

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

THE SOUTHERN NEW ENGLAND
TELEPHONE COMPANY d/b/a AT&T
CONNECTICUT, A WHOLLY OWNED
SUBSIDIARY OF AT&T

Case No. 34-CA-12451

and

COMMUNICATION WORKERS OF
AMERICA

**RESPONDENT'S EXCEPTIONS TO DECISION
OF THE ADMINISTRATIVE LAW JUDGE**

Pursuant to Section 102.46 of the Board's Rules and Regulations, Respondent The Southern New England Telephone Company d/b/a AT&T Connecticut ("SNET" or "Company") files these Exceptions to the Decision of the Administrative Law Judge ("ALJ"):

Exception 1. The ALJ erred by failing to find that the reasonably likely effect of having technicians seek entry to customer residences wearing shirts with "INMATE" the only word on the front would be to alarm a significant portion of those customers, particularly vulnerable individuals such as the elderly and women home alone or with children.

Such a finding was absent from the Decision as a whole, and the ALJ's express refusal to make it is stated at ALJ 20, L. 18-30 and ALJ 21, L. 10-17.¹ The testimony of Mr. Nasznic at Tr. 275 – 460, the testimony of Mr. Saavedra at Tr. 461 – 551, the testimony of Mr. Borchert at Tr. 261, 266 – 268 and 271 – 274, the testimony of Mr. Henderson at Tr. 231 – 235, 239 – 241 and 242 -246 and GCX 2, GCX 14, RX 1, RX 18, RX 19, RX 20, RX 21 and RX 22 are relied upon with respect to this exception. The ALJ erred because the facts of the case and common sense required a finding that the reasonably likely effect of having technicians seek entry to customer residences wearing shirts with "INMATE" the only word on the front would be to alarm a significant portion of those customers, particularly vulnerable individuals such as the elderly and women home alone or with children.

Exception 2. The ALJ erred by failing to find that pervasive publicity about a home invasion in Cheshire, Connecticut, in which two former prisoners who had met as inmates brutalized a family and murdered the wife and two daughters of a local doctor, increased the likelihood that the INMATE shirts would frighten customers and harm the Company's image.

Such a finding was absent from the Decision as a whole, and the ALJ's express refusal to make it is stated at ALJ 21, L. 38 - 44. The testimony of Mr. Nasznic at Tr. 375-376, the testimony of Mr. Saavedra at Tr. 472 -473, the testimony of Mr. Borchert at Tr. 268, and the testimony of Mr. Henderson at Tr. 245 -246 are relied upon with respect to this exception. The ALJ erred because the facts of the case and common

¹ References to the exhibits of Counsel for the General Counsel and Respondent are cited as "GCX ___" and "RX ___" with designation of exhibit numbers and, where appropriate, page numbers. References to the transcript of the hearing are cited as "Tr. ___" with designation of appropriate page numbers. References to the pages and lines in the decision of the Administrative Law Judge are cited as ALJ __, L. __).

sense required a finding that pervasive publicity about a home invasion in Cheshire, Connecticut, in which two former prisoners who had met as inmates brutalized a family and murdered the wife and two daughters of a local doctor, increased the likelihood that the INMATE shirts would frighten customers and harm the Company's image.

Exception 3. The ALJ erred in holding that the Company could not and did not establish special circumstances justifying a ban on the INMATE shirts in customer contact situations through the testimony of two witnesses with first hand knowledge of the customer contact aspects of Company operations together with evidence of the INMATE shirt itself, particularly in light of the undisputed evidence of widespread publicity concerning the Cheshire home invasion case.

In addition to the portions of the Decision specified in Exception 1, the ALJ's assertion that special circumstances could not be established by the testimony of Mr. Nasznic and Mr. Saavedra is stated at ALJ 16, L. 24 38. The testimony of Mr. Nasznic at Tr. 275 – 460, the testimony of Mr. Saavedra at Tr. 461 – 551, the testimony of Mr. Borchert at Tr. 261, 266 – 268 and 271 – 274, the testimony of Mr. Henderson at Tr. 231 – 235, 239 – 241 and 242 -246 and GCX 2, GCX 14, RX 1, RX 18, RX 19, RX 20, RX 21 and RX 22 are relied upon with respect to this exception. The ALJ erred because the record contained sufficient evidence to establish special circumstances justifying the limited ban on the INMATE shirts in customer contact situations.

Exception 4. The ALJ erred by concluding that the Company must produce evidence of what uniforms real prisoners wear, notwithstanding the overwhelming likelihood that not all customers know this, in order to establish the reasonable

likelihood that “INMATE” on the front of a shirt would tend to alarm a portion of customers, particularly the most vulnerable ones.

The ALJ’s decision is stated at ALJ 21, L. 6 - 8. The testimony of Mr. Nasznic at Tr. 275 – 460, the testimony of Mr. Saavedra at Tr. 461 – 551, the testimony of Mr. Borchert at Tr. 261, 266 – 268 and 271 – 274, the testimony of Mr. Henderson at Tr. 231 – 235, 239 – 241 and 242 -246 and GCX 2, GCX 14, RX 1, RX 18, RX 19, RX 20, RX 21 and RX 22 are relied upon with respect to this exception. The ALJ erred because establishing that the INMATE shirts were likely to alarm customers did not depend at all on establishing what real prison uniforms look like.

Exception 5. The ALJ erred by finding “preposterous” that rumors might arise from the INMATE shirts that the Company was involved in prisoner work programs, given undisputed testimony that in the Company’s experience harmful rumors result from misinterpretations, not clear and logical thinking.

The ALJ’s decision is stated at ALJ 21, L. 14 - 17. The testimony of Mr. Nasznic at Tr. 275 – 460, the testimony of Mr. Saavedra at Tr. 461 – 551 and GCX 2, RX 18, RX 19, RX 20, RX 21 and RX 22 are relied upon with respect to this exception. The ALJ erred because the likelihood of rumors that could harm customer relationships did not depend on the truth of those rumors, and because Mr. Saavedra’s testimony about the likelihood of such rumors based upon his substantial experience dealing with customer relations and customer perceptions was undisputed.

Exception 6. The ALJ erred by giving inadequate weight in the special circumstances analysis to the failure of the Union to include its logo or any reference to a labor dispute on the INMATE shirts as a factor making customer alarm more likely

than if the front of the shirt had revealed this, and the ALJ erred further by concluding that SNET's customers without exception would know that the shirts referred to labor negotiations between SNET and the Union.

In addition to the portions of the Decision specified in Exception 1, the ALJ's statement that absence from the shirt of any reference to the Union is of little or no significance is stated at ALJ 17, L. 3 - 18. The testimony of Mr. Henderson at Tr. 244 – 245, the testimony of Mr. Borchert at Tr. 271, GCX 2, RX 18, RX 19, RX 20, RX 21 and RX 22 and the remaining parts of the record cited with respect to Exception 1 are relied upon with respect to this exception. The ALJ erred because the absence from the INMATE shirts of any reference to the Union made it more likely that customers would be alarmed by the shirt than if it had referred to a labor-management dispute, and because this affected the extent to which the right of employees to wear the shirts should be given weight versus the right of the Company to protect its customers, customer relationships and image.

Exception 7. The ALJ erred in drawing an adverse inference about the Company's presumed motive for prohibiting employees from wearing the INMATE shirts while providing installation and repair service in customer homes.

The ALJ's decision is stated at ALJ 15, L. 13 – ALJ 16, L. 38. The testimony of Mr. Nasznic at Tr. 275 – 460, the statement of Mr. Vegliante at Tr. 419, the testimony of Mr. Saavedra at Tr. 461 – 551, the testimony of Mr. Borchert at Tr. 261, 266 – 268 and 271 – 274, the testimony of Mr. Henderson at Tr. 231 – 235, 239 – 241 and 242 -246 and GCX 2, GCX 14, RX 1, RX 18, RX 19, RX 20, RX 21 and RX 22 are relied upon

with respect to this exception. The ALJ erred because neither the facts nor the law permitted such an adverse inference in this case.

Exception 8. The ALJ erred in drawing an adverse inference about the Company's presumed motive for prohibiting employees from wearing the INMATE shirts while providing installation and repair service in customer homes based upon the Company's failure to present testimony about a meeting with in-house counsel that was subject to the attorney-client privilege.

The ALJ's decision is stated at ALJ 15, L. 13 – ALJ 16, L. 38. The testimony of Mr. Nasznic at Tr. 275 – 460, the statement of Mr. Vegliante at Tr. 419, the testimony of Mr. Saavedra at Tr. 461 – 551, the testimony of Mr. Borchert at Tr. 261, 266 – 268 and 271 – 274, the testimony of Mr. Henderson at Tr. 231 – 235, 239 – 241 and 242 -246 and GCX 2, GCX 14, RX 1, RX 18, RX 19, RX 20, RX 21 and RX 22 are relied upon with respect to this exception. The ALJ erred because neither the facts nor the law permitted such an adverse inference in this case.

Exception 9. The ALJ erred in drawing an adverse inference about the Company's presumed motive for prohibiting employees from wearing the INMATE shirts while providing installation and repair service in customer homes when intent was not determinative of whether special circumstances existed that justified the prohibition.

The ALJ's decision is stated at ALJ 15, L. 13 – ALJ 16, L. 38. The testimony of Mr. Nasznic at Tr. 275 – 460, the statement of Mr. Vegliante at Tr. 419, the testimony of Mr. Saavedra at Tr. 461 – 551, the testimony of Mr. Borchert at Tr. 261, 266 – 268 and 271 – 274, the testimony of Mr. Henderson at Tr. 231 – 235, 239 – 241 and 242 -246 and GCX 2, GCX 14, RX 1, RX 18, RX 19, RX 20, RX 21 and RX 22 are relied upon

with respect to this exception. The ALJ erred because neither the facts nor the law permitted such an adverse inference in this case.

Exception 10. The ALJ erred in concluding without adequate evidence that SNET prohibited employees from wearing INMATE shirts at customer homes and other customer contact situations because it “felt that this shirt went too far in that the Union attempted to communicate to customers that [SNET] mistreated its employees.”

The ALJ’s decision is stated at ALJ 22, L. 22 - 24. The testimony of Mr. Nasznic at Tr. 275 – 460, the statement of Mr. Vegliante at Tr. 419, the testimony of Mr. Saavedra at Tr. 461 – 551, the testimony of Mr. Borchert at Tr. 261, 266 – 268 and 271 – 274, the testimony of Mr. Henderson at Tr. 231 – 235, 239 – 241 and 242 -246 and GCX 2, GCX 14, RX 1, RX 18, RX 19, RX 20, RX 21 and RX 22 are relied upon with respect to this exception. The ALJ erred because neither the facts nor the law permitted the adverse inference on which this conclusion was based and there was no other evidence to support it.

Exception 11. The ALJ erred in requiring the employer to establish proof of its motive for banning the INMATE shirts in customer contact situations in order to establish special circumstances, notwithstanding the ALJ’s assertion that motive was not at issue.

The ALJ’s decisions are stated at ALJ 15, L. 13 - 18 and ALJ 22, L. 13 - 20. The testimony of Mr. Nasznic at Tr. 275 – 460, the statement of Mr. Vegliante at Tr. 419, the testimony of Mr. Saavedra at Tr. 461 – 551, the testimony of Mr. Borchert at Tr. 261, 266 – 268 and 271 – 274, the testimony of Mr. Henderson at Tr. 231 – 235, 239 – 241 and 242 -246 and GCX 2, GCX 14, RX 1, RX 18, RX 19, RX 20, RX 21 and RX 22 are

relied upon with respect to this exception. The ALJ erred because such proof of motive is not necessary to establish special circumstances justifying the partial ban the Company imposed on the INMATE shirts in this case..

Exception 12. The ALJ erred in holding that the burden of establishing the existence of special circumstances is “substantial” and imposing on the Company a burden in excess of a preponderance of the evidence for this purpose.

In addition to the portions of the Decision specified in Exception 1, the ALJ’s reference to a “substantial” burden is stated at ALJ 16, L. 22 - 24. The testimony of Mr. Nasznic at Tr. 275 – 460, the statement of Mr. Vegliante at Tr. 419, the testimony of Mr. Saavedra at Tr. 461 – 551, the testimony of Mr. Borchert at Tr. 261, 266 – 268 and 271 – 274, the testimony of Mr. Henderson at Tr. 231 – 235, 239 – 241 and 242 -246 and GCX 2, GCX 14, RX 1, RX 18, RX 19, RX 20, RX 21 and RX 22 are relied upon with respect to this exception. The ALJ erred because his formulation and application of the burden of proof for establishing special circumstances were excessive and at variance with Board precedent.

Exception 13. The ALJ erred in concluding the Company failed to prove it had “uniformly enforced its policies” concerning appearance because of evidence some employees wore shirts containing messages the ALJ considered offensive, when substantial evidence established widespread non-discriminatory acceptance by the Company of Union-related attire, the Company’s expectation that supervisors instruct employees to change, cover or reverse inappropriate attire, and that supervisors regularly do this.

The ALJ's decision is stated at ALJ 18, L. 33 – 35, ALJ 19, L. 4 - 7 and ALJ 20, L. 15 - 16. The testimony of Mr. Nasznic at Tr. 275 – 460, the statement of Mr. Vegliante at Tr. 419, the testimony of Mr. Saavedra at Tr. 461 – 551, the testimony of Mr. Simon at Tr. 106 – 110, the testimony of Mr. Fauxbel at Tr. 200 – 208, and GCX 2, GCX 7, GCX 8, GCX 10, GCX 11, GCX 12, GCX 13, RX 1, RX 18, RX 19, RX 20, RX 21 and RX 22 are relied upon with respect to this exception. The ALJ erred because evidence concerning the shirts he considered offensive did not establish that the appearance policy was not enforced or that it was enforced in a discriminatory fashion such that it would not form the basis for a finding of special circumstances.

Exception 14. The ALJ erred by holding that the employer could not establish special circumstances justifying a restriction on the INMATE shirts without proving that appearance policies had been enforced against all other clothing that may have violated the policies, where the shirts were reasonably likely to alarm customers, adversely affect the employer's image and harm the employer's relationship with customers notwithstanding the employer's treatment of any other article of clothing.

In addition to other portions of the Decision specified in Exception 13, the ALJ's decision is stated at ALJ 19, L. 4 - 7. The testimony of Mr. Nasznic at Tr. 275 – 460, the statement of Mr. Vegliante at Tr. 419, the testimony of Mr. Saavedra at Tr. 461 – 551, the testimony of Mr. Simon at Tr. 106 – 110, the testimony of Mr. Fauxbel at Tr. 200 – 208, and GCX 2, GCX 7, GCX 8, GCX 10, GCX 11, GCX 12, GCX 13, RX 1, RX 18, RX 19, RX 20, RX 21 and RX 22 are relied upon with respect to this exception. The ALJ erred because the evidence established that the reasonably likely effect of having technicians seek entry to customer residences wearing shirts with "INMATE" the only

word on the front would be to alarm a significant portion of those customers, particularly vulnerable individuals such as the elderly and women home alone or with children, notwithstanding whether two employees had worn shirts of questionable taste that customers were not likely to view with alarm as a potential threat.

Exception 15. The ALJ erred in concluding from the wearing of so-called offensive shirts by some employees that the Company was not entitled to protect its customers, its image and its relationship with its customers through a ban on wearing INMATE shirts in customer contact situations when the shirts were reasonably likely to alarm a portion of customers exposed to them.

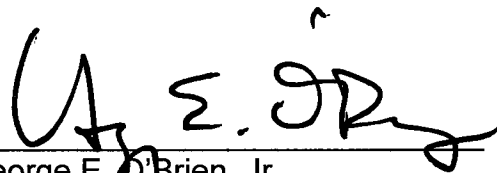
The ALJ's decision is stated at ALJ 18, L. 28 – ALJ 19, L. 7. The testimony of Mr. Nasznic at Tr. 275 – 460, the statement of Mr. Vegliante at Tr. 419, the testimony of Mr. Saavedra at Tr. 461 – 551, the testimony of Mr. Simon at Tr. 106 – 110, the testimony of Mr. Fauxbel at Tr. 200 – 208, and GCX 2, GCX 7, GCX 8, GCX 10, GCX 11, GCX 12, GCX 13, RX 1, RX 18, RX 19, RX 20, RX 21 and RX 22 are relied upon with respect to this exception. The ALJ erred because the evidence established that the reasonably likely effect of having technicians seek entry to customer residences wearing shirts with “INMATE” the only word on the front would be to alarm a significant portion of those customers, particularly vulnerable individuals such as the elderly and women home alone or with children, notwithstanding whether two employees had worn shirts of questionable taste that customers were not likely to view with alarm as a potential threat.

Exception 16. The ALJ erred in concluding that SNET's decision to prohibit employees from wearing the INMATE shirts while in customers' homes unjustifiably interfered with employees' rights under Section 7 of the National Labor Relations Act.

In addition to the portions of the Decision specified in Exception 1, the ALJ's decision is stated at ALJ 22, L. 11 - 20. The testimony of Mr. Nasznic at Tr. 275 – 460, the testimony of Mr. Saavedra at Tr. 461 – 551, the testimony of Mr. Borchert at Tr. 261, 266 – 268 and 271 – 274, the testimony of Mr. Henderson at Tr. 231 – 235, 239 – 241 and 242 -246 and GCX 2, GCX 14, RX 1, RX 18, RX 19, RX 20, RX 21 and RX 22 are relied upon with respect to this exception. The ALJ erred because the record contained sufficient evidence to establish special circumstances justifying the ban on the INMATE shirts in customer contact situations because the Company's interests in protecting its customers and customer relationships outweighed employees' rights to wear the INMATE shirts in such customer contact situations.

For all the foregoing reasons, SNET respectfully requests that all relief covered by these Exceptions be denied.

Dated: July 16, 2010



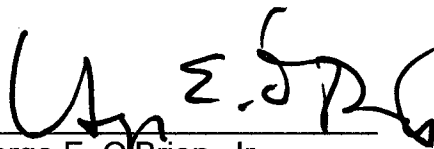
George E. O'Brien, Jr.
Little Mendelson, P.C.
One Century Tower, Suite 300
265 Church Street
New Haven, CT 06510
Telephone: 203-974-8700
Fax: 203-974-8799
E-Mail: gobrien@littler.com

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was served by e-mail and by first class mail to all counsel of record on this 16th day of July 2010, as follows:

Ashok C. Bokde, Esquire
National Labor Relations Board, Region 29
Two Metro Tech Center, 5th Floor
Brooklyn, NY 11201
Ashok.Bokde@nlr.gov

Gabrielle Semel, Esquire
James Pomeranz, Esquire
CWA District 1 Legal Department
350 Seventh Avenue, 18th Floor
New York, NY 10001
gsemel@cwa-union.org



George E. O'Brien, Jr.