

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 24**

**PUERTO RICO TELEPHONE COMPANY,
INC./VERIZON**

Employer

and

Case 24-UC-233

**HERMANDAD INDEPENDIENTE
DE EMPLEADOS TELEFONICOS, INC.**

Petitioner

DECISION

Upon a petition 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.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned makes the following findings and conclusions¹:

I. ISSUES

The instant proceeding involves a petition filed by the Petitioner-Union, Hermandad Independiente de Empleados Telefonicos, Inc., involving the Customer

¹ Upon the entire record in this proceeding, the undersigned finds:

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

b. During the past calendar year, the Employer, a local and long distance telephone communication provider as well as a data transmission services provider in Puerto Rico, derived gross earnings in excess of \$100,000. Accordingly, I find that it is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

Relations Development Officer.² The Union seeks that the unit be clarified to include this position. The Union asserts that many of the duties and responsibilities of the position were previously performed by employees who occupied bargaining unit positions. The Employer contends that the petition should be dismissed because it was untimely filed, and, in the alternative because the incumbents of these positions are managerial and/or closely related with management, and in any event, do not share a community of interest with the bargaining unit employees.

II. DECISION

For the reasons discussed below, it is concluded that the unit should not be clarified to include the Customer Relations Development Officer position since the unit clarification petition was untimely filed by the Union.³ Thus, the petition shall be dismissed.

III. BACKGROUND

The Employer is engaged in providing local and long-distance telephone services as well as data transmission services to consumers in Puerto Rico. The Petitioner-Union has represented a bargaining unit of professional and technical employees of the Employer since 1995.⁴ According to the instant petition, this unit consists of approximately 1540 employees. In 1999, the Commonwealth of Puerto Rico privatized the Employer's predecessor and sold it to GTE. There is currently a

² The other positions included in the petition were withdrawn by the Petitioner during the hearing.

³ In light of these findings, it is unnecessary to reach the merits of the parties' arguments as to whether the position is managerial in nature or that they do not share a community of interest with other bargaining unit employees.

⁴ I take administrative notice of the Decision which issued in Case 24-UC-226 which notes that in 1995, the Employer was part of the Puerto Rico Telephone Company (PRTC) a Commonwealth-owned telecommunications company. The unit was originally certified by the Puerto Rico Labor Relations Board in 1995. In 1996, after the enactment by the U.S. Congress of the Federal Telecommunications Act of 1996, 47 U.S.C. Sec. 151 et. seq., PRTC separated its wireless division from the company and organized it as a separate corporation. In 1999 both wireless and line telecommunications companies were privatized by the Commonwealth of Puerto Rico and sold to GTE. In June 30, 2000, GTE acquired Bell Atlantic Corporation and consolidated its wireless operations into one wireless company known as Verizon.

collective-bargaining agreement in effect between the Employer and the Union which the parties negotiated from around August 19, 2003, until on or about March 30, 2004. The effective dates of the collective bargaining agreement which resulted from these negotiations are January 1, 2004, to December 31, 2008.

IV. STATEMENT OF FACTS:

The Union first sought the inclusion of the Customer Relations Development Officer position in Case 24-UC-229, filed on June 20, 2005, but the petition therein was later withdrawn.⁵ On December 21, 2005, the Union filed the instant unit clarification petition seeking to include in the bargaining unit the Customer Relations Development Officer position. The Customer Relations Development Officer position was first posted by the Employer on October 3, 2001, for the sales department. The position was also posted by the Employer for the wholesale department on several occasions effective from October 15, 2001, to October 19, 2001; February 7, 2002 to February 13, 2002; June 25, 2003, to July 1, 2003; July 16, 2003 to July 23, 2003; and May 26, 2004 to June 2, 2004. Information about the vacancy announcements was distributed through an e-mail broadcast to all employees which included a description of the duties of the position.

As a result of the creation of this new position, by letter dated October 8, 2001, Annie Cruz, Union's President, requested, a copy of the job description for the Customer Relations Development Officer position to the Employer. There is a dispute as to when the Employer provided to the Union the job description. The

⁵ The petition filed on June 20, 2005, included 36 petitions, among them, the Customer Relations Development Officer position. At the Regional Office's request, the Union withdrew this petition on December 21, 2006, and on that same date filed several unit clarification petitions dividing the original petitioned-for classifications into seven different groups and/or petitions.

Employer alleges that it was sent to the Union on April 30, 2003. The Union alleges that it did not receive the job description from the Employer until October 22, 2004.

The Union and the Employer began bargaining negotiations for a new collective bargaining agreement on August 19, 2003, and the parties ultimately executed a collective bargaining agreement on April 15, 2004, effective from January 1, 2004 through December 31, 2008.

Notwithstanding the Union's allegation that the Employer had not provided the Customer Relations Development Officer job description to the Union, on August 26, 2003, during bargaining negotiations, the Union, sought to include the Customer Relations Development Officer position as part of the appropriate bargaining unit, in addition to other newly created positions.⁶ The Employer, however, rejected the Union's proposal in that respect. On September 18, 2003, the Union withdrew its proposal regarding the inclusion of the Customer Relations Development Officer position, and other requested positions, and decided to defer the issue of the inclusion of the classification for resolution after negotiations before the appropriate forums.⁷ The unit description remained unchanged from the previous collective bargaining agreement that had expired by its terms.⁸

After the execution of the collective bargaining agreement, by letter dated August 26, 2004, the Union requested to the Employer a number of job descriptions, including that of the Customer Relations Development Officer. By letter dated October 4, 2004, the Employer responded that the Customer Relations Development Officer's job description had been previously submitted to the Union on April 30,

⁶ See Joint Exhibit 6.

⁷ See Joint Exhibit 7.

⁸ Prior to the extant agreement, the previous agreement was in effect from October 23, 1999 to October 22, 2003.

2003. In a letter dated October 13, 2004, the Union reiterated its request for said job description, among others, alleging that the job description had not been received by the Union. The Employer sent the Customer Relations Development Officer job description, among two others, to the Union on October 22, 2004. By letter dated May 24, 2005, the Union requested information regarding vacancies and number of employees in twenty-five positions, including the Customer Relations Development Officer position. At no time, after the execution of the collective bargaining agreement, the Union made any effort to negotiate and/or change the composition of the agreed upon bargaining unit to include the Customer Relations Development Officer position.

V. DISCUSSION

The Board has traditionally refused to entertain a unit clarification petition filed mid-way during the term of an existing collective bargaining agreement where the bargaining unit is clearly defined and the party filing the petition has not reserved its right to file the petition during the course of bargaining. Wallace-Murray Corp., 192 NLRB 1090 (1971). Notwithstanding this general rule, the Board recognizes a limited exception in cases where parties cannot agree on whether to include or exclude a disputed classification "but do not wish to press the issue at the expense of reaching an agreement." St. Francis Hospital, 282 NLRB 950, 951 (1987). In such a case, the Board will process a unit clarification petition filed "shortly after" the contract is executed so long as the party filing the petition did not abandon its position in exchange for bargaining concessions.

In this case, the Union reserved its right to pursue the matter of the inclusion of the Customer Relations Development Officer in the unit at the Board. The evidence does not show that the Union ever withdrew from this position or

renounced its reservation in exchange for any concession from the Employer. Thus, the only issue remaining, under the St. Francis “limited circumstances” exception is whether the petition here, filed 14 months after the contract was executed, was timely filed.⁹ I conclude that it was not timely filed.

In a recent Decision on Review and Order issued by the Board in Cases 25-UC-224, and 25-UC- 225, G/T/E and Hermandad Independiente de Empleados Telefonicos (the same parties in the instant case), the Board dismissed as untimely a unit clarification petition filed by the Union, where the Union knew of the position before the execution of the contract and waited 17 months after its execution to file the petition. In that case, where the Union failed to raise the issue during the contract negotiations, the Board held that even assuming that the issue had been raised, the petition was untimely filed.

In Sunoco, Inc., 347 NLRB No. 38 (June 16, 2006), during bargaining negotiations the employer initially proposed to exclude terminal operators from the bargaining unit, but withdrew the proposal so as to permit a contract agreement between the parties. When the employer withdrew its proposal it expressed its intent to file a unit clarification petition as to the position. The contract was ratified by the Union membership in May 2004, whereupon the employer retroactively implemented wage increases back to March 2004. The employer ultimately filed a unit clarification petition in January 2005, eight (8) months after the ratification of the contract, which was considered timely filed by the Board. The Board there noted that after the ratification of the petition, the employer, in September 2004, again

⁹ For purposes of analyzing the timeliness of the petition in this case, the date of the initial unit clarification petition filed by the Union, June 20, 2005, whereupon they sought to include the Customer Relations Development Officer position in the unit, is being used. Inasmuch as said petition was withdrawn at the request of the Regional Office, I find that the same tolled the time period for the filing of a unit clarification petition.

expressed to the Union its intention to file a unit clarification petition unless the Union agreed to exclude the terminal operators from the unit. Thereafter, the parties engaged in negotiations with respect to the issue of separate units in October and again in early January 2005. Since the parties' negotiations were unsuccessful, the employer filed its unit clarification petition on January 19, 2005. The Board held that, under those circumstances, the employer had timely filed the unit clarification petition after the negotiations proved unsuccessful since the period for measuring the timeliness of the petition was tolled by the parties' decision to engage in further negotiations on this issue.

In this case, the Union was aware of the Customer Relations Development Officer position and sought information regarding the position and/or a job description prior to the start of bargaining negotiations. Subsequently, the Union proposed to include the position in the bargaining unit during the negotiations, and the Employer rejected the Union's proposal. In light of the Employer's refusal to include the position in the bargaining unit, the Union agreed to withdraw its proposal but reserved its right to seek its inclusion before the Board. Notwithstanding the Union's expressed intention during negotiations to take this issue before the Board, the Union did not seek to clarify the unit until it filed the clarification petition on June 20, 2005, 14 months after the collective bargaining agreement was signed. Unlike the Sunoco case, there is no evidence in the record that after the signing of the contract, the Union made efforts to engage in further negotiations to change the composition of the agreed-upon bargaining unit to include the Customer Relations Development Officer. Although in October 2004, the Union made an information request as to the job description for the Customer Relations Development Officer position, among others positions, and later, on May 2005, requested the number of

incumbents in the position, these actions by the Union cannot be construed as an effort to raise the issue about the unit composition again and cannot be considered sufficient to toll the time for measuring the timeliness of the petition. Thus, during the time period between the signing of contract and the filing of the clarification petition, the Union did not engage in any action that would be construed as an event that would toll the time period use to measure the timeliness of the petition in this case.

Accordingly, I find that, in the context of this case, the gap between the signing of the contract and the filing of the clarification petition went beyond the Board's "shortly after" requirement and rendered the petition untimely.

VI. ORDER

Based upon the above findings of fact and conclusions of law, IT IS HEREBY ORDERED that the Employer's motion to dismiss the petition as untimely is granted, and the Petition filed herein is dismissed.

VII. 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 5:00 p.m., EST on **August 27, 2007**. The request may not be filed by facsimile.

VIII. NOTICE OF ELECTRONIC FILING

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with the Board in Washington, D.C. If a party wishes to file one of these documents electronically, please refer to the enclosed

Attachment supplied with this Decision and Direction of Election for guidance in doing so. The guidance can also be found under “E-Gov” on the National Labor Relations Board web center: www.nlr.gov.

Dated at San Juan, Puerto Rico, this 13th day of August 2007.

/s/

Efrain Rivera-Vega
Acting Regional Director
National Labor Relations Board
Region 24
La Torre de Plaza, Suite 1002
525 F.D. Roosevelt Avenue
San Juan, Puerto Rico 00918-1002
Website: www.nlr.gov