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**Alaska Communications Systems Holdings, Inc. and
International Brotherhood of Electrical Workers,
Local 1547, AFL-CIO.** Case 19-CA-241609

January 30, 2020

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN AND
EMANUEL

This is a refusal-to-bargain case in which the Respondent, Alaska Communications Systems Holdings, Inc., is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on May 16, 2019, by International Brotherhood of Electrical Workers, Local 1547, AFL-CIO (the Union), the General Counsel issued the complaint on August 23, 2019,¹ alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing to recognize and bargain with the Union following the Union's certification in Case 19-RC-226955. (Official notice is taken of the record in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(d). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer, admitting in part and denying in part the allegations in the complaint and asserting affirmative defenses.

On September 13, 2019, the General Counsel filed a Motion for Summary Judgment. On September 19, 2019, the National Labor Relations Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response, and the General Counsel filed a reply to the Respondent's response.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain, but contests the validity of the Union's certification on the basis of its contentions, raised and rejected in the underlying representation proceeding, that (1) its employees in the ACS Cable Systems Group do not share a community of interest with its employees in the existing bargaining unit represented by the Union and therefore should not be included in that unit; (2) the petition should have been dismissed because the Union did not comply with Section 102.61(a)(12) of the Board's Rules and Regulations; (3) the Respondent was deprived of due process because

¹ The General Counsel issued an errata to the complaint on September 4, 2019.

the Regional Director sua sponte added two employees to the voting group; and (4) the Board's application of its rules in the representation proceeding exceeded the administrative deference afforded to it by the courts.²

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding.³ We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.⁴

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a State of Alaska corporation with an office and place of business in Hillsboro, Oregon (the "facility"), and has been engaged in the business of providing telecommunication services. During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations described above, derived gross revenues in excess of \$500,000 and purchased and received at the facility goods valued in excess of \$50,000 directly from points located outside the State of Oregon.

² The Respondent asserts as affirmative defenses in its answer that the complaint does not state a claim for which relief may be granted under the Act, that the actions alleged in the complaint are not illegal under the Act, and that its purported conduct does not have a reasonable tendency to interfere with, restrain, or coerce employees in the exercise of rights guaranteed by Sec. 7 of the Act. The Respondent has not offered any explanation or evidence to support these bare assertions, beyond its previously litigated contentions stated above. Thus, we find that these affirmative defenses are insufficient to warrant denial of the General Counsel's Motion for Summary Judgment in this proceeding. See, e.g., *George Washington University*, 346 NLRB 155, 155 fn. 2 (2005), enfd. mem. per curiam No. 06-1012, 2006 WL 4539237 (D.C. Cir. Nov. 27, 2006); *Circus Circus Hotel*, 316 NLRB 1235, 1235 fn. 1 (1995).

³ The Respondent contends that the Board's recent decision in *Boeing Co.*, 368 NLRB No. 67 (2019), represents special circumstances that warrant de novo reexamination of whether the Respondent's employees in the ACS Cable Systems Group share a community of interest with its employees in the existing bargaining unit represented by the Union. We find no merit in the Respondent's contention that *Boeing* requires us to reexamine the decision made in the representation proceeding. See *Davidson Hotel Co., LLC (Chicago Marriott at Medical District/UIC)*, 368 NLRB No. 110, slip op. at 1 fn. 3 (2019).

⁴ The Respondent's request that the complaint be dismissed is therefore denied.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following a self-determination election held by mail ballot from January 2 to January 30, 2019, the Regional Director for Region 19 issued a certification of representative on February 7, 2019,⁵ certifying the Union as the exclusive collective-bargaining representative of the employees in the voting group described below (the ACS Cable Systems Group), as part of the existing bargaining unit of the Respondent's employees across 50 job classifications located in the State of Alaska:

All full-time and regular part-time Network Operations Specialists, Senior Network Operations Specialists, Senior Team Leads, and Senior Administrative Assistants employed by Alaska Communications Systems Holdings, Inc. in its Cable Systems Group at its facilities throughout the State of Oregon and the Diamond D facility in Alaska; but excluding all Cable Network Operations Supervisors and guards and supervisors as defined in the Act.

The Union continues to be the exclusive collective-bargaining representative of the unit employees, including the employees in the ACS Cable Systems Group, under Section 9(a) of the Act.

B. *Refusal to Bargain*

About April 29, 2019, the Union requested, via email, that the Respondent meet and bargain collectively with it as the exclusive collective-bargaining representative of the employees in the ACS Cable Systems Group. About May 7, 2019, the Respondent, via email, informed the Union that it would not bargain with the Union regarding the employees in the ACS Cable Systems Group pending the Board's decision on the Respondent's request for review. Since May 7, 2019, the Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective bargaining representative of the employees in the ACS Cable Systems Group, as part of the existing bargaining unit represented by the Union.

We find that the Respondent's conduct constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

⁵ By unpublished order dated June 27, 2019, the Board denied the Respondent's request for review of the Regional Director's Decision and Direction of Election.

CONCLUSION OF LAW

By failing and refusing since about May 7, 2019, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the ACS Cable Systems Group as part of the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.⁶

ORDER

The National Labor Relations Board orders that the Respondent, Alaska Communications Systems Holdings, Inc., Hillsboro, Oregon, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with International Brotherhood of Electrical Workers, Local 1547, AFL-CIO (the Union) as the exclusive collective-bargaining representative of the employees in the ACS Cable Systems Group, as part of the existing bargaining unit represented by the Union.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit, as part of the existing bargaining unit of the Respondent's employees across 50 job classifications located in the State of Alaska, concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time Network Operations Specialists, Senior Network Operations Specialists, Senior Team Leads, and Senior Administrative Assistants employed by Alaska Communications Systems

⁶ The General Counsel requests that the Board extend the certification year pursuant to the Board's decision in *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962). Such a remedy, however, is inappropriate where, as here, the underlying representation proceeding involved a self-determination election. See *Winkie Mfg. Co.*, 338 NLRB 787, 788 fn. 3 (2003), aff'd. 348 F.3d 254 (2003); *White Cap, Inc.*, 323 NLRB 477, 478 fn. 3 (1997) (citing cases).

Holdings, Inc. in its Cable Systems Group at its facilities throughout the State of Oregon and the Diamond D facility in Alaska; but excluding all Cable Network Operations Supervisors and guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at all of its facilities in the State of Oregon and its Diamond D facility in the State of Alaska copies of the attached notice marked "Appendix."⁷ Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive 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 an 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. If the Respondent has gone out of business or closed the facility 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 May 7, 2019.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 19 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, Washington, D.C. January 30, 2020

John F. Ring, Chairman

Marvin E. Kaplan, Member

William J. Emanuel, Member

⁷ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with International Brotherhood of Electrical Workers, Local 1547, AFL-CIO (the Union) as the exclusive collective-bargaining representative of the employees in the ACS Cable Systems Group, as part of the existing bargaining unit represented by the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining unit, as part of the existing bargaining unit of our employees across 50 job classifications located in the State of Alaska:

All full-time and regular part-time Network Operations Specialists, Senior Network Operations Specialists, Senior Team Leads, and Senior Administrative Assistants employed by us in our Cable Systems Group at our facilities throughout the State of Oregon and the Diamond D facility in Alaska; but excluding all Cable Network Operations Supervisors and guards and supervisors as defined in the Act.

ALASKA COMMUNICATIONS SYSTEMS
HOLDINGS, INC.

The Board's decision can be found at www.nlrb.gov/case/19-CA-241609 or by using the QR code below. Alternatively, you can obtain a copy of the

decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

