

FINANCIAL SERVICES TRIBUNAL

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "Act");

AND IN THE MATTER OF a proposal by the Superintendent of Financial Services (the "Superintendent") to refuse to approve the Partial Wind Up Report for Westinghouse Canada Inc. Pension Plan, Registration No. 348409 in respect of business carried on by Westinghouse Canada Inc. at its Burlington, Ontario plant;

AND IN THE MATTER OF a proposal by the Superintendent to refuse to approve the Partial Wind Up Report for the Westinghouse Canada Inc. Pension Plan , Registration No. 348409 in respect of business carried on by Westinghouse Canada Inc. at its London, Ontario and St. Jean, Quebec plants;

AND IN THE MATTER OF a proposal by the Superintendent to refuse to approve the Partial Wind Up Report for the Westinghouse Canada Inc. Pension Plan , Registration No. 348409 in respect of business carried on by Westinghouse Canada Inc. at its Motors Division plant;

AND IN THE MATTER OF a proposal by the Superintendent to refuse to approve the Partial Wind Up Report for the Westinghouse Canada Inc. Pension Plan , Registration No. 348409 in respect of business carried on by Westinghouse Canada Inc. at its Beach Road plant in Hamilton, Ontario;

AND IN THE MATTER OF a proposal by the Superintendent to refuse to approve the Partial Wind Up Report for the Westinghouse Canada Inc. Pension Plan , Registration No. 526632 in respect of business carried on by Westinghouse Canada Inc. at its Motors Division plant;

AND IN THE MATTER OF a hearing in accordance with subsection 89(8) of the Act.

BETWEEN:

CBS CANADA CO.

Applicant

and -

SUPERINTENDENT OF FINANCIAL SERVICES

Respondent

and -

**NATIONAL , AUTOMOBILE, AEROSPACE, TRANSPORTATION
AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA)
AND ITS LOCAL 504**

A Party in Relation to
Certain of the Proceedings

BEFORE:

Mr. Colin H.H. McNairn
Vice Chair of the Tribunal and Chair of the Panel

Mr. Louis Erlichman
Member of the Tribunal and of the Panel

Mr. C.S. Moore
Member of the Tribunal and of the Panel

APPEARANCES:

For CBS Canada Co.
Mr. Andrew K. Lokan

For the Superintendent of Financial Services
Ms. Deborah McPhail
Mr. Mark Bailey

For the CAW-Canada and its Local 504
Mr. Lewis Gottheil

ORDER

WHEREAS the parties have agreed upon terms of settlement as evidenced by the attached Minutes of Settlement;

AND WHEREAS the parties have consented to the terms of this Order;

The Tribunal Orders:

1. The Superintendent having agreed to withdraw the Notices of Proposal in this matter, pursuant to the Minutes of Settlement, the Superintendent shall, upon such withdrawal, refrain from carrying out the Notices of Proposal.
2. The Minutes of Settlement are hereby approved.
3. The Tribunal shall remain seized of the matters in these proceedings for the purposes of dealing with the implementation of this Order including the issue or issues referred to in paragraph 10 of the Minutes of Settlement.

DATED at Toronto, this 3rd day of April, 2003

“Colin H.H. McNairn”
Colin H.H. McNairn, Vice Chair of the
Tribunal and Chair of the Panel

“Louis Erlichman”
Louis Erlichman, Member of the Tribunal
and of the Panel

“C.S. Moore”
C.S. Moore, Member of the Tribunal
and of the Panel

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c.P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a proposal by the Superintendent of Financial Services (the "Superintendent") to refuse to approve the Partial Wind-Up Report for the Westinghouse Canada Inc. Pension Plan, Registration No. 348409 in respect of business carried on by Westinghouse Canada Inc. in its Burlington, Ontario plant;

AND IN THE MATTER OF a proposal by the Superintendent to refuse to approve the Partial Wind-Up Report for the Westinghouse Canada Inc. Pension Plan, Registration No. 348409 in respect of business carried on by Westinghouse Canada Inc. in its London, Ontario and St. Jean, Québec plants;

AND IN THE MATTER OF a proposal by the Superintendent to refuse to approve the Partial Wind-Up Report for the Westinghouse Canada Inc. Pension Plan, Registration No. 348409 in respect of business carried on by Westinghouse Canada Inc. at its Motors Division plant;

AND IN THE MATTER OF a proposal by the Superintendent to refuse to approve the Partial Wind-Up Report for the Westinghouse Canada Inc. Pension Plan, Registration No. 348409 in respect of business carried on by Westinghouse Canada Inc. at its Beach Road plant in Hamilton, Ontario;

AND IN THE MATTER OF a proposal by the Superintendent to refuse to approve the Partial Wind-Up Report for the Westinghouse Canada Inc. Pension Plan, Registration No. 526632 in respect of business carried on by Westinghouse Canada Inc. at its Motors Division plant;

AND IN THE MATTER OF a Hearing in accordance with subsection 89(8) of the Act;

BETWEEN:

CBS CANADA CO.

Applicant

- and -

SUPERINTENDENT OF FINANCIAL SERVICES

Respondent

- and -

CAW CANADA

Intervener

MINUTES OF SETTLEMENT

WHEREAS CBS Canada Co. ("CBS Canada") as the successor to Westinghouse Canada Inc. ("Westinghouse"), is the sponsor of Westinghouse Canada Inc. Pension Plan, Registration No. 348409 (the "Hourly Plan") and the Westinghouse Canada Inc. Consolidated Pension Plan, Registration No. 526632 (the "Salaried Plan");

AND WHEREAS Westinghouse sold parts of its business to Asea Brown Boveri Inc. ("ABB") in 1989, being its plants at Beach Road, Hamilton, Ontario ("Hamilton Plant"), London, Ontario ("London Plant"), St. Jean, Quebec ("St. Jean Plant"), and Burlington, Ontario ("Burlington Plant") (collectively the "ABB Plants");

AND WHEREAS ABB subsequently closed the ABB Plants effective June 30, 1991 (Hamilton Plant), December 31, 1992 (London and St. Jean Plants), and August 11, 1994 (Burlington Plant);

AND WHEREAS the Superintendent ordered Westinghouse to partially wind up the Hourly Plan in respect of the ABB Plant closures in May, 1999;

AND WHEREAS CBS Canada filed partial wind-up reports in respect of the ABB Plant closures in March, 2000 (the "ABB Plant Closure PWU Reports");

AND WHEREAS Westinghouse closed its Motors Division effective April, 1995, voluntarily declared partial wind-ups of the Hourly Plan and Salaried Plan in respect of this plant closure, and filed partial wind-up reports in June 1996 in respect of these partial wind-ups (the "Motors Division Hourly PWU Report" and the "Motors Division Salaried PWU Report");

AND WHEREAS the Superintendent approved the ABB Plant Closure PWU Reports, together with a partial wind-up report for the Salaried Plan arising from the London and St. Jean Plant Closures, on September 28, 2000, but revoked such approvals on December 8, 2000;

AND WHEREAS the Superintendent, by Notices of Proposal dated May 9 and 16, 2001, respectively (the "Notices of Proposal") proposed to refuse to approve the ABB Plant Closure PWU Reports and the Motors Division PWU Reports;

AND WHEREAS CBS Canada commenced these proceedings before the Financial Services Tribunal in respect of the Notices of Proposal;

AND WHEREAS the Financial Services Tribunal ordered on March 4, 2002 that the Superintendent re-issue an approval of the partial wind up report for the Salaried Plan arising from the London and St. Jean Plant Closures;

AND WHEREAS the parties to these Minutes of Settlement wish to resolve all matters at issue in these proceedings;

NOW THEREFORE the parties hereto agree to the following terms in full and final settlement of all claims made by the parties, and all present or former plan members represented by the parties, arising from the subject matter of these proceedings:

1. Members of the Hourly Plan who are included in the partial wind-ups of the Hourly Plan arising from the ABB Plant closures, as listed in the ABB Plant Closure PWU Reports filed in March, 2000, with the addition of those members, if any, listed in Schedule "1" and "2" to these Minutes of Settlement who are included pursuant to paragraph 10 below, shall receive early retirement benefits arising from the partial wind-ups calculated as follows:

- (a) Members entitled to grow-in rights at the relevant partial wind-up date will receive full benefits calculated on an "employee request" basis under Article 6.04 of the Hourly Plan.
- (b) Members entitled to grow-in rights at the relevant partial wind-up date, shall receive 90% of the additional amount or amounts that they would have received if their benefits were calculated on a "company request" basis under Article 6.05 if such benefits were treated as consent benefits under s.74(7) of the *Pension Benefits Act*, over the amount received under subparagraph (a), subject to any adjustment that may be required pursuant to paragraph 11.

- (c) No members will receive special early retirement benefits under Article 6.06 of the Hourly Plan.
- 2. Members of the Hourly Plan who are included in the partial wind-up of the Hourly Plan arising from the closure of the Motors Division plant, shall receive the benefits set out in the Motors Division Hourly PWU Report. No member included in this partial wind-up will receive "company request" benefits under Article 6.05 of the Hourly Plan.
- 3. CAW Canada, on behalf of all present and former members of the Hourly Plan included in the partial wind-ups at issue in these proceedings, hereby renounces any and all claims by all such members and former members to any surplus funds in the Hourly Plan, which existed, may exist, or may have existed as at the date of such partial wind-ups.
- 4. Members of the Salaried Plan included in the partial wind-up of the Salaried Plan, as listed in the Motors Division Salaried PWU Report, arising from the plant closure by Westinghouse Canada Inc. of its Motors Division plant shall receive early retirement benefits calculated as follows:
 - (a) Members entitled to grow-in rights at the relevant partial wind-up date shall receive full benefits calculated on an "employee request" basis under Article 7.02(a) of the Salaried Plan.
 - (b) Members entitled to grow-in rights at the relevant partial wind-up date, shall receive 70% of the additional amount or amounts that they would have received if their benefits were calculated on a "company request" basis under Article 7.02(b) if such benefits were treated as "consent benefits" to which s.74(7) of the *Pension Benefits Act* applies, over the amount or amounts received under subparagraph (a).
- 5. Following the execution of these Minutes of Settlement and the determination of which additional members, if any, will be added to the partial wind-up groups under paragraph 10, CBS Canada Co. will file revised ABB Plant Closure PWU Reports, and a revised Motors Division Salaried PWU Report, reflecting the terms of these Minutes of Settlement. Except for revisions that are required to give effect to these Minutes of Settlement, the revised reports will be unchanged from those already filed. The

Superintendent shall withdraw the Notices of Proposal relating to these partial wind-ups and approve the revised partial wind-up reports provided they are consistent with the terms of these Minutes of Settlement. The Superintendent agrees not to support the position of any person or party that seeks to challenge these Minutes of Settlement, or otherwise to take any position on any litigation concerning members of the Hourly or Salaried Plans that is inconsistent with these Minutes of Settlement. The Superintendent further agrees not to support the position of any person or party that seeks to challenge the approval of the partial wind-up report for the Salaried Plan arising from the London and St. Jean Plant Closures dated March 12, 2002.

6. The Superintendent shall withdraw its Notice of Proposal relating to the Motors Division Hourly partial wind-up and approve the Motors Division Hourly PWU Report filed in June, 1996 forthwith.

7. CBS Canada Co. will provide copies of the revised ABB Plant Closure PWU Reports to CAW Canada at the time such reports are filed with the Financial Services Commission of Ontario, including particulars of the plan members included and the benefits for which they are eligible. Any objection to the revised reports by CAW Canada shall be made within 30 calendar days of their receipt.

8. On receiving the Superintendent's approval or approvals for the revised ABB Plant Closure and Motors Division Salaried PWU Reports as set out in paragraph 5 above, and the approval for the Motors Division Hourly PWU Report as set out in paragraph 6 above, CBS Canada Co. will withdraw its requests for hearing on a without costs basis. The parties agree that these proceedings shall be terminated, save and except for the determination of additional eligible members under paragraph 10, if required, and any matter arising from the implementation of these Minutes of Settlement.

9. On receiving the Superintendent's approvals of the revised partial wind-up reports as set out above, CBS Canada Co. will abandon its appeal to the Divisional Court of the Financial Services Tribunal's interim decision dated March 4, 2002, on a without costs basis.

10. Members listed on Schedule “1” or “2” may be added to the relevant partial wind-up group on agreement of the parties, or by order of the Tribunal if CAW Canada establishes that their inclusion is required by law. The parties shall attempt to agree as to which of these members, if any, should be included in the partial wind-ups. If no agreement is reached, the parties shall use the hearing dates currently scheduled before the Financial Services Tribunal commencing April 3rd, 2003 and continuing May 7 and 8, 2003 to determine the issue. All other scheduled dates will be adjourned. Members added pursuant to this paragraph are referred to as “Additional Members”.

11. Any inclusion of Additional Members listed on Schedule “2” shall be on a cost-neutral basis, such that the aggregate liability is not increased by the addition of such members. This will be achieved by changing the 90% figure in paragraph 1(b) to the Adjusted Percentage (AP%) such that:

$$AP\% = [90\% \times (A + B) - D] / (A + B + C),$$

where:

A is: The difference between:

- (a) The aggregate partial wind-up liabilities as of January 1, 2003 that would result if the members listed in the ABB Plant Closure PWU Reports (“the Original Members”) were provided with benefits calculated on a “company request” basis under Article 6.05, if such benefits were treated as consent benefits under s.74(7) of the *Pension Benefits Act*, and
- (b) The aggregate partial wind-up liabilities as of January 1, 2003 in respect of the Original Members, determined on the same basis as the ABB Plant Closure PWU Reports filed in March, 2000 (i.e. benefits calculated on an “employee request” basis under Article 6.04).

B is: The difference between:

- (c) The aggregate partial wind-up liabilities as of January 1, 2003 that would result if the Additional Members listed in Schedule 1 who are to be included in the partial wind-up pursuant to paragraph 10 were provided with benefits calculated on a “company request” basis under Article 6.05, if such benefits were treated as consent benefits under s.74(7) of the *Pension Benefits Act*, and
- (d) The aggregate partial wind-up liabilities as of January 1, 2003 that would result if benefits were provided to the Additional Members listed in Schedule 1 who are to be included in the partial wind-up pursuant to paragraph 10, on the same basis as the benefits provided under the ABB Plant Closure PWU Reports filed in March, 2000 (i.e. benefits calculated on an “employee request” basis under Article 6.04).

C is: The difference between:

- (e) The aggregate partial wind-up liabilities as of January 1, 2003

that would result if the Additional Members listed in Schedule 2 who are to be included in the partial wind-up pursuant to paragraph 10 were provided with benefits calculated on a “company request” basis under Article 6.05, if such benefits were treated as consent benefits under s.74(7) of the *Pension Benefits Act*; and

- (f) The aggregate partial wind-up liabilities as of January 1, 2003 that would result if benefits were provided to the Additional Members listed in Schedule 2 who are to be included in the partial wind-up pursuant to paragraph 10, on the same basis as the benefits provided under the ABB Plant Closure PWU Reports filed in March, 2000 (i.e. benefits calculated on an “employee request” basis under Article 6.04).

D is: The difference between:

- (g) The aggregate partial wind-up liabilities as of January 1, 2003 that would result if benefits were provided to the Additional Members listed in Schedule 2 who are to be included in the partial wind-up pursuant to paragraph 10, on the same basis as the benefits provided under the ABB Plant Closure PWU Reports filed in March, 2000 (i.e. benefits calculated on an “employee request” basis under Article 6.04); and
- (h) The aggregate liabilities as of January 1, 2003 measured on a solvency basis in respect of the Additional Members listed in Schedule 2 who are to be included in the partial wind-up pursuant to paragraph 10, determined as if these members were not included in the partial wind-up (based on the solvency assumptions used to prepare the latest filed valuation of the Hourly Plan as of December 31, 2000).

An illustration of how this calculation would be performed is provided in Schedule 3.

12. These Minutes of Settlement are made without prejudice and without precedent to any other matter, and without admission of liability by any party. The parties hereto agree that the implementation of these Minutes of Settlement will be in full and final

satisfaction of all claims by the parties, and by all members and former members represented by the parties, with respect to the Hamilton, London, St. Jean, Burlington and Motors Division Plant closures and the partial wind-ups of the Hourly and Salaried Plans arising therefrom. The parties further agree that CBS Canada Co., the Hourly Plan and the Salaried Plan are not liable for any amounts or benefits that are or may become payable under the Pension Plan for the Unionized Employees of Asea Brown Boveri Inc., Registration No. 683433, or the Pension Plan for the Non-Unionized Employees of Asea Brown Boveri Inc., Registration No. 683441. The CAW Canada represents and warrants that it has the authority to bind all present and former members of the Hourly Plan, and confirms that it is not aware of any further claim by any present or former member of the Hourly Plan that is not addressed by these Minutes of Settlement.

13. The parties agree to execute any document or documents that may reasonably be required to give effect to these Minutes of Settlement.

14. The parties agree that these Minutes of Settlement shall be made an Order of the Financial Services Tribunal, and that the Financial Services Tribunal shall remain seized to deal with any matter arising from the implementation of these Minutes of Settlement.

Date: March 28, 2003

"A. Lokan"
CBS Canada Co.

Date: 26/03/2003

"Lynda Ellis"
Superintendent of Financial Services

Date: 28 March 2003

"Lewis Gottheil"
CAW Canada

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Schedule 1

Nancy Kellum
Art McLean
Fred Hiscox
Robert Nesbitt
Kenneth Pease

Schedule 2

CBS WESTINGHOUSE

Gord Gittens
Harold Wilcox
Ron Buchanan
Don Cameron
John Liberty
Dymtrow Slusarchuk
Bruce Carver
Fred Noto

A. Albert
P. Bodtker
Y. Eyre
H. Gibson
E. Nunns
A. Silaidis
J. Young

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Westinghouse Canada Inc. Pension Plan

ABB Partial Wind-ups - Settlement Proposal Illustration of Calculation of Adjusted Percentage under Section 11

	Estimated Liabilities at January 1, 2003 (\$000s Canadian)		
	Solvency Liabilities	Partial Wind-up - Employee Request Basis	Partial Wind-up - Employer Request Basis
Original Partial Wind-Up Members		\$8,100	\$9,500
Schedule 1 Members*	\$300	\$400	\$500
Schedule 2 Members*	\$150	\$275	\$350

* in respect of Members who are to be included in the partial wind-ups pursuant to Section 10 of the Minutes of Settlement

Incremental cost of settlement proposal prior to adding Schedule 2 members (\$000s):

	Total Cost as of January 1, 2003	Total Cost consists of:	
		Basic cost of being included in partial wind-up	Cost of Providing 90% of Employer Request Benefits
Original Partial Wind-Up Members	\$1,260	\$0	\$1,260
Schedule 1 Members*	\$190	\$100	\$90
Total	\$1,450	\$100	\$1,350

Determination of Adjusted Percentage (AP%)

A =	Employer Request partial wind-up liabilities for Original Members	minus	Employee Request partial wind- up liabilities for Original Members
A =	\$9,500	-	\$8,100
A = \$1,400			

B =	Employer Request partial wind-up liabilities for Schedule 1 Members	minus	Employee Request partial wind- up liabilities for Schedule 1 Members
B =	\$500	-	\$400
B = \$100			

C =	Employer Request partial wind-up liabilities for	minus	Employee Request partial wind- up liabilities for Schedule 2
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Schedule 2 Members

Members

C =	\$350
C =	\$75

-

\$275

Employee Request
partial wind-up liabilities
for Schedule 2 Members

Solvency liabilities for Schedule 2
Members (prior to being included
in partial wind-up)

D =	\$275
D =	\$125

minus

-

\$150

$$AP\% = \frac{[90\% \times (A + B) - D]}{[A + B + C]}$$

$$AP\% = \frac{[90\% \times (1400 + 100) - 125]}{[1400 + 100 + 75]}$$

$$AP\% = 78\%$$

Cost of settlement after adding Schedule 2 members (\$000s):

	Total Cost as of January 1, 2003	Total Cost consists of:	
		Basic cost of being included in partial wind-up	Cost of Providing 78% of Employer Request Benefits
Original Partial Wind-Up Members	\$1,089	\$0	\$1,089
Schedule 1 Members*	\$178	\$100	\$78
Schedule 2 Members*	\$183	\$125	\$58
Total	\$1,450	\$225	\$1,225

All figures are hypothetical and are provided strictly for illustration purposes only

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