

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

CONSOLIDATED COMMUNICATIONS HOLDINGS, INC. d/b/a	§	CASES	16-CA-187792
CONSOLIDATED COMMUNICATIONS OF TEXAS COMPANY	§		16-CA-192050
	§		
Respondent,	§		
	§		
and	§		
	§		
COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO,	§		
	§		
Charging Party.	§		

**CHARGING PARTY’S RESPONSE IN OPPOSITION TO RESPONDENT’S MOTION
FOR RECONSIDERATION**

COMES NOW Charging Party Communications Workers of America, AFL-CIO (“CWA” or “Charging Party” or “the Union”) and files pursuant to Rule § 102.48 of the Rules and Regulations of the National Labor Relations Board (“the Board” or “NLRB”), 29 C.F.R. § 102.48, this Response in Opposition to the Motion for Reconsideration filed on September 21, 2018 by Respondent Consolidated Communications Holdings, Inc. d/b/a Consolidated Communications of Texas Company (“Consolidated” or “Respondent” or “the Company”), and would respectfully show the following:

Respondent’s motion should be denied because the August 27, 2018 Decision and Order (“the Decision”) in this case correctly applied the facts to the law to hold that discriminate Kin Thompson’s conduct on October 13, 2016 was protected, concerted activity under Section 7 of the National Labor Relations Act, 29 U.S.C. § 157. The record of this case establishes that Thompson on behalf of the Union requested its supporters stand at their respective cubicles on October 13, 2016 in a show of solidarity with the Union. (Transcript (“Tr.”) 30-31). Kristi Lindsey, a Union

supporter, testified that she was asked to engage in this demonstration of solidarity “*for even 30 seconds if that was all we could do, maybe between calls.*” (Tr. 66, lines (“Ins.” 12-14, emphasis added). Lindsey further testified that although she participated in the demonstration, but that when a call came in for her, it was “Business as usual, taking my calls and helping my customers like I was supposed to.” (Tr. 66, line (“In.”) 25-Tr. 67, ln. 1). Mary Schnee, a bargaining unit employee called as a witness by Respondent, testified that she was asked “as a show of support,” to “stand up at two o’clock.” (Tr. 103, lns. 8-9). No witness testified that they were told to stop working or slowdown during the demonstration.

As recognized by the Board in the Decision, Section 7 protects the right to engage in concerted activity in support of their union’s collective bargaining positions. *Consolidated Communications Holdings, Inc.*, 366 NLRB No. 172, slip op. 2 (2018) (citations omitted). The Board correctly held in the Decision that Thompson and the Union were engaged in lawful, protected concerted activity. Further, the Decision correctly recognized that the October 13th demonstration did not constitute an unlawful slowdown. Central to this holding of the Decision is the fact that there was no evidence of lost productivity or worktime. *Consolidated*, slip op. 3. This finding is supported by Lindsey’s testimony, *supra*, that employees resumed working when calls came in through the queue. It is also noteworthy that Respondent itself did not characterize the demonstration as a slowdown when it disciplined Thompson.

It should also be noted that the decision did not create a new test for unlawful work slowdowns, it simply applied Board precedent, in particular *DaimlerChrysler Corp.*, 344 NLRB 1324 (2005), to the facts of this case and concluded that the October 13th demonstration was not an unprotected slowdown. In *DaimlerChrysler*, the Board found an employee’s emails advocated for a work slowdown because the employee was lobbying his coworkers to engage in conduct that

“would confound the Respondent’s efforts to provide pool cars consistent with the parties’ agreement and would result in lost work time.” *DaimlerChrysler*, 344 NLRB at 1325. The Board further found the language used by the employee in *DaimlerChrysler* proved his intent to urge his coworkers to engage in a slowdown. *DaimlerChrysler* at 1326.

In this case, as found by the decision, there is no evidence that Thompson sought or advocated a work slowdown. The evidence established that Thompson only asked in a non-coercive manner that her coworkers to show support for the Union by standing at their workstations at 2 pm on October 13th. There is no evidence that Thompson made any statements suggesting employee’s slowdown there production. These facts distinguish this case from *DaimlerChrysler* and support the Decision’s conclusion that a slowdown did not occur. The absence of facts indicating that a slowdown occurred supports the Decision’s holding that there was no slowdown and Respondent therefore violated Sections 8(a)(1) and 8(a)(3) of the National Labor Relations Act, 29 U.S.C. § 158(a)(1), (a)(3), when it disciplined Thompson for her role in the October 13th demonstration.

In closing, Respondent cannot compensate for the absence of evidence to support its contention that a slowdown occurred or was intended on October 13th by claiming that the Decision created new law. This holding was reached by the application of existing law to the facts of the case. Respondent’s motion should be denied because the Decision, as argued above, does not give rise to the “extraordinary circumstances” and “material error” that are requisites sustaining a motion to reconsider under Rule 102.48(c)(1). Charging Party therefore respectfully asks the Board to deny the motion and reaffirm the August 27, 2018 Decision.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing document was served on Counsel for the General Counsel and Counsel for Respondent by electronic mail on this 5th day of October 2018:

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