

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
SUBREGION 33

COMCAST OF ILLINOIS/TEXAS, INC.

Employer<sup>1</sup>  
and

Case 33-RD-806

MARK DEAN MEIER

Petitioner  
and

INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL 21

Union<sup>2</sup>

**REGIONAL DIRECTOR'S DECISION AND  
DIRECTION OF ELECTION**

The Employer, Comcast of Illinois/Texas, Inc., is an Illinois corporation engaged in the business of providing broadband cable and Internet services. The Petitioner, Mark Dean Miller, filed an RD petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to decertify the International Brotherhood of Electrical Workers, Local 21 (the "Union") as the collective bargaining representative of all full-time and regular part-time Installers (all levels), Advanced Installer, Service Technician, System Technician, Advance Technician, CSSR I, CSSR II, Advanced CSSR, and Dispatcher employed by the Employer at its Kankakee, Illinois facility, but excluding all other employees, guards and supervisors as defined in the Act. A hearing officer of the Board held a hearing. The sole issue presented at the hearing was the renewal of the Union's pre-hearing. The parties filed no briefs and did not argue their position on the record; apparently the Employer and the Union rely on positions

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<sup>1</sup> The Employer's name appears as amended at hearing.

<sup>2</sup> The Union's name appears as amended at hearing.

taken and facts asserted in the documents filed regarding a pre-hearing Motion to stay proceedings, which documents were entered into the record as exhibits. The position of the Petitioner is unknown.

The Union urges, contrary to the Employer, that the processing of the petition should be stayed either because of a Board charge pending appeal or because of a pending arbitration. There are no other issues raised in the record before me. I again, reject the Union's request to stay the proceedings and will direct an election herein.

### **I. OVERVIEW**

The Employer is an affiliate of AT&T Broadband, a nation-wide provider of broadband cable and Internet services. AT&T Broadband is an affiliate of AT&T Corp. (now Comcast). Prior to May 11, 2002, the IBEW commenced organizing activities at a number of local affiliates of AT&T Broadband. As employees at the Employer's Kankakee, Illinois, facilities were already represented by the Union; its organizing activities naturally did not extend to these employees. However, with respect to its organizing campaign at other non-Kankakee facilities, AT&T Broadband and its affiliates were subject to provisions of an agreement between its parent corporation – AT&T Corp. (Comcast) and the IBEW. This agreement was called Neutrality and Consent Election (NCE). The NCE established rules of conduct, binding on both AT&T and the IBEW (and their affiliates) during organizing campaigns. It also provided for the submission of disputes regarding alleged violations of the NCE to a third party neutral (TPN).

By letter dated January 17, 2002, the Union notified the Employer, pursuant to the terms of the NCE, of its intent to conduct organizing at 52 facilities in Illinois and Indiana, not already organized by the Union. Thereafter, on or about March 4, 2002, the Union invoked the dispute resolution procedures of the NCE, claiming that the Employer's tactics at certain Union-represented facilities (including, allegedly, those in Kankakee, Illinois) violated the NCE in that the Employer had, allegedly, "advanc(ed) proposals in the *negotiations* for bargaining units represented by the Union through the recognition provisions of the agreement which were

intended to thwart the Union's efforts to achieve collective bargaining agreements and to obtain representation rights among the Employer's unrepresented employees in the greater Chicago metropolitan area" (emphasis added).

Following the Union's submission of these matters to the TPN, the Employer challenged the right of the Union to assert *bargaining issues* under the Neutrality Agreement and sought a preliminary injunction of further TPN proceedings from the United States District Court for the Northern District of Illinois. The Court subsequently denied the request and the Employer appealed to the Seventh Circuit. On January 29, 2003, the Court of Appeals upheld the District Court, in effect remanding the dispute to the TPN for further arbitration processing. Thereafter, the Union raised new issues before the TPN, all of which concerned the Employer's alleged misconduct vis-à-vis the Union's organizing activities at the Employer's unrepresented work sites in the greater Chicago metropolitan area. These new allegations were consolidated with the allegations that the Employer had engaged in misconduct during bargaining at represented locations/units, including the Unit in Kankakee. The consolidated arbitration is currently in the "discovery phase" and is pending hearing before the TPN.

Despite its claim that the Employer had engaged in "unfair bargaining" at its Kankakee facility, no unfair labor practice charges have been filed with the Board. Instead, the Union contends that its failure to file charges was related to the fact that the NCE disallowed "parallel proceedings" under the dispute resolution procedures of the Agreement, including specifically disallowing utilization of NLRB proceedings. Therefore, the Union contends that it could not submit its bargaining dispute to the Board without forfeiting its rights under the NCE.

On or about November 1, 2002, the Union filed charges with the Board in Case-13-CA-40621 alleging that the Employer violated Sections 8(a)(1), (2), (3), and (5) of the Act at, inter alia, its Kankakee facility. The allegations in Case 13-CA-40621 were dismissed by the Regional Director of Region 13 and an appeal was filed by the Union with the General Counsel on January 17, 2003. To date, no decision on the appeal has been rendered.

On or about November 15, 2002, the decertification petition in the instant case was filed. On February 10, 2003, Counsel for the Union filed with Subregion 33 a Motion to Stay, requesting that the petition be held in abeyance. This Motion was denied on February 14, 2003.

## **II. DISCUSSION OF ISSUES**

The Union relies on two arguments in support of its claim that the petition should be stayed. First the Union argues that the petition should be blocked by the pendency of the appeal of the dismissal of Case 13-CA-40621. Secondly it argues that the petition should be “block” by the pendency of the arbitration proceeding under the NCE. For its reasons set forth below I reject both arguments.

### **A. Motion to Stay Proceedings Pending Appeal of ULP Charge 13-CA-40621**

The Board’s Representation Casehandling Manual, Section 11730, Blocking Charge Policy—Generally, provides:

“The Agency has a general policy of holding in abeyance the processing of a petition where a concurrent unfair labor practice charge is filed by a party to the petition and the charge alleges conduct that, *if proven*, would interfere with employee free choice in an election, were one to be conducted. However, there are significant exceptions to the general policy of having a charge “block” a petition. *Accordingly, the filing of a charge does not automatically cause a petition to be held in abeyance.*” (emphasis added)

In addition, Section 11734 provides that upon dismissal of a charge, the Regional Director has the discretion to process a petition despite an appeal and, indeed, should do so for certain types of charges. Nothing has been presented in this record to establish that the election should be delayed for a resolution of the appeal.

A review of the evidence presented at hearing indicates that the Regional Director of Region 13 dismissed the charge in 13-CA-40621. Nothing has been presented herein that suggests that the resolution of the question concerning representation should be delayed pending resolution of the appeal. Therefore, pursuant to Sections 11730 and 11732 of the Representation Casehandling Manual, I find there is nothing in the charge that would preclude

the resumption of processing of the instant decertification petition and/or preclude the issuance of a decision and direction of an election herein.

**B. Motion to Stay Proceedings Pending Submission of Dispute Regarding Alleged Violations of the NCE to a TPN**

The Board's general policy is to refuse requests that it either stay and/or consider the decision of an arbitrator (or another forum) in determining whether there is a question concerning representation. See *NLRB Outline Of Law And Procedure In Representation Cases*, Section 7-130. Board case law has similarly declined to generally defer to arbitration awards in representation cases. See *Hershey Foods Corp.*, 208 NLRB 452 (1974), and *Commonwealth Gas Co.*, 218 NLRB 857 (1975); c.f. *St Mary's Medical Center*, 322 NLRB 954 (1997) (Board noted that it would defer when the issue turned *solely* on interpretation of the parties contract). Likewise, the Board's deferral policies enunciated in *Collyer Insulated Wire*, 192 NLRB 837 (1971), and *Dubo Mfg. Corp.*, 142 NLRB 431 (1963), in which the Board would either require grievance arbitration (*Collyer*), or stay its proceedings pending resolution of an existing grievance (*Dubo*), are not applicable to issues which are representational. See *Marion Power Shovel Co.*, 230 NLRB 576 (1977); *Massachusetts Electric Co.*, 248 NLRB 155 (1980); and *Super Value Stores*, 283 NLRB 134 (1987). This said, the Board has indicated that it may permit representation questions to be resolved in arbitration for circumstances arising *out of* neutrality agreements or after acquired clauses. See *Verizon Information Systems*, 335 NLRB No. 44 (2001) and *Central Parking System*, 335 NLRB No. 34 (2001). However, unlike the situations presented therein, the instant Union is not seeking the Board to enforce an agreed upon alternative procedure for the resolution of bargaining or representation issues arising in the same Unit as contained in the representation petition. Instead, the issue presented in the aforementioned NCE dispute concerns unorganized and unrepresented employees of affiliates of the Employer at locations other than the Unit Kankakee, Illinois. In addition, the parties to the instant decertification proceeding are different than those in the NCE proceeding, and the

issues submitted to the TPN (i.e., whether unorganized employees at locations other than Kankakee have been adversely affected by the Employer's actions) are unrelated to the issues herein (i.e., whether a question concerning representation exists at the petitioned-for Unit in Kankakee). It is unclear what, if any, impact a TPN resolution would have on the Kankakee Unit. Moreover, while the issues submitted to the TPN are contractual in nature, the existence of a question concerning representation in the instant case is statutory and the Board will not defer its obligation to resolve statutory issues to private dispute resolution mechanisms. *St. Mary's Medical Center*, 322 NLRB 954 (1997).

To the extent that the Union's position can be read as a request to extend the Board's blocking charge policy to arbitral proceedings in the absence of an unfair labor practice charge filed with the Board, I also reject that argument. There is no case authority in support of such a proposition, and it would be an unwise extension of the Board's blocking charge doctrine. *Inter alia*, the absence of a charge effectively decreases or negates the ability of the Board to protect the rights of the parties, including parties not bound by the arbitration agreement, in the representation process.

Accordingly, I shall process the RD petition and conduct an election among the Employer's employees.

### **III. CONCLUSIONS AND FINDINGS**

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are 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 in this case.
3. The Petitioner 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 purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time Installers (all levels), Advanced Installer, Service Technician, System Technician, Advance Technician, CSSR I, CSSR II, Advanced CSSR and Dispatcher employed by the Employer at its Kankakee, Illinois facility EXCLUDING all other employees, guards and supervisors as defined in the Act.

#### **IV. DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Brotherhood of Electrical Workers, Local 21. The date, time, and place of the election will be specified in the notice of election that the Board's Subregional Office will issue subsequent to this Decision.

##### **A. Voting Eligibility**

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before 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 that began less than 12 months before the election date and who retained their status as such during the eligibility period, and the replacements of those economic strikers. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3)

employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

**B. Employer to Submit List of Eligible Voters**

To ensure 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 election 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 within 7 days of the date of this Decision, the Employer must submit to the Subregional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Subregional Office, 300 Hamilton Boulevard, Suite 200, Peoria, IL 61602, on or before **April 1, 2003**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (309) 671-7095. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Subregional Office.

**C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

**V. 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, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EDT on **April 8, 2003**. The request may **not** be filed by facsimile.

Dated: March 25, 2003  
at Saint Louis, Missouri

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Leo D. Dollard, Acting Regional Director, Region 14  
National Labor Relations Board  
Subregion 33

177-8560-1500  
420-5034  
420-6280  
420-7303  
440-1700