UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
WASHINGTON D.C.

MICHIGAN BELL TELEPHONE COMPANY

Respondent

and **Case: 07-CA-150005**

LOCAL 4034, COMMUNICATIONS WORKERS OF AMERICA (CWA), AFL-CIO

Charging Party

GENEERAL COUNSEL'S BRIEF IN SUPPORT OF EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION

I. Statement of the Case[1]

On April 13, 2015, Local 4034 of the Communications Workers of America (hereinafter "the Charging Party" or "the Union") filed the instant charge alleging that Michigan Bell Telephone Company (Respondent) failed and refused to provide information pursuant to the Union's January 12, 2015 request for relevant information in violation of its duty to bargain in good faith within the meaning of Section 8(a)(5) of the Act. (ALJD at 1, GC1(a), GC1(c)) After an investigation, the Regional Director for Region Seven issued a Complaint and Notice of Hearing on July 28, 2015, alleging that the Respondent's failure to provide the information violated 8(a)(5). (GC1(e)) An Amended Complaint and Notice of Hearing, which included an allegation that the Respondent had unlawfully delayed in responding to the Union's information request issued on September 29, 2015. (ALJD at 1, GC1(p)) Pursuant to the issuance of the

[1] All references to the Administrative Law Judge's Decision will be cited ALJD at Page(line). References to the transcript are cited as Tr.(Page), exhibits submitted by the Counsel for the General Counsel as (GCX) and Respondent Exhibits as RX.

Amended Complaint, a hearing was held by Administrative Law Judge Arthur Amchan (ALJ) on October 6, 2015. ALJ Amchan's Decision (ALJD) issued on December 3, 2015.[2]

II. Facts

A. Undisputed Facts

The Respondent and the Charging Party have a long-standing bargaining relationship that has resulted in successive collective bargaining agreements throughout the years, the most recent of which were effective from 2012 to 2015 and 2015 to 2018. (ALJD at 2(6), GC 2, GC 3) The successive collective bargaining agreements contain no-strike clauses that prohibit the Union from engaging in strikes or unauthorized employee-initiated work stoppages. (ALJD at 2(13), GC 2, GC3)

On January 4, the Respondent, by its Area Manager Mike Ten Harmsel ("Ten Harmsel") met with the employees in the Grand Rapids facility to announce that they would be required to continue working until they were officially released by their supervisors, even if that meant the accrual of overtime. (ALJD at 2(24)) The employees were unhappy about the announcement and brought it to the attention of Union officials the following day at a general union membership meeting. (ALJD at 2(31)) At that meeting, some employees suggested engaging in a concerted refusal to work overtime, also known as a "family night" to protest the policy. (ALJD at 2(34) The employees had engaged in similar family nights in the past. (ALJD at 2(38-41)

On Saturday, January 10, supervisor Andrew Maki received information from a unit employee that the employees would be engaging in a "family night" that day. Maki reported the information to his supervisor, Area Manager Ten Harmsel. (ALJD at 2(45))

Ten Harmsel and the other supervisors then formulated a plan to confront and interrogate all of the employees who returned to the garage at the end of their shifts without prior clearance from a supervisor. (Tr. 200) At the end of the shift on January 10, supervisors of the Grand Rapids garage confronted and interrogated 19 employees who returned to the garage and asked them a series of questions, including why they were returning and whether they were engaging in concerted activity. (ALJD at 3(11 -16))

On that same date, Union representative Brian Hooker ("Hooker") learned of the possibility of a family night. On January 12 Hooker contacted Maki by phone and asked him to

[2] All dates 2015 unless otherwise noted.

identify the person who told Maki about the "family night" on the previous Saturday. Hooker specifically asked Maki if the individual sought confidentiality and Maki admitted that the employee did not seek such protection. Despite Hooker's request for the identity of the individual, Maki declined to provide the name of the individual. (ALJD at 3 (19-26)) Hooker followed up with an email to both Maki and Ten Harmsel on the same day, requesting the Respondent to provide him with the name of the individual who reported the "family night," a summary of the information provided by the individual including how and when it was provided and a list of managers to whom the information was provided.[3] (ALJD at 3(31) to 4(25)) The Respondent did not respond to that request. (ALJD at 4(40))

During the third week in February, the Respondent disciplined five of the nineteen employees who refused to work overtime on January 10. (ALJD at 4(39)) The Union made an additional information request on February 20, which included, *inter alia*, a second request for the information requested on January 12. On March 3, Ten Harmsel finally responded, refusing to provide the information that was originally requested on January 12 and again on February 20 based on its belief that the information was not relevant. (ALJD at 4(27-35))

The Union requested the employee informant information again on March 4 and on several later dates, asserting that the information was necessary to the union's duties in investigating and processing grievances. (ALJD at 5(1)) Each time the Respondent refused to provide any portion of the information. (ALJD at 4(45)

B. The ALJ Erred in Failing to make Factual Findings or Consider Crucial Record Evidence (Exceptions 1 -11)

While the ALJ properly determined that the Union represented the employees in the Grand Rapids facility, he failed to take into consideration not only the contentious history between the Respondent and the Union during the preceding year regarding overtime and work stoppages, but also how the relationships between the parties at the higher levels impacted the events at issue.

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[3] The original request sought the following information: 1) the name of the employee who informed [you] that a job action was to take place on Saturday, 1/10[15]; 2) .in writing, the specific description of the information you received; 3). .in writing a list of the people to whom you disseminated the information, including date, time and method of notification. While subsequent requests varied somewhat in phrasing, the information requested was substantially similar or identical. See, GC1(p), paragraphs 8(b) and (c).

The ALJ made no finding regarding the structure of the Union, but the evidence shows that the Communications Workers of America International Union ("International") is the actual bargaining representative for a nation-wide unit of the Respondent's employees. (GC 2, GC3, Tr. 26) Within that nation-wide unit, the International has designated Districts to negotiate collective bargaining agreements on behalf of employees in certain geographic areas. The employees in Grand Rapids are part of a five-state unit that is represented by the International via District 4. ("District")[4] (Tr. 26-27) While District 4 is the bargaining representative, it delegates certain matters to various Locals, including the Union. The Union represents approximately 600 employees in the State of Michigan, including the employees in Grand Rapids. (Tr.26)

The relationship between the Respondent and the Union at its various levels is relevant to the facts particularly given the long-standing dispute regarding overtime. (Tr. 28) The record evidence shows that due to simmering employee discontent regarding the assignment of overtime to employees with no advance notice, the Respondent and the Union had attempted negotiations to allay some of the employee frustrations throughout the term of the prior collective bargaining agreement. (Tr. 28-29) Because of the failure of the parties to reach a satisfactory agreement, the employees engaged in a massive, unauthorized, district-wide refusal to work overtime on September 19, 2014. (Tr. 28, R1) Four hundred employees throughout the District participated in the work stoppage. (Tr. 28, R1)

Given the significant impact on the Respondent, it and the District engaged in long and arduous negotiations to determine what liability, if any, the District or any of its locals had and what level of discipline if any should be issued to the employees who participated in that work stoppage. (R1, Tr. 28-29) The negotiations regarding the September 19, 2014 event stretched into January 2015 and were ongoing when the incident on January 10 took place. (Tr. 33) The settlement agreement that was reached by the District and the Respondent on January 12 provided for the suspension or discipline of union officials and all four hundred of the participating employees, including fifty from the Grand Rapids facility. (Tr. 28, R1) Despite uncontested evidence on the record, the ALJ failed to make any findings on the previous incidents and the relation of those negotiations to the present circumstances or even consider such facts when making his decision.

[4] District 4 covers the states of Illinois, Indiana, Michigan, Ohio and Wisconsin.

Furthermore, the ALJ failed to properly consider record evidence regarding the facts of the events on January 10. The uncontested evidence established that Union Representative Hooker only learned of the possible "family night" from a representative at the District who indicated that any job action could potentially negatively affect the District level negotiations regarding September 19, 2014. (Tr. 33) He then asked Hooker to investigate the matter. (Tr. 32) Because of the potentially devastating impact on the District's negotiations, Hooker immediately began to investigate to determine whether there was any liability on behalf of the Union and whether there had, in fact, been any unauthorized job action. (Tr. 33) In doing so, he spoke to stewards, employees and managers at several facilities and determined that no such work stoppage was planned. (R4) Because Hooker's investigation revealed no plan for a work stoppage, he considered the matter to be settled. Only after the Respondent interrogated the returning employees and informed the Union that it did so based on the statement of an individual employee did the Union request the name of the individual and a summary of that individual's statement. (Tr. 35-36) The ALJ failed to consider these facts when assessing the relevance of the information as it related to the Union's duties under the collective bargaining agreement and its duty to protect its members.

While the ALJ properly found that 19 employees were interrogated when they returned to the garage at the end of their shifts on January 10, he failed to note that any employee who resisted the questioning was then sent for additional interrogation by Area Manager Ten Harmsel in his office. (Tr. 177-178) The Union's role in protecting its employees from such interrogation and investigating the events that led to such an interrogation certainly have a bearing on whether or not the union's January 12 information request was relevant under the circumstances, and the ALJ erred in not considering such evidence.

Furthermore, while the ALJ mentioned that the union made an additional information request on February 20, he failed to note that the information request was attached to a grievance. (GC7) The Union filed the grievance under Article 5.02 of the collective bargaining agreement, which provided that the Union and the Respondent are required work together in the event of an employee-initiated unauthorized work stoppage to "avoid injurious effect." The Union believed that the Respondent's failure to provide it with information or otherwise keep it apprised of the events of January 10 and seek the Union's assistance resulted in a violation of the parties' collective bargaining agreement. (Tr. 50, 86-88, 112, 127, 132-133, R5)

The ALJ failed to make several factual findings that were crucial in making a thorough and accurate ruling on the allegations in the Complaint. The ALJ's failure to to consider such necessary evidence was an error and as such, Exceptions 1-11 should be granted.

III. Argument

A. The ALJ Erred By Failing to Make Findings of Fact or Conclusions of Law Regarding the Respondent's Unreasonable Delay in Responding to the Union's January 12, 2015 Information Request (Exceptions 12 and 18)

In his decision, the ALJ failed to make findings of fact or conclusions of law regarding the allegation that the Respondent unlawfully and unreasonably delayed in responding to the Union's January 12 information request. The allegation was specifically alleged in the General Counsel's Complaint, evidence to support the allegation was presented at the hearing and the issue was argued by Counsel for the General Counsel in the post-hearing brief to the ALJ. (GC1(p)(11))

Included within the statutory duty to provide relevant requested information to the Union is the duty to do so in a timely manner. ***Woodland Clinic***, 331 NLRB 735, 736 (2000)("An unreasonable delay in furnishing information is as much of a violation of Section 8(a)(5)of the Act as a refusal to furnish the information at all.") Furthermore, even if the Respondent has a legitimate defense, or if the information is ultimately determined to be irrelevant, the Respondent has a statutory duty to *respond in some way* in a timely manner. (Emphasis added) ***IronTiger Logistics, Inc.***, 359 NLRB No. 13 (2012) reaffirmed and incorporated by reference 362 NLRB No. 45 (2015). A response of some kind is mandatory. *Id.* slip op at 2, citing. ***Columbia University***, 298 NLRB 941, 945 (1990).

The undisputed record evidence shows that the Union submitted a written information request to Respondent supervisors Andrew Maki and Mike Ten Harmsel on January 12 requesting not only the identity of the individual who informed them that the employees were engaging in a "family night," but also a summary of the information provided and a list of supervisors to whom the information was disseminated. (ALJD at 3(19)). The ALJ properly determined that the information was presumptively relevant, as it related directly to the working conditions of unit employees. (ALJD at 7) The record evidence shows that the Union never received any response to that January request from any representative of the Respondent. (Tr. 39, GC4, GC8) Only after a second request for the information was made on February 20 did the

Respondent respond by denying the Union's request as irrelevant on March 3 – seven weeks after the original request. (GC 8)

The Respondent's seven week delay in responding to the Union's request is clearly unreasonable under the circumstances, particularly given that such a response could have consisted of a simple reply to the Union's email. See, ***Woodland Clinic***, supra (seven week delay without excuse unlawful), ***United States Postal Service***, 308 NLRB 1547 (1992) (seven week delay unreasonable and unlawful.)

Section 102.45(a) of the Board's Rules and Regulations mandates that the ALJ make conclusions on all material issues of fact or law on the record and that he make recommendations on what disposition of the allegations in the case should be made. The ALJ failed to make any factual findings or legal conclusions regarding the Respondent's unreasonable delay in responding to the Union's information request, as set forth in paragraph 11 of the Amended Complaint. (GC1(p)) Because the evidence clearly supports a finding that the Respondent's seven week delay in responding was unreasonable, the Board should grant Exceptions 12 and 18 and find that the Respondent violated 8(a)(5) by its unreasonable delay in responding to the Union's January 12 information request.

B. The Information Requested by the Union Is Relevant to Its Duties as the Bargaining Representative of the Employees (Exceptions 13-18)

1. The ALJ Erred by Failing to Assess the Relevance of the Information at the Time it was Requested (Exception 13)

The ALJ failed to assess the relevance of the information request at the time it was made on January 12. The Board has determined that the relevance of requested information must be determined by the "situation which existed at the time the request was made." ***Mary Thompson Hospital,*** 296 NLRB 1245, 1250 (1989). "Otherwise, important rights under the Act would be lost simply by the passage of time and the course of litigation." ***Id., ATC/Vancom of Nevada Limited Partnership,*** 326 NLRB 1342 (1998).

As stated *supra*, the alleged work stoppage took place on January 10, during a crucial time when the District was negotiating over the effects of the September 19, 2014 incident, which involved four hundred employees, including fifty within its jurisdiction. Furthermore, Hooker knew based on the previous union meeting that employees continued to be angry about the overtime situation and wanted to take action. He also knew that in response to whatever

information provided by the mystery individual, the Respondent interrogated nineteen members with questions regarding their protected concerted activities. It was incumbent on the union – at that moment – to look into the Respondent's assertions regarding the incidents, to investigate and verify the facts before making a determination regarding what, if any action it would take or what liability it had under Article 5 of the contract. The opportunity to review the information provided by the employee, which managers received the information and a chance to independently verify the Respondent's account is fundamental to the Union's duty as the bargaining representative of the unit employees. The employee in question is a "legitimate source[] from which further information can be sought relating to the possible grievance and with whom information obtained from other sources may be checked for corroboration or contradiction." ***The Blue Diamond Company,*** 295 NLRB 1007(1989).

2. *The ALJ Erred by Failing to Consider the Relevance of the Information as it Related to Article 5 of the Collective Bargaining Agreement and the February 20 and March 25 Grievances (Exceptions 14 and 15)*

The collective bargaining agreement creates an obligation on the part of the Union to avoid work stoppages, both those that are authorized or encouraged by the Union as well as those work stoppages that are undertaken by the employees without the authorization of the Union. That obligation had been challenged in the preceding months, particularly in light of the events of September 19, 2014. The Union had been forced to agree to the issuance of discipline for its members and officials who violated the clause, as outlined in the negotiated settlement agreement of January 12.

Given the Union's previous inability to control employees from engaging in work stoppages, its attempt to investigate and police its communications with its membership was paramount. If, as reported by the Respondent, employees continued to discuss or plan work stoppages in the face of Union admonitions to the contrary, or if the employees were somehow misconstruing the Union's demands that they allow negotiations to solve the overtime issue, the Union and its members could suffer repercussions. When the possibility of such unauthorized actions seemed to materialize on January 10, the Union had an immediate and real need to investigate the matter and mitigate any damage that could occur to it as well as its members.

Furthermore, the language of the collective bargaining agreement provides that both parties have an obligation to work together in the face of unauthorized work stoppages to avoid

"injurious effect." (GC2, GC3) The Union believes this language applies not only to possible injurious effect to the Respondent's business, but also any injurious effect on unit members and on the union itself. As such, the Respondent's failure to include the Union or seek its cooperation to mitigate any harm that resulted from January 10 was, according to the Union, a violation of Article 5 of the contract. Based on that theory, the Union filed a grievance on February 20.

Clearly the information was useful to the Union's investigation of the events on January 10 and whether the Respondent complied with its duties to work with the Union to avoid unauthorized work stoppages under Article 5 of the collective bargaining agreement. As such, the information was clearly relevant to the investigation and, if necessary, further processing of the February 20 grievance.

During that same week, the Respondent issued discipline against the five employees who, after being interrogated twice by the Respondent regarding their protected concerted activities on January 10, refused to work overtime. The Union had a concern that the events of that day were orchestrated by the Respondent in order to entrap the Union and members who supported engaging in concerted activities to protest certain policies. (Tr. 132) Clearly it needed to investigate the events of that day –including speaking to the employee informant – to determine whether its theory had any merit. Since the Respondent failed to respond to its initial request, the Union decided to file grievances on behalf of those five employees on March 25.

The ALJ admitted that the employees would not have been confronted on January 10 but for the information that was provided by the individual in question to the Respondent. (ALJD at 8) He erred by failing to acknowledge that the information that was provided by the informant to the Respondent directly related to the discipline that was issued and thus is of "probable" or "potential" relevance to the Union in processing the March 25 grievances. ***Transport of New Jersey,*** 233 NLRB 694 (1977). While the ALJ may not have been persuaded that the identity of the informant was dispositive to the resolution of the grievances, under Board precedent the information need only have "some bearing" on the issue for which it is sought. ***Pennsylvania Power & Light Co.,*** 301 NLRB 1104, 1105 (1991). Clearly the information requested met the

liberal, "discovery-type standard" that has been repeatedly reaffirmed by the Board. ***Southern California Gas Company,*** 346 NLRB (2006)[5]

Similarly, the Union has a right to investigate and process both the February 20 and the March 25 grievances even if the Respondent does not believe that those grievances have merit. It is not for the Respondent, nor the Board, to pass on the merits of the claim. ***Alcan Rolled Products – Ravenswood LLC,*** 358 NLRB No. 11 (2012). The Board must merely determine if there is a possibility that the information is "potentially relevant" will be of "some use" to the union in carrying out its duties and responsibilities. ***W-L Moulding Co.***, 272 NLRB 1239, 1240 (1984)(internal citations omitted.) The Board has repeatedly found that information that relates to the investigation and processing of grievances – irrespective of their ultimate merit - is presumptively relevant and must be provided. See, ***LaGuardia Hospital,*** 260 NLRB 1455, 1461 (1982), ***Grand Rapids Press***, 331 NLRB 296, 299 (2000). As such, Exceptions 14 and 15 must be granted.

3. *The ALJ Erred in Concluding that the Respondent Rebutted the Presumption of Relevance (Exception 16 and 18)*

The ALJ correctly determined that the requested information was presumptively relevant, as it related directly to bargaining unit employees. (ALJD at 7). As such, no further showing of relevance needs to be demonstrated by the Union. The Respondent must provide presumptively relevant information in the absence of a "legitimate affirmative defense." ***Alcan Rolled Products – Ravenswood LLC***, supra slip op at 7 (2012).

The Respondent raised one affirmative defense that would excuse its failure to provide relevant information – confidentiality. (GC1(r)) The ALJ properly rejected that defense. (ALJD at 6(44)) There was no argument or record evidence to show that the information request was unduly burdensome, overly broad or privileged in any way. As there was no other defense proffered, the ALJ erred in finding that the Respondent rebutted the presumption of relevancy. See, ***Metta Electric,*** 349 NLRB 1088 (2007).

Even assuming arguendo that the presumption or relevance had somehow been rebutted, the Board has long held that the burden on the Union to establish relevance for requested information is "not exceptionally heavy." ***Leland Stanford Junior University***, 262 NLRB 136,

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[5] See also, ***Asarco, Inc.*** 316 NLRB 616, 643 (1995)(". .the Union is not required to demonstrate that the information sought is accurate, nonhearsay or even ultimately reliable.")

139 (1982). The union is entitled to information that relates to a) monitoring compliance and effectively policing the collective-bargaining agreement (presumably including its own conduct and the conduct of its members), b) enforcing provisions of a collective bargaining agreement and c) processing grievances. ***Public Service Company of New Mexico***, 360 NLRB No. 45 (2014), slip op. at 45, citing ***American Signature Inc.*** **334 NLRB 880, 885 (2001).** Clearly the identity of this individual employee and the information he provided has "some bearing" on the underlying issues, both as they related to the Union's contractual obligations and on the unit employees, and will "in some way, aid the arbitral process." ***Pennsylvania Power & Light Co.***, supra at 1105.

In addition to erring in finding that the Respondent rebutted the presumptive relevance of the requested information, the ALJ failed to properly consider extant Board precedent. While the ALJ cited ***Alcan Rolled Products – Ravenswood Products LLC***, supra, he failed to apply the reasoning of that case to the current record evidence. In that case, the Board determined that the names of employee witnesses were presumptively relevant. The Employer argued that it rebutted the presumption of relevance based on the fact that it did not and could not rely on the statements of the employee witnesses as the basis for the disciplinary action at issue. The Board found that such an assertion was "inadequate" and did not rebut the presumption of relevancy. ***Id.*** at 10.

The Board indicated that even if the witnesses failed to reveal any actionable facts, the opportunity to interview the witnesses could influence the Union's position on whether to proceed with the grievance. Whether the information provided by the witnesses was relevant to the grievance specifically, the general safety of the employees in the plant, or for "the purpose of acting generally to represent the employees," it could be "of use" to the Union and thus was required to be provided by the Employer. ***Id.*** at 11.

Similarly, the name of the witness and the opportunity for the Union to interview the person will be "of use" to the Union's representational duties in the current case – not only in finding out what happened on January 10, but where the individual may have heard the rumor, how it was disseminated, and whether there were any further discussions that could have had any impact on the course of events that led to the discipline.

The ALJ also failed to consider or analyze the record evidence under the Board's decision in ***Metropolitan Edison Co.,*** 330 NLRB 107 (1999). In that case, the issue was whether

the Union was entitled to the names of employee witnesses/informants. The Board found the identity of the informants was relevant and must be provided, even though the Union already knew what the informants said and "what the investigation triggered by those statements revealed. " The Board continued that the Union may have known what the information was, " But there remains a question about why [the employees] said anything. Were they acting pursuant to a genuine concern (whether theirs or Respondent's). .or, were they on the lookout for any incident that might give the Respondent cause to rid itself of. " union supporters? ***Id.*** at 108.[6]

While the facts in ***Metropolitan Edison Co.*** are somewhat different from the current case, the principle is the same: the Union has the need and the right to conduct its own investigation into matters affecting unit employees, particularly if those matters result in discipline of unit employees. The Union may need to know the motivations of the informant, the circumstances under which the information was provided and whether the informant was coerced or cajoled by the Respondent.[7]

Lastly, the ALJ failed to consider ***Transport of New Jersey***, supra, where the Board found that the identities of neutral third party witnesses to an accident were relevant even though they were not the basis for the Employer's decision to terminate the employee in question. The Board found that the information provided by the witnesses, even if they did not serve as the basis of the disciplinary action, would be of "probable" and "potential" relevance to the Union in carrying out its duties as the employees statutory representative. ***Id.*** at 694-695.

In failing to consider such precedent, the ALJ erred by finding that the Respondent had rebutted the presumption of reliance of the requested information. The Respondent presented no evidence to show that the name of the person and the testimony he provided was not relevant to

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[6] ***Metropolitan Edison Co.***, supra, dealt mainly with the adequacy of the Employer's confidentiality defense, which the ALJ properly rejected here. It is noteworthy, however, that even where the Board found that the Employer had a legitimate confidentiality defense, the Employer was required to provide the Union with a summary of the information that was provided by the witnesses. In the present context, the Union specifically requested such a summary, which was not provided, nor considered by the ALJ.

[7] The record shows that the Union did harbor a concern that the events of January 10 were fabricated or exaggerated by the Respondent in order to either retaliate against the employees or to entrap the Union into a violation of the contract:

Q (Mr. Sferra): So your position is they trumped up – the Company trumped up insubordination charges?
A.(Mr. Hooker): Yes.
Q (Mr. Sferra): And that the insubordination charges were a pretext for concerted activity?
A (Mr. Hooker): Yes. (Tr.132)

the Union's continued attempts to investigate the incidents on January 10 and determine whether any further action is warranted. As such, Exceptions 16 and 18 should be granted.

C. ALJ Erred by Relying on the Fact that the Union Could have Obtained the Information From Other Sources to Support his Conclusion that the Information was Not Relevant (Exception 17)

In his decision, the ALJ indicated that if the Union was concerned about its internal communications and what led to the events of January 10, that it could have asked other employees and simply informed its members to cease engaging in work stoppages. (ALJD at 8(32)) But the ALJ erred in finding that the Union's ability to communicate directly with employees somehow obviated the Respondent's obligation to provide the Union with relevant requested information. The Board has consistently found that, even when information is obtainable by the Union via its own records, an Employer remains obligated to provide relevant requested information in a convenient form. ***Illinois-American Water Co.***, 296 NLRB 715, 724 (1989), enfd. 933 F.2d 1368 (7th Cir. 1991). See also, ***The Finley Hospital***, 362 NLRB No. 102 (2015).

The evidence indicates that the Union spoke to its members about avoiding job actions at the January 5 meeting. The evidence also establishes that the Union spoke to numerous employees to discover what caused the events of January 10. The record evidence shows that despite its efforts on both fronts, the Respondent had evidence that the employees continued to contemplate such wildcat work stoppages as of January 10. The Union has a right to independently corroborate such reports to determine whether those discussions actually occurred and if so, what if any course of action the Union should take.

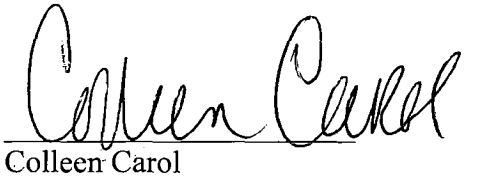
The ALJ erred both by indicating that the Union could have the necessary information it sought if it interviewed its members, which was clearly not the case, and by finding that such an alternate method of investigating the matter in any militated the Respondent's obligations under Section 8(a)(5). As such, Exception 17 should be granted.

IV. Conclusion

For the reasons set forth above, Counsel for the General Counsel respectfully urges the Board to: (1) find that the Administrative Law Judge failed to properly consider evidence and make the legal conclusion that the Respondent violated Section 8(a)(5) both by failing to unreasonably delaying its response and ultimately failing to provide the requested employee

informatn information that is relevant and necessary to the Union's performance as the bargaining representative, as alleged in Exceptions 1-18 and 2) issue the attached proposed remedial order and proposed Notice to Employees.

Respectfully submitted this day 13th of January 2016



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Proposed Order:

Respondent, Michigan Bell Telephone Company is hereby ordered to:

1. Cease and desist from failing to bargain in good faith with Local 4034 of the Communications Workers of America, AFL-CIO (the Union) by failing to timely respond to or provide the Union with relevant requested information, or in any like or related manner failing or refusing to bargain collectively and in good faith with the Charging Party as the servicing representative of the exclusive collective bargaining representative of the Unit.

2. Take the following affirmative action:

(a). Provide the Charging Party with the employee informant information it requested on January 12, February 20, March 5 and March 26, 2015;

(b). Post appropriate notices, and disseminate on the first day of notice posting as sought herein, a copy of the notice in electronic fashion on the same intranet site on which Respondent disseminates information to its employees.

Proposed Notice to Employees:

(To be printed and posted on official Board notice form)

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT fail or refuse to bargain in good faith with the Communication Workers of America International Union or its Local 4034 (the Union) as the exclusive collective-bargaining representative of our employees in the appropriate bargaining unit described in Article 1 and Appendix B of the Collective Bargaining Agreement effective from April 8, 2012 to April 11, 2015.

WE WILL NOT fail or refuse to respond to the Union's request for information, or refuse to provide the Union with information that is relevant and necessary to its role as your bargaining representative.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL provide the Union with the information it requested on January 12, 2015 and again on February 20, March 4 and March 26, 2015.

WE WILL, upon request, bargain in good faith with the Union as the servicing representative of the International Union, the exclusive collective-bargain representative of our unit employees as described above.

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Charging Party

Affidavit of Service

The undersigned affirms that on January 13, 2016, the Counsel for the General Counsel's Brief in Support of Exceptions to the Administrative Law Judge's Decision and was filed with the Executive Secretary of the Board through the Board's e-filing system and that copies were served on the following individuals by electronic mail to the addresses set forth below:

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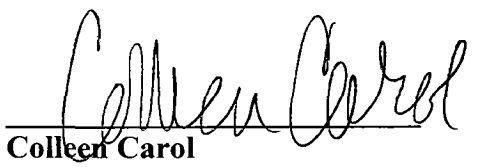

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