

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

COMMUNICATIONS WORKERS OF
AMERICA, LOCAL 4900,

Charging Party,

vs.

INDIANA BELL TELEPHONE COMPANY,
INC.,

Charged Party.

Case No. 25-CA-218494

RESPONDENT INDIANA BELL TELEPHONE COMPANY, INC.'S

EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION

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Dated: October 15, 2019

Pursuant to the National Labor Relations Board’s Rules and Regulations, including Section 102.46 thereof, Indiana Bell Telephone Company, Inc. (hereinafter “the Employer” or “the Respondent”) respectfully files the following Exceptions to the Administrative Law Judge’s Decision issued by Administrative Law Judge Michael A. Rosas (hereinafter “the ALJ”) on September 17, 2019.

<u>No.</u>	<u>Page(s)</u>	<u>Exception</u>
1.	4:36-5:1	The Employer excepts to the ALJ’s finding that technicians displayed their support for the Union by wearing CWA buttons on Company branded shirts and lanyards in the Company’s Indianapolis and South Bend garages, and on job assignments during collective bargaining in 2009, 2012, and 2015.
2.	5:1-2	The Employer excepts to the ALJ’s finding that prior to April 2018, the Company did not enforce the Branded Apparel Program (“BAP”) Appearance standards set forth in the pre-2016 Premises Technician (“Prem Tech”) Guidelines.
3.	5:2, footnote 13	The Employer excepts to the ALJ’s finding that Angela Bickel, the Company’s Area Manager, observed the Branded Apparel Program (“BAP”) Appearance standards being enforced “in 2012 or earlier” when “technicians would attempt to wear a t-shirt over their uniforms,” but did not mention buttons in her testimony.
4.	5:2, footnote 13	The Employer excepts to the ALJ’s finding that Core Technician Preston Dorfmeier distributed union buttons to Prem Techs in 2009 and saw them wear the buttons in the garages as they left to work sites, all in the presence of managers.
5.	5:2, footnote 13	The Employer excepts to the ALJ’s finding that Union officials Timothy Strong and Danny Collum credibly testified that technicians also wore union buttons in garages and while leaving for service calls in 2012 and 2015 without any restraint by Company supervisors.
6.	5:10-11	The Employer excepts to the ALJ’s finding that in conjunction with collective bargaining in March 2018, technicians displayed their support for the Union at several Indianapolis garages.
7.	5:11-13	The Employer excepts to the ALJ’s finding that technicians wore CWA buttons on their branded Company shirts or attached to their lanyards.

No.	Page(s)	Exception
8.	5:15-16	The Employer excepts to the ALJ's finding that the Company instructed its supervisors to enforce the BAP Appearance standards in the 2016 Prem Tech Guidelines in response to the Union's informational picketing and distribution of CWA buttons to technicians, which the technicians allegedly wore.
9.	5:16, footnote 16	The Employer excepts to the ALJ's finding that Collum credibly and undisputedly testified that Joseph St. Clair, the Company's Manager, Network Services, subsequently attributed the Company's enforcement of the BAP Appearance standards in April 2018 to a directive from the Company's bargaining team.
10.	5:21-22	The Employer excepts to the ALJ's finding that technicians continued to wear CWA buttons without incident for about one month after the Company advised Larry Robbins, the Union's Vice President, that the BAP Appearance standards prohibited the wearing of buttons on Company shirts.
11.	8:18-20	The Employer excepts to the ALJ's conclusion that "the notion that the display of a CWA button appended to the Company's uniform unreasonably interferes with [the Company's] public image or business plan, when it already provides employees with a hat that bears the CWA and Company logos is specious."
12.	8:20-22	The Employer excepts to the ALJ's conclusion that the Company's maintenance of the BAP Appearance standards set forth in the 2016 Prem Tech Guidelines contained an overbroad prohibition on the display of union insignia in the workplace in violation of Section 8(a)(1) of the Act.
13.	8:25, footnote 21	The Employer excepts to the ALJ's conclusion that <i>Wisconsin Bell</i> , JD-67-16, does not collaterally estop the claims at issue.
14.	8:37-39	The Employer excepts to the ALJ's conclusion that a union waiver of a statutory right granted pursuant to the Act must be "clear and unmistakable" in order for the waiver to be effective.
15.	8:39, footnote 22	The Employer excepts to the ALJ's conclusion that the "contract coverage standard" set forth in <i>MV Transportation, Inc.</i> , 368 NLRB No. 66, slip op. at 1-2 (2019) does not apply to the present case.
16.	10:8-16	The Employer excepts to the ALJ's conclusion that neither the language of the 2016 guidelines nor the parties' conduct since April 2016 support a waiver of the Prem Techs' right to wear union buttons.
17.	10:23-25	The Employer excepts to the ALJ's finding that similar buttons had been worn by Prem Techs over the previous nine years during similar activities and supervisors had never ordered Prem Techs to remove such buttons.

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18.	10:25-27	The Employer excepts to the ALJ's finding that on April 16, 2018, the Company's labor relations department encroached upon its operations by directing supervisors to remove union buttons just as the Union began mobilizing members for contract negotiations.
19.	10:44-45	The Employer excepts to the ALJ's conclusion that employees wore buttons frequently throughout bargaining sessions in 2009, 2012, and 2015, within sight of supervisors and without restraint.
20.	10:45-47	The Employer excepts to the ALJ's conclusion that on April 16, 2018, a Company supervisor first enforced the BAP Appearance standards at the direction of the Company's labor relations team.
21.	10:47	The Employer excepts to the ALJ's conclusion that the Company supervisor's enforcement of the BAP Appearance standards on April 16, 2018 "entwined the action within the collective bargaining process."
22.	10:47-11:12	The Employer excepts to the ALJ's conclusion that the Company selectively enforced the BAP Appearance standards on April 16, 2018 in response to issues arising out of collective bargaining.
23.	11:14-15	The Employer excepts to the ALJ's conclusion that the Company discriminatorily enforced the BAP Appearance standards set forth in the 2016 Prem Tech Guidelines to restrain employees' Section 7 rights in violation of Section 8(a)(1) of the Act.
24.	11:25-27	The Employer excepts to the ALJ's conclusion that the Company violated Section 8(a)(1) of the Act by maintaining a rule since April 18, 2016 banning Premises Technicians from wearing a union button stating "CWA" and discriminatorily enforcing that ban on April 16, 2018.
25.	11:29-30	The Employer excepts to the ALJ's conclusion that the Company committed an unfair labor practice affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.
26.	11:36-41, 12:6-12	The Employer excepts to the ALJ issuing an order for the Company to cease and desist maintaining a rule prohibiting Premises Technicians from wearing the CWA button.
27.	11:41-43, 12:14-17	The Employer excepts to the ALJ issuing an order for the Company to rescind the rule prohibiting Premises Technicians from wearing the CWA button and, after the rescission, to advise Premises Technicians in writing that the rule is no longer being maintained.

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28.	12:19-31	The Employer excepts to the ALJ's order that Respondent "[w]ithin 14 days after service by the Region, post at all of its facilities in Indiana, copies of the attached notice marked 'Appendix.' Copies of the notice, on forms provided by the Regional Director for Region 25, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 8, 2016."
29.	12:33-35	The Employer excepts to the ALJ's order that Respondent "[w]ithin 21 days after service by the Region, file with the Regional Director for Region 25 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply."

Dated: October 15, 2019

Respectfully submitted,

MICHAEL G. PEDHIRNEY
LITTLER MENDELSON, P.C.

By 
MICHAEL G. PEDHIRNEY

Attorneys for Respondent
INDIANA BELL TELEPHONE COMPANY,
INC.

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PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Littler Mendelson, P.C., 333 Bush Street, 34th Floor, San Francisco, California 94104. On October 15, 2019, I served the within document(s):

**RESPONDENT INDIANA BELL TELEPHONE COMPANY, INC.'S EXCEPTIONS TO
THE ADMINISTRATIVE LAW JUDGE'S DECISION**

- by facsimile transmission at or about _____ on that date. This document was transmitted by using a facsimile machine that complies with California Rules of Court Rule 2003(3), telephone number 415.399.8490. The transmission was reported as complete and without error. A copy of the transmission report, properly issued by the transmitting machine, is attached. The names and facsimile numbers of the person(s) served are as set forth below.
- by placing a true copy of the document(s) listed above for collection and mailing following the firm's ordinary business practice in a sealed envelope(s) with postage thereon fully prepaid for deposit in the United States mail at San Francisco, California, addressed as set forth below.
- by depositing a true copy of the same enclosed in a sealed envelope, with delivery fees provided for, in an overnight delivery service pick up box or office designated for overnight delivery, and addressed as set forth below.
- by personally delivering a copy of the document(s) listed above to the person(s) at the address(es) set forth below.
- Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent to the person(s) at the e-mail address(es) as set forth below on the date referenced above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. The electronic notification address of the person making the service is chgoodman@littler.com.

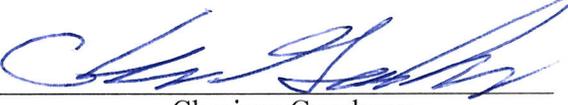
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I am readily familiar with the firm's practice of collection and processing correspondence for mailing and for shipping via overnight delivery service. Under that practice it

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I declare under penalty of perjury under the laws of the United States of America that the above is true and correct. Executed on October 15, 2019, at San Francisco, California.



Charisse Goodman