CANADIAN HR Reporter
THE NATIONAL JOURNAL OF HUMAN RESOURCE MANAGEMENT www.hrreporter.com

# Telus e-mails staff, union cries foul

*Unfair practices complaint filed with industrial relations board*

By Uyen Vu – May 23, 2005

The long-standing battle between Telus and its union is once again raising questions about what an employer is allowed to communicate to employees.

Claiming that bargaining had reached an impasse, the Vancouver-based telecommunications company last month withdrew certain privileges in what's known as a "soft lock-out."

It also sent out an e-mail to employees laying out the company's contract offer.

The e-mail was customized so that it specified to each employee how much they would get in annual raises and variable pay.

The move prompted the Telecommunications Workers Union (TWU) to file fresh complaints with the Canadian Industrial Relations Board (CIRB), which had already found Telus guilty of unfair practices by communicating company positions to employees in e-newsletters and town-hall type meetings with senior leaders.

Despite a CIRB order issued last year to Telus to stop communicating with bargaining unit employees on matters related to employment and collective interest, some management-side lawyers say there's nothing wrong with Telus' e-mail.

In statements to the media, Telus CEO Darren Entwhistle said employees have "earned the right to see" what the company has offered to the union, which includes annual pay increases of two per cent over five years, as well as variable pay increases of three per cent in 2005, four per cent in 2006 and five per cent in 2007.

The company has denied that it was trying to negotiate with employees by sending the e-mail.

Greg Heywood, management-side lawyer at Vancouver-based Greyell Macphail, said employers that communicate contract offers to employees do so out of the concern that some unions don't accurately represent company positions to their members. He added that he often advises his own clients to do the same.

"Employers want to ensure that the offers are being communicated accurately to employees, and communicating with employees effectively lifts the cloud of misinformation that some unions keep over their members," said Heywood.

As long as the employer makes sure that the information is factual and does not contain any editorial comment that would undermine union support, the employer should be on the right side of the law, he said.

"If the employer makes new proposals in a communication to employees that it hasn't made to the union, then that's a problem."

If most employers don't take advantage of this option, it's because they don't want to upset the union, said Heywood. As there has been considerable push and pull over the last couple of years on the line between permissible and impermissible communication, "where that line is, is not entirely clear," said Heywood.

"You may be walking close to the line, and for some litigation-adverse employers, that may be too close for their liking. They'd say, 'We don't want to go there.'"

John Mortimer, president of the Canadian LabourWatch Association, said there's something wrong with labour laws if the courts and tribunals deem it illegal for an employer to communicate to employees the same contract offers it has already made to bargaining agents.

The association that Mortimer heads is behind the LabourWatch website, which claims to be a non-partisan resource on labour relations but is widely viewed as anti-union. In Mortimer's views, employees who might not want union

representation are the ones most deprived of the right to information, which is a subset of the right to free speech.

The Telus e-mail case, said Mortimer, illustrates that the risks of misrepresenting the facts are greater for an employer than they are for unions.

“What are the consequences for a union if it misleads its members? Well, the employees would have to try to decertify the union and make a fair representation complaint at the labour relations board” — steps that aren’t easy for employees to take on their own, said Mortimer.

Unions have to recognize that we now live in an information age, where people routinely seek out multiple sources of information to make up their own minds on all manners of things, he added.

“I hope that across the country, our courts and our tribunals will somehow lose the paternalistic view that employees can’t handle information and they can’t decide for themselves what they think is right and what they think is wrong.”

Craig Bavis, union-side lawyer and partner at the Vancouver firm Victoria Square Law Office, said the way that bargaining works, the bargaining committee doesn’t have to refer every offer made by the employer to union members.

The bargaining committee has the expertise and the latitude to weigh the offers, make recommendations on some to members or reject the frivolous ones out of hand, said Bavis.

Bavis noted that the Canada Labour Code does contain a provision for an employer to directly communicate its final offer to employees, but it has to ask the labour relations board for permission to do so.

Telus and the TWU have been at odds, unable to sign off on a collective agreement for nearly half a decade.

When Telus was formed in 1999 as a result of a merger between BC Tel and Alberta Telus phone companies, it inherited different collective agreements that its predecessors had signed with five bargaining units. As a result of a vote, the TWU, which had the most generous collective agreement of the five, emerged as the sole bargaining agent for Telus unionized employees, which now number around 13,500.

When all the collective agreements expired in 2000, the company wanted to negotiate a new collective agreement from scratch, whereas the TWU wanted to use its collective agreement with BC Tel as a starting point.

The e-mail last month is not the first time Telus has been accused of trying to bargain directly with employees. When Entwhistle joined Telus in 2000, he brought with him an “open communication” style of management, in which company executives met regularly with employees in a “no-holds-barred” question-and-answer format.

Such meetings typically included discussions about contract negotiations. On various occasions, company leaders told employees that the company would insist on reducing the 12 days of accumulated time off that some employees get, that employees had a difficult decision to make for the company to stay competitive, and that the company was prepared to lock the employees out if they rejected the contract.

Such statements had the effect of intimidating employees, as well as undermining the union, a Canadian Industrial Relations Board found last year.

“While the message is couched in business terms, it implies that the bargaining agent does not understand the employer’s business, is insensitive to the employer’s needs and is not responding to current market trends,” wrote the board. As a result of these messages, employees are put in “the untenable position of having to choose to believe what the employer is telling them or maintain a doubt about whether the union has been upfront with its information.”

At the same time that Telus sent out the e-mail, the company also implemented certain near-lockout measures “in an attempt to encourage the settlement of a replacement collective agreement,” the company explained in a press release.

Under the soft lockout, which is an employer’s version of a union’s work-to-rule campaign, Telus has suspended all grievance and arbitration activities except those files that are already proceeding; suspended several joint union-management committees; and suspended personal days off and accumulated time off under certain collective agreements.

The measures also mean employees won’t get paid on their first day of absence for sickness, they won’t get wage progression increases, nor will they receive increases in vacation entitlement under certain contracts. The company has also stopped collecting union dues from employees’ paycheques on behalf of the union.

© Copyright Canadian HR Reporter