

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

COMCAST CABLE COMMUNICATIONS, INC.¹
Employer

and

MARIE LEITNER

Petitioner

Case 4-RD-1919

and

COMMUNICATIONS WORKERS OF AMERICA,
DISTRICT 13, LOCAL 13000, AFL-CIO²
Union Involved

COMCAST CABLE COMMUNICATIONS, INC.
Employer

and

WILLIAM LUDWIG

Petitioner

Case 4-RD-1920

and

COMMUNICATIONS WORKERS OF AMERICA,
DISTRICT 13, LOCAL 13000, AFL-CIO
Union Involved

DECISION AND DIRECTION OF ELECTIONS

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held 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.

¹ The Employer's name appears as amended at the hearing.

² The Union Involved's name appears as amended at the hearing.

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

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

The Employer operates a cable television system from a facility in Levittown, Pennsylvania (herein called the Facility). The Petitioners seek to decertify the Union Involved (herein called the Union) as the representative of employees in two bargaining units at the Facility. The Union contends that there is a "successor bar" that precludes the processing of the decertification petitions. The Employer contends that there is no successor bar because the Employer adopted its predecessor's agreement with the Union.

On April 2, 1997, the Union was certified as the exclusive bargaining representative of two units of employees of Lower Bucks Cablevision,³ which was owned by Time-Warner Entertainment Company (herein called Time Warner). Time-Warner and the Union had collective-bargaining agreements covering the two units with terms of January 1, 1998 through December 13, 2000. In about June 1999, however, Tele-Communications, Inc., of Florida obtained ownership of the Facility, and in about August 1999, AT&T became the owner. AT&T chose not to adopt Time-Warner's contracts with the Union, and in late 2000, AT&T and the Union began to negotiate for new agreements.⁴ On about April 16, 2001, the parties tentatively reached agreement on contracts for the two units with expiration dates of July 31, 2001.⁵ The documents memorializing these agreements, however, did not reflect an agreed-upon two percent wage increase for employees, and the parties never signed them. At the same time that AT&T was negotiating with the Union,⁶ AT&T was also negotiating to sell the Facility to the Employer, and on May 1, the Employer assumed ownership.⁷

³ The petition in Case 4-RD-1919 seeks to decertify the Union as the representative of the "clerical unit," which includes all full-time and regular part-time customer service representatives and dispatchers employed at the Facility. The petition in Case 4-RD-1920 seeks to decertify the Union as the representative of the "technical unit," which includes all full-time and regular part-time service, maintenance, installation, service and warehouse employees employed at the Facility.

⁴ In the interim, decertification petitions were filed for both units that were later withdrawn.

⁵ The parties agreed that a wage increase would be retroactive to April 1, 2001.

⁶ All dates are in 2001 unless otherwise indicated.

⁷ This purchase was part of an ownership swap between the two companies involving numerous cable systems. During this time period, AT&T's attorney regularly provided updates to the Employer concerning the status of its negotiations with the Union.

On about April 16, as AT&T and the Employer neared agreement, the Union's Assistant to the District Vice-President, Marjorie Krueger, telephoned the Employer's Senior Vice-President of Human Resources, Allen Peddrick, and asked various questions about what would happen to unit employees. In response, Peddrick indicated that as of May 1, the Employer would assume ownership of the Facility and would recognize the Union as the employees' collective-bargaining representative. In a subsequent telephone conversation on April 27, Peddrick told Krueger that the Employer intended to retain all of the hourly employees in both units. Krueger asked if the Employer would "accept" the unsigned agreements the Union had negotiated with AT&T, and he indicated that he needed to see the agreements before he could respond. Peddrick also stated that the Employer would not provide employees with certain fringe benefits contained in the agreements, including health insurance, a Section 401(k) plan, and sick leave, because these benefits were under AT&T plans. He offered to substitute the Employer's plans in these areas for the AT&T plans, and Krueger agreed to this proposal. The parties also agreed that the Employer would resolve several employees' individual problems concerning vacations and pension contributions.

On April 30, Krueger forwarded to the Employer drafts of the agreements between the Union and AT&T. Her cover letter read, in pertinent part:

Pursuant to our conversation of April 27, 2001, I am forwarding the agreements for the Clerical and Technical Unit along with a current wages schedule that does not reflect the two percent (2%) increase first negotiated.

Also enclosed is the last offer from AT&T of April 16, 2001. The only change in the offer is the agreement to pay the wages retroactive back to the first pay period in April.

I am sorry I cannot give you the changes incorporated into the agreement because we are in the process of making the necessary revisions.

Please call me with your decision to bargain now or wait until the expiration date of July 31, 2001.

When the Employer took over the Facility, it hired all of the unit employees except for one employee who had failed a drug test.⁸ On May 7, Peddrick's administrative assistant left a message for Krueger indicating that the Employer agreed to adopt the Union's agreements with AT&T except as modified during the April 27 telephone conversation. On about May 25, both units ratified their respective agreements with AT&T. From the time that the Employer assumed ownership, the parties abided by the terms of the contracts negotiated by AT&T and the Union, with the exception of the changes in benefit plans to which Krueger and Peddrick agreed in their April 27 conversation.

⁸ The employees were required to take drug tests and submit new employment applications before being hired.

As the July 31 contract expiration date approached, by letter dated July 18, Krueger requested from the Employer dates to bargain for new collective-bargaining agreements and information to be used for bargaining. She also confirmed in the letter that she was unable to send signed contracts with AT&T to the Employer, as there were still mistakes as to the wage provisions. On July 19, Edward Mooney, the Union's Executive Vice-President, and James J. Sullivan Jr., the Employer's Vice-President of Human Resources, agreed to conduct a negotiation session on September 6 or 7. Mooney asked the Employer to extend the Union's contracts with AT&T until new agreements could be negotiated, but Sullivan declined the request. In a July 19 letter to Mooney confirming the conversation, Sullivan, *inter alia*, stated:

I informed you that Comcast is not interested in extending the agreement beyond July 31, 2001, however, Comcast would be willing to maintain the status quo while negotiations continue with the exception of those items in the agreement that may expire as a matter of law.

The Employer and the Union never executed agreements memorializing the terms and conditions of employment to be applied to the bargaining units through July 31. The petitions in these cases were filed on August 1.

In *St Elizabeth Manor, Inc.*, 329 NLRB 341 (1999), the Board overruled *Southern Moldings, Inc.*, 219 NLRB 119 (1975),⁹ and adopted a new "successor bar" rule. Specifically, the Board announced:

We hold 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 bargaining without challenge to its majority status through a decertification effort, an employer petition, or a rival petition. In doing so, we see no reason to distinguish between those situations in which the predecessor had no current contract with the incumbent at the time of the successorship and one in which there was an existing contract which the successor chose not assume. *Id.* at 344. [Emphasis added].

In adopting this rule, the Board sought to balance the competing policies of promoting employee free choice and encouraging sound and stable labor relations through collective bargaining. The Board emphasized, *inter alia*, that parties in a successor relationship are in a stressful period of transition and should be given a reasonable period free of outside distractions to engage in collective bargaining. The Board further reasoned that a successor employer might be less likely to bargain "wholeheartedly" if the union's majority would be subject to attack immediately following recognition. *Id.* at 343. In a subsequent case, *Adelphia Communications Corp.*, 333 NLRB No. 145 (April 27, 2001), the Board emphasized, however, that the successor bar rule was

⁹ In *Southern Moldings, Inc.*, the Board had held that absent a successor employer's adopting an existing contract, a union only has a rebuttable presumption of continued majority support.

not intended to give the union an unfair advantage or to abrogate the Section 7 rights of employees to select or decertify a bargaining representative.¹⁰

I find that there is no successor bar to the processing of the petitions in these cases. It is undisputed that the Employer is a successor to AT&T with respect to employees in the two units at the Facility. The evidence also indicates that the Employer adopted its predecessor's contracts. Thus, following discussions between the parties by letter dated April 30, the Union forwarded its tentative agreements with AT&T to Peddrick and gave the Employer an opportunity to adopt them or to bargain for new agreements. On May 7, the Employer informed the Union that it would adopt the contracts, subject to several modifications to which the parties had previously agreed. On May 25, the bargaining units ratified these contracts. The parties abided by the contracts, as modified, and the parties' correspondence reveals that they intended to follow the contracts until July 31 and thereafter maintain the status quo until they reached new agreements. Although the parties did not memorialize their agreements in writing, their discussions, correspondence and conduct demonstrate that the Employer adopted AT&T's unsigned agreements with the Union.¹¹ Inasmuch as the Employer adopted its predecessor's agreements, there is no successor bar.

The Union contends that the AT&T contracts could not have been adopted by the Employer because they were never signed by the Union or by AT&T. The Union further contends that the Employer did not adopt these contracts because the parties modified their benefit provisions. However, *St. Elizabeth Manor* does not directly or impliedly require that contracts be signed, or accepted without modification, in order to be adopted. Rather, in *St. Elizabeth Manor* the Board sought to ensure that the union has an opportunity to bargain with the successor employer in an atmosphere free of the threat of impending decertification and that employees have adequate opportunity to determine whether the incumbent union is effective in dealing with the successor employer. These concerns were met here because the Union was able to negotiate with the Employer; indeed, the parties reached a full agreement to abide by the AT&T contracts as modified. In these circumstances, the Union would receive an unfair advantage if it were provided a second opportunity to bargain with the Employer insulated from the processing of decertification or rival petitions, and the employees would be unreasonably prevented from exercising free choice. Accordingly, I do not find that there is a successor bar to the petitions in these cases, and I shall direct elections in the petitioned-for units.¹²

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

¹⁰ In rejecting a contention that the successor bar rule should apply in that case, the Board noted that the decertification petition had been timely filed during the window period of the predecessor's agreement "and would have resulted in an election had the predecessor remained in existence."

¹¹ See e.g., *United States Can Company*, 305 NLRB 1127 (1992), *enfd.* 984 F.2d 864 (7th Cir. 1993). In that case, the Board found that although a successor employer's letter to the union indicating that it would maintain the employees' terms and conditions of employment as under the predecessor's contract was ambiguous, the employer adopted its predecessor's contract by its conduct.

¹² The Union's contention that it was not given "a reasonable period of bargaining" before the decertification petition was filed, is without merit, because the parties had sufficient time to bargain to reach agreement. The Union now appears to be seeking a *second* period of time to bargain for agreements following the July 31 expiration date of its contracts with AT&T.

A. All full-time and regular part-time maintenance, installation, service and warehouse employees employed by the Employer at its Levittown, Pennsylvania facility, excluding all other employees, customer service representatives, dispatchers, office clerical employees, guards and supervisors as defined in the Act.

B. All full-time and regular part-time customer service representatives and dispatchers employed by the Employer at its Levittown, Pennsylvania facility, excluding all other employees, maintenance employees, installation employees, service employees, warehouse employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTIONS

Elections by secret ballot shall be conducted by the undersigned among the employees in the units found appropriate at the time and place set forth in the notice of election to be issued subsequently,¹³ subject to the Board's Rules and Regulations. Eligible to vote are those in the units who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

**COMMUNICATIONS WORKERS OF AMERICA,
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LIST OF VOTERS

¹³ Your attention is directed to Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the elections should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that election eligibility lists, containing the **full** names and addresses of all the eligible voters in both units, must be filed by the Employer with the Regional Director for Region Four within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The lists must be of sufficiently large type to be clearly legible. I shall, in turn, make the lists available to all parties to the election. In order to be timely filed, such lists must be received in the Regional Office, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106, on or before **November 26, 2001**. No extension of time to file these lists may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement of such lists. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The lists may be submitted by facsimile transmission. Since the lists is to be made available to all parties to the election, please furnish a total of **3 copies**, unless the lists are submitted by facsimile, in which case no copies need be submitted. To speed preliminary checking and the voting process itself, the names should be alphabetized (overall, or by department, etc.). If you have any questions, please contact the Regional Office.

RIGHT TO REQUEST REVIEW

Under the provisions 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, Franklin Court, 1099 14th Street, N.W., Room 11613, Washington, D.C. 20570. This request must be received by the Board in Washington by **December 3, 2001**.

Signed: November 19, 2001

at Philadelphia, PA

/s/ _____
DOROTHY L. MOORE-DUNCAN
Regional Director, Region Four

347-0100