

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21

ADELPHIA COMMUNICATIONS CORPORATION
(FORMERLY UNITED CABLE TELEVISION d/b/a
TCI OF LOS ANGELES COUNTY)¹

Employer

and

Case 21-RD-2677

MICHAEL R. LOVELL, An Individual

Petitioner

and

MISCELLANEOUS WAREHOUSEMEN, DRIVERS AND
HELPERS, LOCAL 986, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, AFL-CIO

Union

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was conducted before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

¹ The name of the Employer appears as corrected at the hearing.

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.²

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The Union is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time installer trainees, installers, advanced installers, technician trainees, installer technicians, service technicians, assistant technicians and advanced technicians employed by the Employer at its facility located at 15255 Salt Lake Avenue, City of Industry, California; excluding all other employees, contractor coordinators, dispatchers, warehouse personnel, converter repair and control employees, construction employees, accounting employees, account payable/receivable employees, MIS/data entry employees, customer sales and service representatives, switchboard operators, receptionists, data processing employees, computer operators, CRT clerks, salaried employees, commissioned and non-commissioned inside and/or outside sales employees, marketing and telemarketing personnel, pay TV local coordination, studio and community access personnel and programmers, drafting and design employees, fleet maintenance employees, temporary employees, auditors, administrative assistants and all other office-clerical employees, confidential employees, professional employees, managerial personnel, guards and supervisors as defined in the National Labor Relations Act.³

At issue is whether the successor bar doctrine announced in St. Elizabeth Manor, Inc., 329 NLRB No. 36 (1999), bars the processing of the instant petition.

² The hearing officer referred the Union's Motion to Dismiss to the undersigned for ruling. This Decision disposes of the issues raised by the Union's Motion.

³ The unit description is in substantial accord with the contractual bargaining unit and the parties' stipulation at the hearing.

The Union contends that the decertification petition should be dismissed pursuant to the successor bar doctrine, while both the Petitioner and the Employer contend that the successor bar doctrine does not apply in this case.

The parties stipulated that on May 2, 1997, the Union was certified as the exclusive collective-bargaining representative of the employees of TCI of Los Angeles County (TCI) employed in bargaining unit herein (Unit). The Union and TCI subsequently entered into a collective-bargaining agreement with effective dates of December 23, 1997 to December 31, 1999.

The parties further stipulated that Adelphia Communications Corporation (Adelphia) acquired TCI sometime in 1999 and retained a majority of the employees employed in the unit. In December 1999, after the acquisition of TCI, Adelphia informed the Union that it agreed to assume the terms of the collective-bargaining agreement between the Union and TCI for the contract's duration.

The record reveals that on November 18, 1998, Century Communications Corporation, through its affiliate Century Exchange LLC and TCI Communications, Inc. (through its affiliate TCI California Holdings), entered into an Agreement of Limited Partnership and an Asset Contribution Agreement.⁴ This Asset Contribution Agreement was later amended on January 29, 1999, to extend the closing date to February 28, 2000. The record further reveals that on October 1, 1999, Adelphia closed the acquisition of Century Communications Corporation by way of merger.

Although this acquisition occurred in about October 1999, Union Business Agent Cliff Batham (Batham) met with the TCI attorney on two occasions to negotiate the terms of a new collective-bargaining agreement. Batham did not recall the exact dates of these sessions, but it is clear from the record that they occurred sometime between October 1, 1999 and December 7, 1999. Also during this time period, Batham was

informed by TCI Human Resource Manager Lillian Gomez that Adelphia would be taking over TCI's operations on December 1, 1999. Thereafter, the actual takeover occurred on December 7, 1999.

The Bill of Sale and Assignment and Assumption Agreement were entered into on December 7, 1999, pursuant to the Agreements executed on November 18, 1999. As a result of these actions, the TCI employees were terminated on December 6, 1999, and placed on Adelphia's payroll and benefits effective December 7, 1999.⁵

The decertification petition herein was filed on October 18, 1999. Thereafter, the Union filed a series of unfair labor practice charges against TCI on October 26, 1999, in Case 21-CA-33572; on November 22, 1999 in Cases 21-CA-33634 and 21-CA-33635; and on December 27, 1999 in Case 21-CA-33699, which were all ultimately dismissed or withdrawn.⁶ Pursuant to the Agency's blocking charge policy, the instant decertification petition was placed in abeyance while the charges were investigated. Once the cases were disposed of, the processing of the petition resumed.

The issue raised is whether the successor bar doctrine announced in St. Elizabeth Manor, Inc., bars the processing of the instant petition. In St. Elizabeth Manor, Inc., the Board overruled Southern Moldings, Inc.,

219 NLRB 119 (1975), and held that:

Once a successor's obligation to recognize an incumbent union has attached (where the successor has not adopted the predecessor's contract), the union is entitled to a reasonable period of

⁴ In or about April 1999, AT&T acquired TCI, however the operations continued as TCI.

⁵ This action was conveyed to TCI/Adelphia General Manager Kurt Taylor (Taylor), among others, via e-mail. Although the e-mail refers to AT&T BIS employees being placed on Adelphia's payroll and benefits, Taylor testified that the message referred to all employees of TCI in Southern California.

⁶ Administrative notice is taken of the charges filed in Region 21, as well as the official action taken in each case. All the cases are closed.

bargaining without challenge to its majority status through a decertification effort, an employer petition, or a rival petition.

In NLRB v. Burns International Security Services, Inc.,

406 U.S. 272 (1972), the Supreme Court held that when a new entity takes over the business operations of a prior employer and elects to hire a majority of the predecessor's employees, the new employer is a successor.

Although there is no dispute that Adelphia is a successor employer, there is a dispute as to when exactly it became a successor. The Employer argues that Adelphia did not become a successor until at least December 7, 1999, while the Union contends that Adelphia became a successor on October 1, 1999, the day it acquired TCI.

The record reveals that on October 1, 1999, Adelphia acquired Century via a stock merger. This type of transaction, however, does not make Adelphia a successor. TKB International Corp., 240 NLRB 1082 (1979). The record reveals that it was not until December 7, 1999, when the TCI-Century partnership transaction was closed, that Adelphia formally assumed TCI's operations, hired a majority of its employees, and became a successor. This is confirmed in the Bill of Sale and Assignment and the Assumption Agreement, which are dated December 7, 1999, as well as the e-mail sent to Kurt Taylor advising of the change in payroll to Adelphia effective that date. In addition, it is noted that the Union continued to negotiate a new collective-bargaining agreement with TCI's attorney after October 1, 1999, and then began dealing with Adelphia's counsel in December 1999. The record discloses some evidence that Adelphia and the Union have engaged in bargaining for a new contract since December 1999 but there is no evidence as to what has been accomplished in the bargaining.

I find that Adelphia Communications Corporation became a successor on December 7, 1999, when it hired a majority of the predecessor's employees and assumed a bargaining relationship with the Union. Burns Security Services, supra.

The Employer argues that a finding of successorship status, subsequent to the filing of the decertification petition, renders the successorship bar doctrine in St. Elizabeth's Manor inapplicable to the instant situation. The Union argues, however, that the successor bar doctrine should be applied in this case inasmuch as the reasons set forth by the Board to support the holding in St. Elizabeth's Manor are present in this case as well.

The facts in the instant case are distinguishable from those in St. Elizabeth's Manor in two respects. First, the successor employer in St. Elizabeth's Manor granted recognition to the incumbent without adopting the contract which had 2 years to expire. The parties held three bargaining sessions prior to the filing of an RM petition. In the instant case, the Employer adopted the contract at the time that it assumed operations and hired a majority of the predecessor's employees. However, the contract herein expired at the end of December, only 3 weeks after it was adopted. The parties herein have also been engaged in bargaining but have not agreed to a new contract.

Thus, the relationship between the parties here, as those in St. Elizabeth's Manor, is not dissimilar. In both situations, because the employer and the union embarked on a new relationship, they are in a difficult transitional period. Because the contract has expired and the parties are bargaining, the employees may still not have had an adequate time to determine whether the incumbent Union is effective in representing them in negotiations with the successor. As in St. Elizabeth's Manor, issues remain unsettled since the Employer's "adoption" of the contract for a mere 3 weeks did not result in the stability envisioned by the Board in such situations. Accordingly, I find that the adoption of the predecessor contract by the Employer in the circumstances herein does not by itself warrant a different outcome than that provided for in

St. Elizabeth's Manor where the Board permitted the parties a reasonable period free of outside distractions to allow their new relationship to result in the process of wholehearted collective bargaining.

The second and more troubling factual distinction between the instant matter and St. Elizabeth's Manor is the timing of the filing of the petition. While the RM petition in St. Elizabeth's Manor was filed subsequent to the successor employer's recognition of the union, in the instant case, the RD petition was filed on October 18, 1999, during the "window" period of the expired collective-bargaining agreement. The Employer argues that the successor bar is inapplicable herein inasuch as the decertification petition was filed because employees were dissatisfied with the Union's representation during the course of its relationship with the predecessor employer. Accordingly, the Employer argues that an election should be directed in order to allow employees to cast their votes pursuant to a timely filed petition. The Union, on the other hand, argues that the holding in St. Elizabeth's Manor should be extended to this case. It argues that employees were concerned about the change in ownership and suggests that employee anxiety about their status under the new owner may have led to employee disaffection and the decertification petition⁷. In its brief, the Union also argues that the Employer voluntarily recognized the Union after the decertification petition had been filed and that it should be required to bargain for a reasonable period of time after recognition. I find merit to the Union's last argument.

In adopting its successor bar rule, the Board noted its responsibility to strike a sensible balance between the sometimes conflicting goals of employees' exercise of their Section 7 right to select a union representative of their own choice or

⁷ The Petitioner, Michael R. Lovell, stated that employees had discussed decertification as early as 1997. However, he also stated

to have no union represent them at all and promoting sound and stable labor-management relations by encouraging the practice and procedure of collective bargaining. The Board stated that the adoption of the rule was intended: "to protect the newly established bargaining relationship and the previously expressed majority choice, taking into account that the stresses of the organizational transition may have shaken some of the support the union previously enjoyed."

In striking that balance in the instant case, I note that the decertification petition was indeed filed during the earliest opportunity in circumstances where the Union had represented employees of the predecessor since 1997. Thus, such a petition could well have manifested employee dissatisfaction with the Union's performance in that previous relationship. Nevertheless, the relationship has since ended. The Employer thereafter recognized the Union, adopted the contract, albeit for a very short period of time, and has engaged in bargaining with the Union to reach a new contract. I believe a sensible balance can be achieved by protecting this newly established bargaining relationship and allowing it an opportunity to succeed. In order to accomplish this, the Union is entitled to a reasonable period of bargaining without challenge to its majority status. It does not appear, based on the limited evidence on the record, that a reasonable period of bargaining has elapsed. Accordingly, the petition is dismissed.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th

that he and other employees were aware of the change in ownership since around the middle of 1999.

Street, N.W., Washington, D.C. 10570. This request must be received by the Board in Washington by 5 p.m., EDT, on May 4, 2000.

Dated at Los Angeles, California, this 20th day of April, 2000.

/s/Victoria E. Aguayo
Victoria E. Aguayo
Regional Director, Region 21
National Labor Relations Board

347-2067-3300