

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 5**

CNN America, Inc, and Team Video Services, LLC,
Joint Employers,

Respondents

and

Case No. 5-CA-31828

National Association of Broadcast Employees &
Technicians, Communications Workers of America,
Local 31, AFL-CIO,

Charging Party

and

CNN America, Inc. and Team Video Services, LLC,

Respondents

and

Case No. 5-CA-33125
(formerly 2-CA-36129)

National Association of Broadcast Employees &
Technicians, Communications Workers of America,
Local 11, AFL-CIO,

Charging Party

**GENERAL COUNSEL’S RESPONSE TO CNN’S MOTION TO STRIKE APPENDICES E-S TO
THE GENERAL COUNSEL’S ANSWERING BRIEF**

Counsel for the General Counsel herein responds to CNN’s Motion to Strike Appendices E-S to the General Counsel’s Answering Brief (“CNN Motion”).¹

¹ CNN does not seek to strike any other of General Counsel’s Appendices submitted to the Board with General Counsel’s Answering Brief, *i.e.*, CNN Ans. Brief Appendices A through D, and T through U.

Appendices E through S to General Counsel's Answering Brief were submitted to aid the reader of the record in reviewing the volumes of underlying hiring documents found in the record. The summaries include citations to the record to which the reader may easily refer when using the summaries. The summaries therefore provide a useful road map to the copious record, and CNN's Motion to Strike should be denied in its entirety.

CNN protests that certain applicants were omitted from the Appendices E through S. (CNN Motion 3-4.) General Counsel has explained to the Board that we omitted from Appendices E through S those non-TVS candidates who were not hired by CNN. (GC Ans. Brief 66 n.105.) These individuals are not part of General Counsel's theory of hiring discrimination. CNN has been free to argue, and has argued, that the interviewing of these candidates should be considered. The omission of these candidates in no respect makes General Counsel's summaries inaccurate.

CNN further argues that General Counsel's averaging of interview rating scores for each candidate should not be included in the summaries because the averages are not information contained in the underlying records. (CNN Motion 8.) General Counsel has never asserted that the underlying records contain averages, and has made no contention that CNN used such averages. (GC Ans. Brief 66, n.105; GC's Note Regarding Appendices E-S at cover sheet to Ans. Brief Appendices.) The averages are based on the scores in the underlying records, and are included as a basis of comparison among candidates. CNN is free to contest the accuracy of the arithmetic, but there is no basis to protest the inclusion of mathematical calculations in such evidentiary summaries.

Similarly, CNN argues that a candidate's years of experience indicated in Appendices E through S should not be included because they "were not used by the hiring managers during the

selection process.” (CNN Motion 6.) That is merely CNN’s assertion regarding what happened at the selection process. The General Counsel has been clear that the numbers of years of experience were “derived from, where possible, the description of the candidate as reported in emails and notes from the phone screen recruiters to hiring managers.” (GC’s Note Regarding Appendices E-S at cover sheet to Ans. Brief Appendices.) The record is therefore clear that CNN had this assessment of relevant years of experience within its hiring files at the time it was making hiring decisions. (*See* GC Ans. Brief 65.)

CNN also points to some instances where “Strengths” and “Concerns” are allegedly listed out of order compared to the original document. (CNN Motion 8.) There is no evidence whatsoever in the record that an interviewer or hiring manager gave relative weight to a descriptive phrase or adjective based on whether the descriptor appeared above or below another in a list, or before or after another in a sequence. General Counsel has never made that argument, and any transpositions which occurred during transcription onto the summaries are inadvertent and immaterial.

Although CNN complains in the plural, CNN lists only one instance in its Motion Exhibit A where General Counsel allegedly described concerns as strengths. (CNN Motion 8; CNN Motion Exhibit A at *Sollenberger, Mike*.) Viewing the underlying document, it becomes apparent that General Counsel applied a reasonable interpretation to the interviewer’s placement of the handwritten notes, and in the context reasonably interpreted the phrases “Expressed desire to travel to other bureaus” and “idea man” as an applicant’s strengths.

CNN also claims that, in some instances, where the Appendices state that certain documents were not produced, the documents were in fact produced. CNN primarily supports its argument by citing General Exhibit 152 as “butcher blocks” which were omitted by General

Counsel in Appendix I. (CNN Motion 4-5.) Although the record is unclear as to the extent to which the computer-generated GC 152 had been used by CNN during the hiring process as the functional equivalent of handwritten butcher blocks (Tr. 2449-64), General Counsel's omission is entirely inadvertent and is in no way an attempt to mislead the Board.

Apart from the foregoing meritless bases for CNN's Motion to Strike, CNN alleges other discrepancies (CNN Motion 8) which are on the level of typographical errors, reasonable interpretation of marginally-legible handwriting and inadvertent omissions. (E.g., CNN Motion Exhibit A at *Greene, Bill*, and at *Everett, Vince*.) General Counsel does not object to a party's right to put another party's summaries to the test, but does object to unfounded accusations of bad faith and manipulation of evidence. In the context of evidentiary summaries, CNN has fulfilled its role in the adversarial process by alleging discrepancies in Exhibit A to its Motion.² As a result, the reader of the record has the benefit of, most importantly, the underlying records, in addition to General Counsel's summaries and CNN's response thereto.

For the foregoing reasons, Counsel for the General Counsel respectfully requests that the Board deny CNN's Motion to Strike in its entirety.

Dated at New York, New York
July 8, 2009

Respectfully submitted,



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² CNN has attached, as Appendix B to its Reply Brief, a document identical to Exhibit A to its Motion. Should the Board strike General Counsel's Appendices E through S, the General Counsel respectfully requests that the Board likewise strike CNN Reply Brief Appendix B.

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Date of Mailing: July 8, 2009

**AFFIDAVIT OF SERVICE OF: GENERAL COUNSEL'S RESPONSE TO CNN'S MOTION TO STRIKE
APPENDICES E-S TO THE GENERAL COUNSEL'S ANSWERING BRIEF**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by electronic mail (email) and overnight delivery, as indicated below, upon the following persons, addressed to them at the following addresses:

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CNN America, Inc. and Team Video Services, LLC, and National Association of Broadcast Employees & Technicians, Communications Workers of America, Local 31, AFL-CIO; Case No. 5-CA-31828, and CNN America, Inc. and Team Video Service, LLC, and National Association of Broadcast Employees & Technicians, Communications Workers of America, Local 11, AFL-CIO; Case No. 5-CA-33125 (formerly 2-CA-36129)
SHOWING A DATE OF MAILING 07/08/2009
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