

BARGAINING UNIT MERGER NEGATES DUTY TO BARGAIN, 9TH CIRCUIT RULES

The National Labor Relations Board (NLRB) acted properly in finding that Lucent Technologies had no duty to bargain with Local 21 of the International Brotherhood of Electrical Workers (IBEW) when the company moved a group of telephone workers previously employed by another firm into a larger Lucent unit after a merger, the Ninth Circuit holds.

AG Communications Systems was a joint venture created by corporate predecessors of Lucent and Verizon Communications. Both AG and Lucent manufactured, installed, and sold telecommunications equipment and services. The joint venture agreement provided that Lucent would eventually purchase all of AG's stock, and Lucent completed the stock purchase on February 2, 2003. Before the merger, Local 21 represented about 250 installers, while the Communication Workers of America (CWA) represented a larger unit. After completing its acquisition of AG, Lucent developed a plan to integrate AG and Lucent installers into a larger unit to be represented by the CWA. By April 1, 2003, Lucent had commenced a gradual integration of the AG installers, but it was not until July 17 that Lucent informed Local 21 that as of August 1 the merged unit of installers would be represented by the CWA.

On the same day, Local 21 requested bargaining over the effects of the combination on the IBEW-represented workers, but neither Lucent nor AG responded. Instead, Lucent proceeded with its merger of installer groups and negotiated with the CWA about the effect of the action on employees. As a result of the talks with the CWA, "former AG installers remained employed with full pay and benefits, and received seniority credit for their work at AG."

Local 21 filed an unfair labor practice charge with the NLRB, alleging that AG and Lucent constituted a single employer which violated Section 8(a)(5) of the National Labor Relations Act (NLRA) by failing to bargain with Local 21 about the decision to merge installer units, and the effects of the decision on the IBEW-represented employees. The NLRB decided that after Lucent's acquisition of AG's stock, the firms became a single employer, but the board found that the combined employer was not required to bargain about its decision to merge operations. The NLRB concluded that the employer had a duty to bargain with Local 21 about the effect of the decision on employees, but decided 2-1 that because of Lucent's negotiations with the CWA, the board would not require the employer to bargain retroactively with the IBEW local.

Writing for the court, Judge Ronald M. Gould states the board correctly found Lucent engaged in a "core business decision" that was exempt from the bargaining requirements of the NLRA when it moved about 250 equipment installers into a larger bargaining unit represented by the CWA. Rejecting the IBEW challenge to the NLRB decision, the court also says while the board found that the employer violated the NLRA by failing to bargain about the effects of its decision, the agency acted within its discretion in declining to enter a traditional remedial order for the violation.

The decision is available at <http://op.bna.com/dlrcases.nsf/r?Open=ldue-7rkphk>.

(Source: *Int'l Bhd. of Elec. Workers Local 21 v. NLRB*, 9th Cir., No. 07-72750, April 20, 2009, as reported in BNA, *Daily Labor Report*, No. 81, April 30, 2009, pp. A11-A12.)