regular basis throughout the bargaining process."

Ms. Steward testified that the Tactical Committee was chaired by Don Fehr and had no written terms of reference. The Committee's mandate was to develop and implement strategy and tactics, to interface with the Bargaining Committee, and to communicate with and involve the membership. We heard that the President was Chief Negotiator and also responsible for appointing all committees. He is also responsible to oversee the functioning of the union to ensure that policies and mandates are followed. We heard about Project Solidarity and its lack of implementation. The document Building Local Solidarity was entered into evidence. Ms. Stewart explained that the document had been distributed to the 2003 Convention Ms. Stewart testified that the Tactical Committee met regularly through 2001 and 2002 but, in her recollection, had only two conference calls following the 2003 Convention. Her notes, submitted into evidence, indicated they last met during a conference call on October, 15 2003.

Ms. Stewart testified that decisions were made, such as the creation of television ads without the knowledge or endorsement of the Tactical Committee, which should have been involved. With respect to the ads, the Accusers obtained and played two of them for the Trial Board members. Ms. Stewart testified that it was reported to the 2004 Convention that the ads cost $750,000 and the money came out of the Benevolent Society Fund, the main purpose of which is to serve as a strike fund. She indicated delegates and members were quite upset about the ads because of the cost and because the content was viewed as inappropriate.

The Trial Board listened to tapes from the 2006 Special Convention and heard delegates raise

concerns about the absence of the Tactical Committee.

The Trial Board also considered TWU Constitution Article IV, Authority and Structure, #3, which states, "The President as the principal officer of the Union, shall have sole authority to interpret this Constitution and to carry out the policies of the Union in accordance with the Constitution and the mandates of the Convention subject to the right of appeal to the Convention."

Trial Board Decision

The Trial Board found that the evidence put before us supported this allegation. We believe that the Accusers presented clear, cogent and convincing evidence that the President failed to ensure that the Tactical Committee was engaged to adhere to the policies of the Union.

Allegation #4

That the President failed the bargaining unit and was grossly negligent when he advised them not to open or read the offer as published and distributed by the company in the spring of 2005 thereby preventing a dutiful membership from educating themselves and depriving locals of the opportunity to hold meetings with their membership in order to confer with their membership and to make a timely comparative analysis between what they had and what the company was offering.

Summary of Evidence

The Trial Board considered the sworn testimony of Delores Pilsl and Lila Hackett.

Ms. Pilsl testified that Alberta members' ongoing calls for more information went unanswered. She said:

> *"Once the company sent out its offer, we again requested information be forwarded to each bargaining unit member explaining why we could not vote on the company offer, what we would gain and what would be lost. The members wanted to be able to make a comparison and know what impact language changes could have. Again, our request for information was never granted and nothing was ever forwarded to our total membership."*

Ms. Hackett, a member of the TWU Bargaining Committee, testified that Mr. Bell's advice to the membership was to send TELUS' offer back unopened. Asked to explain, she said Mr. Bell advised, "That it was not worth reading, that it was bargaining directly with the members and that we were going for a revised, respectful collective agreement. Send it back and tell them you wanted them to get back to the table and negotiate with the union a revised, respectful collective agreement."

Trial Board Decision

The Trial Board found that the evidence put before us did not substantiate this allegation. The Trial Board determined that Mr. Bell's direction was a strategy that, whether it can be deemed successful or not in retrospect, did not violate any policies of the Union.

Allegation #5

That the President, as a judicious leader, should have taken the offer out for a vote or at the very least taken a strike vote, as directed by the TWU Constitution Article XVII Item I, and General Policy #39, to determine the support of the bargaining unit before he called for job action in July of 2005.

Summary of Evidence

George Doubt testified that, in the past, when members defeated a ratification of a collective agreement, a special convention had been called.

The Trial Board referred to TWU Constitution Article XVII Item 1, which states:

> *"The procedure for taking a strike vote shall be:*
>
> *(a) When the Bargaining Committee considers that all means available through Bargaining have been exhausted, it may at its discretion authorize the Bargaining Unit affected.*
>
> *(b) The Executive Council shall cause a referendum ballot to be issued to Bargaining Unit on the question of whether or not a strike should be.*
>
> *(c) All affected Locals shall upon reasonable notice call a meeting of their issues involved in the proposed strike.*
>
> *(d) A vote in favor of a strike will require a 66-2/3% majority of the votes by three (3) members and witnessed by a registered Notary Public."*

We also referred to TWU General Policy #39,

> *"When the Bargaining Committee considers that all other means available through the process of collective bargaining have been exhausted, it shall authorize the taking of a strike vote in the bargaining unit affected. Upon receipt of a favourable strike vote, the Executive Council and Tactical or Strike Committee shall have the authority to implement the strike."*

Trial Board Decision

The Trial Board found that the evidence put before us did not substantiate this allegation.

Allegation #6

That the President imprudently made commitments to the bargaining unit, throughout the spring, summer and fall of 2005 that could not be kept, i.e. "we won't go back until we all go back" and "contracting out is the hill to die on", "we are prepared to hold on for a period of six to nine months" and "we have another 18 million available to us" and that his failure to keep those commitments severely and chronically damaged the credibility of the TWU in the eyes of the membership.

Summary of Evidence
The Trial Board reviewed tapes from the 2006 convention. They heard Hope Cumming say:

> *"The other thing that happened was we were told all along – you have been in the room for the last 5 years heard – we had 18 million dollars coming from the labour community to help us out when we needed it. We asked for that money to start to come forward – I think it was the September or October meeting – to go and get that money in place and have it ready. That money was not in place. The people that the president was dealing with through the federations and the different unions, they didn't come through for us the way we wanted to at the time. I don't know whether they were asked – we asked for them to be asked, but it didn't happen. I can tell you it didn't happen because I know that, at the end, your four Executive Officers were trying to make payroll at the end. We did get help, we did get people to give us money, but we were told for a lot of years, that we had 18 million dollars, and it was not there when we needed it."*

The Trial Board also considered the sworn testimony of Delores Pilsl, and Lila Hackett.

In her testimony, Lila Hackett noted:

> *"When they took it out for the ratification meeting, people were angry and said, 'What are you going to do if we say no?' And it was said that they would go back and work hard at making some changes. They were prepared to go back and fight. And people actually said, 'You're not going to take this back and tweak it?' And the answer was, 'No.' And that actually is exactly what happened. The Bargaining Committee was not called in. We did not go over what else we would go for. All of a sudden I got a phone call at home saying to get to the union office. I think it was for 11 o'clock and Hope and Peter and Bruce came in, and it wasn't very long after, it was just maybe – I can't remember the time, maybe a week? – and they came back with the tweaked offer."*

Trial Board Decision

The Trial Board found that the evidence put before us was clear, cogent and convincing and supported this allegation.

Allegation #7

That the President was deceitful to other Table Officers of the Union when, on September 22 of 2005 he told them that he was going to met with Fontana then instead met with the company.

Summary of Evidence

Ms. Fletcher testified that it was in the capacity of her role as a member of the Political Action Committee that she happened to attend a fundraising dinner for Liberal MP David Emerson in Vancouver on September 22, 2005. Also present at the dinner were TWU President Bruce Bell, Secretary-Treasurer Jim Christensen, and Vice-President Hope Cumming. Sitting with these TWU members were Jim Sinclair, President of the BC Federation of Labour, and two representatives of the Van City Credit Union. She testified that "Near the end of the dinner Bruce said he had to fly out that night to go back east for a meeting. I was told not to tell anyone he had gone there. He left early from the dinner."

The Trial Board listened to tapes from the 2006 TWU Convention, hearing from Jim Christensen, Secretary-Treasurer of the TWU.

> "And I think we all made some mistakes but I think the biggest mistake was made on September 22nd. I was one of those people who was lucky enough to go see David Emerson … And Brother Bell came and said, 'Oh, I'm going to Toronto because I'm meeting with Fontana.' So, well that sounds good. We'd like you to meet with Fontana. Let's see if we can get something going.
>
> We come back two days later – he's met with Darren, and the question was, 'Well, you didn't know that it was Darren?' Well, no, you know, I really didn't know who I was going to go meet with.' That was the answer given, and that's really.. probably what I would think, it seemed to me to be, somewhat stretching the truth because there ain't no way Darren, Judy and Steve are going to be there without already knowing it."

They also reviewed Hope Cumming's statements at the same convention:

> "No one from the Bargaining Committee, and no one from your Executive was aware that there was a meeting scheduled in Toronto on the next day until ten o'clock that night, at the dinner. … But we were there at a dinner on a Thursday night to lobby, and I got told at ten o'clock at night by Brother Bell that he was going to Ottawa on a twelve o'clock plane – somewhere around there, I might have the exact time wrong, but a couple of hours from where we were – to meet with Mr. Fontana, the Minister of Labour. There had already been an Executive Council meeting set up for Saturday, and so he tells me he's going to see Mr. Fontana with Mr. Hargrove. We get to the Executive Council meeting on Saturday and the meeting was actually with Darren Entwistle, Judy Shuttleworth and Steve Bedard, not with Joe Fontana. I'm a member of your elected Bargaining Committee – I was a member of your elected Bargaining Committee which isn't in existence. I'm also

> a vice-president of this union. I think that information should have been shared with the appropriate people and we should have made the decision. I don't think anybody would have said, 'Don't go, Brother Bell.' I don't think anybody's going to say that if we're trying to get a special mediator. The meeting wasn't with Mr. Fontana, as we learned on Saturday.
>
> We learned on Saturday that the meeting was with those Telus folks …"

She continued:

> "Politics are part of the game, we should have – you know, there's politics during convention week, a little bit before, a little bit after – but we carry on. And I have a problem when you, the convention, elects officials that you place your trust in who were not included in the decision-making, who were not told. We had someone talk about communication – well guess what? We don't even get communicated to. And when we do it's not helpful with the timing.
>
> This convention elected the Bargaining Committee. This convention elected your officials, and that doesn't mean one or two people to make the decisions. You need to go back to your elected officials, all of them, having all the information, to make the decisions so that they can do the very best for this union and its membership, and I think you need to think very seriously about that because that's where we need to go."

Perry Pasqualetto, on behalf of the Accusers, pointed out to the Trial Board that no one challenged Ms. Cumming's statement at the microphone or otherwise. The Trial Board considered the sworn testimony of Lila Hackett who confirmed she had heard Hope Cumming speak to the matter at the 2006 Convention. Ms. Hackett testified:

> "I heard that afterwards. I know that Hope wasn't aware of the meeting. I know that she was annoyed that she wasn't aware of the meeting and I know that it seemed odd to her that he would set up a meeting with Joe Fontana and you could get Darren Entwistle, Judy Shuttleworth, Steve Bedard and all their calendars to match to accidentally meet up with them in Toronto."

Trial Board Decision

The Trial Board found that the evidence put before us supported this allegation in a clear, cogent and convincing fashion. There was no explanation offered in the evidence before us as to why the President didn't stop the meeting, knowing it was in violation of the TWU policies.

Allegation #8

That the President violated General Policy #28 when he first met with Mr. Entwistle, Mr. Bedard and Ms. Shuttleworth in September 2005 without the knowledge or consent of the TWU Executive Council or the TWU Bargaining Committee and that the President repeated the violation while in Toronto.

Summary of Evidence:

TWU General Policy #28 was entered in evidence, which reads "No paid officer or Union representative shall meet management on Union business without another paid officer or representative with them as witness."

TWU Constitution, Article XVI - Collective Bargaining Authority was entered as evidence, and reads "1 (b) Collective bargaining with employers shall be conducted by the Bargaining Committee of affected Bargaining Unit."

Lila Hackett's Minority Report, which was entered into evidence, reads, in part:

> "On September 24th, 2005, I was advised that Bell had attended a meeting along with Buzz Hargrove in Toronto with Darren Entwistle, Judy Shuttleworth, and Steve Bedard and that bargaining was to resume in Toronto with a small representation of the Bargaining Committee. I was concerned with this turn of events for a couple of reasons.
>
> First the meeting took place without the Bargaining Committee's knowledge or input and was, in my opinion, a violation of General Policy #28 'No paid officer or Union representative shall meet management on Union business without another paid officer or representative with them as witness.' I believe that since no other TWU representative was present that these discussions comprised the spirit of our ongoing commitment to the members in terms of transparency and accountability."

Evidence was entered from the March 2006 TWU Convention tapes, where Hope Cumming told the following to convention delegates:

> "I talked about meetings that we weren't aware of, and there was more than one, and they were turning points. What I have a problem with people don't take responsibility for not including your elected officials. There's been a lot of talk about violations of the constitution and we should be following the constitution. The problem was we didn't follow the constitution when we were at the bargaining table or in front of Darren Entwistle. Your elected Bargaining Committee went to Toronto. A representative group of us went to Toronto and we weren't even included in those decisions. We went to the meeting after Entwistle told us to pound sand and the next thing we know individuals are having meetings. Buzz Hargrove, Hemi Medic and Brother Bell. No courtesy given to Vice-President Peter Massy, Vice-President Hope Cumming or the other elected Bargaining Committee members that were there. I find that an atrocity, I don't believe that people should be going off and doing things on their own."

Entered as evidence from the tapes of the Special Convention in March 2006, we heard Hope Cumming giving the delegates the following information in relation to events on September 22 and 24, 2005:

> "…we were at a dinner on Thursday night to lobby, and I got told at ten o'clock at night by Brother Bell that he was going to Ottawa on a twelve o'clock plane… to meet with Mr. Fontana, the Minister of Labour. There had already been an Executive Council meeting set up on Saturday, and so he tells me he's going to see Mr. Fontana with Mr. Hargrove. We get to the Executive Council meeting on Saturday and the meeting was actually with Darren Entwistle, Judy Shuttleworth and Steve Bedard, not with Joe Fontana."

Ms. Hackett testified that Mr. Bell met with the company once again, in Toronto, without the presence of another TWU member:

> "Hope and I went down to the Royal York and the party was going on. We hadn't gone in yet, we'd ran into Joe Benn and Ron Driscoll and Peter. No Bruce. No Buzz. No Hemi. We waited around and waited around, and we really didn't want to go into this big fancy dinner when we didn't know if anybody would know who we were without Buzz and Hemi and Bruce being there. So Hope and I ended up going out for a quick dinner and coming back, and still no Bruce, no Buzz, no Hemi. But Peter was there, so Hope said to Peter, 'Where's Bruce?' Peter said, 'I don't know.' And Hope said, 'I bet he's meeting with Darren.' And Peter said, 'Fuck, no, that'd be against the constitution.'"

She testified that after they were "hauled" back to the offices at Royal York they found out that Buzz and Bruce had gone to meet with Darren. When asked by Lori Ruggles if Bruce Bell had been made aware of how upset people were that he'd met with the company alone originally, the response was "Yes. As a matter of fact I had a few choice words that night myself because we weren't included. I was very disappointed because we were on the company's offer with changes, in my opinion, and I wanted to go home. I was glad that it was called off and that I was going home."

Bruce Bell, on the March 2006 TWU Convention tape, speaking about the involvement of Buzz Hargrove at bargaining, states:

> "He set up a few meetings. Nobody had a problem with that. Went to the meeting, we're trying to get somewhere. I didn't know he was getting that third meeting. And he asked me to go, and I went. Not to sell the union out, just to get us back to the bargaining table. Not to bargain anything, as I said earlier this week. Just to take it back to the bargaining committee. That's all I did, and as President of the Union, and the dedication and time I've put in, I thought I could have that leeway."

<u>Trial Board Decision:</u>

The Board finds the evidence clear, cogent and convincing that the President met with the company, on more than one occasion without the presence of other TWU members, and without the knowledge or consent of the TWU Bargaining Committee or Executive Council. The evidence shows that this is a violation of TWU General Policy #28. This was a unanimous decision of the Trial Board.

Allegation #9

That the President was grossly negligent in his duties when he invited Brother Hargrove and Brother Metic to the bargaining table and allowed Brother Hargrove to bargain on behalf of the TWU Constitution, Article XVI Paragraph 1(b) as well as Article XIII Item 5 especially since the President's initial decision to involve Hargrove was made in isolation of the duly elected members of Executive Council and the TWU Bargaining Committee and that said decision resulted in the TWU being led down a path toward irreparable harm.

Summary of Evidence

The Trial Board considered the sworn testimony of Lila Hackett who stated that members of the Canadian Auto Workers Union – who had been enlisted to help get the ear of the Minister of Labour – interfered with the work of the TWU elected Bargaining Committee.

The Trial Board consulted the Constitution. Article XVI Paragraph 1(b) reads:

> *"Collective bargaining with employers shall be conducted by the Bargaining Committee of the affected Bargaining Unit."*

The Board also looked at Article XIII:

> *"The Bargaining Committees shall consist of the President and a structure determined by the affected Bargaining Unit, subject to approval of the Convention or the Executive Council in the case of a newly organized Bargaining Unit."*

Ms. Hackett swore under oath that the President allowed Buzz Hargrove, President of the Canadian Auto Workers Union, to sit at the bargaining table negotiating with the Company. Part of her testimony is reproduced here:

> *"Went to Toronto. When we got there we were met that evening by Hemi Metic, who is head of organizing for CAW. I thought he was just there to wish us well and do whatever, but he bought us dinner and said that we would be using some of the CAW officers over at the Royal York. The next day at the Royal York we met Buzz Hargrove and Bruce Bell and the rest of our Bargaining Committee. For the Bargaining Committee, there was myself, Ron Driscoll, Joe Benn, Hope Cumming, Peter Massy and Bruce Bell. That was all of the Bargaining Committee that went to Toronto.*
>
> *So we were going to meet the company, so off we go to – I believe it was the Hyatt Hotel – and we were in our little breakout room, and Buzz is in the room with us, Buzz Hargrove. So I was a little bit confused because I knew that Buzz had kind of been involved with Joe Fontana My understanding was that he had a relationship with Joe Fontana, the Minister of Labour, and that he was going to be helpful in kind of overseeing how the negotiations were going and kind of report back to Fontana as to what was going on. But certainly my understanding was not that he was bargaining for us, so when he was in the room and we were starting to talk*

> *about going in and meeting the company, I had to ask him – 'What is your role in our Bargaining Committee?' And his reply to me was, 'I'm here –'he actually looked a little bit shocked that I would ask that and I know Brother Bell was furious that I asked that. But he said to me, 'I'm here to help in any way I can, and at the end of the day I hope you'll join our union.'"*

Ms. Hackett went on to say,

> *"So everybody's been in the situation where you ask a question that you know nobody wants you to ask because the room goes silent and you get these daggers at you, but I had to ask because he was sitting at our bargaining table and then right after that I was told that only Peter, Bruce and Hope and Buzz ere going into the bargaining room, that Ron, Joe and myself were going to sit in the breakout room and wait all day. So what's wrong with this picture? You have Buzz Hargrove who is not on our bargaining committee sitting at the table with Darren Entwistle and why is the shortened committee sitting all day in the room outside waiting?*
>
> *So all day we waited outside and never did go in and meet with the company that day. We waited for Hope and Peter and Bruce, and when they came back and we caucused afterwards, it was decided that Darren thought it would be beneficial for the rest of the Bargaining Committee to go in the next day and have a shortened version of the talk that they had had that day, which I felt very annoyed at."*

Ms. Ruggles entered into evidence the *Canada Labour Code, Part I, Sections 94 and 95*. She had Ms. Hackett read Section 95 (a): "No trade union or person acting on behalf of a trade union shall

(*a*) seek to compel an employer to bargain collectively with the trade union if the trade union is not the bargaining agent for a bargaining unit that includes employees of the employer;"

The Trial Board was directed to evidence that the substance contained in this allegations had been presented to both the President of the TWU leading up to and at the March, 2006 Convention and to the President of the CAW previously and had never been denied or refuted by either at any time.

Responding to concerns raised from within his own membership, Buzz Hargrove wrote, "I was asked by the Bargaining Committee, including Lila Hackett, to join the committee to assist in bargaining. I was joined by my assistant Hemi Mitic as well. I at no time attempted to browbeat any committee member. I was asked for my opinion on several issues as well as for my opinion on the overall proposals. I joined with the overwhelming majority of the committee to recommend the tentative agreement to the membership for ratification. There is no violation of the CAW constitution by my assistance to the bargaining team. There are no implications one way or the other to Local 2000 members. In solidarity, Buzz Hargrove" (e-mail from Buzz Hargrove to Robert Carmichael, President, CAW Local 2000.)

<u>Trial Board Decision</u>

The Trial Board found that the evidence put before us was clear, cogent and convincing and supported this allegation.

Allegation #10

That the President flagrantly ignored the direction given to him by members of the Twu Executive Council and members of the TWU Bargaining Committee that he was to walk away from the table if the company was still insisting on their final offer.

Summary of Evidence

The Trial Board considered the sworn testimony of Lila Hackett. She testified that up until the September 23, 2005 meeting with Darren Entwistle, Judy Shuttleworth, and Stephen Bedard at which Mr. Bell agreed to return to the bargaining table, members of the TWU Executive Council and Bargaining Committee were of like mind and that the TWU's bargaining position was the TWU agreement with 56 enhancements. On or about September 24, 2006, Mr. Hackett and other members of the Bargaining Committee were informed they were going back to the bargaining table.

Ms. Hackett testified about what occurred following the September 24 TWU Executive Council meeting. "So when the executive meeting was over, I explained what Elizabeth had said to me to Hope, and I said again, "If there is something that I don't know, if were going to go on the company's offer, I'm not going to Toronto, I not doing it." And she said that direction had come from the Executive Council, and I believe it was Sherryl Anderson who asked, made it very clear, so if you're going to Toronto and they're still on their offer, you're coming home." And I believe she asked it more than once because I was very, very concerned with what I had heard and I wasn't prepared to go to Toronto if that was the case. They'd have to send somebody else. So I was assured that if we went to Toronto and the company was on their offer, that we would be coming home."

Asked if Executive Council had directed the Bargaining Committee, Ms. Hackett replied, "What I understand is that the question was asked point blank on more than one occasion, so let me get it straight – if you go to Toronto and the company is on their offer, you're coming home." She testified that the answer to that question was yes.

Ms. Hackett's sworn testimony indicated that the company seemed to be surprised when TWU Bargaining Committee members wanted to speak about TWU proposals. She testified,

> "I mean you could see by Judy's face and you could see by Darren's body language that they were pissed off that we were bringing these proposals. So we were bringing them on, they listened to it, they caucused, they came back and basically said, 'No. We said no. What is this all about?' Right? It was very evident to me they were not prepared to listen to any kind of proposals at all, that they had already come to some kind of agreement, and why are you bringing this now?"

She continued:

> "Well, we came back to Vancouver and at the Radisson, and Buzz and Hemi were there as well. I think Buzz couldn't come the first day but he was there the next day, and it was just like a change in the whole process where we weren't putting forth

> any proposals, we were just talking about their proposals. I kind of went into a withdrawal state because I couldn't believe where we were, and I can't say, 'We can't do this, we can't do this,' and I know that I went to Sister Cummings and said, 'You're going to stop this, right? Because we're not supposed to be on their document, you're going to stop this, aren't you?' And she goes, 'We just have to wait and see Lila, we just have to wait and see.' And at the end of the day they all voted to recommend this company's document, take it out to the membership."

Ms. Hackett also addressed this matter in her minority report:

> "Executive Counsel met and gave the Bargaining Committee spokespeople direction to go to Toronto to bargain but if the Company is still on their offer, they were to come back."

Trial Board Decision

The evidence showed that The Trial Board found that the evidence put before us was clear, cogent and convincing and supported this allegation.

Allegation #11

That the President failed to uphold his oath of office when he recommended acceptance of the Telus offer because that recommendation violated the TWU Constitution, Article XVI, paragraph 1c in that the established bargaining policies carried by the 2000 Bargaining Convention were ignored and that even the very aims and objects of the union were contradicted by the recommendation of the leadership to accept an offer that denied the membership basic rights such as seniority.

Summary of Evidence

Article XVI Collective Bargaining #1(c) Subjects for Collective Bargaining will include such policy objectives of the Union as are determined by Convention and the affected Bargaining Unit. No item shall be in the subject of negotiations which contravenes bargaining policy established by the Convention.

Evidence was introduced that the following policies were adopted at the TWU September 2000 Bargaining Convention.

> Local 1
> Therefore be it resolved that the TWU bargaining committee reject any proposals that the company may bring to the table limiting in any way the use of ATO days by our members.
>
> Local 16
> Therefore be it resolved that the TWU does not accept any wage or benefit concessions during the next round of bargaining.

Local 52
Therefore be it resolved any two tier system within any classification regarding wages and benefits is not acceptable.

Lila Hackett testified that the Rimouski members went from a 35 hour work week and they were going to change them to a 37.5 hour work week without a wage increase and they hadn't had a wage increase in five years. Ms. Hackett testified, "To bring this offer to the membership without even the most basic principles of unionism such as seniority rights was not an option for me."

Ms. Hackett also entered into evidence correspondence from heraddressed to Buzz Hargrove (CAW). She wrote:

"Instead of staying on course and demanding a revised and respectful collective agreement, you took part in destroying 50 years of bargaining, job action and sacrifice. It was your recommendation, not mine, that we accept:

- massive contracting out and work moving overseas
- office closures
- crossing other union's picket lines
- getting rid of our maintenance of membership clause
- no seniority rights on job postings
- longer hours for operators
- mandatory overtime for plant/craft
- splitting the east away from the main contract" and other concessions
- scabs not paying union dues for the duration of the strike (which takes away one very important method of repayment to the members)
- giving away our legal right to make complaints and continue them (including the use of scabs)
- deleting our 'all employees are to be treated in a just and equitable manner' clause, etc."

TWU Constitution Article III Objects paragraph 2 states:

"To improve the wages and working conditions of workers through the process of collective bargaining."

TWU Constitution Article VIII para 7 - Oath of Office President states:

"In installing you as President of the Telecommunications Workers Union, as Convention Chair, I wish to impress upon you the importance of your office.

The confidence of the Delegates is placed in you to give this Union the best of your service, to give your decision impartially without fear or favour for the benefit of the Union and its membership.

Do you accept this responsibility?
Please raise your right hand and repeat after me, using your name where I use mine.

'I, _____, in the presence of these witnesses faithfully promise to obey and enforce the Constitution and Policies of the Union. I also promise to perform the duties of this office to the best of my ability.'"

Trial Board Decision

The Trial Board found the evidence presented to be clear, cogent and convincing and that it supports the allegation. The evidence shows that it is the President's responsibility to enforce the TWU Policies and Constitution, and that the 2002 Bargaining Convention set certain policies that were not adhered to when the offer was taken out for a vote with a recommendation of acceptance. Mr. Bell violated his oath of office, which he promised to obey, by not enforcing the Policies and Constitution of the union. Mr. Bell also ignored the direction of Executive Counsel who instructed that if they were on the Company's offer they were to leave the bargaining table.

Allegation #12

That the President neglected to protect the bargaining unit when he failed to file an unfair labour practice complaint upon threats of office closures, movement of work and the company's interference with the operation of a trade union during the bargaining and ratification process thereby allowing the company to violate the Canada Labour Code under Part 1, Section 94.

Summary of Evidence

Lila Hackett testified that Sherryl Anderson sent an email to Bruce Bell providing the Labour Code language stating that threatening office closures and layoffs in bargaining is bargaining in bad faith. Ms. Ruggles referred Ms. Hackett to a document entered as evidence "Strike and Lock Out Provisions Under the Canada Labour Code" which Ms. Anderson had researched. Ms. Hackett advised that it is a legal opinion and read from the document "Parties are entitled to engage in hard bargaining. The duty to bargain does not cease when the work stoppage commences" "When an employer deliberately manipulates an issue to the point of impasse, even when the issue is negotiable, the employer has a heavy onus to support its position with plausible and justifiable reasons." Threats to move the operations unless an offer was accepted, threats of layoffs concealed in an otherwise permissible communication with employees." "The reported cased under Section 50 provided a number of examples of bargaining practices that were considered to violate the duty to bargain in good faith. These include threats to move the operations unless an offer was accepted." This information was shared with the Bargaining Committee and it fell on deaf ears.

Trial Board Decision

The Trial Board finds that the evidence supports that an unfair labour practice complaint could be filed on the threat of office closures while in bargaining. There is no evidence, however that the decision not to file an unfair labour practice complaint was Mr. Bell's decision alone as the bargaining committee members were made aware of this information and chose not to act on it. The Trial Board does not find that the evidence provided substantiates this allegation.

Allegation #13

That the President betrayed his commitment to the membership that he would accept the no vote, continue on with the fight but then immediately pushed for a 'tweaked' offer instead.

Summary of Evidence

This allegation has two allegations within the allegation. The Trial Board determined that it would look at the 'President betrayed his commitment to the membership that he would accept the no vote and continue on with the fight' as one allegation. The testimony of Delores Pilsl was in regards to the Cloverdale Ratification Meeting where Rob Jones went to the mic for questions, and asked Bruce Bell if it's a No vote, what will happen? Mr. Bell replied that we would continue the fight. By the following Monday Ms. Pilsl advised they had gotten back to the bargaining, twigged deal was imminent and John Carpenter who is a Business Agent wouldn't let them hand out the brochures at the rally they were planning because there was an imminent deal.

Lila Hackett, in testimony, stated

> "At ratification I was expecting where do we go now, maybe we'll go back to fight and get something else. We weren't even called in on it. The Bargaining Committee was not called in. The three of them went back to the company and came back with this tweaked offer. Ms Hackett stated that people were angry at the ratification meetings and asked, 'What are you going to do if we say no.' It was said that they would go back and work hard at making some changes. They were prepared to go back and fight. People actually said 'You're not going to take this back and tweak it?' The answer was 'no' and that is exactly what happened."

Trial Board Decision

On the first part of the allegation "That the President betrayed his commitment to the membership that he would accept the no vote and continue on with the fight; the Trial Board finds there is clear, cogent and convincing evidence that supports this part of the allegation. On the second part of the allegation "but then immediately pushed for a 'tweaked' offer instead; the Trial Board recognizes that the tweaked offer happened quickly but the allegation of "betrayed his commitment" as it relates to the tweaked offer was not clear, cogent and convincing. While there is testimony of some members objecting to tweaking the offer it was not clear in evidence that Mr. Bell made that commitment and therefore the allegation is not substantiated.

Allegation #14

That the President betrayed the trust of the membership by declining to properly inform the membership of what they were voting on at the ratification meetings because the members did not have time to digest and compare their respective collective agreement's and the company's offer. Some members voted on the Bargaining Committee's recommendation alone without the benefit of having the company's offer in hand to make their own comparisons. During the second ratification vote, the members only received an update and there was no opportunity via the mail in ballot to have their questions answered or their

concerns responded to. This was a further violation of the Constitution which mandates that members must have a set of proposals in front of them, during referendum ballots, in order to be able to make an informed decision. (see TWU Constitution, Article XIX, Item 2).

Summary of Evidence

Lila Hackett stated in her testimony:

> "Everybody including the Bargaining Committee, upfront said it was a bad agreement, but we're recommending it."
>
> "we spent five years looking at their document, listening to them read it to us, not really giving it any kind of credence because it was crap we were on a revised, respectful collective agreement and now we're giving it to our members."
>
> "We didn't even know what was in there. We didn't even really realize the stuff we were giving up. We did not do a good job for Rimouski; we did not do a good job for the East."

Ms. Hackett goes on to say :

> "this was like it was pushed through, there wasn't a lot of thought to it and every day, since then, you find out something more that you didn't know you gave away or that you lost. I don't think its right to recommend acceptance to an agreement that you haven't really looked at."

Ms. Ruggles drew our attention to TWU Constitution Article XIX Balloting paragraph 2, which states:

> "All referendums shall be by secret ballot and voting conducted either by mail or at meetings where members receive prior notification. Referendum ballots shall be accompanied by the proposals to be voted on and shall specify the date of return. A majority of the votes cast shall determine the referendum unless otherwise specified in this Constitution."

In the 2006 Convention tapes Rob Jones stated that he was aware of 78 people that had requested ballots and did not receive them.

Trial Board Decision

This allegation has two parts within the allegation. The first part of the allegation is that the President betrayed the membership by declining to properly inform the membership of what they were voting on. While we heard compelling testimony from Lila Hackett who was on the Bargaining Committee stating they never really looked at the offer, we did not hear any evidence from the membership or evidence that they were unaware of what they were voting on. Not hearing any evidence, the Trial Board does not find the allegation to be substantiated due to the absence of clear, cogent and convincing evidence. On the second part of the allegation we found

that ballots not received would not allow for members to have an update or opportunity to vote. While the Trial Board found this allegation to be true we did not find any evidence pointing to the accused as having sole responsibility for this so in the absence of clear, cogent and convincing evidence we find the allegation is not substantiated..

Allegation #15

That the President had unilaterally decided upon a strategy (acceptance of the company's offer with minor changes) without consulting or advising the TWU Executive Council or the TWU bargaining committee and took actions that had the effect of ensuring that other avenues of defence were unavailable to the membership.

Summary of Evidence

The Trial Board separated this allegation into two components for the purpose of dealing with the evidence. The first component ("Part One") deals with the evidence related to unilaterally deciding upon a strategy without consulting or advising the Executive Council or Bargaining Committee. The second component ("Part Two") deals with evidence related to ensuring that other avenues of defence were unavailable to the membership.

Part One

Elizabeth Fletcher testified that on September 22, 2005, she was in attendance at a Liberal fundraising dinner for David Emerson, along with President Bruce Bell, Vice-President Hope Cumming and Secretary-Treasurer Jim Christensen. During the evening she had a conversation with Mr. Bell in which he stated he wanted to take the company's offer out for a vote. She was surprised by this news and commented that she thought taking the offer out meant the union would be on the company's offer from then on. His reply was that there would be "quid pro quo" bargaining and that the union didn't have to accept that offer and might need to go back for numerous votes. Further, Ms. Fletcher testified that near the end of the dinner, Mr. Bell told her that he was flying east that evening, and asked her not to tell anyone he had gone there. He then left early from the dinner. At the ending of that evening, Ms. Fletcher asked Ms. Cumming and Ms. Christensen if they knew Bruce wanted to take the offer out to a vote. They said they did not. Ms. Cumming remarked that Bruce "wasn't all of Executive Council" and that Executive Council would be the ones making that decision, not him.

Lila Hackett, through her Minority Report, which was entered into evidence, provided the following statement:

> "We had many strategies in place and many more that had not yet been utilized. Unfortunately, those strategies were interrupted and set back due to our capitulation to the company's demands.
>
> During the week of September 19 through 23, 2005 I received calls from members advising me that President Bell was telling people that we were on the company's offer with some changes to it. I advised these members that the committee had not

> even met since the lockout so they must be mistaken and that I was certain we were still on the position of a revised respectful collective agreement."

Ms. Hackett also gave sworn testimony as follows:

> "The Bargaining Committee had not met since that time, our position hadn't changed to my knowledge, and it kind of gave me a sick feeling when I got the second and third and fourth phone call from different people that there was something happening that I didn't know about. I actually called some other members of the Bargaining Committee to see if they had heard anything about that, and none of them had."

Evidence was entered from the March 2006 TWU Convention tapes, where Ms. Cumming told the following to convention delegates:

> "I talked about meetings that we weren't aware of, and there was more than one, and they were turning points. What I have a problem with people don't take responsibility for not including your elected officials. There's been a lot of talk about violations of the constitution and we should be following the constitution. The problem was we didn't follow the constitution when we were at the bargaining table or in front of Darren Entwistle. Your elected Bargaining Committee went to Toronto. A representative group of us went to Toronto and we weren't even included in those decisions. We went to the meeting after Entwistle told us to pound sand and the next thing we know individuals are having meetings. Buzz Hargrove, Hemi Medic and Brother Bell. No courtesy given to Vice-President Peter Massy, Vice-President Hope Cumming or the other elected Bargaining Committee members that were there. I find that an atrocity, I don't believe that people should be going off and doing things on their own."

Part Two

Bob Marcus testified, and submitted as evidence an e-mail with the same information, that he'd had a conversation with Bruce Bell in the TWU office at Lane St. after the first tentative agreement, but before the vote took place. Vice Presidents Peter Massy and Hope Cumming were in the room as well. After some "badgering," Mr. Bell told Mr. Marcus that he had turned down an offer by the Labour Minister of a Special Mediator. The President said he'd turned it down because the person who would be appointed was involved in the Alliant dispute, and would have given us a terrible deal. Ms. Cumming commented that she disagreed with that view. Mr. Marcus's view was that the President had made a major blunder.

Entered as evidence from the tapes of the Special Convention in March 2006, we heard Ms. Cumming giving the delegates the following information:

> "No one from the Bargaining Committee, and no one from your Executive was aware that there was a meeting scheduled in Toronto on the next day until ten o'clock that night, at the dinner. I was at the dinner. Brother Bell was at the dinner. Brother Christensen and Sister Fletcher was there, and we were lobbying to try and

> get David Emerson and his group, you know, the Liberals, to get onboard to get us that special mediator – and remember, we had a lobby group read to go out to Ottawa to lobby again. They were very successful the first time they went out there. They had the politicians paying attention and we were sending them again. That got stopped.
>
> But we were at a dinner on Thursday night to lobby, and I got told at ten o'clock at night by Brother Bell that he was going to Ottawa on a twelve o'clock plane… to meet with Mr. Fontana, the Minister of Labour. There had already been an Executive Council meeting set up on Saturday, and so he tells me he's going to see Mr. Fontana with Mr. Hargrove. We get to the Executive Council meeting on Saturday and the meeting was actually with Darren Entwistle, Judy Shuttleworth and Steve Bedard, not with Joe Fontana.
>
> …I think this was a turning point in our dispute because earlier in that week in Vancouver there was a protest of about 400 people outside of the Vancouver Sun. When Mr. Fontana was meeting with the editorial board of the Vancouver Sun and he was telling them that he was looking at appointing a special mediator. Remember he offered one before and we said yes, Entwistle said 'no'? That wasn't what he was talking about this time. This was a new day. I'm talking about a special mediator that he was going to appoint. I don't think he was asking either party – he'd already asked, and somebody said 'no, thanks'."

During the same speech by Ms. Cumming, the following evidence was introduced from the Special Convention tapes:

> "The other thing that happened was we were told all along – you who have been in the room for the last 5 years heard – we had 18 million dollars coming from the labour community to help us out when we needed it. We asked for that money to start to come forward – I think it was the September or October meeting – to go and get that money in place and have it ready. That money was not in place. The people that the President was dealing with through the federations and the different unions, they didn't come through for us the way we wanted to at the time. I don't know if they were asked – we asked for them to be asked, but it didn't happen. I can tell you it didn't happen because I know that, at the end of the day, your four Executive Officers were trying to make payroll at the end. We did get help, we did get people to give us money, but we were told for a lot of years, that we had 18 million dollars, and it was not there when we needed it."

Jeff Morris testified that he had powerful information that could be used during contract negotiations. That information was given to Mr. Bell during a private meeting in August, 2005. The meeting had been arranged by Mr. Bell who had been in communications with others who knew about the material. The meeting lasted three hours and every relevant piece of paper he had, and every file he had, was discussed with the President.

Mr. Morris went into great detail about the material and its value. Due to the confidentiality of this material, details will not be reproduced in this report. We heard testimony that he was never

contacted by Mr. Bell again over the use of the material. He never heard from the Bargaining Committee or Executive Council. He called the President a number of times to ask where things were and his calls went unanswered. He said he watched the contract roll out and never heard mention of his information. Ms. Hackett, a member of the Bargaining Committee, testified that she had only heard of Jeff Morris's information a few weeks earlier, and that it never came up for discussion with the Bargaining Committee.

Trial Board Decision

The evidence showed that the President changed the Union's bargaining strategy without consultation or endorsement from either the Bargaining Committee or Executive Council. The evidence showed that the President had unilaterally decided to bargain on the company's offer after five years of a strategy founded upon the TWU Collective Agreement with 56 enhancements.

The evidence also showed that the President turned down a federal mediator when offered, despite the fact that this was one of the Union's priorities, and instead chose to return to the bargaining table on the company's offer. It was noted that when this was stated at the 2006 Special Convention, it was neither disputed nor refuted. Through testimony, the Trial Board was shown other ways in which the President, through his actions, inaction or lack of consultation with others, deprived the membership from pursuing various other possible strategies to successfully conclude the labour dispute and gain some leverage in negotiations. An example of this was cancelling political lobbying when it was appearing to be showing some success.

The Trial Board finds that the evidence put before us was clear, cogent and convincing, and supports the allegation.

Allegation #16

That the President committed to TWU members that the East was going to join in the labour dispute and then retracted that commitment, causing TWU members to become disheartened and resulting in a further loss of credibility, which negatively impacted the locals' ability to have their picket lines respected.

Summary of Evidence

Evidence was introduced through the sworn testimony of Delores Pilsl. She reviewed her experiences on the picket lines at Telus Mobility in Calgary. She testified that Bruce Bell was in Calgary on August 4, 2005, where he told members attending an information meeting that "the East was going to be out in two weeks". Ms. Pilsl testified that she'd heard this from members attending the meeting and was "stunned" as that was not the information they had been operating under. Mr. Bell then attended the picket line at 3030 -2nd Avenue S.E. where Ms. Pilsl was picketing with others. Members asked him repeatedly about the East. She heard the President state that the East was going to be taken out within the next two weeks.

Ms. Pilsl testified that John Carpenter had advised the members about the lack of preparation in the East. She testified that members in Mobility were concerned because Mobility workers in the East

were doing their work, and what was the point of staying out if the East wasn't going out. In her testimony, Ms. Pilsl's said,

> "There was never an intention to take the East out. Apparently he did not have all of the names of the bargaining unit members, so did not know who was bargaining and who was not. None of the locals had been established, there were no executives in place until September. We could not take the East out. Once the members of my local found out that the President of the TWU lied to them, all confidence in the union was gone and the vast majority of Local 213 crossed the picket line."

Ms. Pilsl also testified that she was expressing concern about the lack of information and communication, about the many tactics of the company that were discouraging the members on the line; company Kool-Aid sessions, the company bringing in food, iPods, managers calling members fifteen times a day threatening them. In her view, there appeared to be no strategy to deal with those issues. She, along with Ivana Niblett, met with John Carpenter and called Mr. Bell from Mr. Carpenter's car. During that conversation, she told Mr. Bell they needed help, and confirmation that the East was going out because "we were getting killed out there." Mr. Bell's reply skirted the issue of the East going out and that he'd look into it to see what he could do to help, but that they'd have to hold the line, even if there were only two of them left. By the end of the conversation it was clear to Ms. Pilsl that the East was not going out and they weren't going to get any help.

Trial Board Decision

The Trial Board found that a commitment to take the East out had been made and later retracted, but that no offence can be found in that action. We were convinced that members did cross the Mobility picket lines in Calgary, and the evidence shows there were many reasons for the members to become discouraged. Members may have crossed the picket line because the East did not go out, but there was no evidence produced that clearly and convincingly linked the President's commitment to take the East out and the actions of the members crossing the lines. Therefore this allegation is not substantiated.

Allegation #17

That the President failed to provide the delegates and members with timely information with respect to the consequences for crossing picket lines which undermined the sanctity of the picket lines and weakened the various locals' ability to defend those lines.

Trial Board Decision

The accusers withdrew this allegation; therefore the Board did not deliberate on this issue.

Allegation #18

That the President, in observance of past practice should have called a special convention upon the rejection of the offer and that he failed to meet his obligation to the Delegates in allowing the locals to have a say in the debate and discussion as to how to proceed.

Summary of Evidence

Bruce Bell speaking at the mike at March 2006 convention stated:

> *"The second mistake that I'll apologize for when we did get that crummy deal it took a long time and some late hours with the Bargaining Committee. It was overwhelming majority, not unanimous. Then took it to Executive Counsel that took two days. It wasn't unanimous but it was overwhelming again. Here's the mistake should of called a special convention, even though that would have cost a lot of money and let you guys decide."*

George Doubt on the stand was asked by Ms. Ruggles, "The last time a Bargaining Committee recommendation was rejected, what happened?

Response of Mr. Doubt, "My experience what happened was a special convention was called.

Ms. Ruggles entered into evidence the TWU Constitution which contains Article VII Special Conventions paragraph 2 (a) "Special Conventions may be called by the Executive Council at any time."

Ms. Ruggles quoted Article IV paragraph 3 The President as the principal officer of the Union, shall have sole authority to interpret this Constitution and to carry out the policies of the Union in accordance with the Constitution and the mandates of the Convention subject to the right of appeal to the Convention.

Trial Board Decision

The evidence showed the President, at Convention, was apologizing for a second mistake. He states, "Here's the mistake, shoulda called a special convention, even though that would have cost a lot of money, and let you guys decide." Mr. Doubt's testimony was that the last time a Bargaining Committee recommendation was rejected a special convention was called. The Trial Board found that the evidence was clear, cogent and convincing and supported this allegation.

Allegation #19

That the President, by his actions at the Calgary ratification meeting, in yelling at and publicly threatening Sister Hackett, the author of the minority report, sent a message to the membership that diverse opinions are not well tolerated within the TWU and that his behaviour exhibited that the President himself could not refrain from conduct unbecoming of an Officer of the Union and that this action led to a lack of respect for the President and cast doubt on the ability of the President to perform his duties in a professional manner.

Summary of Evidence

Delores Pilsl testified that she attended a "heated" Calgary ratification meeting. Ms Pilsl advised she was directly opposite the stage near where Lila Hackett was sitting. She gave the following account of what happened after Ms. Hackett filed her minority report and where Bruce Bell was

getting a "rough ride" over the terms of the tentative agreement or the recommendation of the committee.

> "Brother Bell walked over to Sister Hackett and leaned over the table and shook his finger in her face and said, 'You're going to pay for this.' The people [who] were standing around me were stunned, saying 'This is how our President of our union acts?' People felt betrayed, people felt abandoned and to have this kind of action from somebody who is supposed to be our leader and making decisions for us wasn't going over very well at all."

Further testimony from Ms. Pilsl after the above story indicated people in Calgary felt dismissed, that people felt like scapegoats, and similar comments. She testified of having discussed these issues with members from Local 213, and through her access to other members as the "Soup Lady", members on the line from Locals 203 and 204. However, it is not clear from this testimony whether she was talking about the repercussions related directly from the "finger shaking" event, or to the ratification meeting as a whole.

The Board was not aware of any further or corroborating evidence on this allegation.

Trial Board Decision

The Board concluded from the evidence presented that the President did shake his finger in anger at Lila Hackett and made threatening remarks in a public forum. The Board felt that, while inappropriate, there was no evidence making a convincing argument for the allegation. Those who were close enough to hear the comments, or close enough to witness the gesture, may have been adversely influenced as alleged, but to extend this out to the membership, which we take to mean the membership at large, is a stretch. We note that Ms. Hackett gave testimony at the trial, but did not take the opportunity to bring up this incident. The Board therefore finds that the evidence does not substantiate this allegation.

Allegation #20

That the President undermined the plans of those responsible for Political Action, to enlist the assistance that was needed from MPs and other unions in order to support the TWU's strategy to obtain federal intervention.

Summary of Evidence

The evidence shows that the March 2005 convention endorsed a campaign called "Another Wrong Number" which had a three-pronged approach; 1) a Political Action component that included lobbying Members of Parliament which, in part, was to gain support to get third-party intervention in the dispute, 2) a consumer boycott component to gain support from the public for a boycott of Telus's services and products, and 3) a third-party boycott component that targeted suppliers, such as Future Shop, to convince them to stop handling Telus products.

George Doubt, the TWU Political Action officer, testified that during the week of June 6 to 10, 2005, he, Elizabeth Fletcher and two other TWU members, along with francophone members from

the Steelworkers, met with over one hundred Members of Parliament and were successful in gaining political support, including the support of the whole NDP caucus, the Conservative Labour Critic, and letters of support from a large number of Liberal MPs. During that trip, George Doubt talked to Bruce Bell on the phone, who indicated he'd heard about the success of the lobbying campaign, and remarked that the campaign was "almost too successful." Bruce Bell also indicated that the Minister of Labour was close to doing something for the TWU, but the Minister wanted it to be his own idea, rather than forced on him by opposition parties.

According to George Doubt's testimony, up to June 27, 2005, the consumer boycott campaign was proving to be far less successful, and the third-party boycott campaign had been completely unsuccessful.

On June 27, 2005, there was a meeting of the "Another Wrong Number" committee. In attendance were President Bruce Bell, Vice-Presidents Peter Massy and Hope Cumming. The purpose of the meeting was to discuss future strategy. George Doubt testified his preference was to build on previous success with the political action campaign and put more pressure on the Minister of Labour. Bruce Bell indicated, "Political action would be put on the back burner." Instead the union would concentrate on the consumer boycott campaign by setting up picket lines at 66 London Drug locations in BC and two in Alberta on July 9th. George testified that when he tried to debate that decision, he was told by the President that "the decision was made, he didn't have time to listen to what I had to say, and there was other important things to go on with."

He also testified that there was no reason not to continue with all three prongs of the campaign, as all three had been in place up to that time. But out of three options the President was choosing the weaker option to concentrate on, and ignoring the strongest and most successful option. Because of the choice of the weaker option and something he thought was key to the TWU strategy, that the President was not fully committed to using all of the union's strength to get the best possible agreement for the members. He also believed his own contributions to the Political Action Committee were not wanted by the President. He believed in the end that disaster was on the way for the members. When he left that meeting he wrote out a letter of resignation.

Elizabeth Fletcher testified that on September 22, 2005, she was in attendance at a Liberal fundraising dinner for David Emerson, along with President Bruce Bell, Vice-President Hope Cumming and Secretary-Treasurer Jim Christensen. During the evening she had a conversation with Bruce Bell in which he stated he wanted to take the company's offer out for a vote. He also told her that he was going to fly out that night and go back east. He asked her not to tell anyone. She also testified that TWU members had plans to go to Ottawa to lobby federal Members of Parliament on bargaining issues. Two days after the Emerson dinner, Bruce Bell phoned her to advise her that the planned political action trip was cancelled.

Evidence submitted from the March 2006 TWU Convention tapes indicates Secretary-Treasurer Jim Christensen, speaking at the microphones from the floor of convention, stated,

> "We were all set to go to Ottawa when we were at the meeting with Emerson, we were working the room, there were a lot of other people there, Ujal Dosanjh and also Bob Pleckus. We went to talk to them and said, 'You know, we're just trying to get a deal here.' He said, 'You guys are being treated terribly. David Emerson is a

> friend of mine. I'll be making sure that he's going to push to make something happen for you guys.' All of the work we did, plus we were supposed to be heading for Ottawa the next week. We had the people ready. We were going to follow in the path lead to us by Brother Doubt in early June when he went out and did such a great job in bringing our issues to the fore. We were ready to go."

Still with the March 2006 Convention tapes, Vice President Hope Cumming speaking at the microphones in reference to the David Emerson dinner, said,

> "I was at the dinner, Brother Bell was at the dinner. Brother Christensen and Sister Fletcher were there, and we were lobbying to try and get David Emerson and his group, you know, the Liberals, to get on board to get us that Special Mediator. And remember, we had a lobby group ready to go out to Ottawa to lobby again. They were very successful the first time they went out there. They had the politicians paying attention, and we were sending them again. That got stopped."

Trial Board Decision

The evidence provided, including sworn testimony, indicates there had been a successful political action campaign, and other less successful campaigns going on at the same time. The testimony at the trial to this effect was corroborated by TWU officers of the union on tape at the TWU Convention in March 2006 who told delegates that political action had been stopped despite previous successes and the potential for further success. Mr. Doubt, the Business Agent in charge of political action, resigned from office over the issue of abandoning a successful strategy. The evidence shows that efforts to revive political action had again been attempted; the lobbying at the David Emerson dinner and a planned trip to Ottawa three days later to build on previous successes, but that effort too had been stopped in its tracks when the President cancelled the trip the day before the departure to Ottawa. The Trial Board finds that the evidence put before us was clear, cogent and convincing, and supports the allegation.

Allegation # 21

That the President, at times, put a political agenda ahead of his service to the membership.

Summary of Evidence

The Trial Board considered the sworn testimony of George Doubt, who believes that the President delayed binding arbitration prior to the 2004 Convention in order to create political advantage. He testified, "When I first read this my belief was – and I believe today still – that the reason to put off binding arbitration until after convention was for political advantage and to have the bargaining, as I said, up in the air and in a tenuous state at convention for political purposes." Mr. Doubt pointed to the Heenan Blaikie document discussed at length in Allegation #2 (on page ten of this document).

Lila Hackett testified regarding an incident in November, 2003 where the President cancelled a bargaining session to deal with a matter involving two local executives, a matter which Ms. Hackett observed to be local politics that, while important, was not worthy of cancelling a session of

bargaining. As well as being a member of the Bargaining Committee, Ms. Hackett was the President of one of the locals involved at the time. In her testimony, she said,

"So when we had our Executive meeting, this story came out and the local executive was very angry about what had happened, and they wrote a letter to Executive Council about what Brother Bell had done at this local, and how it made it very difficult for locals to work together if you were going to suggest that something had happened that was fishy. When it got to Executive Council – I don't even think it got to Executive Council actually – but Brother Bell was so angry at this letter, that we had sent it to Executive Council, he cancelled bargaining for the day. He actually cancelled bargaining over this letter that came in from the local. He called the Bargaining Committee in and basically threatened to have Greg Lorne and myself taken off the Bargaining Committee if we would not have that letter rescinded and not go to Executive Council.

So to me, a Local letter should not have taken priority over bargaining, because we were at a stage where we should have been bargaining. And there were times that the company was accusing us of not wanting to come to the bargaining table, or stalling or delaying, so to delay bargaining for that purpose was beyond belief."

Trial Board Decision

While the Trial Board recognized that the Accusers and the Witnesses truly believed the allegation as set out, the Trial Board did not find that the Accusers produced clear, cogent and convincing evidence to substantiate the allegation.

STANDARD OF PROOF

Prior to issuing our decision, the Trial Board wishes to comment on the effect imposed on the proceedings due to the Accused's refusal to participate.

Members of the Trial Board were aware that during arbitration hearings, it is viewed as reasonable to take a negative inference when a party or a witness refuses to participate. We consulted legal counsel to determine if the same would hold true here. Counsel directed us to *Administrative Law in Canada*, where (at page 61) it says:

> "In an adversarial proceeding, a party who fails to testify and submit to cross-examination is at risk of an adverse inference being drawn, particularly where their personal conduct is in issue and other evidence has been filed against them. If they do not want the other adverse evidence accepted, they must testify to refute it."

At the same time, the Trial Board was guided by the principle that the evidence of the Accusers had to be clear, cogent and convincing. This is a high onus. The Trial Board consulted Philip H. Osborne's The Law of Torts, 2nd. ed. (2003), provided by the Accusers as a resource. In his discussion regarding evidence of negligence, Osborne notes:

> "The burden of proof is on the plaintiff to establish on the balance of probabilities that the defendant was negligent. This standard of proof is sometimes expressed as

> requiring a finding that there is a preponderance of the evidence in favour of the plaintiff's allegations."

The Accusers do not have to meet the test of proof beyond a reasonable doubt as would be required in a criminal prosecution. But the principles of justice do demand that the evidence presented satisfy the members of the Trial Board that the alleged misconduct, infraction, or omission occurred on the higher end of the balance of probabilities.

DEFINITION OF DERELICTION OF DUTY

As both the Accusers and the Accused noted, the term "Dereliction of Duty" as used in the TWU Constitution originated as a military offense. During Preliminary Objections, the Accused's counsel directed us to a portion of the definition for "dereliction" contained in Black's Law Dictionary, 7th edition. We reproduce the entire definition here:

> **Dereliction** n 1.Abandonment, esp. through neglect or moral wrong.
> ***dereliction in the performance of duties.*** *Military law.* Wilful or negligent failure to perform assigned duties; culpable inefficiency in performing assigned duties

Really, there was little disagreement between the Accused and Accusers as to the basic definition of the term.

The Trial Board's legal counsel advises that cases involving dereliction of duty do not generally define it, but rather find that certain conduct is or is not dereliction of duty. The Trial Board's legal counsel pointed us to what she considered the best example, *Mental Patients' Assn. v. Vancouver Municipal & Regional Employee' Union (Hatfull Grievance)*, [1995] BCCAAA No. 45, where it says at paragraph 29:

> "Exercising poor judgment is not, in the absence of something more, culpable conduct. To be culpable, there must be some element of dereliction of duty in making such a judgement call. Dereliction of duty means more than acting unwisely; it involves a meaningful and measurable departure from the standards established by the employer, provided that those standards were communicated to the employee."
>
> [emphasis added]

The Accusers also submitted several legal decisions and one text to assist us in our efforts. They submitted that outside of the military, one finds that cases involving dereliction are usually classified in modern civil law as negligence. The cases they submitted spoke to negligence in relation to trade unions' representation of their memberships.

In *Daniel Courchesne c. le Sundicat des travailleurs de la Corporation de batteries CEGELEC (CBC) de Louisville (CSN) et la Corporation de batterie CEGELEC* [1979] T.T. 328, the concept of gross negligence is discussed.

> "The concept of negligence which can be more or less serious, of great or minor consequence or of another type is always difficult to deal with. On the one hand, a simple negligence can result in serious damage; on the other hand, a gross one can have no consequences. The law must be appreciated by taking into account the whole of the facts and their effects, the negligence and its consequences, the cause and the resulting prejudice."
>
> (at page 335, translation provided).

A chapter from a text by Dr. Phillip Osborne, Professor at the Faculty of Law at the University of Manitoba assisted the Trial Board in relation to various tests to determine whether or not a person has exercised reasonable care.

In the end, the Trial Board did not consider that each and every allegation had to constitute dereliction of duty. For example, one member was adamant that we note that although he voted in favour of accepting Allegation #8, he did not believe that such a violation amounted to dereliction of duty. All the Trial Board members recognized that the process was really one of two stages.

First, the Trial Board considered all of those allegations brought forward, dismissing those for which the Accusers were unable to provide "clear, cogent and convincing" and relevant evidence to substantiate. Second, the Trial Board considered the question, "Do the proved allegations, viewed together, substantiate the charge of Dereliction of Duty.?" It is on that basis that we proceeded.

THE TRIAL BOARD DECISION ON CHARGE OF DERELICTON OF DUTY

The Trial Board believes that the Accusers put forward a clear, cogent and convincing case containing relevant evidence. Based on all of the considered evidence and the allegations that have been proven to be true, the Trial Board finds the accused, Bruce Bell, Guilty of Dereliction of Duty, as charged.

We wish to be clear that this is not a case of punishing someone for actions that we can judge in retrospect to be wrong. We do not find the "Guilty" by virtue of Mr. Bell having been "wrong" on any particular issue. In a democratic organization such as the TWU, however, there is a contractual obligation imposed upon the officers of the Union, to come to those decisions – bad or not – democratically. In other words, Mr. Bell had the right to be wrong if he came to those decisions as part of the democratic process as set out in the TWU's Constitution and Policies. What he had no right to do was to come to those decisions on his own. We have found that a pattern of unilateral and arbitrary behaviour has been established in this case.

The evidence is compelling that - at certain times - Mr. Bell believes that his position as President affords him "leeway" to make decisions on his own, yet at other times makes claims that as President, he doesn't even get a vote. We found that those unilateral decisions at times had quite severe consequences for the membership of the Union.

The Trial Board found that this behaviour continued even during the trial itself, with a letter from the President advocating merger with another union (dated July 18th and sent out to the entire membership on July 21st). This issue was never discussed with the members of Executive Council and the decision to release the letter was made on his own.

PENALTY IMPOSED

With the verdict being guilty, the Trial Board has imposed a penalty to be "Removal from Office" effective immediately (August 6, 2006). TWU Constitution Article V paragraph 12 states, "A member in good standing is a member who is not expelled and is not under any penalties outlined in Article XVIII, Section C, Paragraph 1- Penalties." As such, the Trial Board has determined that Bruce Bell will no longer be "a member in good standing" (see Constitution), also effective immediately, August 6, 2006.

DISSENTING OPINION dated August 3, 2006

The undersigned disagree with the opinions expressed by the majority above. In our opinion, the allegations were not proven to a level consistent with a finding of guilty of dereliction of duty. The following is a list of the reasons that apply to some or all of the allegations stated, and resulted in our finding of not guilty on the charge of dereliction of duty.

There was not clear cogent and convincing evidence to warrant a finding of guilty.

There were conclusions drawn by the witnesses on the accused motives that were accepted as evidence.

There is contradictory evidence in the accusers' submissions.

The allegation did not constitute an offence under the constitution.

The accused was acting on legal advice, as he knew it to be at the time, and was not willfully misleading anyone.

The accused is being blamed for decisions that were made by either the Executive Council or the bargaining committee, some unanimously and some by majority vote.

The evidence that the accusers submitted clearly points to a very turbulent time. It is obvious that decisions were made that at the time were contentious, or in hindsight now *may* seem questionable, but that in our minds does not constitute dereliction of duty. As a matter of fact, dereliction would be more likely occur if those decisions weren't made at all.

The amount and format of the evidence presented made it difficult to search through all the documents and recordings provided, and so to give the accused a fair hearing. As we were directed to not rely on our past knowledge of events as they transpired, and only use the evidence as it was submitted to deliberate upon, this became more difficult for us. In order to review all of the evidence presented by the accusers in a thorough manner to answer all of the allegations, much more deliberation time would be required.

Ron Williams
Marjorie Shewchuk