

Bell Atlantic Corporation and its wholly-owned subsidiary, New England Telephone and Telegraph Company, and Telesector Resources Group, a Wholly-Owned Subsidiary of New England Telephone and Telegraph Company and New York Telephone Company and International Brotherhood of Electrical Workers, Systems Council T-6, AFL-CIO. Case 1-CA-37462

December 29, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS
LIEBMAN
AND HURTGEN

On August 17, 2000, Administrative Law Judge Jerry M. Hermele issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed exceptions and a brief in support of exceptions and in support of portions of the judge's decision. The Charging Party filed cross-exceptions, a supporting brief, and an answering brief to the Respondent's exceptions. The Respondent filed an answering brief to the General Counsel's exceptions.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions, and to adopt the recommended Order as modified and set forth in full below.²

ORDER

The National Labor Relations Board orders that the Respondent, Bell Atlantic Corporation and its wholly-owned subsidiary, New England Telephone and Telegraph Company, and Telesector Resources Group, a wholly-owned subsidiary of New England Telephone and Telegraph Company and New York Telephone Company, Boston, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with the International Brotherhood of Electrical Workers, Systems Council T-6, AFL-CIO by unilaterally implementing a surcharge for the garnishment of employees' wages without first providing the Union with notice and an opportunity to bargain

¹ The parties have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

² We shall modify the recommended Order to accord with the traditional Board format and to include specific cease-and-desist provisions for the Respondent's unlawful conduct.

about this subject on behalf of the employees the Union represents in an appropriate bargaining unit described in the current collective-bargaining agreement between the Respondent and the Union.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request by the Union, rescind the unlawfully implemented surcharges imposed on employees' garnished wages, and make all employees whole for all amounts withheld as surcharges for garnished wages since the surcharges were unlawfully implemented in July 1999.

(b) On request by the Union, bargain in good faith with the Union over the proposed surcharges on employees' garnished wages.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its facilities throughout Maine, New Hampshire, Massachusetts, Rhode Island, and Vermont, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 22, 1999.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region at

³ If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

testing to the steps that the Respondent has taken to comply.

APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to bargain with the International Brotherhood of Electrical Workers, Systems Council, T-6, AFL-CIO by unilaterally implementing a surcharge for the garnishment of employees' wages without first providing the Union with notice and an opportunity to bargain about this subject on behalf of our employees whom the Union represents in an appropriate bargaining unit described in the current collective-bargaining unit between us and the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, upon request by the Union, rescind the surcharges imposed on employees' garnished wages, and make all employees whole for all amounts withheld as surcharges for garnished wages since July 1999.

WE WILL, upon request by the Union, bargain in good faith with the Union over the proposed surcharges on employees' garnished wages.

Linda M. Crovella, Esq., for the General Counsel.

Michael Hertzberg, Esq., New York, New York, for the Respondent.

Wendy M. Bittner, Esq., Boston, Massachusetts, for the Charging Party.

DECISION

I. INTRODUCTION

JERRY M. HERMELE, Administrative Law Judge. In July 1999, the Respondent, Bell Atlantic Corporation and its wholly-owned subsidiary, New England Telephone and Telegraph Company, and Telesector Resources Group, a wholly-owned subsidiary of New England Telephone and Telegraph

Company and New York Telephone Company (the Company),¹ started charging its employees for child support and other creditor obligations garnished from their weekly paychecks. The Union, the International Brotherhood of Electrical Workers, Systems Council T-6, AFL-CIO, filed a charge on July 28, 1999, alleging that the Respondent never bargained with it over this matter. And on November 30, 1999, the General Counsel issued a complaint alleging that the Respondent had violated Section 8(a)(1) and (5), and Section 8(d), of the National Labor Relations Act. The Company denied this allegation in a December 16, 1999 answer.

This case was tried on June 5, 2000, in Boston, Massachusetts, during which the General Counsel presented one witness and the Respondent presented two witnesses. Then on July 7, 2000, the General Counsel and the Union filed briefs, followed by the Respondent's brief on July 10.

II. FINDINGS OF FACT

Before 1997, telephone company Bell Atlantic covered Virginia, West Virginia, Washington, D.C., Maryland, Delaware, Pennsylvania, and New Jersey, while telephone company NYNEX serviced New York, Rhode Island, Massachusetts, Vermont, New Hampshire, and Maine. After their merger in August 1997, the surviving company, Bell Atlantic, derived annual gross revenues over \$100,000, and purchased and received interstate goods at its Boston facility exceeding \$5000 a year. Also following the merger, the payroll operations of the two companies began a process of consolidation (GC Exh. 1(C), (I); Tr. 85-88).

Before 1990, Maine, New Hampshire, Vermont, Massachusetts, and Rhode Island enacted statutes allowing employers to charge an employee for amounts garnished from an employee's paycheck for court-awarded child support. The original Bell Atlantic company had instituted this surcharge against employees' paychecks in New Jersey, Maryland, Virginia, and Washington, D.C. (GC Exh. 5; Tr. 83-87). In 1998, the Union and the Respondent reached a new 2-year collective-bargaining agreement covering employees in the five New England States, effective August 9, 1998. Nothing about surcharges or garnishments is addressed in the contract and there were no discussions beforehand about either subject (G.C. Exh. 2; Tr. 15-17, 33).

After the 1997 merger, the Company decided to impose surcharges on the New England employees whose weekly paychecks were being garnished for child support (Tr. 34, 87). To that end, Edward Simmons, a Bell Atlantic supervisor in New York, wrote a December 14, 1998 letter to Myles Calvey, the Union's business manager in Boston (G.C. Exh. 1(C), (I); Tr. 13). The letter read:

In an effort to standardize regional Payroll operations within the Bell Atlantic footprint, the Company will begin to assess, during the first Quarter 1999, an employer fee/surcharge for garnishments associated with Court Or-

¹ At trial, the parties stipulated that this mouthful was the proper name of the Respondent (Tr. 55). After trial, the Respondent apparently changed its name to a Bell-less "Verizon Communications, Inc."

ders i.e. Child Support and Creditor Executions, as allowed by current State laws.

Implementation of this charge will result in an additional collection/remittance of \$1.00 to \$5.00 per pay period or transaction depending upon the State in which the employee works.

This fee applies to each active Court Order and will remain in effect for the duration of the Order.

Please be assured that proper notification will be forwarded to each of the employees affected by this initiative prior to implementation.

Attached, for your benefit, is the applicable State rate schedule, as well as the breakdown of employees currently impacted in each State.

If you have any questions regarding the above, please feel free to contact me. I can be reached on (212) 221-2884.

State	Fees/Surcharge	# of Employees Affected
Maine	\$2.00 per transaction	19
Massachusetts	\$1.00 per transaction	434
New Hampshire	\$1.00 per payment	32
Rhode Island	\$2.00 per payment	26
Vermont	\$5.00 per month	23

(GC Exh. 3). According to Simmons, Calvey never responded to the letter, although Calvey talked with him about another matter in February 1999 (Tr. 57-59). Calvey, however, testified that he called Simmons, with whom he regularly dealt, to complain about this surcharge in light of the recently concluded collective-bargaining agreement's failure to address it at all. According to Calvey, Simmons said he was merely Bell Atlantic's messenger, and that Calvey should direct his protest to Jim Dowdall (Tr. 19-20, 43). So, Calvey talked to Dowdall before the latter's retirement in early 1999 (Tr. 39).

6. The Company did not implement the surcharge in early 1999, as Simmons indicated in his December 14, 1998 letter (Tr. 20-21). Tyler Williams assumed Simmons' job in the Company in early 1999 and, in a February 1999 meeting in Boston with Calvey, Calvey complained about Simmons' December 1998 letter. Williams said he would look into the surcharge matter (Tr. 21-22, 75-76). In another Boston meeting, on February 25, 1999, Calvey spoke with Tom O'Gara, Bell Atlantic's Director of Labor Relations in New York, but did not raise the surcharge issue because he thought it had "disappeared," inasmuch as the Company had still not implemented it (Tr. 23, 40-42, 95-100).

On April 12, 1999, Simmons wrote another letter regarding the surcharge to Calvey, in order to wrap up old issues from his previous job. Simmons told O'Gara that he would be sending a letter about the surcharge (Tr. 75, 134-135). It read:

As per my last correspondence dated December 14, 1998, The Company will begin to implement, effective May 1, 1999, an employer fee/surcharge for garnishments associated with Court Orders i.e. Child Support and Creditor Executions, as allowed by current State laws.

This surcharge will result in an additional collection/remittance of \$1.00 to \$5.00 per pay period or transaction depending upon the State in which the employee works. This fee applies to each active Court Order and will remain in effect for the duration of the Order.

Attached again, for your benefit, is the applicable State rate schedule, as well as the breakdown of employees currently impacted in each State.

If you have any questions regarding the above, please feel free to contact me. I can be reached on (212) 221-2884.

(GC Exh. 4). Instead of calling Simmons, Calvey called O'Gara but was unsuccessful in getting through to him. Specifically, Calvey placed between 10 and 15 calls and was able to leave just two messages on O'Gara's telephone because the capacity was otherwise full. For the two messages, Calvey merely said that he wanted to speak with O'Gara, but did not say about what (Tr. 24, 37-38, 100-101).

The surcharge was not implemented on May 1 either (Tr. 25). Instead, on June 9, 1999, the Company sent the following letter to its employees:

Effective in July, Payroll Services will begin assessing an employer surcharge, as allowed by law in the state in which you work, per each court award-child support deduction made and remitted on your behalf.

If paid weekly: the surcharge will be effective with your paycheck dated 7/15/99.

If paid monthly: the surcharge will be effective with your paycheck dated 7/30/99.

Below is the rate schedule and applicable state law which allows for this surcharge. For your information, similar surcharges have already been in effect in other Bell Atlantic companies.

Court Awards-Child Support

Work State	Fee Schedule
District of Columbia	\$2.00 per pay period deduction
Maine	\$2.00 per pay period deduction
Maryland	\$2.00 per pay period deduction
Massachusetts	\$1.00 per pay period deduction
New Hampshire	\$1.00 per pay period deduction
New Jersey	\$1.00 per pay period deduction
Rhode Island	\$1.00 per pay period deduction
Virginia	\$5.00 per pay period deduction
Vermont	\$5.00 per month; if paid weekly

(GC Exh. 5). Calvey received this letter from an employee, whereupon Calvey called Company official Dick Lamontagne in Boston. But Lamontagne said he knew nothing about it (Tr. 26-28).

On June 22, 1999, in Boston, the Advisory Committee on Health Care held a meeting. This committee was comprised of

union and management representatives and its purpose was to address health care issues (R. Exh. 1). Calvey and O’Gara both attended. Calvey told O’Gara that the proposed surcharge was “outrageous,” unacceptable to the Union, and had to be bargained over. O’Gara responded that the surcharge issue was not an appropriate topic for the health care committee meeting. But O’Gara referred Calvey to various state laws which permitted the surcharge and told Calvey he would send those statutes to him later (Tr. 28–31, 47, 109, 137–139). Calvey never asked to schedule a meeting to bargain about the surcharge (Tr. 110). Nor did Calvey write a letter requesting bargaining (Tr. 42). But after the Company implemented the surcharge, Calvey filed an unfair labor practice charge with the National Labor Relations Board on July 28, 1999 (G.C. Exh. 1(A); Tr. 8, 32).

III. ANALYSIS

The General Counsel’s theory of this case is two variations on the same theme: the Respondent violated Section 8(a)(1) and (5) by failing to negotiate with the Union before implementing the garnishment surcharge; and violated Section 8(d) by indirectly reducing employees’ wages with the unilateral implementation of this surcharge, thus modifying the existing collective-bargaining agreement. In the presiding judge’s view, the Respondent has the better legal argument regarding Section 8(d). Specifically, the 1998–2000 collective-bargaining agreement was absolutely silent on the subject of employer-imposed garnishment surcharges. Thus, to accept the General Counsel’s theory, virtually any unilateral change in a term or condition of employment before the expiration of a collective-bargaining agreement that indirectly affects wages would constitute a violation of Section 8(d); a liberal interpretation never adopted by the Board or the courts. See *Milwaukee Spring Division*, 268 NLRB 601, 602 (1984), *affd.* 765 F.2d 175 (D.C. Cir. 1985). Moreover, this separate 8(d) allegation is redundant in view of the 8(a)(1) and (5) allegation. Accordingly, this part of the complaint will be dismissed.

But the presiding judge concludes that the General Counsel has proven a violation of Section 8(a)(1) and (5), which requires an employer to “bargain collectively with the representatives of his employees” regarding the wages, hours and other terms and conditions of employment. In this regard, an employer may not unilaterally change any of these terms and conditions when a union represents the employees. *NLRB v. Katz*, 369 U.S. 736 (1962). Thus, an employer may propose a change to a union, whereupon a union has the right to bargain with the employer, provided a union acts with due diligence in requesting bargaining. *Medicenter, Mid-South Hospital*, 221 NLRB 670, 678–679 (1975).

Here, the conduct of the Respondent and the Union was equally ambiguous from late 1998 to mid-1999. Specifically, the Union’s Business Manager, Myles Calvey, received a letter in December 1998 from Bell Atlantic Supervisor Edward Simmons that “the Company will begin to assess, during the first quarter 1999, an employer fee/surcharge for garnishments. . . .” Despite the unequivocal wording of the letter, the Company’s proposal was not a *fait accompli*, relieving the Union of its duty to request bargaining. See *Haddon Craftsmen*, 300 NLRB 789 (1990). But according to Calvey, he merely complained to

Simmons about the proposal, rather than requesting bargaining. Thus, Calvey’s mere protest was ambiguous—neither constituting a clear waiver of the Union’s right to bargain or a clear request to bargain. See *Clarkwood Corp.*, 233 NLRB 1172 (1977). Calvey’s February 1999 protest to Simmons’ successor, Tyler Williams, was equally ambiguous. Likewise, Calvey’s early June 1999 conversation with supervisor Dick Lamontagne was inconclusive, inasmuch as Lamontagne knew nothing about the surcharge. And the Company’s conduct regarding the surcharge was also ambiguous. The Company stated in December 1998 that the surcharge would be implemented in early 1999, but it never was. And in April 1999, the Company said the surcharge would be implemented on May 1, 1999. But this never happened either.

Finally on June 9, 1999, the Company informed its employees that the surcharge would be effective in July, and this time it was. But on June 22, 1999, *before* the surcharge implementation, Calvey met with yet another Bell Atlantic supervisor, Tom O’Gara, complained about the “outrageous” surcharge, and, finally, orally requested bargaining over the subject. O’Gara’s lame response was to inform Calvey that the laws of five New England States permitted the surcharge, rather than accepting the bargaining request. And the Respondent’s lamer legal argument is that the June 22 meeting was an inappropriate venue at which to request bargaining because the surcharge issue was not on the agenda. But there is no requirement that the bargaining request be made at a place and time of the employer’s choosing. Moreover, Calvey was not legally required, as the Respondent contends, to request yet another meeting to bargain. In sum, the Union adequately asserted its right to bargain with the Respondent on June 22, 1999, and the Respondent violated Section 8(a)(1) and (5) by ignoring the request and unilaterally implementing the garnishment surcharge in July 1999. Compare *Haddon Craftsmen*, *supra* (Union waived its right to bargain by requesting bargaining after a change was implemented). Accordingly, the Respondent will be required to rescind the garnishment surcharge, make all affected employees whole, bargain about the surcharge, and post a remedial notice.

IV. CONCLUSIONS OF LAW

1. The Respondent, Bell Atlantic Corporation and its wholly-owned subsidiary, New England Telephone and Telegraph Company, and Telesector Resources Group, a wholly-owned subsidiary of New England Telephone and Telegraph Company and New York Telephone Company, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, International Brotherhood of Electrical Workers, Systems Council T-6, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. As alleged in paragraphs 10, 11, 12, 13, 16, and 17 of the General Counsel’s complaint, the Respondent has violated Section 8(a)(1) and (5) of the Act by refusing since June 22, 1999 to bargain with the Union over the surcharge imposed on employees’ garnished wages and by implementing the surcharge without bargaining about it.

4. The General Counsel has failed to prove its allegations at paragraphs 14, 15, and 18, that the Respondent violated Section 8(d), and Section 8(a)(1) and (5), of the Act.

5. The unfair labor practice of the Respondent, described in paragraph 3, above, affects commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommended Order omitted from publication.]