

**BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 25**

INDIANA BELL TELEPHONE
COMPANY, INC

Respondent

and

COMMUNICATIONS WORKERS OF
AMERICA LOCAL 4900, A/W
COMMUNICATION WORKERS
OF AMERICA, AFL-CIO

Charging Party

CASE NO. 25-CA-218405

**RESPONDENT INDIANA BELL TELEPHONE COMPANY'S EXCEPTIONS TO THE
DECISION OF THE ALJ**

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ATTORNEYS FOR RESPONDENT
Indiana Bell Telephone Company

Pursuant to Section 102.46 of the National Labor Relations Board’s Rules and Regulations, Respondent Indiana Bell Telephone Company (“Indiana Bell” or “Company”), respectfully files the following Exceptions to the December 11, 2019, Decision and Order (“Decision”) of Administrative Law Judge Michael Rosas (“ALJ”).

EXCEPTIONS TO FINDINGS AND CONCLUSIONS

Respondent takes exception:

1. To the ALJ’s conclusion that the Company unlawfully failed to bargain with the Communications Workers of America (“CWA” or “Union”) by “unilaterally utilizing” Premises Technicians (“Prem Techs”) “to perform the pulling of fiber cable in the final phase of the building of the IP network in the Indianapolis market” (D 16:4-5)¹, because this conclusion is beyond the scope of the allegations in the Complaint and the work assignment is expressly covered by the Premises Technicians Job Duties Memorandum of Understanding (“Prem Tech MOU”) which was negotiated between and agreed upon by the Communications Workers of America (“CWA”) and the Company. (R 1).

2. To the ALJ’s conclusion that “the pulling and pre-wiring of fiber wire in the final phase of building the IP network” in Multi-Dwelling Units (“MDUs”) “was work that was contractually reserved to core technicians” (D 12:10-18), because the Prem Tech MOU expressly provides that Prem Techs can be assigned this work and there is no contract or agreement that reserves this work for “core technicians.” (R 1).

¹ In these Exceptions and Respondents' Brief in Support of Exceptions to Administrative Law Judge’s Decision, Respondents use the following abbreviated citations: hereinafter, “D ___:___” refers to specific page and lines of the ALJ’s Decision; “R ___” and “GC ___” refers to the Respondent Exhibits and General Counsel Exhibits, respectively; and “[Witness Name] ___” refers to the witness and the transcript pages of the witness’s testimony introduced at the hearing before the ALJ.

3. To the ALJ's finding that "a plain reading of the [Prem Tech] MOU... establishes that: (1) non-demand work installing the last phase of the IP network in MDU structures was exclusively reserved to core technicians..." (D 13:21-22), because that finding is contrary to law and fact, as it is clearly erroneous under the terms of the Prem Tech MOU and conflicts with undisputed testimony. (R 1; Brewer 608, 617-19; Strong 125; Collum 297-98; Wright 349-351; Hess 574).

4. To the ALJ's finding that "The plain language of the [Prem Tech] MOU enlarged some of the duties of premises technicians but only in the context of demand work in response to customer orders" (D 13:2-3), because that limitation was wholly fabricated by the ALJ, and is contrary to law and fact, as the Prem Tech MOU does not contain any such limitation and does not even reference "demand work" or "customer orders." (R 1).

5. To the ALJ's finding that the 2012 arbitration decision "did not expand the role of [Prem Techs] beyond their role in responding to customer orders only" (D 13: 17-18), because that limitation was wholly fabricated by the ALJ, and is contrary to law and fact, as the 2012 arbitration award did not contain any such limitation.

6. To the ALJ's finding that "the assignment of duties to premises technicians requiring them to pull fiber in MDU buildings from April 16 to November 12 was outside the scope of those enumerated in the MOU" (D 13:20-26), because the work assignments were covered by the Prem Tech MOU and this conclusion is contrary to law and fact. (R 1).

7. To the ALJ's finding that the work of pulling fiber cable in MDU buildings was "a category of work contractually reserved to" core technicians from the TFS department and loaned from other departments (D 13: 42-44), because that finding is contrary to law and fact, as it is

clearly erroneous under the terms of the Prem Tech MOU and conflicts with undisputed testimony. (R 1).

8. To the ALJ's finding that "core technicians had a right of first refusal" to perform the work of pulling fiber cable in MDU buildings (D 14: 1-2, because that finding is contrary to law and fact, as it is clearly erroneous under the terms of the Prem Tech MOU and conflicts with undisputed testimony. (R 1).

9. To the ALJ's conclusion that CWA Local 4900 "was certainly empowered on behalf of CWA" to demand bargaining over the change at issue in the Complaint (D 14: 16-18), because that finding is contrary to law and fact, as it is clearly erroneous under the terms of the CBA and the CWA Constitution and conflicts with undisputed testimony.

10. To the ALJ's conclusion that "there is no indication that the Company was being asked to bargain with the [Local] instead of CWA," by virtue of Robbins' request to bargain made on behalf of the Local (D 14: 29-30), because that finding is contrary to law and fact and conflicts with undisputed testimony.

11. To the ALJ's conclusion that CWA District 4 Vice President "requested bargaining" and "requested that the Company bargain over the proposed changes at the main bargaining table" (D 14: 37-38), because that finding is contrary to law and fact and conflicts with undisputed testimony.

12. To the ALJ's conclusion that the assignment of the disputed work to Prem Techs resulted in a loss of work for core technicians "that was material, substantial and significant" (D 15: 30-32), because that finding is contrary to law and fact and conflicts with undisputed testimony.

EXCEPTIONS TO THE ALJ'S CONCLUSIONS OF LAW

Respondent takes exception:

1. To the ALJ's conclusion that "Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally utilizing premises technicians to perform the pulling of fiber cable in the final phase of the building of the IP network in the Indianapolis market," as that conclusion is contrary to law. (D 16:4-6).

EXCEPTIONS TO PROPOSED ORDER

Respondent takes exception:

1. To the ALJ's proposed Order compelling Respondent to "bargain collectively with Communications Workers of America, Local 4900, a/w Communications Workers of America, District 4 as the exclusive bargaining representative of the employees in the appropriate unit in the Indianapolis market" because CWA Local 4900 is not the exclusive bargaining representative of the bargaining unit, and therefore the Company had no duty to bargain with Local 4900. (D 16:35-37).

2. To the ALJ's proposed Order compelling Respondent to "bargain collectively with Communications Workers of America, Local 4900, a/w Communications Workers of America, District 4 as the exclusive bargaining representative of the employees in the appropriate unit in the Indianapolis market" because the CWA waived its right to bargain over the change at issue in the Complaint. (D 16:35-37).

3. To the ALJ's proposed Order compelling Respondent to cease "[u]nilaterally utilizing premises technicians to perform the pulling and pre-wiring of fiber cable in the final phase of building the IP network in the Indianapolis market" (D 16:43-44), because the Prem Tech MOA covers this work and this Order is contrary to law. (R 1).

4. To the ALJ's proposed Order compelling Respondent to "bargain in good faith with the Communications Workers of America, District 4 and/or Communications Workers of America, Local 4900, a/w Communications Workers of America, District 4 the as the exclusive collective-bargaining representative of employees in the Indianapolis market" (D 17:3-10), because the CWA, not Local 4900, is the exclusive bargaining representative of the bargaining unit, the Company had no duty to bargain with Local 4900, and this Order is contrary to law.

5. To the ALJ's proposed Order compelling respondent to "[m]ake whole all core technicians who lost wages and other benefits because Respondent unilaterally utilized premises technicians to perform the pulling and pre-wiring of fiber cable in the final phase of building the IP network in the Indianapolis market" (D 17:12-14), because the Company did not violate the Act when it assigned the disputed work to Prem Techs, there was no evidence that "core technicians" lost any wages or work as a result of the work assignments, and this Order is contrary to law.

6. To all other portions of the proposed Order that are based on conclusions and findings to which Respondent has excepted herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of February, 2020, a copy of the foregoing was electronically filed and served via e-mail upon the following:

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