INFO CONCERNING NLRB CASES AND CNN BUYOUTS

NABET-CWA Local 31 ("Local 31") is aware of Turner Broadcasting System’s Voluntary Separation Program ("VSP"), which offers severance benefits for eligible employees who voluntarily elect to terminate their employment with any of Turner’s affiliates, including CNN America ("CNN"). The VSP has been offered to CNN employees who are within the bargaining units that are represented by NABET-CWA, Local 31 and Local 11.

Local 31 has received many questions from concerned CNN employees about the impact of the VSP upon the litigation presently pending before the National Labor Relations Board ("NLRB"). Local 31 requested information from CNN, so that the Union can learn more about the VSP and provide guidance to employees. However, CNN has refused to comply with Local 31’s information requests, even though an Administrative Law Judge ("ALJ") has found that CNN has violated the National Labor Relations Act by failing to recognize the Union and bargain with the Union over the terms and conditions of employment for bargaining unit employees at CNN. The ALJ has further recommended that CNN recognize and bargain with the Union. Local 31 is hopeful that the National Labor Relations Board ("NLRB") will issue its decision in the near future. Meanwhile, Local 31 will continue to fight for the employees’ Section 7 rights to be represented by a labor organization in their dealings with their employer.

This handout will attempt to answer some of those questions; however, Local 31 cannot and will not provide either financial or legal advice. Local 31 strongly suggests that CNN employees consult with their personal advisors, such as accountants, attorneys or financial planners before making any decisions with respect to the VSP.

I. THE NLRB CASES

There are four cases pending with the NLRB. The first two cases involve the Bureau Staffing Project in 2003 and 2004. The case in DC is 05-CA-031828 and the case in NY was originally 02-CA-306129 but was renumbered 05-CA-033125 before the trial in 2007 and 2008. These cases led to the ALJ’s decision, which is currently on review before the NLRB. There other two cases involving the 2011 layoffs by CNN. Both cases – 05-CA-069094 and 02-CA-069101 – are currently pending before the D.C. and N.Y. Regions. In both cases, the Regional Directors have issued complaints against CNN, but, the cases have been stayed awaiting the outcome of 5-CA-31828 and 5-CA-33125.
II. THE "NON-SOLICITATION" CLAUSE IN THE RELEASE

Local 31 has received many questions concerning the draft Employee Release of Claims. Many employees have particular concerns about a provision on page 3 of that release. The language at issue is as follows:

I acknowledge that the Company is in the competitive business of supplying entertainment, news and sports through its ownership and/or operation of film and animation libraries, websites, digital properties, networks and programming services ("Company Business"). I agree, during the Severance Period and for a period of twelve (12) months from the end of the Severance period, that I will not alone or in conjunction with any other party and/or entity, recruit, induce or solicit to become employed by or engage in a business that competes with the Company in the Company Business as defined above, any third party who is or was, within the preceding six (6) months, an employee of the Company, and of whom I became aware by virtue of my employment with the Company. The parties agree that this paragraph will not be violated if my solicitation occurs after the person was laid off or otherwise involuntarily terminated by the Company through no fault of the person.

This language is very confusing because it is poorly worded. Simply stated, the above provision basically reads, "I agree that, for the duration of the severance period plus twelve months, I will not act individually or in concert with anyone else to recruit, induce or solicit any current Company employee to become employed with any of the Company’s competitors in the Company’s business."

Thus, the above language does not prohibit the individual participating in the VSP from accepting employment during the Severance Period or the 12 months thereafter. (However, other provisions of the release provide that if the individual obtains employment and is eligible for comparable health benefits, the health benefits provided under the VSP will cease; and, if the individual obtains employment with the Company, all benefits will cease.)

III. CLAIMS IN THE NLRB CASES

Local 31 has received additional questions concerning the remedies in the NLRB cases. As noted above, the ALJ has recommended that CNN recognize and bargain with the Union over the terms and conditions of employment governing bargaining unit employees working at the D.C. and N.Y. Bureaus. The ALJ has also recommended that CNN provide bona fide offers of reinstatement to former, jointly employed CNN/TVS employees who were not hired by CNN during the Bureau Staffing Project. These employees are listed in Appendices C and D of the ALJ’s decision. The ALJ has further recommended that CNN make whole employees who suffered losses as a result of the Company’s unfair labor practices, including, but not limited to lost wages and fringe benefits. The individuals covered by this make-whole remedy are identified in Appendices A and B of the decision.
After the ALJ issued his decision, Local 31 filed partial exceptions with the NLRB because the Union believes that the ALJ’s remedy did not go far enough to remedy the unfair labor practices. These exceptions argued, among other things, that the requirement to provide bona fide offers of reinstatement should apply to former CNN/TVS employees who were hired by CNN and who later voluntarily quit because the job they were hired to contained unlawful conditions of employment. Local 31 also filed an exception arguing that CNN should be required to provide bona fide offers of reinstatement to former CNN/TVS employees who declined CNN offers during the Bureau Staffing Project. Finally, Local 31 filed an exception arguing that the ALJ’s recommended order should apply to all “similarly situated” employees.

In the end, the remedy will ultimately depend upon the NLRB’s decision. It should be noted that any decision issued by the NLRB may be appealed to a United States Court of Appeals and ultimately to the United States Supreme Court. This process will take longer than the timeframe envisioned for the VSP. For that reason, Local 31 reiterates the importance that every CNN employee consult with their personal accountants, attorneys and/or financial planners when it comes to making any decision about the VSP.

In Solidarity,

[Signature]

Richard McDermott
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