IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Telecommunications Workers Union v. TELUS Communications Inc.,* 2024 BCSC 1613

Date: 20240808
Docket: S245097
Registry: Vancouver

Between:

Telecommunications Workers Union, United Steelworkers Local Union 1944

Applicant

And

TELUS Communications Inc.

Respondent

Before: The Honourable Mr. Justice Coval

Oral Reasons for Judgment

In Chambers

Counsel for the Applicant:	P.A. Deol
Counsel for the Respondent:	P.D. McLean J. Sanderson
Place and Date of Hearing:	Vancouver, B.C. August 7, 2024
Place and Date of Judgment:	Vancouver, B.C. August 8, 2024

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Introduction

[1] **THE COURT:** The applicant union ("TWU") seeks an interlocutory injunction to restrain TELUS Communications Inc. from requiring approximately 1,000 of its employees to elect, by the deadline of tomorrow, August 9, 2024, between giving up their full-time, work-from-home status or accepting a voluntary severance package.

[2] For approximately 140–150 of these employees – being those who currently work for TELUS's location in Barrie, Ontario – if they choose to stay rather than take the severance package, they will also be required to relocate from Barrie to Montréal, Québec.

[3] TWU has grieved this initiative on the grounds that it violates the parties' Collective Agreement in numerous ways. The grievance process in the Collective Agreement contemplates arbitration proceedings, but that process has not commenced and no arbitrator is as yet appointed. In this application, TWU seeks to restrain the implementation of these job changes and relocations pending the arbitrated outcome of its grievances.

[4] TWU argues that its grievances raise serious issues to be tried on whether TELUS is entitled to impose these measures. It submits that irreparable harm is being caused to numerous employees by the stress and disruption from such short-fused, significant changes to their working lives, and that the balance of convenience favours maintaining the *status quo*, pending the outcome of the grievances.

[5] In response, TELUS firstly argues that, as a matter of law, TWU has brought this application in the wrong forum and so the court should not exercise its injunctive powers. In a labour grievance with a pending arbitral process, the court's injunctive remedies should be exercised only where there is a remedial gap in the labour relations regime, which is not the case here as the *Canada Labour Code*, R.S.C. 1985, c. L-2 [*Labour Code*] gives an arbitrator the power to make the orders sought by TWU in this application.

[6] Alternatively, TELUS says, TWU does not satisfy the criteria for an interim injunction. Its position does not reach the level of serious issue to be tried, in light of the prior dealings and arbitral decisions between the parties. Further, the alleged harms to be suffered by employees are speculative and compensable in damages. Finally, on the balance of convenience, any urgency is due to TWU's own delay in commencing its arbitral grievance, and the injunction sought will cause TELUS business losses and competitive disadvantages in circumstances where TWU has not offered an undertaking for damages.

[7] Since the deadline for employee election is tomorrow, the parties need an answer today. This decision has therefore been expedited.

[8] For the reasons that follow, I grant TWU's injunction but on a time-limited basis.

Facts

The Parties

[9] TELUS is a federally-regulated telecommunications company, and its labour relations are governed by the *Labour Code*.

[10] TWU is the certified bargaining agent under the *Labour Code* for the majority of TELUS's unionized employees.

The Initiatives

[11] As mentioned, the initiatives in issue affect approximately 1,000 members of this roughly 4,000-member bargaining unit.

[12] The affected members are affiliated with call centre offices in BC, Alberta, Ontario, and Quebec. Their job description is “customer experience agents”, or “CE agents”. TWU's evidence is that 99% of these agents work remotely, and some have been doing so since as far back as 2006, when the At Home Agent (“AHA”) Program was introduced. These agents attend the call centre office with which they are affiliated once a quarter, if at all.

[13] As part of its ongoing review of operations in the highly-competitive telecommunications industry, TELUS has determined that some consolidation of call centres is necessary to achieve improved economies of scale, higher efficiency, and reduced costs. TELUS anticipates this will also lead to higher-quality outcomes for customers and improved performance by CE Agents.

[14] The Barrie call centre is a relatively small designated office for about 140 CE Agents. TELUS has determined that the services provided by CE Agents in Barrie can be provided more efficiently and effectively through the consolidation and redistribution of that work across TELUS's national call centre infrastructure. TELUS has therefore made the difficult but necessary decision to close the Barrie call centre.

[15] TELUS has also determined that changing the AHA Program to require CE Agents to work from the office three times a week is necessary for training purposes and to serve other customer service goals.

[16] At a meeting on July 9, 2024, TWU was advised of the initiatives. During the meeting, TELUS advised TWU regarding the Barrie employees:

> a. that each affected employee in Barrie would have a choice between redeployment to the Montreal call centre or taking a severance package under TELUS' voluntary severance program;
>
> b. while affected employees in Barrie would be asked to elect between their two options by August 9, 2024, TELUS would be prepared to extend the August 9, 2024 election date for affected Barrie employees considering relocating to Montreal;
>
> c. TELUS would provide significant relocation expense coverage up to $10,000 to each affected employees who elected to make the move to Montreal; and
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> d. employees electing to move to Montreal would not be expected to report to the Montreal call centre until October 1, 2024 at the earliest.

[17] Regarding all CE Agents in the AHA Program, TELUS advised TWU:

> a. each affected CE Agent would be given the option of attending at the office as directed or taking a package under TELUS' voluntary severance program;
>
> b. affected employees would be required to make an election as between the two options by August 9, 2024;

> c. part-time attendance at the office would not be required until September 16, 2024; and
>
> d. in the case of any affected employee electing to take a severance package, TELUS explained to the Union at the meeting that no one would be leaving their employment at TELUS until after August 30, 2024.

[18] The next day, July 10, 2024, so just under one month ago, TELUS gave written notice to the affected CE Agents.

[19] The voluntary service program (or “VSP”) formula for calculating the lump-sum payments is one month's pay per year of service (inclusive of base wages and performance bonus), to a maximum of 18 months' pay, based on length of service with TELUS. In addition to the calculation of one month's pay per year of service, TELUS is offering affected employees a “top-up” of an additional $1,000 per year of service up to a maximum of $20,000.

TWU’s Response

[20] TWU quickly took the position on its website that it would be "exploring all avenues, legal and otherwise, to combat this action." It then began an online campaign, encouraging Canadians to request that federal politicians and agencies intervene.

[21] On July 29, 2024, it filed this action and delivered its two policy grievances.

The Collective Agreement and AHA Program

[22] The parties' Collective Agreement states that it governs the terms and conditions of employment for the employees represented by TWU from April 16, 2023 to March 31, 2027.

[23] It includes provisions giving TELUS rights to redeploy employees (including in the case of office closure), offer voluntary severance programs for those who decline redeployment, and the right to determine whether and to what extent employees work at home or in a TELUS office. It also provides for workplace accommodation processes that employees, with TWU's support and assistance, may access based on human rights protected grounds.

[24] The AHA Program was introduced in the Collective Agreement in 2011. It includes the following:

> 15.01 An employee may, by mutual agreement with their manager, participate in either the AHA or Work Styles program in accordance with the applicable Company policies and guidelines... …
>
> 15.02 The Company agrees to meet and review with the Union any substantial modification to the AHA Guidelines and Expectations or the Work Styles Policy or Guidelines prior to the change being implemented. The Company will continue to provision the required telecom equipment and services as reviewed during negotiations. Any reimbursement for expenses incurred in the purchase of ergonomic equipment will be administered consistent with the AHA Guidelines and Expectations or the Work Styles Policy or Guidelines.

Governing Law

[25] The fundamental question on an application for an interim injunction is whether the injunction sought is just and equitable in all the circumstances.

[26] As summarized in *Vancouver Aquarium Marine Science Centre v. Charbonneau*, 2017 BCCA 395, at paras. 37–38:

> [37] The test for issuing an injunction is well-known and stated in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 at 334. The chambers judge refers to the two-part formulation of the test from *Wale*. There is no practical effect to the distinction between the two-part test and the three-part test: *Coburn v. Nagra*, 2001 BCCA 607 at para. 7. Before issuing an interlocutory injunction, there must be a preliminary assessment of the merits of the case to ascertain that there is i) a serious question to be tried, ii) a consideration of whether the applicant will suffer irreparable harm if the application were dismissed, and finally, iii) an assessment of the "balance of convenience", that is, which of the parties would suffer the greater harm from the granting or refusing the injunction pending a decision on the merits of the case. As noted in *Google Inc.* [*v. Equustek Solutions Inc*., 2017 SCC 34] at para. 25, the fundamental question is whether the granting of an injunction is just and equitable in all of the circumstances of the case.
>
> [38] In *Potash Corp. of Saskatchewan Inc. v. Mosaic Potash Esterhazy Limited Partnership*, 2011 SKCA 120 at para. 26, the Court discussed the overall nature of the test in *RJR-MacDonald*, and said:
>
> > For the moment, let me observe that the strength of case, irreparable harm and balance of convenience considerations, although prescribed and necessary parts of the analysis mandated by the Supreme Court, are nonetheless not usefully seen as an inflexible straightjacket. Instead, they should be regarded as the framework in which a court will assess

> whether an injunction is warranted in any particular case. The ultimate focus of the court must always be on the justice and equity of the situation in issue. As will be seen, there are important and considerable interconnections between the three tests. They are not watertight compartments.

[27] The threshold to be met on the merits test is not demanding. An applicant need only show that the claim is not frivolous or vexatious. A prolonged examination of the merits is generally not necessary or desirable: *Vancouver Aquarium*, at paras. 39–40.

[28] Regarding irreparable harm, *RJR – MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, says the following:

> At this stage the only issue to be decided is whether a refusal to grant relief could so adversely affect the applicants' own interests that the harm could not be remedied if the eventual decision on the merits does not accord with the result of the interlocutory application.
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> "Irreparable" refers to the nature of the harm suffered rather than its magnitude. It is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other. Examples of the former include instances where one party will be put out of business by the court's decision (*R.L. Crain Inc. v. Hendry* (1988), 48 D.L.R. (4th) 228 (Sask. Q.B.)); where one party will suffer permanent market loss or irrevocable damage to its business reputation (*American Cyanamid* [*Co. v. Ethicon Ltd*., [1975] A.C. 396]); or where a permanent loss of natural resources will be the result when a challenged activity is not enjoined (*MacMillan Bloedel Ltd. v. Mullin*, [1985] 3 W.W.R. 577 (B.C.C.A.)). The fact that one party may be impecunious does not automatically determine the application in favour of the other party who will not ultimately be able to collect damages, although it may be a relevant consideration (*Hubbard v. Pitt*, [1976] Q.B. 142 (C.A.)).

[29] Because interlocutory injunctive relief pending the trial of the issues is a significant remedy, it should be invoked only when irreparable harm is demonstrated on a sound evidentiary foundation: *Vancouver Aquarium*, at para. 60.

[30] Finally, the balance of convenience assesses which of the parties would suffer greater harm from the granting or refusal of the remedy pending a decision on the merits: *Vancouver Aquarium*, at para. 69.

Positions of the Parties

TELUS

[31] Counsel for TELUS says, firstly, that this court should not exercise its jurisdiction in this matter. The case law is clear that it should do so only if the labour arbitration process "cannot provide an adequate remedy" or, as it is sometimes put, where there is a "remedial gap" in the labour relations regime: *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929, para. 57; *National Organized Workers v. Sinai Health System*, 2022 ONCA 802 at para. 24; *P.S.A.C., Local Y022 v. Whitehorse (City)*, 2000 YTSC 20, paras. 11–15. TELUS says there is no such gap in this case because a duly-appointed arbitrator can provide the injunctive relief sought: *Labour Code*, s. 60(1)(a.2).

[32] TELUS says TWU should not be able to argue that a gap exists because an arbitrator is not yet appointed when it made no effort to pursue the arbitration expeditiously, and so the lack of an arbitration remedy results from its own inaction. TELUS goes even further to suggest that TWU's delay was tactical, in that it wanted the injunction to be decided by this Court rather than a labour arbitrator more versed in the labour history relationship and Collective Agreement between the parties.

[33] Turning next to consideration of the injunction itself. On serious issue to be tried, TELUS says the provisions relied on in the grievances have been the subject of numerous previous proceedings before the Canada Industrial Relations Board and labour arbitrators, conclusively decided in TELUS's favour, and the initiatives are similar to numerous other initiatives taken in the past by TELUS that proceeded without objection from TWU because they were appropriate and permissible, as per the relevant provisions in the Collective Agreement. It also points to the 2024 AHA guidelines and expectations, which say AHAs will be required to visit the office when scheduled by management.

[34] On irreparable harm, TELUS says the harms relied on are hypothetical only, because no steps have yet been taken under the initiatives, and many will be

addressed through rights of accommodation and potentially remedies available in the arbitration.

[35] On balance of convenience, it says there is no urgency to the relief sought because nothing will actually happen under the initiatives until mid-September, and any time pressure arises from TWU's own delay. Further, TELUS's evidence, without providing specifics, estimates that the adverse financial impact of any delay in implementation will be considerable, with the consequent adverse impact on its competitiveness. There will also be costs to requiring the Barrie call centre to remain open.

TWU

[36] Regarding whether the court should step into this remedial gap, TWU submits that the lack of an appointed arbitrator in place is not due to its delay. It says that, only one month ago, it was presented with a complex, unprecedented situation involving 1,000 people across four provinces. Since then, it has dealt with an inundation of inquiries from members, obtained legal advice, and filed its grievances within the legislated time limits. Its evidence is that if the injunction were granted, it will take all reasonable steps to move the grievances forward expeditiously.

[37] On the merits, it points to statements in TELUS's materials, regarding the AHA Program, that CE Agents may do so "on a permanent basis". It points to the fact that, in September 2022, TELUS removed the requirement that the agents live within 150 kilometres of their affiliated office, allowing them to work remotely from anywhere in the country. Finally, it says that, in the most recent round of bargaining, TELUS representatives repeatedly represented to TWU that CE Agents would continue to work solely from home and only be required to attend in person at the employer's office occasionally and exceptionally.

[38] Some employees depose in their affidavits that, when hired or on other occasions, they were told their work from home was indefinite or permanent. Some say they feel the loss of this arrangement discriminates against them based on their sex, family status, or disability.

[39] The grievances allege numerous breaches of the Collective Agreement, which the affidavit of Ross Brown, secretary treasurer, summarizes this way:

> 47. On or about July 29, 2024, the Union filed two policy grievances, as amended July 31, 2024, with the Employer pursuant to the Collective Agreement in respect of the Employer's Return to Office Announcement. In the grievances, the Union grieves the return to office mandate and the closure of the Ontario offices, alleging the Employer violated provisions of the Collective Agreement including the following:
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> a. Article 4.01 (Discrimination);
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> b. Article 5.01 (Union Recognition);
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> c. Article 8 (Management Rights);
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> d. Article 15 (At Home Agent (AHA) and Work Styles Programs);
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> e. Article 23 (Technological Change);
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> f. Article A13 (Transfers and Change of Assignment);
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> g. Article A15 (Transfer Expenses);
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> h. Articles A16 (Layoffs);
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> i. Article B10 (Layoffs); and
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> j. Memorandum of Agreement (Hired into the At Home Agent (AHA) or Work Styles Programs); among other Articles

[40] Mr. Brown’s affidavit also sets out a brief summary of TWU’s position on each of these alleged breaches.

[41] On irreparable harm and the balance of convenience, TWU has put in a number of affidavits from employees who relied on the AHA Program when organizing their lives, all of whom would be seriously prejudiced by the initiatives. The evidence also includes a summary of specific complaints and concerns lodged by around 230 identified members.

[42] Examples of those whose lives would be particularly upended include an employee who has worked entirely from home since 2013 and has two young children and a spouse with MS. He describes buying a new home in 2024 in Chilliwack, BC, which he would not have done if aware he might need to commute to the Burnaby office, which is one-and-a-half hours each way. Another is a single

mother with special needs children who sees no feasible way of moving homes to keep the job she needs. An agent affiliated with the Calgary office describes buying a farm in Saskatchewan in reliance on the ability to work remotely. Others with young children have lived in Ontario their whole lives and have no connection to Montréal. Some have family members with medical problems and so fear moving away from their medical team.

[43] Regarding the harm that will be suffered without the injunction, Mr. Brown's affidavit says:

> 56. If the Employer is permitted to proceed with imposing the Election, I believe that, by the time the Union's Grievance is heard, impacted CE Agents in Ontario would have already terminated their employment (likely taking voluntary severance pursuant to the Voluntary Severance Program) or will have already moved to Montreal, Quebec.
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> 57. The outcome for CE Agents in British Columbia, Alberta and Quebec would be similar. If the Employer is not restrained and the Election mandate is permitted, by the time the Grievance is heard, I believe these CE Agents will have quit their jobs (likely taking voluntary severance or opted for the Employer's Early Retirement Incentive Plan and Early Retirement Incentive Plan Equivalent, as applicable). If the Employer is permitted to proceed with imposing the Election and the injunction is not granted, I verily believe and have been told directly in some instances (as described above) that CE Agents will experience permanent, significant disruption to their lives, and many CE Agents will experience significant distress.

Analysis

[44] Regarding jurisdiction, in my view, this is an exceptional situation because TELUS's tight timelines did not allow for the arbitral process to provide an adequate alternative remedy.

[45] I accept TWU's submission that the lack of an appointed arbitrator to hear this application before tomorrow's deadline for employee election is not due to its delay. In my view, it was unrealistic to expect TWU to expedite this process such that an arbitrator would be in place in time to issue a decision on an interim injunction before the August 9 deadline.

[46] Under the Collective Agreement, the process from grievance to appointment of an arbitrator extends over a few months, although presumably the parties could speed this up somewhat if cooperating. First, TWU has 30 days to file a grievance; a deadline which it met. Then the Collective Agreement contemplates 30 days to refer the grievance to the vice president of labour relations, and then a further 30 days for that office to convene a meeting with the parties, and a further 30 days for it to provide a decision. If that fails to resolve the grievance, then either party may commence the arbitration within the next 30 days and provide the names of three proposed arbitrators. The other party then has 21 days to respond. If the parties are unable to agree within 14 days of this response, they write to the Minister of Labour to request an appointment. Once appointed, the arbitrator has 21 days to convene a meeting.

[47] As I raised with counsel for TELUS during the hearing, if it was crucial to TELUS that a labour arbitrator decide this injunction rather than the Court, TELUS could extend its deadline somewhat to allow for the arbitrator to make that decision on an expedited basis, but that suggestion was not taken up.

[48] I do not accept TELUS's argument that the real deadlines of concern are not until mid-September when office attendances must begin. The elections as of August 9 are obviously important to most, if not all, employees, because they may well be binding depending on the outcome of the arbitration. TWU submitted that those who do not elect by the deadline might be subject to discipline or termination. Furthermore, on the evidence, many employees must be making new arrangements already to prepare for the significant change in their work lives by mid-September. Given the timelines described above, TWU cannot be confident that an arbitrator could be in place to provide interim relief, even by the August 30, 2024 deadline when VSPs would start being implemented, or mid-September when BC, Alberta, and Quebec workers would be required to work in-person at their call centres.

[49] Turning then to the criteria for the injunction, in my view, TWU has satisfied a serious question to be tried. First, its grievances raise *prima facie* coherent arguments of breach of numerous sections of the Collective Agreement.

[50] Second, TELUS acknowledges that the history of the relationship and prior disputes are complex. The prior arbitral decision on which it relied, *TELUS Communications Inc,* 2009 CIRB 475, appears to me, in the short time I have had, to decide that certain VSPs do not constitute an impermissible contracting out of the *Labour Code*. It was not apparent to me that it resembled the situation in this case or suggested there was no question to be tried on these facts.

[51] Third, the grievances rely extensively on the specific facts of this dispute, such as the lack of notice, human rights issues associated with remote work, and TELUS's representations about the work-from-home programs and the AHAe+ "Love Where You Work" program made at bargaining. In my view, it cannot be straightforwardly established, especially on the tight timelines of this hearing, that prior decisions in other contexts demonstrate TWU has no serious issue to be tried.

[52] On irreparable harm, in my view, there is substantial evidence of risk of such harm to employees that could not be remedied in the arbitration, some examples of which I summarized above. In more general terms, the witnesses described the following such harms:

a) job loss and associated financial hardship on families;

b) loss of childcare arrangements or other conflicts in caring for children; time with family; conflicts with caring for elders, spouses, or other family members with serious medical or mental health issues;

c) the need to uproot, sell their homes, or otherwise relocate to be ready for the mid-September deadlines; significant financial and personal stresses; and exacerbation of mental health issues which cannot be compensated in damages; and

d) being forced to leave Ontario where they have lived their entire life and have supportive extended family, to Montréal where they have no such connections.

[53] For cases holding these types of prejudice to be irreparable harm, see *Sawyer v. Loblaws*, 2011 ONSC 7251, paras. 51–54, and *Aranas v. Toronto East General & Orthopaedic Hospital Inc.*, [2005] O.J. No. 169 (S.C.J.), paras. 13–16.

[54] On balance of convenience, given the irreparable harm to the numerous TWU employees and the fact of TELUS's tight deadlines imposed upon them, in my view the balance favours maintaining the *status quo* pending the outcome on the merits.

[55] Also weighing in the balance, however, is the case law holding that such injunctions should be the domain of the labour arbitrator, and the potential financial cost to TELUS from delay in implementing their desired changes without the benefit of an undertaking from TWU. I accept Ms. Deol's submission, unchallenged by Mr. McLean, that such undertakings are not required in labour arbitrations in exchange for interim injunctions.

[56] In these circumstances, in my view, the interests of justice call for the arbitration to be commenced as soon as reasonably possible. Thus, if TELUS is successful, delays in implementing its initiatives will be minimized. Also, TELUS should have the opportunity as soon as reasonably possible to oppose the continuation of the injunction and to address the issue of the undertaking before the labour arbitrator.

[57] In my view, therefore, the injunction should be granted but should extend only until two months after the appointment of the arbitrator, so as to give that arbitrator time to consider whether this or any other form of injunction should be continued pending the outcome of the arbitration.

Conclusion

[58] I grant the injunction sought, but only on an interim basis.

[59] Unless extended by the parties or further order of the Court, the injunction will terminate two months after the appointment of the arbitrator in this matter.

[60] This injunction may be amended or terminated by written agreement of the parties or further order of the court.

[61] I also direct the parties to reasonably cooperate in the expeditious commencement of the arbitration proceedings and selection of the arbitrator.

[62] Finally, my appreciation to both counsel for their helpful submissions in a difficult situation.

(DISCUSSION WITH COUNSEL)

[63] CNSL P. McLEAN: There may be, Justice, in terms of implementation, and TELUS's concern would be, for example, if an arbitrator is appointed and interim relief is sought by TELUS in that proceeding or a decision is rendered sooner, it may be the injunction falls away earlier.

[64] THE COURT: Yes, and I have thought of that, and that is why I have said this injunction may be amended or terminated by further order of the court. So if that happens, you certainly have leave to come back.

(PROCEEDINGS ADJOURNED AND RECONVENED)

[65] All right, so Madam Registrar, there will be one further order which is by consent, and so it should say, by consent, any employee who has accepted a VSP by August 9, 2024: (a) who wishes to receive the benefits of the Voluntary Severance Package shall be entitled to do so; or (b) who wishes to revoke their election shall be entitled to do so.

[66] All right. Thank you very much, counsel.

"Coval J."