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March 5, 2013

Mr. Gary Shinnars
Acting Executive Secretary
National Labor Relations Board
1099 14th Street, NW
Washington, D.C. 20570

Re: CNN America, Inc. and Team Video Services,
Case Nos. 05-CA-31828 & 05-CA-33125 (formerly 02-CA-36129)

Dear Mr. Shinnars:

Charging Party Local 31 ("Union") submits this response to the February 19, 2013 letter of Respondent CNN America, Inc. ("CNN"). CNN asserts that: (1) the Board (Liebman and Schaumber) lacked authority under *New Process Steel v. NLRB*, 130 S. Ct. 2635 (2010) to issue the decisions reported at 352 NLRB 448 (2008), 352 NLRB 675 (2008), and 353 NLRB 891 (2009); and (2) the Board currently lacks authority to render a final decision due to the D.C. Circuit's decision in *Noel Canning v. NLRB*, 194 LRRM 3089 (D.C. Cir. Jan. 25, 2013).

First, the Board established a process to address *New Process Steel*, which will resolve any issue regarding the challenged decisions. Such a resolution is enforceable by an appellate court. *See, e.g., SFO Good-Night Inn v. NLRB*, 700 F.3d 1 (D.C. Cir. 2012) (enforcing Board's subsequent decision after remand of two-member decision).

Second, the Union incorporates the Department of Justice's arguments set forth in its letter brief to the Third Circuit explaining why *Noel Canning* cannot withstand scrutiny. *See NLRB v. New Vista Nursing & Rehabilitation Center*, Case No. 11-3440, Doc. # 003111181374 (filed 02/28/13), available at <http://pubcit.typepad.com/clpblog/2013/03/doj-responds-to-the-dc-circuits-noel-canning-recess-appointment-decision.html> (last visited 03/05/13). Moreover, notwithstanding the *Noel Canning* decision, the Second Circuit has found that the President has authority to make recess appointments like those of the current Board members. *United States v. Alocco*, 305 F.2d 704 (2d Cir. 1962). Given CNN's unfair labor practices in both New York

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and Washington, D.C., the Board's decision in these cases could be appealed to either the Second Circuit or the D.C. Circuit. 29 U.S.C. § 160(f). Unless and until the Supreme Court resolves the recess appointment issue, the Board should proceed with the decision in these cases.

Finally, Chairman Pearce has stated that the Board will continue to perform its statutory duties. The discriminatees have been waiting over three years for the Board to issue a decision in a case involving charges filed in 2004; and, they deserve a decision without any further delay.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian A. Powers / KRS". The signature is written in a cursive, flowing style.

Brian A. Powers
Keith R. Bolek
Counsel for Local 31

CERTIFICATE OF FILING AND SERVICE

The undersigned hereby certifies that, on March 5, 2013, a PDF version of the following original document:

Letter from Brian A. Powers to Gary Shinnars dated March 5, 2013

was filed using the National Labor Relation Board's electronic filing system and that the original and eight (8) copies were sent by overnight mail to the Executive Secretary on the same date.

The undersigned further certifies that, pursuant to 29 C.F.R. § 102.114(i), a copy of the above-referenced letter was served via e-mail on March 5, 2013 on the following:

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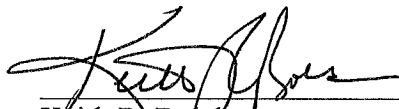
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