

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 7**

**MICHIGAN BELL TELEPHONE  
COMPANY and AT&T SERVICES, INC.,**

**and**

**LOCAL 4034, COMMUNICATIONS  
WORKERS OF AMERICA (CWA),  
AFL-CIO,**

**CASE: 07-CA-161545; 07-CA-165384;  
07-CA-166130; 07-CA-170664;  
07-CA-176618; 07-CA-177201;  
07-CA-182490; 07-CA-184669;  
07-CA-190631**

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**RESPONDENTS' EXCEPTIONS TO THE  
SUPPLEMENTAL DECISION OF THE ADMINISTRATIVE LAW JUDGE**

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ATTORNEYS FOR RESPONDENTS  
*Michigan Bell Telephone Company and  
AT&T Services, Inc.*

Pursuant to Section 102.46 of the National Labor Relations Board's Rules and Regulations, Respondents Michigan Bell Telephone Company ("Michigan Bell") and AT&T Services, Inc. ("AT&T Services") (collectively "AT&T" or "Company"), respectfully file the following Exceptions to the December 8, 2020, Decision and Order ("Decision") of Administrative Law Judge Ira Sandron ("ALJ").

### **EXCEPTIONS TO FINDINGS AND CONCLUSIONS**

Respondents take exception:

1. To the ALJ's conclusion that the Company unlawfully discriminated against Hooker by issuing a written warning to him on March 3, 2016,<sup>1</sup> (Supp. Dec. 15:19), because that discipline was based on legitimate, non-discriminatory business reasons; Hooker received the discipline for violating established and uniformly enforced work rules; and that conclusion is not supported by the relevant facts and is contrary to law. The ALJ also failed to consider comparable discipline issued to other employees who engaged in similar misconduct, the Company's established written work rules, and the Company's guidelines for issuing progressive discipline. (R 5, 32, 38; Osterberg 2096; Sharp 2414-16).

2. To the ALJ's conclusion that the Company unlawfully discriminated against Brian Hooker by suspending him pending an investigation on April 27, and issuing a final written warning and a 3-day suspension on May 10, (Supp. Dec. 15:21), because that discipline was based on legitimate, non-discriminatory business reasons; Hooker received the discipline and suspension for violating established and uniformly enforced work rules by tampering with and removing a GPS device installed on his work truck on February 28 and April 24; and because that conclusion is not supported by the relevant facts and is contrary to law. (Brash 1447-50). The ALJ also failed

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<sup>1</sup> All dates hereinafter are for the year 2016, unless otherwise noted.

to consider comparable discipline issued to other employees who engaged in similar misconduct, the Company's established written work rules, and the Company's guidelines for issuing progressive discipline. (R 5, 32).

3. To the ALJ's conclusion that the Company unlawfully discriminated against Brian Hooker by issuing a final written warning and a 3-day suspension on May 10, (Supp. Dec. 15:22), because that discipline was based on legitimate, non-discriminatory business reasons; Hooker received the discipline for violating established and uniformly enforced work rules; and because that conclusion is not supported by the relevant facts and is contrary to law. The ALJ also failed to consider comparable discipline issued to other employees who engaged in similar misconduct, the Company's established written work rules, and the Company's guidelines for issuing progressive discipline. (R 5, 32, 38; Osterberg 2096; Sharp 2414-16).

4. To the ALJ's conclusion that the Company unlawfully discriminated against Brian Hooker by suspending him pending termination on October 10, and then terminating his employment on October 13, (Supp. Dec. 15:23-24), because that discipline was based on legitimate, non-discriminatory business reasons; Hooker was suspended and then terminated for violating established and uniformly enforced work rules; and because that conclusion is not supported by the relevant facts and is contrary to law. The ALJ also failed to consider comparable discipline issued to other employees who engaged in similar misconduct, the Company's established written work rules, and the Company's guidelines for issuing progressive discipline. (R 5, 32, 38; Osterberg 2096; Sharp 2414-16).

5. To the ALJ's reliance on the facts set forth in his original decision to find the Company acted with anti-union animus when issuing disciplines and discharging Brian Hooker (Supp. Dec. 15:11-14), because the Board expressly rejected the ALJ analysis that "was based on

an assumption that each act of disciplining Hooker following his return to the load was de facto tainted by the Respondent's animus in placing him there in the first place." (Bd. Dec. at 5).

6. To the ALJ's analysis putting the burden on the Company to demonstrate it would have disciplined and discharged Hooker regardless of his union activities (Supp. Dec. 4:38-39), because the General Counsel failed to establish a *prima facie* case that the disciplines and discharge violated the Act. Even if the Board accepts the ALJ's finding that the Company acted with anti-union animus when it returned Hooker to the workload, the Board rejected the ALJ's analysis that the discipline and discharge was "de facto tainted by the Respondent's animus in placing him there in the first place." (Bd. Dec. at 5).

7. To the ALJ's finding that the Company failed to meet its burden of rebuttal<sup>2</sup> by demonstrating that it would have disciplined and discharged Hooker regardless of his union activities (Supp. Dec. 15:17-23), because such a finding contrary to the record evidence and law.

8. To the ALJ's finding that the Company acted with anti-union animus based on meetings on October 23, 2015, and February 18, 2016 (D 37:34-44), because there was no evidence of animus arising from the meetings. (D 13:4-21).

9. To the ALJ's finding that the Company acted with anti-union animus by issuing discipline and terminating Hooker based on conduct by managers other than Ted Brash (D 40:5-16), because such a finding conflicts with relevant facts and law, and cannot be reconciled with the ALJ's finding "Brash was the decision-maker in all of the disciplines that Hooker received." (D 25:17-18).

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<sup>2</sup> As noted in Exception 6, the Company does not concede that it had the burden of rebuttal to show that it would have issued the disciplines and discharge regardless of Hooker's union activity. However, the record evidence demonstrates that even if it did, the Company met that burden, despite General Counsel's failure to establish a *prima facie* case of discrimination.

**10.** To the ALJ's finding that the Company acted with anti-union animus by issuing discipline and terminating Hooker because "Brash did not furnish to Vilik [sic] a document from the GPS contractor that might have lent credence to Hooker's version of the problems that he had with his GPS" (D 40:5-16), because the document did not support Hooker's version of events regarding the GPS tampering, it was irrelevant whether Vilik had the document because Brash made the decision to issue discipline, and Brash considered the document when he made the discipline decision. (CP 2; Brash 1792; D 25:17-18).

**11.** To the ALJ's finding that "Brash used the GPS investigation as a means of having Osterberg spend a good part of a day observing Hooker to find fault with his conduct wholly unrelated to the GPS matter" (D 40:5-14), because that finding is unsupported by the record evidence and in direct conflict with the uncontested testimony of three witnesses. (Vilk 1998; Brash 1429; Osterberg 2055-56, 2097).

**12.** To the ALJ's conclusion that the Company violated the Act by issuing discipline to Hooker on the basis that "an employer may not discipline an employee for conduct that would not have occurred but for the employer's unfair labor practice" (D 39:28-30), because that conclusion is unsupported by law and fact. All discipline issued to Hooker was based on legitimate, non-discriminatory reasons and was unrelated to any unfair labor practice, and even if the Company violated the Act when it returned Hooker to the load, Hooker's termination arose from events occurring nearly a year later with no causal connection to the alleged violation, and therefore Hooker's discipline and termination was lawful under Section 10(c) of the Act.

## **EXCEPTIONS TO CONCLUSIONS OF LAW**

Respondents take exception:

1. To the ALJ's conclusion that "By issuing disciplines to Hooker, culminating in his discharge, the Respondents have engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act and violated Section 8(a)(3) and (1) of the Act," as that conclusion is contrary to law. (D 46:43-45).

## **EXCEPTIONS TO PROPOSED ORDER**

Respondents take exception:

1. To the ALJ's proposed Order compelling Respondent to take "affirmative action" to "offer Brian Hooker full reinstatement to his former job," "make Brian Hooker whole for any loss of earning and other benefits," and "remove from its files any reference to the unlawful disciplines and discharge of Brian Hooker," (Supp. Dec. 17:38-41; Supp. Dec. 18:1-8), because it is prohibited under Section 10(c) of the Act as Brian Hooker received discipline and was discharge for cause.

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

Respectfully submitted,

/s/ Stephen J. Sferra

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Attorneys for Respondents,  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 11th day of January 2020,<sup>3</sup> a copy of the foregoing was served  
via e-mail upon:

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<sup>3</sup> The Exceptions and Brief in Support were due to be filed by Friday, January 8, 2021. However, the NLRB's e-filing system was down due to maintenance and the filing deadline was extended to Monday, January 11, 2021.