UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

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

**and**

**Case 02-RD-220036**

**BRUCE CARBERRY**
**Petitioner**

**and**

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

## SUPPLEMENTAL DECISION ON CHALLENGES AND OBJECTIONS

Upon a petition filed on May 10, 2018 in the above-captioned matter, and pursuant to a Decision and Direction of Election that issued on June 18, 2018, and a Notice and Direction of Election that issued on January 10, 2019,[1] an election by mail ballot was conducted in the following unit:

> All field operations, network operations, and warehouse technician employees employed by Charter Communications, Inc., the Employer, at is Bergen County, NJ, and Staten Island, Manhattan, Brooklyn, and Queens, NY facilities, including Tech 1's through Tech 5's, Crew Chiefs, Foremen and General Foremen; but excluding all other employees, guards and supervisors as defined in the National Labor Relations Act.

The ballots were mailed to the voters on January 25, 2019, and the count of ballots took place at the Regional office on February 25 and 26, 2019. On February 26, 2019, a Tally of Ballots was prepared and made available to the parties. The Tally shows that of approximately 2,437 eligible voters, 62 ballots were void and the remaining 1,601 ballots cast were challenged, a sufficient number to affect the election results.

The Union timely filed ten objections. Pursuant to Section 102.69 of the Board's Rules and Regulations, I directed an investigation into the challenged ballots and I considered the Union's objections and offer of proof, and I find as follows:

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[1] On November 16, 2018, I informed the parties that the petition was unblocked and processing of the petition resumed.

## I. BACKGROUND

The Union has represented the same bargaining unit, including at the Employer's predecessor, Time Warner Cable, since about 1967. On March 28, 2017, the Union commenced an economic strike, and remains on strike to date. Since the inception of the strike, the Employer has hired replacement employees. On May 10, 2018, the Petition in the instant matter was filed. A series of charges were subsequently filed by both the Union and the Employer. As summarized below, the Region found merit to certain allegations.

Regarding the charges in Case Nos. 02-CA-220539 and 02-CA-223159, the undersigned informed the parties[2] that the Region authorized, absent settlement, issuance of Complaint and Notice of Hearing alleging that the Employer unlawfully: 1) terminated the *Laidlaw* recall rights of seven striking employees;[3] 2) terminated the employment of those seven employees, upon their unconditional offers to return to work; and, 3) refused to reinstate eight striking employees to their former or substantially equivalent positions (including the seven terminated employees), upon their unconditional offers to return to work,[4] in violation of Sections 8(a)(1) and (3) of the Act. In addition, the Complaint, absent settlement, will allege the unlawful terminations of Mikhail Morse (terminated on 8/14/18) and Luis Bravo (terminated on 9/12/18). The Region concluded, however, that the evidence of dissemination of the alleged unlawful terminations and denial of *Laidlaw* rights was insufficient to find that the economic strike converted to an unfair labor practice strike. Accordingly, the Complaint will not allege that the strike was an unfair labor practice strike at any time.

The charge in Case No. 02-CA-237265 alleges that the Employer engaged in unlawful conduct during the critical period prior to the election that affected the results of the election. Those allegations mirror the Union's Objections 1 through 5, and as discussed below, if the Union does not obtain a majority of valid votes cast, I will direct a hearing before a Hearing Officer on those allegations in Objections 1 through 5 and hold the unfair labor practice charge in abeyance.[5]

On April 17, 2019, the undersigned issued an Interim Decision on Challenges directing that the challenges to the ballots cast by 332 strikers who returned to work before the January 3, 2019 payroll period for eligibility be overruled. I hereby order that these 332

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[2] The undersigned met with the parties on June 26, July 16 and July 18, 2019.

[3] The seven terminated employees are Kerry Baker, Curz Batiz, Mark Brown, John Caleca, Luis Chusan, Jonathan Matias, and Rodolfo Mejia.

[4] Lawrence O'Rourke was not terminated. Rather, he was allegedly reinstated to another unit classification at different location, a non-equivalent position.

[5] The undersigned also informed the parties of the disposition of other charges alleging conduct that occurred outside the critical period, not subjects of the objections, and thus are not relevant to the dispositions of the issues presented herein. Specifically, in Case No. 02-CA-219532, the Region authorized, absent settlement, issuance of Complaint and Notice of Hearing alleging that the Employer unlawfully refused to provide the Union with information relevant to processing a grievance concerning the Union's alleged violation of the "no strike" clause, and in Case No. 02-CB-216678, the Region authorized, absent settlement, issuance of a Complaint and Notice of Hearing alleging that the Union engaged in picket line misconduct by allegedly blocking ingress and egress to the Employer's facilities.

challenged ballots be opened and counted along with the remaining challenges overruled herein.

## II. THE REMAINING CHALLENGED BALLOTS

The Voter List, which the Employer provided on January 14, 2019, consisted of 2,132 names of employees included in the bargaining unit pursuant to the terms of the Decision and Direction of Election. On January 31, 2019, the Employer provided a list with an additional 301 names of employees, bringing the total number of names on the Voter Eligibility List to 2,433. Of the votes, 62 were void ballots and 1,601 were challenged ballots. The following charts reflect the remaining challenges made by the respective parties:

***Additional Challenges by the Union***

| Number of Ballots Challenged | Challenged Envelope No.[6] | Basis for Challenge |
|---|---|---|
| 601 | 1-25 | Replacement employees during ULP strike. |
| 26 | 24-25 | Ballots arrived in the Region late (after February 22, 2019, the date contained in the Notice of Election).* |
| 20 | Various[7] | Voter printed their name instead of signing their name.* |

*In addition to being challenged on the basis of being a temporary replacement employee during a ULP strike.

[6] Every challenged ballot was placed in a Challenged Ballot Envelope. Each such envelope contains on its face the name of each voter whose challenged ballot is contained within.

[7] 20 ballots were challenged by the Union on the basis that the voter printed their name instead of signing their name:

1. Abdelmontaser, Mohamed K.
2. Aguilera, Jose E.
3. Aguilera, Luis
4. Anderson, Ravindra
5. Balgobin, Dean
6. Barrett, Raymond A.
7. Batts, Veronica
8. Brows, Jevaughn A
9. Cummings, Clemrick C.
10. Dalberis, Kinsky
11. Diaz, Cesar
12. Emmanuel, Kervin B.
13. Fagon, Dewyane S.
14. Fall, Mohamed A.
15. Gonzalez, Richard S.
16. Green, Jamaal
17. Guthrie, Rhoan
18. Gittens, Osmorn
19. Johnson, Brady
20. Perez Aponte, Robert P.

The Union challenged the additional 601 ballots on the basis that they were temporary replacement employees hired during a strike that converted to an unfair labor practice strike in or around February 2018. The strike commenced on March 28, 2017, more than 12 months before the January 25, 2019 mail ballot election date. Although the Union asserts that the strike converted to an unfair labor practice strike, the General Counsel has final authority over the issuance and prosecution of complaints under Section 10. An initial finding that a strike was caused by unfair labor practices may be made only in unfair labor practice proceedings. *Times Square Stores Corporation*, 79 NLRB 361, 365 (1948). As noted above, the Complaint to issue in Case Nos. 02-CA-220539 and 02-CA-223159 will not allege that the strike was an unfair labor practice strike at any time. Thus, the strike at all material times must be considered an economic strike and the strikers who participated therein as economic strikers. Section 9(c)(3) of the Act provides:

> Employees engaged in an economic strike who are not entitled to reinstatement shall be eligible to vote under such regulations as the Board shall find are consistent with the purposes and provisions of this Act in any election conducted within twelve months after the commencement of the strike.

The Board has interpreted Section 9(c)(3)'s statutory language to hold that where an election is conducted more than a year from the commencement of an economic strike, only those replaced economic strikers who are actually reinstated by the eligibility date of the election are eligible to vote. *Wahl Clipper Corp.*, 195 NLRB 634, 636 (1972). In these circumstances, I find that the additional 601 voters in question are not temporary striker replacements but rather permanent employees, and I must therefore overrule the challenges made on this ground as to them.

The Union also challenged the ballots cast by 26 of these 601 voters on the additional ground that their mail ballots were received at the Regional Office after the return date. The official Notice of Election that accompanied the mail ballots to the voters and posted at the Employer's facilities provided:

> Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 02 office by close of business on Friday, February 22, 2019. All ballots will be commingled and counted at the Region 02 Office on Monday, February 25, 2019 at 10:00 a.m. In order to be valid and counted, the returned ballots must be received in the Region 02 Office prior to the counting of the ballots.

These 26 ballots were received by the Regional Office before the count of ballots. The Board has held that ballots received before the count should be counted, even if the ballots are received after the return date. *See Kerrville Bus Co.*, 257 NLRB 176 (1981); *Premiere Utility Services, LLC*, 363 NLRB No. 159 (2016). Accordingly, I overrule the challenges made on this ground.

The Union also challenged 20 of these 601 voters on the additional ground that the mail ballot envelope was not signed by the voter; instead, each voter printed their name on the ballot envelope. The official Notice of Election that accompanied the mail ballots to the voters and posted at the Employer's facilities contained the following instruction:

> Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void. (Underline in original)

Because of the absence of direct Board supervision over employees voting by mail, the Board has developed procedures to preserve the integrity of the mail ballot election process. These procedures include the above instruction that voters sign their names on the ballot envelope. Ballots that are returned with no signature or with a name printed, rather than signed, must be voided. *See Thompson Roofing, Inc.*, 291 NLRB 743 (1988). Accordingly, the Union's challenges to the 20 ballots containing a printed name rather than the required signature is sustained, and those ballots will be deemed void.

***Challenges by the Employer and the Petitioner***

| **Number of Ballots Challenged** | **Challenged Envelope No.** | **Basis for Challenge** |
|---|---|---|
| 666 | 26-45 | Strikers who were permanently replaced.[8] |
| 117 | 39-42 | Not employed on the payroll eligibility date.* |
| 15 | Various | Voter printed their name instead of signing their name.* |

[8] Of those 666 ballots challenged by the Employer and the Petitioner, 15 of them named below were also challenged by the Employer and the Petitioner on the basis that the voter printed their name instead of signing their name on the mail ballot return envelope:

1. Cooper, Michael A.
2. Marin, Jorge
3. Martinez, Julio C.
4. Mercedes, Vivaldi
5. Miranda, Raul E.
6. Moran, Nicholas O.
7. Morris, Dwayne A.
8. Moshref, Nawid
9. Ortiz, Hector
10. Ortiz, Oscar A.
11. Padilla, Juan C.
12. Rempala, Piotr
13. Rivera, George A.
14. Rivera, Michael A.
15. Singleton III, Willie

| | | |
|---|---|---|
| 7 | 43 | Ballots arrived in the Region late (after February 22, 2019, the date contained in the Notice of Election).* |

* In addition to being challenged on the basis that they were strikers who were permanently replaced. By letter dated March 5, 2019, the Employer requested permission to withdraw its challenges to the "late" arrival of ballots and to the adequacy of the signatures on mail ballot envelopes.

The Employer and the Petitioner challenged the ballots cast by these 666 voters on the basis that they are economic strikers who had been permanently replaced in an election held more than 12 months after the strike began. For the reasons mentioned above, the strike at all material times must be considered an economic strike and the strikers who participated therein as economic strikers. Where an election is conducted more than a year from the commencement of an economic strike, only those replaced economic strikers who are reinstated by the eligibility date of the election are eligible to vote. *Wahl Clipper Corp.*, *supra.* In these circumstances, since these strikers were not reinstated by the eligibility date, I find that the voters in question are not eligible to vote. Consequently, the Employer's challenges are sustained.

The Employer and the Petitioner also challenged 117 of those 666 ballots on the basis that those employees were not employed on the payroll eligibility date. The Employer argued that 301 voters identified on the Voter Eligibility List as numbers 2841-3142, correspond to former employees that were not employed on the payroll eligibility date, either because of retirement or some other form of separation from employment during the strike. The Union argued that some of the 301 voluntary resignations or constructive discharges were subjects of the unfair labor practice charges then under investigation. In response to the Union's assertion, on January 31, 2019, the Employer submitted a supplemental Voter List containing the addresses for these additional voters, to whom the Region mailed ballots. 117 of these resigned or terminated voters cast mail ballots. As noted above, none of the 117 separated employees are to be alleged in the Complaints as having been unlawfully terminated. It is well settled that, in the absence of unfair labor practices charges, such a discharge, constructive discharge, or other employment termination will be presumed to be for cause and lawful. *See Texas Meat Packers*, 130 NLRB 279 (1961). Since these 117 voters were not employed as of the January 3, 2019 payroll period for eligibility, I must sustain the Employer's challenge to their ballots on this ground as well.

With regard to the challenges to the ballots cast by 15 voters of those 666 ballots who printed their names rather than writing their signatures on the return ballot envelopes, to preserve the integrity of the mail ballot election process these ballots must be deemed void. See *Thompson Roofing, Inc.*, 291 NLRB 743 (1988). Accordingly, and notwithstanding the Employer's request for permission to withdraw these challenges, I must sustain the challenges and these 15 ballots will be counted as void.

Regarding the Petitioner's[9] challenges to these 7 ballots that arrived after the due date but before the count of mail ballots, the Board has held that ballots received before the count should be counted, even if the ballots were received after the return date. *See Kerrville Bus Co.*, 257 NLRB 176 (1981); *Premiere Utility Services, LLC*, 363 NLRB No. 159 (2016). Accordingly, the challenges on this separate ground must be overruled. As noted above however, the challenges to these 7 ballots are sustained as they are economic strikers not reinstated by the eligibility date and therefore ineligible.

## III. THE OBJECTIONS

The Petitioner's ten objections allege conduct that affected the results of the election. A copy of the Petitioner's objections is appended as Attachment A.

Section 102.69(a) of the Board's Rules and Regulations provides that, when filing objections to an election, a party must also file a written offer of proof in the form described in Section 102.66(c), which specifies that offers of proof shall identify each witness and summarize the testimony of that witness. If the Regional Director determines that the evidence described in an offer of proof is insufficient to sustain the proponent's position, the evidence shall not be received. With regard to processing objections and/or challenges, Section 102.69(c)(i) provides that if the Regional Director determines that the evidence described in the offer of proof would not constitute grounds for setting aside the election if introduced at a hearing, the Regional Director shall issue a decision disposing of the objections and a certification of the results of the election, including a certification of representative, where appropriate.

The objecting party has the burden of providing evidence in support of its objections. A hearing should be held if the objecting party has established that it could produce at hearing evidence that, if credited, would warrant setting aside the election. NLRB Casehandling Manual (Part Two) Representation Proceedings Section 11395.1.

**Objections 1-5**

In Objections 1 through 5, the Union contends that agents and/or representatives of the Employer engaged in unlawful conduct during the critical period prior to the election that affected the results of the election. Specifically, Objections 1 and 2 allege that the Employer made promises and/or implied promises of benefits to employees during captive audience meetings, including promises of raises and/or increased access to benefits and/or programs in order to persuade employees to vote to decertify the Union. Objections 3 through 5 allege that the Employer, by its agents and/or representatives, made threats and/or implied threats and/or statements of futility during captive audience meetings. Objections 1 through 5 mirror the allegations contained in Case No. 02-CA-237625. The Employer denies engaging in such objectionable conduct. The Petitioner asserts that these objections lack merit.

In support of these objections, the Union submitted a requisite offer of proof. In its offer of proof, the Union essentially asserts that on January 11, 2019, two weeks before the mail ballots

[9] The Employer's request for permission to withdraw its challenges to these ballots is hereby approved.

were mailed to the voters, the Employer conducted a meeting among unit employees at which attendance was mandatory. During the meeting, the Union asserts in its proffer that the Employer made promises and/or implied promises of benefits; advised employees they would receive raises and/or increased benefits should employees vote to decertify Local 3; made threats and/or implied threats to employees for voting to continue to be represented by Local 3; made statements of futility; misrepresented the eligibility rules as set forth by the Notice of Election; and, advised employees that the votes of striking employees would not count. In support of these allegations, the proffer includes a recording of the alleged meeting. The recording contains statements which, if stated to unit employees by identified agents of the Employer and disseminated among a sufficient number of voters, could, in my view, warrant setting aside the results of the election. As noted above, the Employer denies engaging in this conduct.

Accordingly, following the count of ballots as set forth above, if the Union does not obtain a majority of valid votes cast, I will direct a hearing on Objections 1 through 5.

**Objections 6 and 7**

In Objection 6, the Union alleges that the Employer provided an inaccurate Employee Eligibility Voter List by failing to include a list of the names and addresses of 301 involuntary separations. Objection 7 alleges that the Employer provided an untimely Employee Eligibility Voter List after ballots had already been mailed, by failing to include all employees it had deemed to have resigned. The Union did not provide an offer of proof in support of Objection 7. The Employer denies that its Voter List was inadequate. The Petitioner asserts that this objection lacks merit.

The Union contends that these 301 terminated employees are subject of pending unfair labor practice charges. Accordingly, these voters' names and contact information should have been included on the original voter list.

As amplified in the challenge section above, based on the Union's assertion that these voters had been unlawfully terminated, on January 31, 2019, the Employer submitted a belated supplemental Voter List containing the addresses for these additional voters, to whom the Region mailed ballots. None of these 301 separated employees are to be alleged in the Complaints as having been unlawfully terminated. It is well settled that, in the absence of unfair labor practices charges, such terminations will be presumed to be for cause and lawful. *See Texas Meat Packers, supra.* Thus, the Employer's omission or belated submission of the names and addresses for these additional ineligible voters was not objectionable, and Objection 7 related to the untimely list is overruled.

As noted below in Objections 9 and 10, the complaints to issue will allege the unlawful termination of 9 employees. However, those 9 employees' names all appeared on the Voter List. Inasmuch that those names were not omitted from the Voter List, Objection 6 is overruled.

**Objection 8**

Objection 8 alleges that agents and/or representatives of the Employer, encouraged, facilitated, and/or coordinated voting by person not eligible to vote. The Union did not provide an offer of proof in support of Objection 8 as required by the Rules. Accordingly, Objection 8 is overruled.

**Objections 9 and 10**

Objection 9 alleges that agents and/or representatives of the Employer, impeded, discouraged, or prevented eligible employees from voting in the election by terminating and/or deeming employees to have resigned after employees declined offers of reinstatement to non-equivalent positions. Objection 10 alleges that by its conduct, the Employer has interfered with the rights of employees to engage in protected activities and has "destroyed the laboratory conditions necessary for the conduct of the election." The Employer denies engaging in such objectionable conduct. The Petitioner contends that these objections lack merit.

In support of these objections, the Union refers to the charges in Case Nos. 02-CA-220539 and 02-CA-223159. As noted above, the Region authorized, absent settlement, issuance of a Complaint and Notice of Hearing alleging that on dates prior to the filing of the petition on May 10, 2018, which date commenced the critical period, the Employer unlawfully: 1) terminated the *Laidlaw* recall rights of seven striking employees; 2) terminated the employment of those seven employees, upon their unconditional offers to return to work; and, 3) refused to reinstate eight striking employees to their former or substantially equivalent positions (including the seven terminated employees), upon their unconditional offers to return to work, in violation of Sections 8(a)(1) and (3) of the Act. The investigation of the charges adduced evidence that news of the seven terminations was disseminated among the striking employees, of whom 332 strikers returned to work before the January 3, 2019 payroll period for eligibility, and one additional striker returned to work, *albeit* not to a substantially equivalent position. In addition, the Complaint absent settlement will allege the unlawful terminations of Mikhail Morse on August 4, 2018 and Luis Bravo on September 12, 2018, which terminations fall within the critical period. However, there is no evidence that news of these two terminations that occurred within the critical period was disseminated among the eligible voters, or that these two terminations occurred in circumstances where the unit employees could reasonably have learned of either termination.

The Board's traditional practice enunciated in *Dal-Tex Optical*, 137 NLRB 1782, 1786-1787 (1962), is to set aside any representation election conducted amid contemporaneous unfair labor practices. The *Dal-Tex* rule is premised on the notion that unfair labor practices committed during the "critical period" prior to an election is "a fortiori conduct which interferes with the exercise of a free and untrammeled choice in an election." *Id.* Subsequently, a narrow exception was established to the *Dal-Tex* principle - only 8(a)(1) violations that are so minimal or isolated that "it is virtually impossible to conclude that they would have affected the results of the election." *Caron International, Inc.*, 246 NLRB 1120, 1121 (1979). *See* also *Advanced Masonry Assoc., LLC d/b/a/ Advanced Masonry Systems,* 366 NLRB No. 57, slip op. at 1, fn. 3 (2018) (holding that the *Dal-Tex* principle has never been applied to 8(a)(3) violations), citing *Lucky Cab Company*, 360 NLRB 271, 277 (2014). In *Diamond Walnut Growers, Inc.*, 326 NLRB 28 (1988) the Board

(Members Fox and Gould, Member Hurtgen dissenting) set aside an election where the employer, during the critical period and continuing throughout the 2-week period preceding the election, discriminatorily assigned one returning striker in a unit of 1300 employees to a low-paying job of cracking and inspecting walnuts, rather than to her prestrike position of forklift driver.

In applying the "virtually impossible" standard, the Board considers the number of violations, their severity, the extent of dissemination, the size of the unit, the closeness of the election, the proximity of the conduct to the election date, and the number of unit employees affected. See *Bon Appetit Management Co.*, 334 NLRB 1042, 1044 (2001).

The prepetition conduct consisting of the terminations of seven strikers and the discriminatory reinstatement of an eighth striker, may be considered where such conduct "adds meaning and dimension to related postpetition conduct." *Dresser Industries*, 242 NLRB 74 (1979); *Yuma Coca-Cola Bottling Co.*, 339 NLRB 67 (2003); *Cedars-Sinai Medical Center*, 342 NLRB 596, 598 fn. 13 (2004). Generally, such prepetition conduct cannot, standing alone, be a basis for setting aside an election. *Data Technology Corp.*, 281 NLRB 1005, 1007 (1986).

The "virtually impossible" standard has not been applied to violations of Section 8(a)(3) that occur during the critical period. See *Lucky Cab Co., supra.*, citing *Baton Rouge Hospital*, 283 NLRB 192, 192 fn. 5 (1987). But see *Advanced Masonry Systems*, 366 NLRB No. 57 slip op. at 1, fn. 3 (then-Chairman Kaplan echoed the counter-observation of former Member Johnson that the Board has never held that this exception should never apply to 8(a)(3) violations—not even, in the context of a lopsided vote, to an 8(a)(3) violation that affects one or few employees and involves no loss of employment), citing *Lucky Cab Co., supra.* at fn. 22. Here, the prepetition terminations and discriminatory reinstatement may add meaning and dimension to the two postpetition terminations. The two postpetition terminations, however, appear not to have occurred in circumstances where the unit employees could reasonably have learned of either termination.

In light of these unique circumstances, in my view the best course is to consolidate Objections 9 and 10 with the complaint to permit the parties to address before an administrative law judge whether the "virtually impossible" standard should apply to the two Section 8(a)(3) terminations that occurred during the critical period and whether the Employer's conduct was sufficient to set aside the election. However, it only becomes necessary to embark on this course of action after Objections 1-5 have been decided following a hearing before a Hearing Officer. *See White Plains' Lincoln Mercury*, 288 NLRB 1133 (1988) (In a combined unfair labor practice/representation proceeding, the Board has authority to set aside an election based on unfair labor practices that were not specifically alleged as objectionable conduct).

## IV. FINDINGS AND CONCLUSION

I have voided the 20 ballots challenged by the Union and the 15 ballots challenged by the Employer and the Petitioner because the return envelopes contained a printed name rather than the required signature.

I have directed that the ballots cast by the 332 strikers who returned to work before the January 3, 2019 payroll period for eligibility be opened and counted. I also directed that the 601 voters challenged by the Union as temporary striker replacements, including the 26 ballots in this group received by the Regional Office before the count of ballots, but excluding the 20 voters in this group who cast void ballots because they printed rather signed their mail ballot envelope, should also be opened and counted.

I have sustained the Employer and Petitioner's challenges to the ballots cast by the 666 economic strikers who were permanently replaced in the election held more than 12 months after the strike began.

I have concluded that following the count of the above ballots, if a majority of valid votes cast has not been cast for the Union, I will direct a hearing to be conducted before a Hearing Officer on Objections 1 through 5, and hold the related unfair labor practice charge in abeyance.

I have overruled Objections 6, 7, and 8.

Finally, I have decided that in the event the Union does not obtain a majority of valid votes counted, and if Objections 1-5 are ultimately overruled, I will then consolidate Objections 9 and 10, with the Complaint in Case Nos. 02-CA-220539 and 02-CA-223159 for hearing before an administrative law judge.

## V. REQUEST FOR REVIEW

Pursuant to Section 102.69(c)(2) of the Board's Rules and Regulations, any party may file with the Board in Washington, DC, a request for review of this supplemental decision, which may be combined with a request for review of the Regional Director's decision to direct an election and/or the Regional Director's Interim Decision on Challenges, as provided in Sections 102.67 (c) and 102.69 (c)(2), if not previously filed. The request for review must conform to the requirements of Sections 102.67(e) and (i)(l) of the Board's Rules and must be received by the Board in Washington by August 19, 2019. If no request for review is filed, the decision is final and shall have the same effect as if issued by the Board.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-filed, the Request for Review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing

a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

DATED: August 5, 2019

John J. Walsh, Jr.
Regional Director
National Labor Relations Board
Region 02
26 Federal Plaza, Suite 3614
New York, NY 10278-3699

# ATTACHMENT A

**UNITED STATES OF AMERICA**
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**
**REGION 2**

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BRUCE CARBERRY,

Petitioner,

-and-

CHARTER COMMUNICATIONS, INC.,

Case No. 02-RD-220036

Employer,

-and-

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

Involved Party Union.

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**LOCAL UNION NO. 3, IBEW**
**OBJECTIONS TO CONDUCT AFFECTING THE RESULTS OF THE ELECTION**

Pursuant to Section 102.69 of the Rules and Regulations of the National Labor Relations Board, Local Union No. 3, International Brotherhood of Electrical Workers ("Local 3") hereby files the following objections to the conduct of the election and to conduct affecting the results of the election held on February 25, 2019, in the above-captioned case, as follows:

1. Charter Communications, Inc. ("Charter"), by its agents and/or representatives, made promises and/or implied promises of benefits to employees during captive audience meetings in order to persuade them to vote to decertify Local 3.

2. Charter, by its agents and/or representatives, advised employees during captive audience meetings that employees would receive raises and/or increased access to benefits and/or programs in order to persuade them to vote to decertify Local 3.

3. Charter, by its agents and/or representatives, made threats and/or implied threats to employees during captive audience meetings in order to discourage them from voting to continue to be represented by Local 3, including, but not limited to, fines, penalties, and violence.

4. Charter, by its agents and/or representatives, advised employees during captive audience meetings that continued unionization was futile in order to persuade them to vote to decertify Local 3.

5. Charter, by its agents and/or representatives, incorrectly advised employees during captive audience meetings that the votes of striking employees would not count and/or misrepresented eligibility rules contained in the Notice of Election in order to persuade replacement employees to vote and/or discourage strikers from voting.

6. Charter, by its agents and/or representatives, provided an inaccurate *Excelsior* (employee eligibility) list by failing to include a list of involuntarily separations, which is the subject of a pending unfair labor practice charges (02-CA-223159 and 02-CA-220539) wherein Local 3 alleged, *inter alia*, that Charter unlawfully terminated employees for engaging in activity protected by the Act.

7. Charter, by its agents and/or representatives, provided an untimely *Excelsior* (employee eligibility) list after ballots had already been mailed by failing to include all employees it had deemed to have resigned, which is the subject of a pending unfair labor practice charge (02-CA-220539) wherein Local 3 alleged that Charter, by its officers, agents and representatives, has discriminated against employees striking members and former striking members of Local 3 (i) by refusing to reinstate striking employees to their former positions upon unconditional offer to return to work, (ii) by refusing to allow striking employees to remain subject to recall for the same or substantially equivalent employment and/or their former positions, upon unconditional offer to

return to work, (iii) by failing and refusing to inform striking employees of their recall status and/or positions upon their unconditional offer to return to work, (iv) by coercing such employees in exercising their rights to recall upon their unconditional offer to return to work, and by misrepresenting the recall rights of such employees, and (v) by terminating striking employees and/or notifying them and claiming that they have resigned their employment, for seeking reinstatement to their former positions upon their unconditional offer to return to work.

8. Charter, by its agents and/or representatives, encouraged, facilitated, and/or coordinated voting by persons not eligible to vote in the election.

9. Charter, by its agents and/or representatives, impeded, discouraged, or prevented eligible employees from voting in the election by terminating and/or deeming employees to have resigned after employees declined offers of reinstatement to non-equivalent positions.

10. By these and other acts, Charter, by its agents and/or representatives, interfered with the rights of employees to engage in protected activities, to organize and support Local 3, and thereby destroyed the laboratory conditions necessary for the conduct of the election.

WHEREFORE, for the foregoing reasons, Local 3 requests that the election be set aside and a new election ordered.

Dated: Melville, New York
March 5, 2019

Respectfully submitted,

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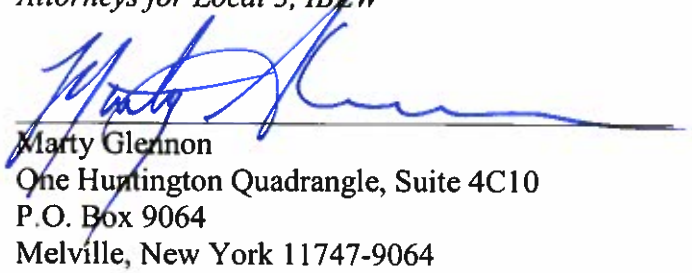
*Attorneys for Local 3, IBEW*

By: 

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