

## **National Labor Relations Board finds that Dish Network Corporation illegally refused to bargain with Communication Workers of America**

On June 25, 2018, the National Labor Relations Board (Board) generally affirmed and modified the findings of an administrative law judge that Dish Network Corporation violated the National Labor Relations Act by unilaterally changing its employees' terms and conditions of employment in the form of its "last, best offer," without bargaining for it with the union.

Dish Network and the Communications Workers of America began bargaining in 2010, and conducted about 25 in-person bargaining sessions over the course of four years. By the end of this four-year period, the parties had reached an agreement on all but one contested issue: whether to keep an incentive-based quality performance compensation system, or whether to use a straight, hourly wage schedule approach. Dish Network made its "final proposal" during the last in-person session in late 2014. The union sought to hold additional meetings but Dish Network conditioned any further meetings on written responses to its final offer. They also provided that the union's failure to accept or reject its final offer would result in Dish Network declaring an impasse. After going back and forth for a month on negotiating when to meet, Dish Network concluded that an impasse had been reached. Dish Network did not respond to the union's request to bargain for approximately a year, when it asked the union whether they will accept their final offer. The union once more requested that the parties bargain in-person. Dish Network declared an impasse and imposed its terms on employees.

The administrative law judge found that Dish Network violated the National Labor Relations Act by declaring an impasse and imposing its terms. However, the Board modified the findings by including an analysis of the parties' collective bargaining process in accordance with its 1967 decision *Taft Broadcasting Co.* Under this analysis, the Board must look at (1) the parties' bargaining history; (2) the good faith of the parties in negotiations; (3) the length of the negotiations; (4) the importance of the issue or issues as to which there is disagreement; and (5) the contemporaneous understanding of the parties as to the state of negotiations.

Using this framework, the Board noted that the parties were having difficulty in bargaining for an initial contract. They noted that Dish Network had failed to bargain in good faith by refusing to meet with the union for additional bargaining sessions, indicating that the parties had not reached an impasse despite the year-long absence of communication. The Board emphasized Dish Network's failure to respond to the union's counterproposal offering substantial concessions on the question of quality performance pay, the most important issue in their lack of progress on reaching an agreement.

The Board thus concluded that the parties were not at a valid impasse and still had a duty to bargain. The Board ordered Dish Network to resume bargaining with the union over the issue of performance compensation, and other subjects of bargaining the parties wish to discuss.

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