

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
ATLANTA BRANCH OFFICE

INDIANA BELL TELEPHONE COMPANY, INC.
a wholly owned subsidiary of AT&T
TELEHOLDINGS, INC.

and

Case 25-CA-30527

COMMUNICATIONS WORKERS OF AMERICA,
LOCAL 4900, AFL-CIO

Rebekah Ramirez, Esq., for the General Counsel.
Kenneth B. Siepman, Esq., for the Respondent.
Barbara Baird, Esq., for the Charging Party.

DECISION

Statement of the Case

GEORGE CARSON II, Administrative Law Judge. This case was heard in Indianapolis, Indiana, on May 15, 2008, pursuant to a complaint that issued on February 29, 2008.¹ The complaint alleges that the Respondent has failed and refused to provide requested relevant information in violation of Section 8(a)(5) of the National Labor Relations Act. At the hearing, the General Counsel amended the complaint to allege that the Respondent unlawfully delayed providing certain information. The Respondent denies that it has violated the Act. I find that the Respondent has not violated the Act and shall recommend that the complaint be dismissed.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following

Findings of Fact

I. Jurisdiction

The Respondent, Indiana Bell Telephone Company, Inc., a wholly owned subsidiary of AT&T Teleholdings, Inc., provides telephone services from various facilities including facilities in Indianapolis, Indiana, and annually provides services valued in excess of \$50,000 in states other than the State of Indiana. The Respondent admits, and I find and conclude, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Respondent admits, and I find and conclude, that Communications Workers of America, Local 4900, AFL-CIO, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

¹ All dates are in 2007 unless otherwise indicated. The charge in Case No. 25-CA-30527 was filed on November 19.

II. Alleged Unfair Labor Practices

A. Facts

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The appropriate unit, covered by a master contract, includes employees of telephone companies that are subsidiaries of AT&T in several states. The unit employees are represented by numerous different local unions that are administratively included in districts that include the local unions in a geographic territory. The relevant territory in this proceeding is the State of Indiana in which the local unions are included in District 4.

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The precipitating action for the issue presented in this case occurred when the Company eliminated several positions and “surplused” the employees in those positions including 14 Customer Service Specialists and one Maintenance Administrator. The record does not establish the specific date that this occurred, but it appears to have occurred late in 2005 insofar as the resulting terminations occurred early in 2006. Customer Service Specialist Deborah Sturgeon had worked as a pay telephone customer advocate, handling complaints from customers who experienced problems with pay telephones. The surplus employees were, under the collective-bargaining agreement, permitted to attempt to remain employed if they qualified for other positions that were available. The only positions available “surplused” appear to have been line technicians. That meant that, to remain employed, these individuals, who had worked in clerical positions, had to qualify for pole climbing and ladder handling. None were able to qualify, and all were separated. Sturgeon was terminated on January 23, 2006. Grievances were filed on behalf of several of the employees.

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When employed as a Customer Service Specialist, Sturgeon was represented by Local 4900 and was a union steward. When in training and attempting to qualify for another position, she was represented by Local 4700. The grievance relating to her separation was filed by Local 4700. Upon her reemployment pursuant to the settlement, she was again represented by Local 4900. She again became a steward at some point after August 6. Both locals are in District 4. Grievances at the arbitration stage of the grievance procedure are handled by District 4, not the local. The settlement herein was negotiated between the Company and District.

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Beginning in 2006, Jerry Schaeff, Communications Workers of America Representative for District 4, sought to get the surplus employees returned to work. He dealt with Fred Eder, AT&T Director of Labor Relations. About a year after Schaeff began his efforts, on June 4, he and Eder finally negotiated a settlement pursuant to which these surplus employees who had been terminated due to their failure to qualify in pole climbing and ladder handling would be returned to work in different clerical positions. The agreement provides that they would be offered jobs as Technical Specialists (TS) in Construction and Engineering Construction Management Centers in their respective states and would be “pay protected” and, therefore, would receive the “rate of pay they were at when they were removed from the payroll.” The agreement further provides that no backpay would be given and that the seniority of the affected employees would not be immediately bridged. The provision in that regard states: “In accordance with normal service bridging rules, these former employees will not have their service immediately bridged.” The Union agreed to withdraw all outstanding grievances.

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Eder explained that the Union had sought immediate service bridging, but that he, on behalf of the Company, would not agree. Thus, if the affected employees chose to be rehired, normal service bridging would apply which meant that they would return “with no service credit, no seniority and the NCS [Net Credited Service] date would be their first start date and ... [after] five years of continuous service their prior service would be bridged.”

5 The Union finally agreed to the absence of immediate service bridging, and accepted the offer, which was extended to all affected employees regardless of whether they had filed a grievance. Schaeff sent a memorandum to all local presidents who had affected members. The memorandum notes that all of the affected employees had been “off the payroll ... for over a year.” He sets out the terms of the settlement, including “[n]ormal bridging rules apply” and points out that the Union’s chances at arbitration of the grievances were minimal, and notes that his desire was to get the people back to work, that he “could not gamble with the potential of these ... people having a full career and retirement ... by pushing a case to arbitration and potentially losing it all when the Company [had] finally agreed to bring them back.”

15 Each employee individually accepted the offer. The Union did not accept the offer on their behalf. Sturgeon acknowledged that she reviewed the settlement prior to accepting it and that that Dave Wilson, President of Local 4700, met with her and went through it prior to her accepting the settlement and returning to work.

20 Sturgeon and four of the other employees who accepted the offer were assigned to the Construction Maintenance Center in Indianapolis under the supervision of Manager Brian Edwards. They returned to work on July 9, 2007. Upon receiving her first paycheck, Sturgeon observed that it showed her start date as July 9th. She asked Manager Edwards if he would check about the start date. He did so and reported that he “checked with both the Union and the Company and that what we got coming back was all we were going to get.”

25 On August 6, Sturgeon, who at that point was not a steward, and the four other similarly situated employees who had been assigned to the Indianapolis Construction Maintenance Center, exercised their right under Article 12.13 of the collective-bargaining agreement to file an individual grievance. The grievance alleges violation of Article 14 of the collective-bargaining agreement, the Net Credited Service and Seniority article, which provides that “[s]eniority shall be determined by the net credited service of the employee.” The employees, in their grievance, state the following position: “We demand all affected employees cumulative net credited service time be bridged immediately, due to the company’s dismissal without just cause, and to be made whole in every way.”

35 AT&T’s Manager of Labor Relations for the State of Indiana, Grace Biehl, received a copy of the grievance and called Tim Strong, Vice President of Local 4900, and questioned why a grievance had been filed on this matter which had been settled. Strong stated that he did not know, but would look into it. He indicated that the Local did not support the grievance and, in response to a question from Biehl, stated that it would be withdrawn. Thereafter, he informed Biehl that, although Local 4900 did not support the grievance, because Article 12.13 of the contract permitted individual employees to file grievances, they “were allowing it to stand.”

45 Upon hearing about the grievance, Director Eder called Representative Schaeff and asked, “[W]hat the hell is going on here, I thought we had a deal?” Schaeff replied “I thought we did too, but don’t worry, the grievance isn’t going anywhere.” In a subsequent conversation, Schaeff informed Eder that District 4 “is not going to support arbitration.”

On October 11, Sturgeon, who had been appointed as a union steward, filed an information request seeking various items including the personnel files of herself and the four other employees named in the grievance, various forms relating to breaks in service, grievances, grievance settlements, arbitration decisions, and NLRB cases relating to “failure to pass any company administered ‘pole climbing’ or similar tasks.”

5 By letter dated October 30, Labor Relations Manager Biehl denied the information request claiming that the grievance was not arbitrable under Article 16 of the collective-bargaining agreement insofar as it related to a benefit plan, was untimely, and was barred by the settlement agreement “which specifically agreed that relevant employees would not receive service bridging.”

10 By letter dated November 5, Sturgeon answered, stating that the grievance did not relate to a benefit plan but only seniority rights and that the grievance was timely insofar as it was filed following her conversation with Manager Edwards. The response does not address the terms of the settlement agreement but points out that the requirement to furnish relevant information extends beyond the grievance. Sturgeon, in her capacity as a union steward, filed the charge herein in the name of Local 4900 on November 16.

15 *B. Analysis and Concluding Findings*

20 The General Counsel, citing longstanding and recent Board precedent including *Postal Service*, 337 NLRB 820, 822 (2002), argues that an employer is obligated to provide requested information so long as there is a “probability that such data is relevant and will be of use to the union in fulfilling its statutory duties and responsibilities as the employees’ exclusive bargaining representative.”

25 The Respondent, also citing recent precedent, *Courier-Journal*, 342 NLRB 1148, 1150 (2004), argues that the 2006 grievances were settled and that, contrary to the agreement into which the parties entered, “the Union and the General Counsel are, in effect, attempting to resurrect the original dispute, which was disposed of through the settlement agreement. In our view, these actions cannot be squared with the salutary policy of affording finality to the informal settlement of such disputes.”

30 Counsel for the General Counsel, in her brief, asserts that “the Union interpreted the settlement language ... as referring exclusively to their [the employees] rights under Respondent’s pension plan.” I disagree. At the time the grievance was filed, Sturgeon was not a steward, thus whatever position she was taking is not attributable to the Union. Sturgeon was not involved in the settlement negotiations and had no basis for interpreting the settlement language when she, as an individual employee, filed the grievance seeking immediate bridging. 35 When, as a steward, she filed the information request, she did not seek proposals and counter proposals exchanged between Representative Schaeff and Director Eder relating to settlement terms, language changes, or contractual interpretation. Sturgeon did not testify that she spoke with Schaeff regarding interpretation of the agreement. Furthermore, Sturgeon never testified that she had any question regarding interpretation of the settlement agreement.

40 There is no evidence that “the Union interpreted the settlement language ... as referring exclusively to ... rights under Respondent’s pension plan.” Sturgeon was the only witness presented by the General Counsel, and she did not testify to any conversation in which a union officer raised any question about interpretation of the settlement agreement. As the brief of the 45 Respondent points out, the General Counsel did not present any officer of Local 4900 or District 4 Representative Jerry Schaeff. Schaeff, who negotiated the settlement on behalf of the Union, was not called to deny or contradict the testimony of Director Eder or the statements that he made to Eder, and I credit Eder’s testimony. All the affected employees had been off of the payroll for more than a year, thus incurring a break in service. The Respondent was unwilling to waive normal bridging rules. In order to get the employees back to work, the Union agreed that normal service bridging rules would apply and withdrew the pending grievances.

There is no evidence that Sturgeon had any belief that the absence of bridging did not relate to her Net Credited Service (NCS) date. The settlement she and the other employees accepted provides that “these former employees will not have their service immediately bridged.” The grievance that she filed with the other employees shows the service date as 7-9-07, the date they began working in Indianapolis. Counsel for the Respondent, when questioning Sturgeon, confirmed that her earliest credited service began in 2000, and then asked: “And that’s what seniority you had at the time that you were discharged in January 2006?” Sturgeon answered, “Yes.” I asked whether that was “what was lost as a result of the agreement whereby you were reinstated?” Sturgeon again answered, “Yes.”

The grievance filed by Sturgeon on August 6, requests that “all affected employees cumulative net credited service time be bridged immediately, due to the company’s dismissal without just cause” All of the affected employees had been off of the payroll for over a year as a result of their dismissals, thus their service had been broken. The fact that Sturgeon inserted the reference to dismissal without just cause establishes that she was fully aware that their service had not been bridged and was not going to be bridged pursuant to the terms of the settlement agreement. The dismissals without just cause were raised by the initial grievances in 2006. The Union withdrew those grievances pursuant to the settlement that Schaeff and Eder negotiated. The settlement states that: “In accordance with normal service bridging rules, these former employees will not have their service immediately bridged.” Sturgeon and the other affected employees accepted the settlement in order to return to work. Sturgeon acknowledged that her seniority was “what was lost” as a result of her acceptance of the agreement. There is not a shred of evidence that there was any question about interpretation of the agreement.

The Board, in *Alpha Beta Co.*, 273 NLRB 1546, 1547 (1985), held that it would defer to settlement agreements that were not repugnant to the Act if made in the context of grievance proceedings that were fair and regular, that the settlement was made under the contractual grievance procedure, and that all parties agreed to be bound. In that case, having found that the individual charging parties had agreed to be bound, the Board dismissed the unfair labor practice charges filed by the individuals. See also *Postal Service*, 300 NLRB 196 (1990).

This case, of course, relates to a charge concerning an information request rather than a charge seeking relief that the settlement did not provide. The grievance underlying the information request herein does, however, seek relief, immediate bridging, that the settlement does not provide. The settlement herein meets the standards set out in *Alpha Beta Co.*, supra.

I am mindful that the arguable merit of an underlying grievance or whether a grievance is arbitrable does not establish the relevance or irrelevance of requested information. The test is “whether the information bears upon the union’s determination to file a grievance or is helpful in evaluating the merits of the grievance and the propriety of pursuing the grievance to arbitration.” See *United Technologies Corp.*, 274 NLRB 504, 506 (1985). In this case, the representative of the Union responsible for both the settlement and taking any grievance to arbitration, Schaeff, informed his counterpart, Director Eder, that the grievance would not be taken to arbitration.

The information sought herein is not made relevant because a grievance was individually filed demanding relief for the grievants that is specifically precluded by the settlement to which they agreed. There is no claim that the information sought has any relevance with regard to future grievances. See *York International Corp.*, 290 NLRB 438, 440 (1988). Without regard to the merit of the grievance, the settlement establishes that normal service bridging rules apply and that “these former employees will not have their service immediately bridged.” No information showing that, in some other circumstance, normal

bridging rules had not been applied would alter the terms of the agreement that the affected employees accepted.

5 The information sought herein, including specifically other grievances, settlements, arbitrations, and NLRB cases relating to “issues of employee seniority for failure to pass any company administered ‘pole climbing’ or other tests,” might well have been relevant regarding the initial 2006 grievances following the failure of these employees to qualify in pole climbing and ladder handling. The record does not establish whether such information was sought. With regard to this proceeding, in view of the settlement, it is not relevant. Information sought relating to a pending grievance must be relevant to the grievance. *United Technologies Corp.*, supra at 10 507. Whether other grievances were settled on different terms has no relevance to the pending grievance which demands that the seniority of these employees be immediately bridged, a remedy foreclosed by their agreement that normal service bridging rules would apply and that these employees would “not have their service immediately bridged.”

15 The terms of the settlement are clear. Union Representative Schaeff informed all local presidents of the specific terms of the settlement and pointed out that his purpose was to get the people back to work, that he “could not gamble with the potential of these ... people having a full career and retirement ... [or] losing it all when the Company [had] finally agreed to bring them back.” Pursuant to the settlement, the employees were returned without backpay and subject to “normal service bridging,” and the Union withdrew its grievances, grievances that 20 Schaeff was satisfied could not be won if they had been arbitrated. Local 4700 President Dave Wilson explained the terms to the affected employees. Sturgeon acknowledged that he did so and that she herself reviewed the terms prior to accepting the settlement which restored her to 25 employment.

The grievance seeking immediate bridging, as stated in the request for the remedy, is predicated upon the claim of “the company’s dismissal without just cause.” Raising the issue of dismissal without just cause resurrects the initial grievance, an issue foreclosed by the 30 settlement. See *Courier-Journal*, supra at 1150. Those grievances were withdrawn as part of the settlement. None of the items sought in the information request are relevant because each of the employees agreed to reemployment under the terms of the settlement pursuant to which they knew and understood that “normal bridging” would apply and that “these former employees will not have their service immediately bridged.”

35 The Respondent, notwithstanding its claim that the information sought was not relevant, agreed to provide the personnel files of the employees named in the grievance. Sturgeon testified that the request for the personnel files was to establish the service dates of the employees, information that was not relevant insofar as their service date, pursuant to the 40 settlement, was July 9. The Respondent had expected the Union to make an appointment with the supervisor of the employees whose records were being sought, but no appointment was scheduled, thus the information was not immediately provided. Sturgeon and Manger Brian Edwards, according to Sturgeon, verbally agreed, on some unspecified date, to put the grievance “on hold.” The Union did not protest its failure to immediately receive the information 45 that the Respondent had agreed to provide. Sturgeon was aware that her personnel file had been provided in connection with her initial grievance in 2006. I am unaware of any case finding a violation of the Act predicated upon delay in providing irrelevant information, thus I need not address whether there was a good faith misunderstanding regarding the protocol for providing personnel files. My granting of the eleventh hour amendment might well have been in error. See *New York Post Corp.*, 283 NLRB 430, 431 (1987). If it were an error, it is immaterial insofar as I find that the information sought was not relevant, and I shall, therefore, recommend dismissal of the amended allegation alleging unlawful delay in the provision of the information.

5 The information sought has no relevance to the demand that the Respondent immediately bridge the seniority of these employees due to their alleged “dismissal[s] without just cause” in view of their acceptance of reemployment pursuant to an agreement in which they specifically agreed that “normal service bridging rules” would apply and that “these former employees will not have their service immediately bridged.” I shall recommend that the complaint be dismissed.

10 Conclusions of Law

The Respondent has not violated Section 8(a)(5) of the Act as alleged in the complaint.

15 On these findings of fact and conclusions of law and on the entire record, I issue the following recommended ²

ORDER

The complaint is dismissed.

20 Dated, Washington, D.C., July 15, 2008.

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George Carson II
Administrative Law Judge

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² If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.