

**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

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**RESPONDENT INDIANA BELL TELEPHONE COMPANY, INC.'S**

**REPLY TO GENERAL COUNSEL'S ANSWERING BRIEF**

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Dated: November 26, 2019

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## I. INTRODUCTION

For the reasons asserted in its Exceptions and Brief in Support thereof filed by Respondent Indiana Bell Telephone Company, Inc. (“Indiana Bell,” “Employer,” or “Respondent”) on October 15, 2019, Indiana Bell requests that the National Labor Relations Board reverse the decision of Administrative Law Judge Michael A. Rosas (“ALJ”) dated September 17, 2019. The Answering Brief submitted by the General Counsel raises no legal or factual arguments not already comprehensively addressed in Respondent’s Brief in Support of Exceptions. However, the General Counsel’s Answering Brief distorts the facts of this case and relevant legal principles applied in numerous Board decisions. For the reasons set forth in Indiana Bell’s Exceptions and Brief in Support thereof, the Board should reverse the ALJ’s decision.

## II. LEGAL ANALYSIS

### A. The ALJ’s Purported “Credibility” Findings Are Entitled To No Deference.

The General Counsel’s assertion that the Board should defer to the ALJ’s supposed credibility determinations is unavailing. The ALJ’s findings are unsustainable because he failed to consider key evidence submitted by the Employer at the hearing.

The Board has overturned ALJ findings and credibility determinations when the Judge “erred by not considering [a witness’] testimony in full and by failing to appreciate that a significant portion of his testimony was independently corroborated.” *Marshall Engineered Products*, 351 NLRB 767, 768 (2007). Although an ALJ can consider all the evidence without directly addressing every piece of evidence submitted by a party, an ALJ’s factual findings as a whole must show that he “implicitly resolve[d]” conflicts created by all the evidence in the record. *NLRB v. Berger Transfer & Storage Co.*, 678 F.2d 679, 687 (7th Cir.1982). As the Supreme Court instructs, the Board may not make its determination “merely on the basis of evidence which in and of itself justifies it, without taking into account contradictory evidence and evidence from which

conflicting inferences could be drawn.” *See Universal Camera Corp. v. NLRB*, 340 U.S. 474, 487 (1951). Rather, the Board must “take into account whatever in the record fairly detracts from [the] weight” of the ALJ’s decision. *TNS, Inc. v. NLRB*, 296 F.3d 384, 395 (6th Cir. 2002). The *Universal Camera* standard is not met if the ALJ does not discuss, or even provide a citation to, that evidence. *Sears, Roebuck & Co. v. NLRB*, 349 F.3d 493, 514 (7th Cir. 2003) (*citing Scivally v. Sullivan*, 966 F.2d 1070, 1076 (7th Cir.1992) (“the ALJ must minimally articulate his reasons for crediting or rejecting” evidence); *Fortuna Enterprises*, 354 NLRB 202, 203 (2009) (ALJ’s failure to make detailed factual findings and credibility resolutions resulted in remand) (*abrogated on other grounds by New Process Steel, L.P. v. NLRB*, 560 U.S. 674 (2010)).

Here, the ALJ’s Decision fails to meet the standards of *Universal Camera*. In addressing whether Respondent permitted Prem Techs to wear union buttons prior to April 2018 notwithstanding the Personal Appearance Standards, the ALJ ignored the evidence put forward by the Employer that Indiana Bell never deviated from its rigid enforcement of those standards. Moreover, he failed to address credibility factors relevant to the evaluation of a particular witness’ testimony. “The Board has consistently held that ‘where credibility determinations are not based primarily upon demeanor ... the Board itself may proceed to an independent evaluation of credibility.’” *J.N. Ceasan Co.*, 246 NLRB 637, 638, n. 6 (1979); *Stevens Creek Chrysler Jeep Dodge, Inc.*, 357 NLRB 633, 634-35 (2011).

As demonstrated in Indiana Bell’s Brief in Support of Exceptions, the ALJ ignored substantial portions of testimony proffered by Respondent’s witnesses that contradict the General Counsel’s witnesses’ conclusory and threadbare testimony seeking to support the notion that Prem Techs routinely wore CWA buttons during work time outside of the facility prior to April 2018.

The ALJ contended that the CWA witness testimony was undisputed. However, he neglected to address the following key testimony from Angie Bickel, Indiana Bell's Area Manager since 1997:

Q To your knowledge, since you've been area manager, has the company ever permitted a premises technician to wear union insignia over their branded apparel?

A No.

...

Q To your knowledge since 2007, has the company ever permitted any premises technicians within your area to wear union insignia over their branded apparel?

A No. (Tr. 104:9-21.)

As such, the General Counsel's representation that "Bickel did not rebut the evidence that premises technicians wore union buttons on the Company branded shirts in 2009, 2012, 2015, and 2018" is false.

Furthermore, the ALJ failed to address the testimony of Joe St. Claire, Indiana Bell's Manager, Network Services, who testified that he knew of only one instance in which a Prem Tech attempted to wear a union button over the Employer's branded apparel – the April 16, 2018 incident involving Prem Tech Terry at the Company's Hanna garage. (Tr. 86:7-87:21.) Neither the General Counsel nor the Union put forward any credible evidence that rebutted St. Claire's testimony.

For these reasons, the General Counsel's contention that the ALJ's "credibility" findings are owed deference is without merit. The ALJ failed to consider critical evidence put forward at the hearing. Indeed, as explained in Indiana Bell's Exceptions Brief, the ALJ's conclusion that Indiana Bell waived the right to enforce the BAP Personal Appearance Standards by allegedly enforcing the standards in a disparate manner is not supported by the evidence.

**B. The BAP Personal Appearance Standards Do Not Violate The Act.**

As explained in Respondent's Exceptions Brief, the Prem Tech Personal Appearance Standards do not violate Section 8(a)(1) of the Act. Employers may lawfully prohibit union insignia when such insignia would unreasonably interfere with a public image that an employer has established, as part of its business plan, through appearance rules for its employees. *Bell-Atlantic-Pennsylvania*, 339 NLRB 1084, 1086 (2003), *enfd.* 99 Fed. Appx. 233 (D.C. Cir. 2004) (citing *Nordstrom, Inc.*, 264 NLRB 698, 700 (1982)). It is undisputed that the Employer implemented its Prem Tech Personal Appearance standards to create a unique brand of professionalism that is immediately perceivable to its customers, which is a critical value to Respondent because it operates in a competitive environment. (Tr. 103:3-8.) Nevertheless, the General Counsel and the ALJ contend that this rationale is "specious" and "misleading" because the Company offers Prem Techs branded apparel that includes the CWA logo. (Tr. 70:14-21, 88:22-89:19; G.C. Exh. 14.)

Again, the mere fact that Respondent offers such branded apparel bearing the CWA logo in no way undermines the Company's basis for ensuring that its Prem Techs comply with the Employer's desired image when interfacing with the public. Here, there is no dispute that the Employer at all material times reserved the negotiated contractual right to implement appearance standards "at its discretion." (G.C. Exh. 2 at p. 217; G.C. Exh. 3.) Pursuant to that right, the Employer instituted the BAP Personal Appearance Standards, which expressly articulate the Company's intent "to ensure that AT&T employees project and deliver a professional, business-like image to our customers and community" (Section 14.1); confirms that Prem Techs are required to wear BAP (Section 14.2); and restricts Prem Techs from altering branded apparel (Section 14.3). (G.C. Exh. 6 at pp. 14-15.)

Because the Company reserved the right under the CBA and the Personal Appearance Standards to provide the branded apparel at its discretion, it necessarily had the exclusive and unfettered right to design the branded apparel. The mere fact that the Employer provides some branded apparel that recognizes the existing relationship between CWA and AT&T does not undermine the Employer's basis for seeking to ensure that its employees are dressed professionally in a manner consistent with the Company's desired image.

**C. The General Counsel's Arguments Against Collateral Estoppel Are Unavailing.**

The General Counsel contends that the decision in *Wisconsin Bell, Inc.*, 2016 NLRB LEXIS 506 (2016) has no preclusive effect because it is allegedly "significantly different" from the instant case. This contention is without merit. Both cases involve the same issue – whether the Company has the lawful right to enforce its prohibition against Prem Techs altering their branded apparel. Local 4900 is in privity with CWA Local 4622. The *Wisconsin Bell* decision was rendered after a full and fair hearing on the merits.

Nevertheless, the General Counsel contends that this case is distinguishable from *Wisconsin Bell* because Indiana Bell purportedly allowed Prem Techs to wear union buttons over their branded apparel notwithstanding the clear language in the BAP Personal Appearance Standards. However, as explained in Indiana Bell's Exceptions Brief and above, there is insufficient evidence to establish that Respondent in any way waived its right to enforce those standards. The record evidence does not at all support the notion that Indiana Bell "acquiesced" by letting Prem Techs wear CWA buttons during work time in the presence of customers.

The General Counsel's contention that the change in the 2016 BAP Personal Appearance Standards language differentiates the present dispute from that at issue in *Wisconsin Bell* is also unavailing. It is undisputed that at all relevant times in both cases, the Personal Appearance

Standards expressly provided, “The branded apparel may not be altered in any way.” (G.C. Exh. 6 at p. 14 (emphasis added).) This language is clear and unambiguous and leaves no room for any interpretation that Prem Techs could wear anything over their branded apparel during work time. The mere fact that the Employer removed examples of ways in which Prem Techs could not alter their branded apparel can in no way be reasonably construed to authorize Prem Techs to alter their branded apparels in ways in which they previously could not. Hence, the notion that the Prem Tech Personal Appearance Standards applicable in this dispute materially vary from those at issue in *Wisconsin Bell* is mistaken.

### III. CONCLUSION

For all of the above reasons and the reasons asserted in Respondent’s Brief in Support of Exceptions, the ALJ’s findings and conclusions are without merit and must be reversed, and the Complaint dismissed in its entirety.

Dated: November 26, 2019

Respectfully submitted,

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By   
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Attorneys for Respondent  
INDIANA BELL TELEPHONE COMPANY,  
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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 November 26, 2019, I served the within document(s):

**RESPONDENT INDIANA BELL TELEPHONE COMPANY, INC.'S REPLY TO  
GENERAL COUNSEL'S ANSWERING BRIEF**

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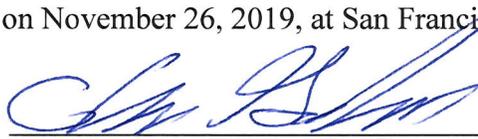
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Charisse Goodman