

NOVA SCOTIA LABOUR BOARD

IN THE MATTER OF: The *Trade Union Act* of Nova Scotia, R.S.N.S. 1989 c. 475

and

IN THE MATTER OF: A Complaint of Unfair Labour Practice pursuant to Section 35

BETWEEN:

HALIFAX TYPOGRAPHICAL UNION, LOCAL 30130

Complainant

- and -

THE HALIFAX HERALD LTD.

Respondent

REPLY OF THE HALIFAX HERALD LTD.

1. This is the Reply of the Respondent, The Halifax Herald Ltd., whose address is:

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2. The address of The Halifax Herald Ltd. for service is:

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Attention: Grant Machum

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I. OVERVIEW

3. This is a reply to a complaint filed on November 14, 2016 (the "Complaint") by the Halifax Typographical Union, Local 30130 ("Union") against The Halifax Herald Ltd. ("The Herald").
4. In this Reply, the Herald denies that it failed to comply with section 35 of the *Trade Union Act* ("Act") and has in fact made extensive efforts to conclude and sign a new collective agreement.
5. The newspaper industry is facing unprecedented challenges characterized by declining revenues and circulation (See Tabs 56, 33). The Herald is not immune from the rapid changes. The expired collective agreement has been acknowledged by the Union to be a "gold plated" agreement first drafted when revenues were increasing. Any new collective agreement must reflect current realities and anticipates changes during the term of the agreement (8 years). The Union was well aware going into negotiations that The Herald was seeking significant concessions and not just monetary concessions, and this was reinforced throughout negotiations (Tab 33).
6. Prior to and during negotiations The Herald provided extensive disclosure of confidential financial information to the Union. The Union acknowledged that monetary concessions sought by The Herald were justified after viewing the disclosure (Tab 48).
7. The Union fails to disclose in its Complaint the numerous proposals and efforts by The Herald to advance negotiations. The Union has delayed bargaining or acted in a manner to scuttle meaningful negotiations which included:
 - (a) commencing negotiations seeking a 7.5% wage increase (Tab 10);
 - (b) negotiating through the media instead of at the bargaining table;
 - (c) walking away from negotiations;
 - (d) walking away from conciliation;
 - (e) by refusing to negotiate or ignoring proposals;
 - (f) breaching terms agreed to by the parties to facilitate negotiations;
 - (g) backing away from representations in relation to scope, severance and layoff;
 - (h) personal attacks; and
 - (i) delayed responses to proposals made by the Herald – 234 days were lost to prolonged delays by the Union (see Appendix "A").
8. Negotiating scope/jurisdiction (non-union Hub) does not constitute unlawful conduct. The Complaint fails to disclose that the lead negotiator for the Union agreed to negotiate this issue, as this Union (and others) have done at newspapers throughout the country. In fact the Union presented various proposals during and after recent negotiations which provided for a non-union Hub. The Union encouraged The Herald to advance proposals for a non-union Hub – just before bringing this Complaint. Suggesting that these

proposals constitute unlawful conduct is ludicrous. Non-union Hubs are common in the newspaper industry and create significant efficiencies. Negotiations involved proposals by The Herald to “buy the Hub” just like had been done by other newspapers with this same Union.

9. Scope/jurisdiction has not been negotiated to an impasse as defined by the law. As acknowledged by the Union in the Complaint there are a number of significant issues outstanding including contracting out, severance pay and layoff language. The Union is self-selecting items causing an impasse at the same time it refuses to negotiate other outstanding issues.
10. Negotiating job security does not constitute unlawful conduct. Again, the Complaint fails to disclose that both the Union and The Herald exchanged various proposals in relation to layoffs. The Herald has in fact accepted previous proposals made by the Union in relation to layoffs. Unfortunately the Union backed away from the proposals. The Complaint disingenuously fails to disclose that under the expired collective agreement The Herald was entitled to lay off without regard to seniority. The allegation that The Herald was changing a job security article of the collective agreement is false. Suggesting that these proposals constitute unlawful conduct is ludicrous.
11. Negotiating language to allow for contracting out does not constitute unlawful conduct. The Complaint fails to disclose that contracting out is common in the newspaper industry and has been negotiated by this – and other – media union in multiple collective agreements throughout Canada. The Herald offered to place limitations around contracting out however the Union would not engage in negotiations in relation to contracting out. In fact the Union completely ignored this issue throughout negotiations. Suggesting that proposals by The Herald in relation to contracting out constitutes unlawful conduct is ludicrous.
12. Both the Union and The Herald have continued negotiations with proposals being exchanged by the Union as recent as November 17, 2016 and by the Herald on November 23, 2016 (Tabs 49 and 50). Prior to providing the proposals to the Union the lead negotiator for the Union stated “I can confirm that when it comes to scope, the Hub (only the Hub) is up for discussions in this round of bargaining provided return conditions are met.
13. On its face, the Complaint's allegations regarding impasse are false as the parties are actively bargaining.

II. PRELIMINARY MATTER

1. As a preliminary matter, paragraph 14 of the Complaint regarding The Herald's financial disclosure breaches an extensive non-disclosure and confidentiality agreement (“NDA”) signed by the parties and should be struck. The NDA was a pre-condition to disclosure of the Herald's financial information. Breaching the NDA through the Complaint is sharp practice by the Union and is in bad faith. Striking the paragraph would not prejudice the Complaint.

III. BACKGROUND

1. The Complaint alleges that the Union has bargained in bad faith by making improper proposals. This position ignores the fact that the Union itself recently provided proposals on the same issues that now cause it to allege unlawful conduct, in an attempt to induce The Herald into bargaining those issues (Tabs 40 and 44).
2. Just hours after the Complaint was filed, an email sent to The Herald by Dave Wilson, the Union's lead negotiator, stated (Tab 47):

You know full well why we proposed what we did last time. It was a fishing expedition requested by the members. It failed to extract positive results. It is now gone.

3. The Herald believes there are more appropriate ways for the Union to back out of a bargaining position, which are less wasteful of resources, than filing a Complaint.
4. In recent years, the newspaper industry has faced unprecedented challenges characterized by declining revenues and circulations (Tab 56), and other newspapers have been streamlining their operations and collective agreements to adapt while The Herald has not. In fact, the expired agreement became one of the more expensive in the industry. The Union's own publication lists the top reporter salary as the 17th highest out of the 300 media organizations it represents in North America and 4th highest Canadian newspaper (Tab 57). It has been acknowledged by the Union to be a "gold plated" agreement.
5. The Herald is not immune to the challenges faced by every other industry employer, and has recognized the need to incorporate the modernizations that other employers have in their collective agreements (see Tabs 51-55 generally for some examples). Therefore, it was imperative for The Herald to seek significant concessions in this round of bargaining in order to become sustainable. It has presented extensive financial disclosure to the Union to substantiate the concessions sought.
6. Given the state of the expired agreement in comparison to others in the industry, time for incremental change has passed. Accordingly, The Herald had to introduce a number of changes in this round of bargaining (not nearly as many as were alleged by the Union in its Complaint). Its goal is to gather all the required concessions this round, weathering a work stoppage if necessary, so that it may return to non-concessionary bargaining in the future.
7. The Complaint lists concessionary proposals that the Union says were further demands introduced during bargaining. This takes the proposals out of context. Negotiations between the parties have been fluid and the parties have been working out the details of their proposals as negotiations progress. It must also be noted that the Union has taken an approach to bargaining where it has not properly engaged The Herald's proposals at the bargaining table. Instead the Union has preferred to simply say "no" to almost all proposals and then plead its case publicly through the media (see Tabs 8 and 9). Given that this has been the Union's approach it only has itself to blame if it did not appreciate certain details about The Herald's proposals when they were first presented.

8. There has been no attempt to remove the Union's jurisdiction. The Herald has included language in its proposals that would allow it to contract out page and web production and related work to a third party ("Production Hub"), to obtain efficiencies enjoyed by most other employers in the industry, including the Winnipeg Free Press, the Globe and Mail and the Toronto Star. The Herald invited the Union to provide a counter proposal limiting contracting out which the Union has not done – in fact the Union refuses to even negotiate this provision.
9. The language of the clause proposed by the Employer prior to the Complaint is near verbatim of a similar term from the Toronto Star agreement. (Compare Article 1.2 of The Herald's proposed language (Tab 50) to clauses 203, 204 and 1703 of the Star's Agreement (Tab 55) – the only differences are as necessary to reflect differences between the agreements.)
10. There has been no bargaining scope to an impasse. There is no impasse; as acknowledged by the Union in its Complaint, many terms are still outstanding and active negotiations are continuing (see also Tabs 49 and 50, proposals made by the parties after this Complaint was filed).
11. The assertion in the Complaint that the Union has agreed to all The Herald's demands is false. The Union has refused to agree on many of The Herald's major proposals. Severance and lay-off are two such examples. As acknowledged in the Complaint itself, the parties have extensively discussed these terms and do not agree.
12. The difference between the parties on severance represents a large cost for The Herald, as it plans to lay off a large portion of the unit as part of a new Agreement. Therefore the parties have been actively engaged in negotiating a separate one-time severance arrangement for the impending round of lay-offs ("Voluntary Exit Package"). As recently as August, 2016, the difference between the parties on severance represented a wide monetary gap.
13. Since that time, and at The Herald's initiative, the parties have explored a way to bridge that gap: by exchanging a Non-Union Production Hub for a higher severance amount (along with other monetary items). This sort of exchange (a "Package Deal") was actively bargained by the Union. The Union openly acknowledged that it and other unions had bargained Package Deals in other newsroom agreements (Tabs 40 and 44). Therefore the Package Deal proposals were consensual and in good faith. Further, the understanding was that if the parties could not agree on an acceptable Package Deal, the Herald would fall back on its earlier proposals that did not include scope. The Herald reiterated this point during each negotiation with the Union (Tabs 41, 46 and 50).
14. The volume of The Herald's proposed changes is not evidence of bad faith; it is indicative of a swiftly changing industry. The Herald's proposals were made with a view to obtaining efficiencies and establishing flexibility required to adapt to future changes in the industry. All the substantive changes to the Agreement it proposed, however minor, were changes that The Herald felt it needed going forward, and were tied to the Herald's purpose of creating a more efficient and sustainable newsroom. Any other changes were of a 'clean-up' variety, such as changes to grammar, formatting, or ordering of the Articles in the Agreement, and were also in good faith. They were not, as the Complaint alleges, changes designed to provoke or break up the Union.

15. It is the Union's conduct that is indicative of bad faith. It has curtailed progress at many stages, mostly through its strategy of bargaining through the media. It has also delayed negotiations, walked away from the table, or backed away from tentative agreements or assurances. Attached to this Reply is a timeline of proposals (Appendix "A").
16. The Herald sees these tactics as manipulations designed to gain leverage through deception, rather than the test of economic wills which The Herald understands should dictate the result of free collective bargaining. The most recent example of the Union's approach is the filing of this Complaint. This Complaint comes at a time when negotiations are ongoing and The Herald feels progress is being made (Tabs 49 and 50).
17. There is an understanding between the parties that these negotiations are fluid and that any agreement is tentative until a new agreement is concluded. The Herald has been clear as to its bottom line concessions sought, and has provided supporting financial disclosure, but has solicited, without success, from the Union comprehensive proposals that would provide similar efficiencies and flexibility. In this context, it cannot be considered to be in bad faith for either party to offer one concession in exchange for another. The Package Deal negotiations are a prime example of this (see Tabs 38-46).
18. It would be premature at this juncture for the Board to intervene in the parties' free collective bargaining. Since filing the Complaint the Union, on November 17, 2016, submitted a counterproposal in response to the Herald's proposal dated November 6, 2016 (Tab 49). In response The Herald made a further proposal (actually 2 options) on November 23, 2016 (Tab 50). The second option was provided after receiving confirmation from the Union that it was prepared to still negotiate a non-union Hub. Negotiations have been difficult, but they are ongoing and should be allowed to continue in due course.

II. OVERVIEW OF NEGOTIATIONS

19. The parties to this Agreement have a long bargaining history. In most if not all previous rounds of bargaining, the Union was able to secure large advances. As of 2015, the expired agreement was one of the most expensive in the industry. It is acknowledged by the Union to be a "gold plated agreement" (see also the top reporter salaries – Tab 57).
20. In order to remain sustainable in the face of significant economic challenges taking place in the newspaper industry, The Herald recognized the need to update the expired agreement in the current round of bargaining, to obtain the efficiencies enjoyed by other newspapers.
21. Accordingly, The Herald required the Union to make significant concessions. The Herald was proactive in scheduling pre-bargaining meetings with the Union to explain that bargaining would be concessionary.
22. The Herald acknowledged during negotiations that concessionary bargaining is difficult for this Union, given its long history of securing advances. That is why The Herald has adapted into its proposals terms from other media agreements, including newsrooms represented by the Union. The Herald has also presented an unparalleled extent of financial disclosure, both before and during negotiations, in order to support the concessions sought. The chief negotiator and counsel for The Herald highlighted this for the Union in his opening address at the bargaining table.

23. One of The Herald's key proposals was to move page and web production and related work to a separate production hub. The Herald presented its vision for the production hub along with its monetary proposals. The Union acknowledged that most other newsrooms in Canada have achieved efficiencies through a Production Hub, either by contracting out to a third party or by 'contracting in' to non-union employees.
24. The Herald understood correctly the difficulties this Union would have with concessionary bargaining. Indeed, these negotiations have now continued for over one year and the parties are currently in the 10th month of an ongoing strike.
25. The Herald says the laggard pace of negotiations correlates directly with the Union's approach to bargaining. The Union delayed progress in various ways: by bargaining through the media instead of at the bargaining table, attending at bargaining and conciliation meetings underprepared, failing to present viable counter-proposals, and backing away from previously held positions and representations.
26. At times, the Union has openly acknowledged its reluctance to get a deal. Indeed, the Union's chief negotiator said, at the negotiating table:
 - (a) "No' is bargaining." (November 13, 2015); and
 - (b) "I was on a plane Monday coming back here (to conciliation), hoping we don't get a deal." (June 1, 2015)

By contrast, The Herald has at all times expressed its willingness to continue productive negotiations toward a deal.

27. That is why The Herald finds it ironic that it is the Union that has filed this Complaint. Further ironies are found in the substance of the Complaint. One example is the Union's premise, that scope (i.e. the Non-union Hub in the Package Deal) was improper or unlawful subject matter for bargaining. If that is to hold true then the Union also actively engaged in unlawful bargaining just one week before filing its Complaint (Tab 44). On the contrary, The Herald says that bargaining on mutually-consented matters (in this case, scope) cannot be unlawful or in bad faith.
28. The Complaint is founded on other misrepresentations and omissions as detailed in this Reply, including:
 - (a) The Complaint presents certain select Herald proposals without context; it leaves out all of the Union's proposals, many of The Herald's proposals and many of the important communications between the parties;
 - (b) Contrary to the assertions in the Complaint, the seniority rights sought by the Union upon lay-off were not part of the expired agreement. There were no seniority rights on lay-off under the expired collective agreement (notice absence of any such provision in Article 5.2 of Tab 1) and therefore all the proposals tendered by The Herald regarding security on lay-off are advances for the Union;
 - (b) The Herald has not bargained scope to impasse. Many outstanding material items remain, particularly since certain concessions (such as increased severance) have only been offered as part of the Package Deal;

- (c) The Complaint itself concedes this point by mentioning the large number of outstanding items between the parties. In this way, the Complaint as a whole is self-contradictory and fails make a *prima facie* case that scope (or any other unacceptable terms) were bargained to an impasse;
 - (d) The Complaint does not disclose that terms of The Herald's proposals (including those in package deals) have largely been accepted in other newsroom agreements elsewhere in Canada and are, in fact, near verbatim copies of language that appear in other Canadian media collective agreements.
 - (e) The Herald remained prepared to return to its August 18 position, which does not include a proposal on scope, if a package deal is not agreed to by the Union;
 - (f) The Complaint does not disclose the compromises made by The Herald throughout the months of negotiations. In fact, the Complaint removes The Herald's proposals from the context in which they were made; and
 - (g) The Union was not responsive to several of The Herald's proposals upon which the Complaint is founded.
29. Even given the unusual course of negotiations up until this point, The Herald is confounded by the Union's decision submit a Complaint while negotiations are actively ongoing. The Herald says the Complaint is unfounded and premature, and asks the Board to allow the parties to continue bargaining so that they may tackle the remaining issues between them (which is part of the Union's requested remedy).

III. CHRONOLOGY OF NEGOTIATIONS

A. PRE-BARGAINING MEETINGS AND DISCLOSURE – JULY-SEPTEMBER, 2015

30. On July 16, 2015, before notice to bargain was given, Ian Scott of The Herald reached out to Union national president Martin O'Hanlon to meet to discuss the upcoming collective bargaining.
31. Throughout the summer, the parties exchanged emails and telephone calls. The Herald disclosed to the Union at this time that it would be seeking major concessions. The concept of concessionary bargaining was not new to either party, as they had reached a deal earlier in 2015 in respect of The Herald's press room, where The Herald obtained significant concessions.
32. In response, the Union requested access to The Herald's confidential financial information.
33. On September 23, 2015, The Herald obliged the Union's request for access to its financial information. Mr. Scott arranged a meeting between Jamie Welsh of Collins Barrow, The Herald's auditor, and Keith Maher, the Union's accountant, in order to facilitate disclosure of The Herald's confidential financial information.
34. On September 24, 2015, Mr. Maher advised Union members as to his conclusions based on The Herald's audited financials. No further detail was provided pursuant to a non-disclosure and confidentiality agreement signed by Mr. Maher.

35. On September 25, 2015, Mr. Scott and Herald VP, Administration Nancy Cook met with Union national president Mr. O'Hanlon, Union lead negotiator Dave Wilson and two members of the bargaining committee to discuss the Herald's need for concessions and to review in general terms the key items for the Herald to obtain at this round of bargaining.
36. During the meeting Mr. Scott discussed that both sides want to avoid a labour stoppage. Dave Wilson stated that the Union was willing to make a "reasonable compromise". Concerned that the Union did not comprehend the extent of changes required, Mr. Scott said that there may be disagreement on what 'reasonable' was. He told the Union: "What I thought was unreasonable a year ago I no longer think is unreasonable today."
37. The group also discussed the financial disclosure on September 23, and Mr. O'Hanlon confirmed that he planned to tell the membership:
 - (a) that The Herald needed concessions, and
 - (b) that he understood The Herald was serious.
38. The Union's broad request for financial disclosure to be provided directly to the Union members was agreed to be put on hold until The Herald's monetary proposals could be presented.

B. INITIAL BARGAINING: OCTOBER-NOVEMBER, 2015

39. The parties convened collective bargaining on October 22 and 23, and November 12 and 13, 2015. During this time the parties bargained non-monetary proposals only.
40. On October 22, 2015, Mr. Machum led off by reiterating The Herald's need to gain major concessions in this round of bargaining. He stated that, unlike in previous rounds of bargaining, The Herald was prepared to endure a work stoppage if necessary to obtain the required concessions. Mr. Machum pointed to the pre-bargaining meetings and financial disclosure, where the parties had already discussed concessionary bargaining. His opening was delivered in a muted tone and without the inflammatory rhetoric alleged by the Union in its Complaint.
41. The parties then exchanged non-monetary proposals (Tabs 2 and 3). The Union presented 5 non-monetary proposals (Tab 2). The Herald then countered with 21 non-monetary proposals (Tab 3). Two of its proposals were:
 - (a) The Herald's proposal to specify skills, ability, qualifications and seniority as the factors used in determine the order of lay-off (Article 5.2(a) of Tab 3). The language of this provision was taken from an agreement between another Nova Scotian media company (MBS) and this Union (Article 11.4 of Tab 52); and
 - (b) Changes to Article 1.2 that would give The Herald the flexibility it needed to contract out its production hub. The new language for this article was taken from the Toronto Star agreement (clauses 203, 204 and 1703 of Tab 55). The

Toronto Star currently uses an outsourced Production Hub for page and web (online) production.

42. The Herald's proposals were presented as fully written clauses within a complete non-monetary agreement that incorporated all of its proposals as well as minor clean-up changes to grammar and formatting (Tab 3).
43. The Union tentatively agreed to three of The Herald's proposals. In preparation for the next day of bargaining, The Herald prepared summary charts disclosing its circulation and revenues over the past several years, and prepared non-disclosure language. This was in direct response to what the Union lead negotiator stated had been provided by other newspapers.
44. On October 23, 2015, the Union agreed to one more of The Herald's proposals (Tab 6). The Union did not prepare a comprehensive response to the Herald's proposal as expected. It also declined to agree to non-disclosure of financial information which The Herald required to disclose financial information that had been prepared. Instead the Union claimed (having not seen it) that The Herald's disclosure was insufficient, and demanding that all 61 Union members be provided with full access to all the confidential financial information of The Herald.
45. The Herald was concerned by this request, as it would be an unprecedented level of access, and based on its research, far above what any adjudicator had ever ordered. Further, none of the Union members had the training to make any sense of the information even if they saw it, and the Union's accountant had already been provided unfettered access to The Herald's books.
46. On October 26, 2015, Dave Wilson emailed Grant Machum to advise the Union would withdraw its request for full financial disclosure until such time as when monetary proposals were presented (Tab 4).
47. On November 12, 2015, the Union gave its first response to The Herald's non-monetary proposals (Tab 7). As the Union had had several weeks to review the non-monetary proposals, The Herald had expected the Union to provide a detailed substantive response. However, the only response it got was simply "no" to all but three of its non-monetary proposals. The Union did not provide counterproposals. This was concerning to the Herald as it did not provide a basis for discussion or for productive bargaining. Then, the Union demanded financial disclosure, despite Mr. Wilson's statement on October 26 (Tab 4) and the fact that non-monetary items had not yet been dealt with. It would take the Union 26 days to respond to this proposal.
48. On November 13, 2015, the Union did not provide any counterproposals to The Herald's non-monetary proposals. The day was wasted and bargaining was adjourned after only a few minutes, when Mr. Wilson began the day not with proposals but by threatening The Herald with damage, stating:
 - (a) "If there is a strike or a lockout and we are on the street then we will do damage. That is what we do. That is what you have to do."
 - (b) "It's going to be a fight. These are not press men; they are journalists. The damage we're going to do to the paper will be enormous if there is a strike or

lockout, I can guarantee you that. The employer better move off these issues and get a lot more reasonable.”

49. The latter quote refers to the press room agreement between The Herald and the Union that was reached earlier in 2015. The Herald team interpreted Mr. Wilson’s threats as a clear signal that the bargaining unit was even less willing to engage in concessionary bargaining than the press room unit had been, and that the Union was determined to cause havoc unless The Herald dropped its concessionary demands.
50. Before adjourning, the parties agreed that they would proceed with the assistance of a conciliator. Conciliator Peter Lloyd was later appointed at the parties’ request. The Employer was prepared to be available essentially anytime. Conciliation was scheduled for December 17 and 18, 2015, with the potential for additional meetings during the week between Christmas and New Year’s Day (Tab 9).

C. CONCILIATION: DECEMBER, 2015

51. On the days leading up to the first day of conciliation, the parties agreed to terms of financial disclosure (Tab 9). Financial information would be provided to the Union’s accountant, Keith Maher, as well as the bargaining team. The parties had reviewed and agreed on the terms of a detailed Nondisclosure and Confidentiality Agreement (“Agreement”). It was agreed that this would be signed on the first day of conciliation just prior to the presentation of the information. As was agreed by the Union and The Herald, The Herald arranged for its auditor, Mr. Welsh, to be present at the first day of conciliation to meet with the Union accountant.
52. On December 17, 2015, the first day of conciliation, to The Herald’s surprise, the Union had failed to invite Mr. Maher to attend conciliation. This caused a delay in financial disclosure until the following day and The Herald was left to figure out logistics of planning another presentation that would work with Mr. Welsh’s schedule. Mr. Maher now planned to attend remotely.
53. Both parties presented monetary proposals (Tabs 10 and 11). The Herald considered the Union’s two monetary proposals which included a 7.5% wage increase (Tab 10). The Union, on the other hand, refused to consider The Herald’s 28 monetary proposals until after financial disclosure was provided (namely, the disclosure The Herald was prepared to present and which was delayed by the Union).
54. As part of its monetary proposal, the Herald presented its proposal for a production hub that would handle page and web production and all related work. Most employers in the newspaper industry have availed themselves of the efficiencies of a Hub; papers with a contracted-out Hub include The Toronto Star (Tab 55), The Globe and Mail (Tab 54) and The Winnipeg Free Press. Newspapers with an insourced Hub model include, The Saint John Telegraph Journal, The Moncton Times & Transcript (Tab 51), The Fredericton Gleaner, The Cape Breton Post, The Charlottetown Guardian, and the St. John’s Telegram, all the PostMedia newspapers, including the Ottawa Citizen and the Edmonton Journal; several of which are represented by the same Union. The Herald had proposed a change to Article 1.2 of the Agreement to create the flexibility it needed to manage a Hub. The language for its proposed Article 1.2 was adapted from the Toronto Star agreement.

55. Along with this presentation, The Herald announced the flip side of the efficiencies gained through moving to a Hub: it planned to lay off roughly 1/3 to 1/2 of the bargaining unit members upon a new Agreement being signed. The lay-offs were in part due to the Hub, but some were the result of other new efficiencies that The Herald sought, such as the consolidation of the journalist and photographer classifications (another industry trend), which had occurred as well at The Saint John Telegraph Journal, The Moncton Times & Transcript, and The Fredericton Gleaner, all newspapers represented by this Union.
56. On December 18, 2015, Mr. Welsh reattended conciliation to present The Herald's confidential financial information. The non-disclosure agreement, which had to be modified slightly to enable Mr. Maher to attend remotely, was signed. Mr. Welsh's presentation spanned a half day of conciliation.
57. Following the presentation, The Herald advised the Union that the concessions it sought were fixed based on the financial realities of business. The Herald established a 'bottom line' for its concessions, which it advised gave it very little wiggle room in modifying its current proposal. The Herald would essentially need the Union to come to a full compromise, rather than meeting it "half-way", or to come up with its own proposal that provided the same bottom line savings and flexibility The Herald required for future sustainability. The Union accepted the financial disclosure as a basis for concessions sought (Tab 48).
58. The Union did not respond to the monetary proposal on December 18, 2015. It would take the Union 32 days to respond to this proposal.
59. These delays forced the Herald to continue paying at the old rates of the (now expired) collective agreement and delayed the implementation of the efficiencies expected through adopting strategies similar to those which had been negotiated with this (and other) media unions throughout the country.
60. Before leaving conciliation that day, The Herald left its most recent offers on the table (Tab 12) and conciliation officer Lloyd and The Herald team offered to be available for further conciliation the following week. The Union declined, opting to wait for the conciliator's report to be filed. The Union knew that pursuant to the *Trade Union Act*, fourteen days after the report was filed, it would be able to commence a strike.
61. On December 20, 2015 The Herald team reached out to Dave Wilson regarding a Union response to the monetary proposals of The Herald. Instead of responding the Union went to the media (Tab 13).

D. FURTHER CONCILIATION AND STRIKE: JANUARY, 2015

62. On January 8, 2016, Conciliator Lloyd filed his report with the Labour Minister.
63. On January 20, 2016, the parties met again with Conciliator Lloyd so that the Union could present its counterproposal to The Herald's (monetary and non-monetary) December 18 proposal (Tab 14). The Union's proposal did not contain the bottom line savings and flexibility required by The Herald to merit further discussion. The Herald left its December 18 proposal on the table.

64. Despite having filed a notice to lock out, The Herald advised that it would consider imposing the terms of the December 18 proposal (including the proposed lay-offs) as an alternative to locking out the Union. It did so as it could no longer operate under the expired agreement, which contained none of the aforementioned efficiencies (Tab 15).
65. On the same date, the Union filed its notice to strike. To avoid a strike Grant Machum reached out to Sean FitzPatrick, counsel for the Union.
66. On January 22, 2016, the Union had not indicated whether it intended to strike or continue working under imposed terms. The Herald, maintaining its open willingness to impose the latest offer as an alternative to locking out, mailed out the lay-off letters. Some letters included offers of re-employment in the Production Hub.
67. On January 22, 2016 Mr. Machum again reached out to Sean FitzPatrick, the Union's solicitor, to effect a return to bargaining.
68. Several hours later, the Union announced its intent to strike as of January 23, 2016 (Tab 16). The Union signed a strike protocol agreeing to observe certain rules of conduct during strike ("Strike Protocol").
69. On January 23, 2016, the striking workers received lay-off letters, which had been sent out before The Herald was advised that employees would not be returning to work. Mr. Machum again reached out to effect a return to bargaining. The Herald bargaining team convened to meet with the Union team for further bargaining. However after several hours of waiting the Union team advised it was not prepared to continue negotiations (Tab 17).
70. On January 24, 2016, the parties met for bargaining without conciliation officer Lloyd (Tabs 18-20). The Herald provided further information to the Union team regarding the proposed Production Hub.
71. The Union's rhetoric on that day was emotionally charged. Mr. Wilson again threatened The Herald with damage:
 - (a) "This is only going to get worse. Social media is already abuzz. (Herald CEO) Mark (Lever) and the Herald are taking a beating online. ... People's actions – they are cancelling subscriptions. We will cut off the flow from advertising.... We told you, that is what we have to do."
 - (b) "I'm not Dave Esposti and these are not press men. These people are way more connected to the community than you and Mark Lever combined."
72. In order to encourage more productive negotiations, the parties requested the assistance of conciliation officer Lloyd at the following day of meetings.
73. The parties reconvened with conciliation officer Lloyd on January 25, 2016 for another day of conciliation. The Herald presented its monetary counterproposal, which included an alternative to contracting out (Tab 21). This was rejected by the Union (Tab 22). The Herald was prepared to present another proposal, but was advised by conciliation officer Lloyd that there was no point in continuing, based on his assessment of the Union's

receptiveness to further proposals at the time. It would take the Union 120 days to respond to this proposal.

74. There were no further meetings between the parties until May, 2016.

E. FAILED RETURN TO NEGOTIATIONS: MARCH-APRIL, 2016

75. On March 22, 2016, the Union's solicitor proposed that the parties re-convene negotiations with a new conciliator, namely Bruce Outhouse.

76. On March 28, 2016, The Herald stated that there was no point in returning to conciliation until the Union was prepared to discuss the three main items (outsourcing of the Production Hub, Lay-off, and Pension), points on which it had been awaiting follow-up on since February. Additionally, the Herald stated that it did not believe it would be beneficial to introduce a new conciliator into the picture who would take time to bring up to speed and would therefore not be able to assist the parties in bridging their differences with any greater degree of alacrity than had conciliation officer Lloyd.

77. The Herald followed up three more times by email (on April 1, April 2 and April 4) to request that the Union return to bargaining to discuss the three main items (Tab 23).

78. Between April 5 and 14, 2016, the parties exchanged a number of emails discussing one of these items, namely the lay-off clause (being requested by the Union as part of a new agreement) (Tab 24). The Union was advocating a threshold clause that defined job security on seniority order, whereas The Herald preferred a clause that prioritized skills, ability and qualifications over seniority unless all other factors were equal. This precept was common in other media agreements including, The Globe and Mail (Tab 54, Art. 21.03(d)), the St. John's Telegram, and CBC Radio (Tab 53, s. 16.1.1), and MBS Radio (Tab 52, Art 11.4). Negotiations on this priority item broke down shortly after Mr. Wilson used profanity in an email.

79. The parties again consulted conciliation officer Lloyd, and he advised there was no point in returning to the bargaining table to discuss lay-off.

F. RETURN TO CONCILIATION – MAY-JUNE, 2016

80. On May 9, 2016, without The Herald's knowledge, the Union wrote to the Labour Minister requesting the appointment of another mediator pursuant to s. 40 of the *Trade Union Act*.

81. On May 16, 2016 the Department of Labour appointed Jarrod Baboushkin as the (second) conciliation officer. (See Tab 25.)

82. On May 23, 2016 Mr. Baboushkin proposed a conciliation meeting between the Union and The Herald. The Herald requested that the Union enter into a media "black-out" once talks resumed while progress was being made. This was to promote the Union remaining at the bargaining table and not negotiating through media.

83. On May 25, 2016 the Union tendered a counterproposal in advance of the planned conciliation meeting to commence on May 30, 2016 (Tab 26). This was the first Union proposal since January to feature the three main items.

84. Among the proposals provided by the Union was a competition clause for lay-off, with language taken from the Globe and Mail agreement (Compare the Tab 26 layoff language to Art. 21.03(d) of Tab 54). The essence of the clause was that lay-off would be by seniority order provided that the skills and ability of the employees were equal. This was important to The Herald, as it had been advocating for a similar competition clause as well (albeit using CBC agreement language; see Tab 53, s. 16.1.1).
85. On May 30, 2016, the Herald presented its counterproposal at conciliation, where both conciliation officers (Lloyd and Baboushkin) were present. The Herald proposed, among other things, a CBC-style competition clause, a contracted-out production hub, and additional lay-offs among staff (Tab 28).
86. On May 31, 2016, the Union advised that it would have a counterproposal to submit on June 1, 2016. However, on June 1, 2016, there was no Union counterproposal (Tab 27). The conciliation officers met with both parties separately and it was decided that The Herald would submit a full proposal that would be taken to Union membership for a vote.
87. The Herald provided a proposal on June 3, 2016, despite the fact that on June 2, 2016, Mr. Wilson appeared on a radio talk show where he misrepresented the previous day's conciliation proceedings (Tab 28).
88. The Herald sent its June 3 proposal as a completely revised agreement, and appended a list of returning employees and their proposed wage rates, a list of employees that were to be laid off, and the names of employees that The Herald wished to be moved to management based on positions it thought should be excluded from the scope of the unit (Tab 28).
89. The Union responded that day by asking whether The Herald's proposal would put the production hub workers inside or outside of the bargaining unit. The Herald replied that it would be open to either possibility.
90. On June 10, 2016, the Union submitted a counterproposal (Tab 29). This proposal was a rollback on key issues such as:
 - (a) Wages - an earlier proposal to accept a 5% wage reduction was removed; and
 - (b) Lay-off - the Union removed its Globe & Mail competition clause and returned to seniority order.
91. On June 13, 2016, in a telephone call between Mr. Machum and Mr. Wilson, the Union modified its June 10 position slightly (for example, offering 2.03% of pension contributions from employee wages, instead of 2%), but did not change its two major rollbacks described above.
92. Mr. Machum advised these rollbacks would stall negotiations. In order to move negotiations forward and to properly respond to the Union's enquiries regarding the Hub, he requested from Mr. Wilson and was promised a list of employees' names who were willing to accept voluntary lay-off instead of returning to work (Tab 30). This list would provide the Employer with key information which would help determine the cost of severance and the costs of providing other seniority-dependent benefits such as vacation, which were important given the concessionary negotiations at play.

93. Mr. Machum followed up to request the Union's voluntary lay-off list on June 16, 2016. Mr. Wilson replied that it would be a long strike, and advised that the Union's plan was to continue striking through the summer so that it could target strike efforts on The Herald's fall advertising.
94. Mr. Machum followed up via email to request the lay-off list on June 24 and June 28, 2016, and again via telephone on June 30, 2016 (Tab 30). The Union responded by asking the same questions about the Hub being inside or outside the bargaining unit. The Herald reiterated that it would be open to either option.

G. BARGAINING THROUGH E-MAIL: JULY-AUGUST, 2016

95. Bargaining eventually regained momentum once the Union requested to set aside the Hub issues in order to "concentrate on the other issues that divide us" (Mr. Wilson, via email on July 6, 2016 - see Tab 38).
96. The Herald submitted a proposal on July 15, 2016, and sought full response from the Union (Tab 31).
97. The Union submitted its counterproposal by email on July 21, 2016. Attached to the proposal was a vague lay-off list with no names. This did not help The Herald and it was not the information that was promised (Tab 32).
98. The Union's July 21 proposal contained essentially no changes from its previous proposal of June 10, 2016.
99. The Herald advised it had interpreted the July 21 email as a signal that the Union was uninterested in bargaining. The Herald reached out to Mr. Wilson for a phone call on the afternoon of August 9, 2016. He did not respond, but instead appeared on a radio show the next morning.
100. In order to move negotiations forward and notwithstanding no movement by the Union, The Herald submitted a counterproposal on August 11, 2016, addressing each of the Union July 21 proposals (Tab 34).
101. The next Union counterproposal dated August 15, 2016 represented a move back towards the pre-June 10 position. It reinstated the offer of 5% wage reduction; however, it did not reoffer the Globe & Mail layoff language (Tab 35).
102. The Herald submitted another proposal on August 18, 2016. The August 18 proposal included a wage comparison table to show that the parties' proximity on the issue of wages with respect to current payroll (Tab 36). It would take the Union 40 days to respond to this proposal.
103. In response to the Union's significant breaches of the agreed-upon parameters of picketing, The Herald applied to Nova Scotia Supreme Court for an order enforcing the Strike Protocol of the parties. These significant breaches included:
 - (a) Holding up traffic and causing significant delays on Joseph Howe Drive;
 - (b) Impeding access of employees of nearby employers (i.e., Manulife Financial);

- (c) Sitting on the hoods of vehicles;
- (d) Union President, Ingrid Bulmer, banging aggressively on the hood of at least 1 vehicle;
- (e) Traffic accident causing further delays;
- (f) Severely prohibiting access of Herald employees to The Herald's facility on Bluewater Road in Bedford, Nova Scotia ("Bluewater") and causing significant delays to delivery vehicles leaving the Bluewater facility for times that far exceeded the times described in the Protocol, including:
 - (i) On one occasion, a truck being held up for approximately an hour and a half;
 - (ii) Over 20 picketers blocking entry to and departure from Bluewater;
 - (iii) Delays of up to 2 hours and 20 minutes affecting entry of employees and contractors to Bluewater;
 - (iv) Delays of multiple vehicles (i.e., up to 9) from entering or leaving Bluewater at a time; and
- (g) Shining spotlights in the faces of security persons subcontracted by the Herald.

These breaches of the Strike Protocol by the Union compromised the Herald's ability to print its products and deliver news services to its customers on a timely basis.

- 104. The Union and The Herald agreed to a court order enforcing the Strike Protocol, which was issued by Justice Arnold of the Nova Scotia Supreme Court on September 2, 2016 (Tab 37).
- 105. Union president Ingrid Bulmer appeared the same day on television to announce that the parties were "nowhere near" getting back to the table.
- 106. Two weeks later, Ms. Bulmer covertly applied to the Minister of Labour for an Industrial Inquiry Commission to look into the parties' bargaining proceedings. The application was denied on September 26, 2016. In Ms. Bulmer's application, she failed to disclose discussions between the lead negotiators (initiated by the lead negotiator for the Employer) to move negotiations forward.

H. BARGAINING THE PACKAGE DEAL FOR A NON-UNION HUB: SEPTEMBER-NOVEMBER, 2016

- 107. On September 22, 2016, Mr. Machum reached out to Mr. Wilson regarding the package deal whereby the parties would bargain scope in return for severance or other monetary items on which the parties were far apart. Afterwards he wrote a follow-up email to Mr. Wilson (Tab 38) stating:

We were discussing ways in which an agreement may be achieved. During that call we specifically discussed how other newspapers achieved a nonunionized HUB through negotiations. You indicated a willingness during our call to bargain on this issue. We even discussed some areas

where the Employer may be prepared to move if it obtained efficiencies through the HUB. If there is some misunderstanding let me know. Either the Union is prepared to negotiate the HUB or it is not.

108. There was no refutation forthcoming from Mr. Wilson.
109. The Union tendered a proposal on September 26, 2016 (40 days after The Herald proposal). There was little movement in this proposal (Tab 39), and the Herald felt it was not sufficient to create momentum in negotiations. Still The Herald agreed to schedule meetings with Mr. Wilson in early October.
110. On October 4, 2016, Mr. Wilson met with Mr. Scott to discuss a package deal. The parties discussed bargaining scope, and other terms upon which they differed. The Union stressed that severance was an important issue. At the conclusion of the meeting Mr. Wilson promised to submit a full proposal.
111. The Union's proposal was submitted on October 11, 2016 (Tab 40). Its previous proposals on issues such as the Hub, seniority, the one-time severance package (for employees who would be laid off upon signing of the new Agreement), and geographical transfer were largely unchanged. However, this proposal did show movement by the Union on certain items such as hours, mileage, and the severance cap moving forward.
112. The Union's October 11, 2016 proposal explicitly acknowledged that package deals have occurred at other newspapers, and that other employers have essentially bought scope with increased severance amounts. Referring to his October 4 discussion with Mr. Scott, Mr. Wilson wrote (Tab 40):

I reminded you of what the other chains have done to reduce staffing when setting up production HUB's or other centers. The low end was 3/78 with the high end at 4/104. The employer's offer of 2/60 is not sufficient enough for people to give up their careers at this time. On a go forward basis in the collective agreement the union proposes BNI rates of 3/52.

113. The numerical references above are references to weeks per year of severance pay and severance caps. For example, "3/78" refers to severance pay of three weeks per year of service, to a cap of 78 weeks.
114. In response, The Herald submitted its first package deal proposal on October 18, 2016 (Tab 41). The proposal bargained scope in return for a higher one-time severance, as well as decreased hours of work, a lay-off clause based on the Globe & Mail clause, a window for employees to qualify for 7 weeks' vacation, and other terms of value to the Union. The Herald's proposal sought to move the Hub outside the union, as well as to move two senior editorial positions to management in exchange for two others.
115. Along with the package deal, The Herald communicated that if the Union was not prepared to have the Hub operate outside the Union, The Herald would simply contract out the work to a third party (Tab 41). The severance increase, along with other elements of the package deal, were significant moves given the current economic environment in the newspaper industry, and so a removal of the non-union Hub from the equation would cause The Herald to revert to its August 18 proposal as a launch point for further negotiations.

116. The following day, the Union responded in writing with a flat rejection of The Herald's October 18 proposal (Tab 42). This was a surprise to The Herald as Mr. Wilson had been amenable to the idea of a package deal in verbal communications leading up to October 18.
117. On October 21, 2016, the Union changed tacks again when Mr. Wilson, in a telephone call with Mr. Scott, said:
 - (a) "I've been asked to explore movement – everything is on the table."
 - (b) "I have been instructed to see what I can get for scope."
118. As a result, Mr. Scott and Mr. Wilson met on October 26, 2016 to discuss a package deal. The exchange of a non-union Hub for larger one-time severance was the focus of the discussion.
119. Mr. Wilson requested that the one-time severance be termed the "Voluntary Exit Package". He also indicated that he would need a "sweetener" to assist with obtaining an agreement on the non-union Hub and that his members wanted a seniority-based lay-off clause.
120. The Union also represented, through Mr. Wilson, that there would be no grievance of a contracted out Hub under Article 1.2 of the expired agreement if there was agreement on the severance amount. At the October 26th meeting, Mr. Wilson said: "If there is agreement on the exit of people who currently do production, there is no grievance on a non-union Hub."
121. Mr. Scott stressed that the maximum Voluntary Exit Package that The Herald was willing to exchange for a non-union Hub would be at a rate of 2 weeks' pay per year of service, though it could be somewhat flexible with the 60-week cap on severance and the rates (current vs. reduced) at which those wages would be calculated.
122. Mr. Wilson responded later the same afternoon, to advise after consulting members that the price of a non-union Hub would be 3/78.
123. On November 1, 2016, Mr. Machum resumed communications with Mr. FitzPatrick to request that the parties return to conciliation to discuss the Package Deal. The parties agreed that there would be a media blackout and a pause on secondary picketing while negotiations progressed (Tab 43). The parties also agreed that the trade for the Non-union Hub was to be 2/68 and although Mr. FitzPatrick suggested that while the Union understood that there would be no new money introduced by The Herald, that the money for the severance may be "split" differently. Mr. Machum also confirmed that the Employer was prepared to accept modified language in relation to layoff (removal of a sentence).

I. NOVEMBER 4, 2016 CONCILIATION

124. On November 4, 2016, the parties met with Conciliators Lloyd and Baboushkin to reconvene bargaining scope in return for the Hub.

125. Through the conciliators, the Union submitted a package deal proposal (Tab 44) which outlined a trade for the Non-union Hub that was far more expensive than The Herald had ever indicated it would be willing to accept. This package deal was so far-flung the conciliation officers called it a "non-proposal".
126. The conciliation officers requested that Mr. Machum telephone Mr. FitzPatrick to ask for his assistance in bringing a different negotiating lead to work with the bargaining team because of "serious dysfunction" within the bargaining committee for the Union.
127. The Herald was preparing to submit its own package deal in response, when the Union announced, through conciliation officer Lloyd, that it was no longer prepared to continue negotiations based on the terms agreed to by the parties. That caused negotiations to come to an end.
128. Mr. Machum sent an email to the Union advising that there would not be any further negotiations or discussions/emails unless the Union put forth a proposal that reflects what was previously represented by the Union. He pointed out that The Herald was upset with the conduct of the Union and had concluded the Union was acting in bad faith (Tab 46).
129. By immediate response, Mr. Wilson attempted to justify the Union non proposal failing to recognize that it did not reflect the representations that were made previously.
130. Mr. Machum responded advising that if the Union wanted to continue negotiations it needed to put forward a bona fide proposal. He highlighted the obvious fact that since the Union was no longer prepared to continue negotiations under the terms agreed it was clear that the Union was not interested in serious bargaining.
131. Mr. Wilson then called Mr. Machum from what sounded like a restaurant/pub based on the background noise. He advised Mr. Machum that Mr. FitzPatrick was no longer representing the Union and Mr. O'Hanlon was no longer involved. He stated: "I took care of that". He also distanced himself from any representations made by Mr. FitzPatrick in order to get the Employer back to the table. He suggested that offering the Hub outside the Union was a big move. Mr. Machum pointed out that a Non-union Hub was not a new move but was the centre of discussions over the prior over the last three weeks with Mr. Scott. Mr. Wilson suggested that those discussions were "off the record".
132. When Mr. Machum asked why the Union was not prepared to continue negotiations on the basis discussed (media blackout and no secondary picketing), Mr. Wilson simply said "it was not in the Union's best interest". That put a complete halt to negotiations.
133. Mr. Wilson made a number of statements during the call that were completely contrary to what he had discussed one on one with Mr. Scott. It became obvious that the Union was again backtracking and wasn't ready to bargain in good faith.
134. Mr. Machum then sent an email to Mr. Baboushkin outlining The Herald's concerns with the actions of the Union.
135. Mr. Baboushkin then replied advising that the Union was now willing to continue the media blackout until midnight November 6, 2016. There was no commitment by the

Union to suspend secondary picketing. There was no commitment to honour the representations which were important to The Herald in deciding whether to return to negotiations. In other words, only offering a continued media blackout did not address the backtracking by the Union on other issues.

136. On the morning of November 5, 2015, Mr. Machum communicated to the conciliation officers concern that there was confusion within the Union that was having a serious impact on negotiations. Mr. Machum expressed concern that the Union was negotiating in bad faith. Based on the actions of the Union over the prior 24 hours he advised that The Herald was not prepared to return to negotiations until it received a proposal from the Union that reflected the representations previously made by the Union.

137. That night, Mr. Machum emailed Mr. Wilson advising (Tab 46):

Based on your comments last night and your refusal to continue negotiations under the agreed terms I am instructed not to continue any form of negotiations at this time. As previously stated, the Union needs to now show good faith by putting forth a proposal reflective of recent discussions.

138. On November 6, 2016, the Union submitted a second package deal by telephone through the Conciliators. The provisions of this second package deal still did not reflect what had been represented to the Employer leading up to conciliation. Notably, the Union did not move from the 3 weeks/year rate of severance in the proposed Voluntary Exit Package. The Herald had indicated in many discussions that that severance rate was not acceptable and that it would not go above 2 weeks/year. The Union advised that this offer would expire at midnight.

139. In response, The Herald delivered through the conciliator, a counterproposal that it had prepared at conciliation on November 4, 2016. That proposal presented an even greater lessening of the concessions than in its October 18 proposal, including increases in straight costs such as mileage, overtime, and severances including those associated with the Voluntary Exit Package. The package deal was intended to buy a non-union Hub (Tab 46).

140. The next morning, the Union announced in the media that it planned to file the present Complaint.

141. Although this announcement put a significant damper on negotiations, discussions between the parties continued. As of the date of the Complaint, The Herald was led to expect from the Union a counterproposal to its November 6 package deal, to be submitted later in the week (i.e. by November 11, 2016).

142. The Complaint was filed November 14, 2016. Before a copy of the Complaint was delivered to the Employer Union members appeared in the media to present their case for bad faith bargaining and circulated the Complaint.

IV. BARGAINING IN BAD FAITH

143. The Herald complied at all times with its duty to bargain in good faith. The Herald says that it consistently tried to engage with the Union on key issues, but the Union was unwilling to respond at the table, instead preferring to lash out through the media. The

Herald reached out on various occasions to counsel for the Union and the conciliation officers in an attempt to keep negotiations moving forward.

144. The Complaint focuses on four issues:
- (a) The Herald's revision of the Agreement (para. 40 of the Complaint); and,
 - (b) The Herald's proposals regarding the Production Hub and Lay-off (paras. 34 and 35 of the Complaint);
 - (c) The negotiation of a Package Deal whereby a Non-union Production Hub would be exchanged for a larger Voluntary Exit Package (para. 33 of the Complaint); and
 - (d) Allegations that The Herald improperly modified its proposals (paras. 36-39 of the Complaint).

A. REVISION OF THE AGREEMENT

145. The Herald presented many of its comprehensive proposals in full agreement form, so that the Union could get the opportunity to appreciate the language of each proposal and how they functioned together in the draft agreement.
146. The Herald also took the opportunity, while introducing a number of substantial changes to the draft agreement, to also introduce some organizational ones, including corrections to punctuation, formatting, and inconsistencies in terms of reference. It also relocated some misplaced provisions to more appropriate spots in the draft agreement.
147. The Herald did all of this out of courtesy to the Union and in the hopes of creating a better organized agreement moving forward. It is not evidence of bad faith or intent to provoke. It is evidence of good faith.
148. The Complaint cites a number of other minor changes that it says were not based on practical need. The Herald says that each of its substantive proposals was necessary based on its vision for the future of the newsroom.
149. If the Union had taken the opportunities presented to it in negotiations to fully engage with the other proposals, it might be better able to identify with the reasons for them. Indeed, many of the other proposals raised in the Complaint were either not brought up by the Union or the Union refused to engage in negotiations.
150. Now the Union wants the Board to forbid negotiations on these same provisions. A reasonable conclusion is that the Union has chosen to ignore the proposals in the hopes that they would go away. While The Herald respects that this may be the strategy, it submits that it would not be appropriate or just for the Board to order on that basis that they now be excluded from the discussion. Therefore The Herald proposes that the Union be returned to bargaining to discuss them.

B. PRODUCTION HUB AND LAY-OFF

151. Before negotiations began, The Herald prepared the Union for significant changes in the Agreement. This would be concessionary bargaining, not bargaining as usual. The

Union was aware of this, all the more so because the press room and composing room bargaining units of the same Halifax Typographical Union had recently gone through concessionary bargaining sessions.

152. The Herald's proposed changes to the workforce encompassed more than monetary concessions; they included a reorganization of the workforce itself. The newsroom was going to be recast in the image of a modern newsroom, as has been done in newsrooms across Canada. One example of this was the combination of the reporter and photographer job classifications into the single "multimedia journalist". The idea behind this was to increase efficiency by asking reporters to also take photos or snippets of video at the events they cover.
153. Another industry trend was to move page and web production work to a centralized location where it could be handled by dedicated staff who are capable of handling editorial, advertising and custom content. This change was especially important to implement in The Herald's case because it would correct a glaring inefficiency in its workforce. Under the expired agreement, the Union had one sort of page or web production work excluded from its jurisdiction. Therefore, in many cases, the same page would have to be reviewed by both union and non-union staff. That is very inefficient.
154. Additionally, production staff was overpaid for the value of their work. Because of advances in technology, the wages of page editors have been significantly reduced since the days of traditional layout tasks (as in early 1900s typesetting). Tasks that were onerous for previous generations can now be handled quickly. However, the salary scales in The Herald's agreement were still the equivalent salary scales of a previous generation. Page production staff were earning up to \$75-80k under the expired agreement which is well above the current market rate of \$30-35k.
155. When monetary proposals were first presented by the parties in December, 2015 the Herald presented its idea to centralize page and web production into a Production Hub. The Hub is a construct that is currently used in almost every newspaper in Canada, particularly those with The Herald's size and reach. These newspapers, including the Toronto Star, contract out the Hub work to third parties or use centralized staff to obtain the efficiencies. Through the Hub, The Herald would be able to produce The Herald and some of the other publications it owned with staff that would be dedicated to the task.
156. The unfortunate side of the Hub was also disclosed up front: because of the efficiencies created, The Herald would be able to consolidate staff. That meant layoffs. The Herald presented an estimated layoff number and list, in good faith, even though it was not certain of the exact number because it had not operated a Hub before. Later in negotiations, The Herald would revise that number up once it had begun to operate a Hub using replacement staff and realized additional efficiencies were possible. Again, it advised the Union over the table at the first such opportunity after it became aware.
157. Throughout negotiations, The Herald communicated its Hub proposals to the Union in good faith.
158. The Union now takes issue with how The Herald chose to represent the Hub in the text of the proposal. Borrowing language from Toronto Star (a newspaper with a Production Hub), The Herald modified Article 1.2 of the Agreement to allow for contracting out of Hub work to a third party. The Complaint calls this proposal illegal and alleges that it

seeks to destroy the Union's jurisdiction. However, the same language hasn't done so in Toronto, nor has presence of a Hub ruined a newsroom bargaining unit in any of the many newspapers that have one. Notably, the same Union represents three New Brunswick newspaper newsroom units that currently operate in conjunction with a Hub.

159. The Union has also stated that it doesn't think the modified Article 1.2 is necessary for contracting out. While opinions differ on that issue, the mere existence of a difference of opinion does not make the proposal itself conclusive of bad faith. The Herald has asked the Union on multiple occasions to suggest additional language that provides them the limits on The Herald's discretion that they require. The Union has failed to do so. The Herald respectfully requests that the Board allow the parties to work out the Article 1.2 issue between them through the bargaining process.
160. Another issue raised by the Union is with respect to the lay-off clause. The expired agreement does not put any restriction on The Herald to lay off in any particular order. Therefore The Herald currently has the power to manage the newsroom by laying off employees in any order it sees fit (within reason).
161. In its initial proposal, The Herald borrowed a clause from another media agreement (MBS) to constrict its power slightly. The proposed MBS clause required that management lay off staff in accordance with their skills, ability and qualifications, with seniority taken into account only as a tie-breaker. The Union started negotiations at the opposite end of the spectrum, with a proposal that lay-offs be conducted in strict seniority order. While the Union's proposal is clearly more Union-friendly, The Herald says that either of the proposals should be preferable to the Union to the seniority language in the expired agreement, which was none.
162. More importantly, The Herald's initial proposal of MBS language is not evidence of bad faith. The MBS agreement was signed by this Union.
163. Throughout negotiations, the parties shifted their positions around on seniority and lay-off. The Herald moved from to a competition clause (where seniority would govern when skills, ability and qualifications were relatively equal) adapted from a CBC agreement. The Union moved from a threshold clause (where seniority would govern if the skills and ability of those remaining was sufficient to perform the remaining work) based on Brunswick News, to a Globe and Mail competition clause, back to Brunswick News. The Herald moved to the Globe and Mail clause but the Union has now withdrawn the Globe and Mail offer.
164. Given the bargaining history of the security provision, The Herald finds it bizarre that the Union would now complain that The Herald's proposals are in bad faith and that they would give the Union no job security and are blatantly unacceptable. First of all, if anything, it is the language currently in the expired agreement (nothing) that would give the Union no job security. All of the Employer proposals are better. Second, how can the Union assert that the Globe and Mail language it once proposed is objectively unacceptable? Rather, The Herald states that the Union's refusal to accept a provision that it had once proposed is indicative of the Union's bad faith and reluctance to conclude an agreement.
165. In conclusion, all of the Herald's proposals that the Union features in its Complaint were made for bona fide reasons. They were taken from other newsroom and media

collective agreements. Many of them involve terms that were accepted by this Union. Given this context, it would be unreasonable to conclude that the proposals are so offensive that their mere existence would be bad faith.

C. PACKAGE DEAL

166. As described above, the package deals were an option explored by the parties in an effort to resolve the remaining disparity in their monetary proposals. In exchange for pure cost (in the form of an enhanced Voluntary Exit Package), The Herald was willing to consider receiving value of a different form: a non-union Hub. Providing The Herald a non-union Hub such as is used by the New Brunswick newspapers represented by the same Union would enable The Herald to obtain the cost savings of a contracted-out Hub but with the ability to supervise and manage operations. That is a thing of value. Conversely, the Union was willing to consider surrendering some of its scope in return for a greater Voluntary Exit Package.
167. It is clear that both parties were complicit in bargaining scope. They each submitted package deal proposals.
168. While the package deals involve bargaining scope, that fact alone does not make it bad faith. Indeed, the Union essentially admitted shortly after filing the Complaint that its intent had been to entice the Herald to make a package deal proposal to see how much severance it could get in return (Tab 47). It would be unjust to grant the Union a remedy on the basis of proposals that it had enticed The Herald to make by suggesting that such proposals would be acceptable.
169. In conclusion, the package deals are not in bad faith because it was consensually bargained. In fact, the Union has agreed to continue negotiating in relation to scope subsequent to filing this Complaint, which should obviate any legitimacy to its Complaint.

D. MODIFICATION OF BARGAINING POSITION

170. Good faith bargaining does not require one party to force the other to engage fully with its proposals. Rather, it requires the parties to conduct bargaining by holding meaningful discussions and negotiations and make every reasonable effort to enter into a Collective agreement. The Herald has complied with this obligation fully.
171. The Union says that in its view, some of The Herald's proposals were unilaterally modified after their first appearance. This, the Union says, is proof positive of bad faith.
172. While there may be different reasons for this, none of those reasons connects to bad faith bargaining. As described above in relation to the Hub, tweaks to some proposals had to be made as The Herald obtained more information that would affect its management of a new agreement. As described below in relation to page production, the Union's perception that a change had been made may have been partially due to its lack of attention paid to the details of each proposal.
173. None of the examples put forward in the Complaint are examples of bad faith. The Herald responds to each such allegation below.

E. THE UNION'S BAD FAITH CONDUCT IN NEGOTIATIONS

174. The Herald denies all of the allegations set forth in the Complaint as set out above. Further, as evidenced by the Union's conduct during negotiations, it is the Union, if any one of the parties, that has not made reasonable efforts to conclude an agreement. The Union has shown in various ways reluctance to continue the negotiations process.

VI. RESPONSE TO COMPLAINT

175. With respect to the following paragraphs, the Herald says specifically:
176. Paragraph 5 – There had been no meaningful bargaining prior to the Union's strike. Prior to conciliation the Union had simply negotiated by saying "no". The Union declined offers by The Herald and the Conciliator to meet again following the initial conciliation meetings, where The Herald's monetary proposals were presented. Instead the Union waited for the conciliation report to be filed.
177. Paragraph 6 – In previous bargaining, the Union and The Herald had given strike countdowns or lockout countdowns.
178. Paragraph 11 –
- (a) When the parties first met for bargaining on October 22, 2015, Grant Machum talked about the challenges facing the industry as a whole, as well as The Herald's declining subscriptions and revenue.
 - (b) Mr. Machum stated that, contrary to previous rounds of bargaining with other negotiators and a publisher who was averse to a strike, The Herald this time around would be willing to weather a work stoppage in order to gain the required concessions.
 - (c) The Union was already aware of The Herald's approach to this round of bargaining, as The Herald had communicated as much one month earlier when Mr. Scott met with Mr. O'Hanlon and Mr. Wilson. It was shortly after the time that the Union's accountant was provided with access to The Herald's financial records in order to verify the concessions sought by the Union.
179. Paragraphs 12 and 13 –
- (a) The Herald responded to all Union requests for financial disclosure, and provided such disclosure both before and during the negotiation process. It did not refuse to provide information. It was not prepared to circulate confidential financial information to all bargaining unit members.
 - (b) Prior to negotiations, an accountant employed by the Union (Mr. Maher) was given unfettered access to The Herald's books. Mr. Maher came back with several additional questions and The Herald provided answers.
 - (c) The Herald had prepared financial disclosure to show the Union on the second day of bargaining, but the Union declined to agree to a non-disclosure agreement on that date. After the second day but before the third day of bargaining, the Union stated that it would drop its request to see financials until monetary

proposals had been tabled. The Herald honored this request and settled with the Union on the form of the non-disclosure agreement.

- (d) The Union team would have seen The Herald's financial information one day earlier than it did, had it invited its accountant to attend conciliation on December 17, 2015 as was expected and for which The Herald paid to have its auditor present.
180. Paragraph 14 – The information contained in this paragraph is in breach of a non-disclosure agreement signed by the parties prior to the disclosure of The Herald's confidential financial information. It is not helpful to the Union's Complaint. Accordingly, the Herald requests that this paragraph be struck.
181. Paragraphs 15 and 24 – The Herald has not bargained any terms to an impasse. First, negotiations are still active and so *prima facie* there is no impasse. Second, as acknowledged within the Complaint itself, there are many outstanding items which the parties have not agreed and it is meaningless for the Union to say that this or that one has brought an impasse. Third, The Herald has brought forward many outstanding items to deal with them, which is not consistent with causing an impasse.
182. Paragraph 16 –
- (a) We note that each of the parties has tendered at least a dozen proposals since the documents included at Tabs 1 and 2 of the Complaint.
 - (b) The Herald understands that "a proposal to change the jurisdiction" is a reference to Article 1.2. This proposal was included only to address contracting out, of the Hub, which is what other newspapers including the Toronto Star currently have. The language was adapted from the Toronto Star collective agreement (Tab 55 at clauses 203, 204 and 1703).
 - (c) Regarding the job security article, The Herald already has the right to lay off senior employees over more junior employees. The expired agreement contains no protections and lay-offs could have been made according to any bona fide rationale. The Herald's first proposal incorporated seniority in security, which is more than the Union had previously. The Herald has since compromised again by moving to even weaker seniority language in pursuit of a deal.
183. Paragraph 17 – The Non-union Hub was not presented or proposed by either party in December, 2015. Those proposals happened much later, as a result of conversations that Mr. Machum initiated with Mr. Wilson in September of 2016. Later, the parties agreed to bargain scope and each made multiple proposals that exchanged scope for severance and other terms. Therefore it cannot be said that the mere subject matter of bargaining scope is an impasse.
184. Paragraphs 18-21 –
- (a) On January 20, 2016, the Herald agreed that it would not lock out employees upon expiry of the freeze period if they agreed to return to work under the new contractual conditions (Tab 14). At that time, most of the monetary terms were not agreed.

- (b) By that time, the talks had already dragged on for two months past the expiry of the old agreement. It was The Herald's view that the Union was seeking to prolong negotiations to avoid accepting the concessions which would then become immediately effective.
 - (b) The Lay-off notices were prepared in concert with that proposal and were mailed before the strike was declared. Only after the letters went out did it become apparent that Union members would not be returning to work as the Union made good on its threat to strike the employer.
- 185. Paragraph 22 – The “major concessions” of the Union also represent compromises by The Herald:
 - (a) Regarding “an across the board wage reduction”, The Herald's initial wage proposal was similar in aggregate but had proposed scale reductions in proportion to the value of work being performed. Eventually The Herald agreed to the 5% annual reduction.
 - (b) Regarding “elimination” of the defined benefit plan, there was no such proposal. The parties agreed that Union members would move all future accruals into a Union target benefit plan.
- 186. Paragraphs 23 and 24 – The location of these paragraphs is misleading. The Union did not agree to Pagemaster wage rates of \$30-35k for Production Hub workers in January. Its proposal at that time was to pay those employees their existing salaries of up to \$75-80k. The roll back of Hub wages did not appear in the Union's proposals until many months later. That fact is not disclosed in the Complaint.
- 187. Paragraph 25 – In this paragraph the Union references changes sought to Article 1.1 with respect to inclusion of senior editor positions in management. The Herald says:
 - (a) The changes to 1.1 were not a new proposal on June 3, 2016. They were raised verbally beginning on the first day of bargaining, which was October 22, 2015. They were again discussed on November 12, 2015 and consistently throughout negotiations. The proposals are older than the first day they appeared in the draft agreement. They are as old as the negotiations.
 - (b) Two of the “four employees who are on strike” are currently not in the Union's scope. Business editor and the Truro bureau chief are excluded from the unit pursuant to the expired agreement and certification order. The Union wanted them in, but that does not put them in the scope.
 - (c) The Herald indicated that it was open to bringing two of the four positions back in, namely business editor and Truro bureau chief. This would make for an equal exchange of Union positions.
- 188. Paragraphs 26, 36 and 37 –
 - (a) Regarding the “additional 4%” reduction in wages, The Herald is surprised to hear an objection now given that none was raised at negotiations. The parties

had bargained the previous proposals based on hourly rates and no agreement was made to increase the wage rates when hours were reduced.

- (b) The Herald had through financial disclosure provided support for its bottom line. When movement would occur with respect to one cost, another would have to shift accordingly to preserve the bottom line.
- (c) The Herald's sick pay provision is exorbitant. Even with the 1/3 reduction, it is still one of the most expensive sick leave provisions among Canadian newspapers. It is an easy cut to propose as a means to control costs.

189. Paragraph 27 –

- (a) On July 6, 2016, the Union had agreed to set the production Hub issues aside, but then resurrected those issues after the parties made progress and now suggests that this constitutes bargaining to an impasse.
- (b) In its October 11, 2016 proposal, and in subsequent Package Deal proposals, the Union suggested or explicitly acknowledged that it would exchange scope for a larger voluntary exit package.

190. Paragraphs 28 and 29 – The November 6, 2016 package deal proposal must be taken in the context of the discussions between the parties on October 4, 19, 21, 26, 31, and November 1, 2016, where bargaining scope in return for severance was discussed, and the package deal proposals submitted on October 18 and November 4 and 6, 2016 (the last two being Union proposals), in which was proposed to be exchanged for scope. None of this context was disclosed in the Complaint. Subsequently, the Union specifically stated that it was willing to continue to bargain scope.

191. Paragraph 29 – Regarding the “unlawful proposal” to retain replacement workers: in an October 26, 2016 meeting with Mr. Scott, Mr. Wilson of the Union requested that the one-time severance package be termed a “Voluntary Exit Package” and stated that there would be no grievance filed on a Hub under Article 1.2 provided that there was agreement on severance. The parties therefore had a mutual understanding at that time that severance would be voluntary, that any laid off volunteers would not be seeking re-entry, and there would be no controversy as to who would populate unfilled positions such as those in the Hub. This context was not disclosed in the Complaint.

192. Paragraph 30 – There was no refusal to withdraw or modify minor proposals. Many changes to those proposals were requested or accepted by both parties over the course of negotiations. Regarding the “deliberately provocative” proposals:

- (a) The change listed under the first bullet point was for operational reasons. Further the Union's characterization of the change is misleading. The expired provision set the vacation range of June - September, where under the proposed change the range was expanded to May - September.
- (b) The Complaint does not disclose that the Union never raised specific objections or asked questions as to the second through fifth bullet points, despite that they were provided to the Union on October 22, 2015. In fact, the Union chose not to

engage many of the minor proposals. The Herald believes this was part of a strategy to ignore the proposals in the hopes that they would disappear.

- (c) Regarding the second bullet point, the change was made to avoid the operational difficulties associated with the arcane and superfluous language of the provision.
 - (d) Regarding the third bullet point, The Herald simply copied and pasted a vacation table from another newsroom collective agreement. The Complaint is the first time the Union has objected to this aspect of the vacation provision. The Union had previously tentatively agreed to this provision.
 - (e) Regarding the fourth bullet point, The Herald foresaw that what wasn't an issue in the past might yet become an issue after reconfiguration of the workforce. Had the Union raised this proposal for discussion, it might have received that explanation and had a chance to consider it.
 - (f) Regarding the fifth bullet point, the parties had already agreed to such a provision in the press room agreement.
193. Paragraphs 31 and 33 – These allegations are false. They are bald assertions unsupported by the facts. Any scope proposals were tied to a package deal that The Herald was prepared to withdraw in favor of its position in its August 18, 2016 proposal.
194. Paragraph 32 –
- (a) Many of the monetary concessions proposed by The Herald were not agreed – severance, for example.
 - (b) It is self-contradictory and nonsensical to note that there are “hundreds” of outstanding terms and simultaneously assert that they are all being bargained to impasse, particularly when a number of them have not been discussed at the table.
 - (c) There are not “hundreds” of proposals on the table. The actual number is less than fifty. The Union is artificially driving up the number by counting every change to punctuation and formatting. This sound bite has formed a significant part of the Union’s media relations strategy but it is severely misleading.
195. Paragraph 34 – The parties have agreed to negotiate and have each presented proposals on out-sourced or in-sourced Hub. Everyone knows that Hubs exist at almost every other newspaper in the country. The Herald’s proposal in Article 1.2 is contracting out language based on the language from the Toronto Star agreement. The Toronto Star is a newspaper that has a contracted-out Hub. Article 1.2 does not render the Union’s “bargaining rights meaningless” any more than the Toronto Star’s agreement does by its contracting out clause.
196. Paragraph 35 and 16 – The Herald currently has the absolute right to lay off employees in any order. All of its proposals throughout bargaining limit its power more than it is limited under the terms of the expired Agreement. Its first proposal, which was based on MBS language, was rejected by the Union. Then it proposed slightly weaker CBC language. Meanwhile, The Union had proposed a limit to the seniority language through

its proposal to include Globe and Mail language. More recently, The Herald has proposed the Globe and Mail language but the Union has backed away from its previous position. All of the proposals provide job security and the facts are that they are all more advantageous to the Union than the former language and that one was actually proposed by the Union; this is proof that they are acceptable. None of this context is presented in the Complaint.

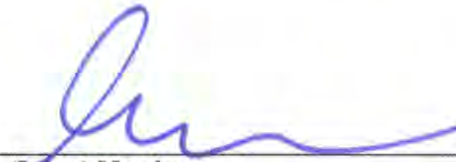
197. Paragraph 38 – The proposed production Hub is consistent with other Hubs and with the Herald’s stated intention to find new efficiencies in managing its workforce. Although the Union’s focus in bargaining the production Hub may have been limited to page production, the proposed Hub was always meant to include web production. The detailed presentation of the production Hub in January, 2016 described the work as copy editing and design layout of “papers, web, mobile and social media”; this clearly includes web production. After The Herald presented the production Hub to the Union in January, 2016, the web editor classification did not appear in any of The Herald’s subsequent proposed wage tables. The addition of the word “web” to Article 1.1 in a recent proposal does nothing more than reflect what the Union has been notified early and often – that web production would be part of the Hub.
198. Paragraph 40 –
 - (a) The Herald’s proposals were not a “complete rewrite” but rather a revision of the existing agreement to include its proposals in a complete agreement.
 - (b) The Union has not agreed to the Herald’s major concessionary demands. Severance and Lay-off language are two prime examples. The Union even refuses to include a management rights clause.
199. Paragraph 41 – Remedies
 - (a) Regarding the remedy sought in subparagraph (a), there is no Herald premises to which the bargaining members have access.
 - (b) Regarding the remedy sought in subparagraph (b), The Herald and Union continue to bargain. The Union broke off bargaining momentarily in order to launch this Complaint and has since returned to bargaining with both parties exchanging proposals subsequent to the Union’s launching of this Complaint (Tabs 49 and 50).
 - (c) Regarding the remedy sought in subparagraph (c), The Herald is prepared to withdraw any proposals dealing with scope and to base further negotiations on its August 18 proposal. In fact it has done so. The fact is that the trade of scope for enhanced severance and other benefits was a welcomed approach for both parties and has been successfully negotiated at other newspapers throughout Canada.
 - (d) Regarding the remedy sought in subparagraph (d), The Herald has already suspended these notices.

VII. SUMMARY

200. The Board is not an instrument for withdrawing one's bargaining position. Proceedings before the Board are not a substitute for free collective bargaining. Therefore, the Board should not judge the reasonableness of bargaining positions, unless they are clearly illegal, contrary to public policy, or indicia, among others, of bad faith.
201. In this case, The Herald engaged in full, informed and rational discussion of the issues. The Union found itself in a position in negotiations where it did not want to be and was not prepared to provide any counter-proposals. Thus, it has sought the intervention of the Board. The Employer has not engaged in bad faith bargaining. As such, the Complaint is without merit and should be dismissed, with costs of defence to The Herald.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at Halifax Regional Municipality, Province of Nova Scotia, this ^{25th} day of November, 2016.



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APPENDIX "A"

**Summary of Proposals
The Halifax Herald Ltd. ("Herald") & Halifax Typographical Union,
Local 30130, Editorial Unit ("Union")**

Date	Company Proposal	Union Proposal
October 22, 2015	X	X
October 23, 2015	X	
November 12, 2015		No counter proposal says no to all but 3 Company proposals.
November 17, 2015		X (26 days later)
December 17, 2015	X	X
December 18, 2015	X	
January 20, 2016		X (32 days later)
January 24, 2015	X (2 proposals)	X (2 proposals)
January 25, 2016	X	X
April 5-14, 2016	Discussions on layoff clauses	
May 25, 2016		X (120 days later)
May 30, 2016	X	
May 31, 2016	Union states it will provide proposal June 1, 2016	
June 3, 2016	X	
June 10, 2016		X
July 15, 2016	X	
July 21, 2016		X
August 11, 2016	X	
August 15, 2016		X
August 18, 2016	X	

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¹ September 26, 2016		X (40 days later)
October 11, 2016		X
October 18, 2016	² X	
³ November 4, 2016		⁴ X (16 days later)
November 6, 2016		⁵ X
November 6, 2016	⁶ X	
November 17, 2016		⁷ X (11 days later)
November 23, 2016	⁸ X	

¹ September 22, 2016 start of Hub discussions to bridge.

² Package deal. Ties severance to Hub.

³ On October 21, 2016 Dave Wilson instructed to see what he can get for Hub. On October 26, 2016 Dave Wilson says price of Hub 3/78. On October 31, 2016 Dave Wilson will not agree to less than 3 weeks for Hub per year. November 1, 2, 3, 2016 Grant Machum and Sean FitzPatrick agreement on terms for negotiations (no secondary picketing, media blackout, lay off, 2/68). Includes non-union Hub.

⁴ Doesn't propose severance at 2/68 or Globe and Mail layoff language.

⁵ Union proposes non-union Hub.

⁶ Company proposes non-union Hub.

⁷ No non-union Hub.

⁸ Two options.