

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8

COMMUNICATIONS WORKERS OF AMERICA
AND COMMUNICATIONS WORKERS OF AMERICA,
LOCAL 4309 (AT&T TELEHOLDINGS, INC., D/B/A
AT&T MIDWEST AND THE OHIO BELL TELEPHONE
COMPANY-Employer)

and

CASE NO. 8-CB-10487

SANDA ILIAS,

An Individual

**RESPONDENTS' SECOND MOTION TO REOPEN OR SUPPLEMENT THE
RECORD AND RECEIVE FURTHER EVIDENCE**

Now come Respondents, Communications Workers of America (“CWA”) and CWA Local 4309, and hereby move the Board, to reopen or supplement the record and receive further evidence in this case. The evidence that Respondents seek to be received are Respondents’ Board Exhibits A and B which are attached hereto. The reasons for this motion are made clear in the attached Brief and the attached Exhibits, all of which are incorporated by reference herein. This motion is being made pursuant to § 102.48 (b) of the Board’s Rules and Regulations (29 CFR § 102.48 (b)).

Respectfully submitted,

/s/ Theodore E. Meckler

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ATTORNEY FOR RESPONDENTS

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CASE NO. 8-CB-10487

SANDA ILIAS,

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**RESPONDENTS' SECOND BRIEF TO REOPEN OR SUPPLEMENT THE
RECORD AND RECEIVE FURTHER EVIDENCE**

On October 15, 2012 Respondents filed their Exceptions to the Administrative Law Judge's ("ALJ") recent decision in this case. On that same day Respondents caused a check to be sent to Charging Party covering the difference, plus interest, between the amount of agency fees she paid and the amount of agency fees paid by *Beck* objectors for the time in question. Respondents' Board Exhibit A, attached hereto, is a copy of the cover letter to Charging Party enclosing the check. Respondents' Board Exhibit B, also attached hereto, is a copy of the check to Charging Party.

Charging Party, Sanda Ilias also filed Exceptions to the ALJ's determination on October 15, 2012. At least two of the Exceptions raised by Charging Party went to the ALJ's determination that Charging Party should not be "made whole" because such relief would contradict the Board's determination in *International Ass'n of Machinists, Local 2777 (L-3 Communications)*, 355 NLRB No. 174 (2010), (hereinafter, "*L-3*

Communications”) that relief in a case like this ought to be prospective only. (See Exceptions nos. 7 and 10.) If Respondents’ Board Exhibits A and B are not made part of the record the Board will have an incomplete picture of the factual circumstances before it, when it decides the pending Exceptions. It is to make that factual record complete that Respondents are filing this motion.

LAW AND ARGUMENT

I. Respondents’ Request to Supplement the Record by Admitting the Proffered Exhibits is Fully Justified.

§ 102.48 (b) of the Board Rules provides that upon filing of exceptions the Board “may reopen the record and receive further evidence”. Respondents’ request to reopen or supplement the record by admitted Exhibits A and B is fully justified. These Exhibits could not have been made a part of the record earlier, since they did not yet exist.

Charging Party has taken exception to the ALJ’s determination not to make Charging Party whole. The ALJ’s determination was fully consistent with the Board’s decision in *L-3 Communications*, on which the ALJ relied. The Board held that only prospective relief should be granted in that case. The circumstances in this case warrant a similar result in that regard. Nonetheless, in the exercise of extreme caution, Respondents have made Charging Party whole by sending her a check covering the entire difference between what she paid in agency fees and what she would have paid, had she sought to be treated as a continuing objector and had, thereafter, been treated as such. The check also included interest. She has now been made whole.

Assuming *arguendo* that the issue of whether she should be made whole was once a legitimate question, it no longer is. That issue is now moot. Given this scenario, it is both just to the parties and wise from an administrative efficiency viewpoint, for the

Board to admit Respondents' Board Exhibits A and B into the record and consider them when rendering a decision on the Exceptions. Not permitting these Exhibits into the record would lead to the anomaly of the Board considering whether or not Respondents ought to make Charging Party whole, while being blind to the fact that she has already been made whole.

The Board has granted requests to reopen the record to receive and/or supplement the record, when such requests were justified by the circumstances. *Edw. C. Levy Co.*, 351 N.L.R.B. 1237, 1238, fn 10 (2007) (the Board approved an Employer's Motion to Supplement the Record with an arbitration award, which held that the Union's grievances against the Employer were without merit); *Dean Transp. Inc.*, 350 N.L.R.B. 48, 50, fn 4 (2007) (Employer's motion to Supplement the Record with various documents in order to ensure the existence of a complete record was granted by the ALJ, and the Board upheld the ALJ's decision); *Aero Ambulance Serv., Inc.*, 349 N.L.R.B. 1314, 1319, fn 2 (2005) (the ALJ granted the Respondent Employer's Motion to Supplement the Record with various documents in order to ensure the creation of a complete record, and the Board upheld the ALJ's decision). The circumstances of this case certainly justify reopening or supplementing the record in the manner being requested.

If the proffered Exhibits are not considered by the Board when considering Respondents' Exceptions, the Board will be rendering a decision in a factual vacuum, without having a true picture of the complete evidentiary landscape. Therefore, Respondents respectfully urge the Board, pursuant to Rule 102.48 (b), to reopen or supplement the record by receiving the attached Exhibits into evidence and considering them when rendering its decision on the Exceptions.

CONCLUSION

For all of the foregoing reasons, Respondents respectfully urge the Board to reopen or supplement the record to receive the attached Exhibits into evidence and to consider them when rendering its decision on the Exceptions.

Respectfully submitted,

/s/ Theodore E. Meckler

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ATTORNEY FOR RESPONDENTS

CERTIFICATE OF SERVICE

I certify that on the 29th day of October 2012, this Motion was electronically filed at the e-filing section of the Board's website. Counsel for the other parties to this proceeding were sent copies of this Motion via email at their below listed email addresses

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/s/ Theodore E. Meckler
Theodore E. Meckler
CWA District 4 Counsel
Attorney for Respondents

ATTACHMENTS

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|--|--------------------|
| Respondents' Board Exhibit A – Copy of Attorney Bolek's October 15 th cover letter to Charging Party | A-1 |
| Respondents' Board Exhibit B – Copy of the check enclosed with said letter, making Charging Party whole | A-2 |