

**UNITED STATES GOVERNMENT  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 29**

**CSC HOLDINGS, LLC and CABLEVISION  
SYSTEMS NEW YORK CITY CORP., a**  
Single Employer,

Respondent

Case Nos.

02-CA-085811

and

02-CA-090823

29-CA-097013

29-CA-097557

**COMMUNICATION WORKERS OF  
AMERICA, AFL-CIO,**

29-CA-100175

29-CA-110974

Charging Party.

**COUNSEL FOR THE GENERAL COUNSEL’S OPPOSITION TO RESPONDENT’S  
MOTION TO SUBMIT A POST-TRIAL EXHIBIT**

Counsel for the General Counsel submits this Response in Opposition to the Respondent’s April 24, 2015 Motion to Submit [a] Post-Trial Exhibit. Respondent’s Motion seeks to introduce evidence into the record that is not relevant to the instant matter and is impermissible under Board law and the Board’s Rules and Regulations. Consequently, the Board should deny Respondent’s Motion should be denied in its entirety.

**A. Respondent’s “Exhibit A” is not Relevant to the Instant Matter**

In its April 24, 2015 Motion, Respondent seeks to introduce into the record a copy of a February 13, 2015 collective bargaining agreement it entered into with the Charging Party. (Respondent “Exhibit A”). Respondent asserts that Counsel for the General Counsel’s request for review of the Administrative Law Judge’s (ALJ) determination regarding the surface bargaining allegation of the Amended Consolidated Complaint in this matter makes Respondent’s Exhibit A relevant to the extent that the agreement shows that “Cablevision bargained in good faith”[*Respondent’s Brief in support of the Motion*, at 4]. However, actions taken by the

Respondent nearly two years after the alleged unfair labor practices are not relevant to the instant matter. Bargaining positions taken by the Respondent during the fourteen (14) month period after the close of the hearing record, from December 2013 to February 2015, were not part of the trial record and cannot be considered relevant to Respondent's unlawful conduct at the bargaining table in 2012 and 2013.

The Amended Consolidated Complaint alleges that Respondent's bargaining positions from approximately July 2012, continuing to the last day of the hearing in December 2013, were evidence of its surface bargaining. Counsel for the General Counsel raised no new issues or claims in its Exceptions extending beyond December 2013 which warrant a finding that the February 2015 collective bargaining agreement is relevant to determining whether any of the alleged 2012 and 2013 unfair labor practices occurred. The fact that the parties entered into a collective-bargaining agreement in February 2015 does not have any bearing on whether Respondent's bargaining positions in 2012 and 2013 were lawful. See *Rule 401, Fed. R. Evid.* (defining relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence").

Here, the contract that the Respondent seeks to introduce is self-serving, and is only offered to create a revisionist spin on bad faith proposals it extended at the bargaining table during a period of time where the Respondent's anti-union sentiments were widespread and well known. *Phelps Dodge Mining Co.*, 308 NLRB 985, n. 4 (1992) (Denying Motion to receive additional evidence where the Respondent offered affidavits which revised its own witness testimony and corrected its witnesses' omissions).<sup>1</sup> For this reason, the Board should deny

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<sup>1</sup> Respondent seeks to expand the definition of "newly discovered or not previously available" evidence defined by Section 102.48(b) of the Board's Rules and Regulations. Under Respondent's reading of the rule, evidence which

Respondent's request and exclude from the record the contract executed fourteen (14) months after the close of the hearing.

**B. Admission of the proffered document would deny both the Charging Party and the General Counsel due process**

The contract Respondent seeks to introduce was not available at the time of the hearing. Likewise, no testimony was presented at the hearing regarding the context, in which this agreement was reached, including the bargaining positions taken by the respective parties at the bargaining table between December 5, 2013 and February 9, 2015. Consequently, the record presents no evidence concerning how the collective bargaining agreement was reached or the concessions which were required by the Charging Party to obtain the agreement – an agreement reached more than three years after the Charging Party was certified as the employees' collective-bargaining representative. Neither the General Counsel nor the Charging Party were afforded an opportunity to present or cross-examine witnesses on the events which occurred at bargaining between December 5, 2013 and February 9, 2015. Further, the document Respondent seeks to introduce has not been authenticated. Consequently, the events leading up to the collective-bargaining agreement the Respondent seeks to introduce were not fully litigated at hearing and it is inappropriate to consider the document at this time. *Washington Hospital Center*, 270 NLRB 396, n. 1 (1984) (documents not offered or authenticated at hearing may not appropriately be considered post hearing).

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did not exist at the time of the violation or at the time hearing can be considered as a defense to unlawful action. In this way, Respondent can take actions or create evidence after the fact to suggest that it did not commit an unfair labor practice. See Generally, *Washington Street Foundry*, 268 NLRB 338, n. 1 (1983); *Together We Stand Women's Guild*, 256 NLRB 393, n.2 (1981); *Farmers Grain Elevator*, 226 NLRB 564, n.2 (1976)(denying a motion to reopen the record absent evidence that was newly discovered or previously unavailable); *Wisconsin Rubber Products Co., Inc.*, 160 NLRB 166, 167 n. 1(1966)(denying the addition of post-trial evidence that was not newly discovered and previously unavailable).

**C. Conclusion**

Accordingly, Counsel for the General Counsel opposes the admission of Respondent's "Exhibit A" as a post-hearing exhibit. Counsel for the General Counsel respectfully requests that the Board deny Respondent's Motion to submit this post hearing exhibit and affirm the unfair labor practices found in the December 4, 2014 Recommended Decision and Order of Administrative Law Judge Steven Fish, and modify the Recommended Decision and Order as set forth in the General Counsel's Exceptions and Supporting Brief.

Dated: April 30, 2015  
Brooklyn, NY

Respectfully submitted,

*/s/ RyAnn M. Hooper*  
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