

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

**CHARTER COMMUNICATIONS
(SUCCESSOR TO TIME WARNER CABLE OF NYC),**

Employer,

-and-

BRUCE CARBERRY,

Petitioner,

Case 02-RD-220036

-and-

**LOCAL UNION NO. 3, INTERNATIONAL
BROTHERHOOD OF ELECTRICAL WORKERS,**

Union.

EMPLOYER'S REPLY TO THE UNION'S OPPOSITION TO REQUEST FOR REVIEW

On May 21, 2019, Charter Communications, Inc. (hereinafter the "Employer") requested review, pursuant to Section 102.71(b) and (c) of the Rules and Regulations of the National Labor Relations Board, 29 C.F.R. s. 102.71(b) and (c), of the Regional Director's May 10, 2019 "... determination to hold the opening and counting of the above-referenced challenged ballots in abeyance, arising under Section 11730.7 of the [Board's] Casehandling Manual."

The Union, Local Union No. 3, International Brotherhood of Electrical Workers, responded on May 28, 2019 with what purported to be an opposition to the Request for Review although no provision of the Rules and Regulations of the National Labor Relations Board, 29 C.F.R. s. 102.1 *et seq.*, permits an opposition to a request for review made pursuant to Section 102.71 of the Board's Rules and Regulations.

Accordingly, the Employer objects to the submission of the Union's purported opposition as *ultra vires*, and requests that the Board strike it from the record.

Additionally, the Employer seeks to clarify one fact assertion made by the Union in its May 28, 2019 submission, which relates to the following statement made at page 2 of the Employer's May 21, 2019 Request for Review:

... [O]n May 10, 2019, the Regional Director reversed himself and confirmed in a letter to the parties his intention not to count those 332 ballots (hereinafter, the "May 10 letter") unless directed to do so by the Board.... [The Regional Director] also cites the Region's submission of a single unfair labor practice issue to the General Counsel's Division of Advice in Cases 02-CA-220539 and 223159 but simultaneously admits that the charge at issue there does not affect the eligibility of the 332 voters here.^{4/}

^{4/} The two charges were originally filed on May 17, 2018 and July 2, 2018, respectively; it was not until April 18, 2019, nearly a full year later, that the Region submitted to Advice the single issue of whether the economic strike by IBEW Local 3, the incumbent union, that began on March 28, 2017 was converted to an unfair labor practice strike from and after February 22, 2018. That allegation, regardless of its merit, cannot affect the voter eligibility of the cross-over, former strikers whose ballots should now be tallied as directed in the April 17, 2019 *Interim Report*.

In response to that portion of the Employer's Request for Review, the Union stated the following at page 1 of its May 28 submission: "... Moreover, Charter's request [for review] is moot due to the recent guidance provided by the Office of the General Counsel, Division of Advice regarding the concurrent unfair labor practice charges."

To clarify the record, here is what the Employer's legal counsel was told, in relevant part, via an e-mail from a Board agent in Region 2 on May 23, 2019¹ relating to what the Union describes, cryptically, as the "guidance provided by the Office of the

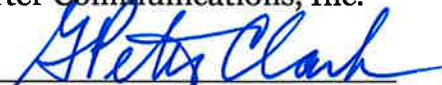
¹ We assume that a similar message was sent to counsel for the Union.

General Counsel, Division of Advice regarding the concurrent unfair labor practice charges”: “The Division of Advice has determined the [March 28, 2017] strike [by the Union] did not convert to an unfair labor practice strike and remains an economic strike....” (emphasis in original). The General Counsel’s determination, that the Union’s strike has remained an economic strike throughout, means that the remaining allegations of unfair labor practices cannot and do not affect the eligibility to vote of the cross-over strikers whose ballots the Regional Director determined should be opened and counted in his April 17, 2019 *Interim Report on Determinative Challenged Ballots and Order Directing Opening and Counting of Challenged Ballots*. The cross-over strikers were and remain eligible voters whose ballots should be opened and counted.

The Employer continues to request that the Board overrule the Regional Director’s May 10, 2019 determination to hold the opening and counting of the 332 ballots in the April 17 *Interim Report* in abeyance; and, it further requests that the Board affirm the Regional Director’s April 17 *Interim Report* ordering the “opening and counting of the ballots” of the 332 cross-over, former strikers, to be conducted, forthwith.

Dated: June 3, 2019 at New York, New York.

Respectfully submitted,
Kauff McGuire & Margolis LLP
Attorneys for the Employer,
Charter Communications, Inc.

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CERTIFICATION OF SERVICE BY ELECTRONIC MAIL

The undersigned, an attorney admitted to practice before the Courts of the State of New York, and legal counsel for the Employer herein, certifies under penalty of perjury of the laws of the United States, that, on June 3, 2019, he caused a true and correct copy of the foregoing EMPLOYER'S REPLY TO THE UNION'S OPPOSITION TO REQUEST FOR REVIEW to be served upon: Mr. John J. Walsh, Jr., Regional Director, National Labor Relations Board, Region 2, via electronic mail at Jack.Walsh@NLRB.gov; and Matthew J. Antonek, Esq., legal counsel for the Petitioner - Bruce Carberry, via electronic mail at MAntonek@outlook.com; and, Marty Glennon, Esq., legal counsel for the Union - IBEW Local 3, via electronic mail at MGlennon@abglaw.com; all pursuant to the e-filing rules of the National Labor Relations Board, 29 C.F.R. § 102.5(c), (f), and (h).

Dated: June 3, 2019.


G. Peter Clark