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March 17, 2011

**VIA UPS OVERNIGHT MAIL**

Lester A. Heltzer  
Office of the Executive Secretary  
National Labor Relations Board  
1099 14th Street, N.W.  
Washington, DC 20570-0001

**Re: Star West Satellite, Inc. and IBEW, Local Union 206, et al.**  
**Case Nos. 19-CA-32870 and 19-CA-32911**

Dear Mr. Heltzer:

Enclosed please find one original and eight (8) copies of the Motion to Dismiss, or in the Alternative, Motion for Summary Judgment for filing in the above-referenced matters. I am also enclosing an executed Affidavit of Service in that regard.

Thank you for your cooperation.

Cordially,



George Basara

GB/lmc

Enclosures

cc: Richard L. Ahearn (w/encls.)  
Mr. Robert Brock (w/encls.)

RECEIVED

2011 MAR 18 PM 12: 34

NLRB  
ORDER SECTION

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
REGION 19

STAR WEST SATELLITE, INC., )  
)  
Respondent )  
) Case No. 19-CA-32870  
and ) Case No. 19-CA-32911  
)  
INTERNATIONAL BROTHERHOOD OF )  
ELECTRICAL WORKERS LOCAL UNION 206 )  
affiliated with INTERNATIONAL )  
BROTHERHOOD OF ELECTRICAL WORKERS, )  
AFL-CIO, )  
)  
Charging Party. )

**AFFIDAVIT OF SERVICE OF MOTION TO DISMISS OR,  
IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT**

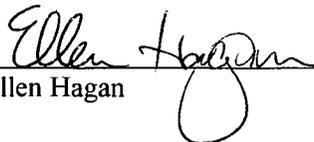
I, Ellen Hagan duly sworn, deposes and says: that deponent is not a party to this action, am over 18 years of age and am employed with Buchanan Ingersoll & Rooney PC located in Pittsburgh, Pennsylvania.

That on the 17th day of March 2011, deponent served a true copy of **Notice to Dismiss or, in the Alternative, Motion for Summary Judgment** by UPS Overnight Mail, upon the below parties at the address set forth by depositing a true copy thereof, enclosed in properly addressed wrappers, in an official depository under the exclusive care and custody of the United Parcel Service.

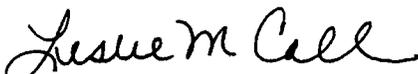
Lester A. Heltzer  
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1099 14th Street, N.W.  
Washington, DC 20570-0001

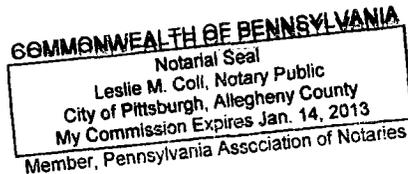
Richard L. Ahearn, Regional Director  
National Labor Relations Board, Region 19  
2948 Jackson Federal Building  
915 Second Avenue  
Seattle, WA 98174

Mr. Robert Brock  
IBEW Local 206  
P.O. Box 4704  
Butte, MT 59701-4704

  
Ellen Hagan

Sworn to before me this  
17th day of March, 2011

  
Notary Public



RECEIVED  
2011 MAR 18 PM 12:34  
NLRB  
ORDER SECTION

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
REGION 19

STAR WEST SATELLITE, INC., )  
)  
Respondent )  
) Case No. 19-CA-32870  
and ) Case No. 19-CA-32911  
)  
INTERNATIONAL BROTHERHOOD OF )  
ELECTRICAL WORKERS LOCAL UNION )  
206 affiliated with INTERNATIONAL )  
BROTHERHOOD OF ELECTRICAL )  
WORKERS, AFL-CIO, )  
)  
Charging Party. )

**MOTION TO DISMISS OR, IN THE ALTERNATIVE,**  
**MOTION FOR SUMMARY JUDGMENT**

Star West Satellite Inc. ("Star West") by and through its undersigned counsel files this Motion, averring as follows:

1. On March 4, 2011, the Regional Director for Region 19 filed the Complaint attached hereto as Exhibit 1.
2. On March 17, 2011, Respondent Star West filed its Amended Answer wherein it alleged, in part, that the Regional Director failed to comply with the reasonable pleading requirements set forth in 29 U.S.C. § 102.15 and the U.S. Supreme Court's decisions in *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949-50 (2009) and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556-67 (2007). The Answer is attached hereto as Exhibit 2.
3. On March 16, 2011, Respondent requested that the Regional Director's office amend the subject Complaint to reflect specific facts suggestive of the proscribed conduct.

4. On March 16, 2011, the Regional Director refused to amend his Complaint asserting that the Complaint conformed to the Board's standards for notice pleading.

5. Star West maintains that the allegations set forth in Paragraphs 5, 6(a), (b), and (c), 7(a) and (b), and 8(b) and (c) are vague and fail to set forth sufficient facts to assert a proper claim under the National Labor Relations Act and Federal law. The sum and substance of the claims set forth in these Paragraphs are:

- (i) In Paragraph 5, the Regional Director merely states that Star West "created an impression" among its employees that their union activities were under surveillance;
- (ii) In Paragraphs 6(a), (b), and (c), the Regional Director merely states that Star West "interrogated employees";
- (iii) In Paragraphs 7(a) and (b), the Regional Director merely states that Star West "solicited employees' complaints and grievances";
- (iv) In Paragraph 8(b), the Regional Director asserts that Star West sent a letter to employees threatening to take away certain benefits. However, the Regional Director chose not to attach the letter containing the threat, nor has the Regional Director cited to the offending language in the letter; and
- (v) In Paragraphs 8(c) and (g), the Regional Director merely states that Star West "threatened to take away certain benefits".

6. Star West contends that none of the above-referenced allegations fulfill the requirements of 29 C.F.R. 102.15 which specifically requires that the Regional Director to file a Complaint containing "clear and concise descriptions of the acts which are claimed to constitute unfair labor practices . . . ." Instead, the Regional Director has chosen to be vague and unclear in drafting the subject Complaint. Star West maintains that the Regional Director, who is charged with the duty to investigate fully unfair labor practice charges, should be required to place sufficient detail of each alleged unfair labor

practice in the Complaint so that Star West has appropriate notice of the claims asserted. Absent such reasonable detail, Star West cannot properly prepare its defense in this matter.

7. Further, based upon the U.S. Supreme Court's decision in *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949-50 (2009) and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556-67 (2007), the Regional Director failed to properly set forth his claims against Star West. Under *Twombly*, "it is no longer sufficient to allege mere elements of a cause of action; instead a complaint must allege facts suggestive of the [proscribed] conduct." *Phillips v. County of Allegheny*, 515 F.3d 224, 233 (3d Cir. 2008); *see also Iqbal*, 129 S.Ct. 1937, 1949 ("[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.").

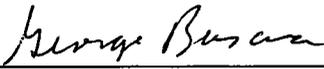
8. Therefore, The Regional Director's allegations at Paragraphs 5, 6(a), (b), and (c), 7(a) and (b) and 8(b), (c), and (g) of the Complaint must be dismissed because those paragraphs fail to allege facts suggestive of the proscribed conduct and are the exact type of "threadbare allegations" rejected by the U.S. Supreme Court. Thus, The Regional Director has failed to state claims upon which relief can be properly granted.

9. Finally, Star West maintains that Paragraph 8(b) must be dismissed because the writing that the Regional Director relies upon was not attached to the Complaint and because the Regional Director failed to set forth the offending language, which was clearly within the Regional Director's knowledge.

March 17, 2011

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY P.C.

By 

George Basara, Esquire

Pa I.D. #41811

[george.basara@bipc.com](mailto:george.basara@bipc.com)

One Oxford Centre

301 Grant Street, 20th Floor

Pittsburgh, PA 15219-1410

(412) 562-1636

Counsel for Respondent,  
Star West Satellite, Inc.

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 19**

STAR WEST SATELLITE, INC.

and

Cases 19-CA-32870  
19-CA-32911

INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS LOCAL 206 affiliated with  
INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, AFL-CIO

**ORDER CONSOLIDATING CASES, CONSOLIDATED  
COMPLAINT AND NOTICE OF HEARING**

International Brotherhood of Electrical Workers Local 206 affiliated with International Brotherhood of Electrical Workers, AFL-CIO (the "Union"), has charged in Cases 19-CA-32870 and 19-CA-32911 that Star West Satellite, Inc. ("Respondent"), has been engaging in unfair labor practices as set forth in the National Labor Relations Act (the "Act"), 29 U.S.C. § 151 *et seq.* Based thereon, and in order to avoid unnecessary costs or delay, the Acting General Counsel, by the undersigned, pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the "Board"), ORDERS that these cases are consolidated.

These cases having been consolidated, the Acting General Counsel, by the undersigned, pursuant to §10(b) of the Act and §102.15 of the Board's Rules and Regulations, issues this Order Consolidating Cases, Consolidated Complaint and Notice of Hearing and alleges as follows:

1.

(a) The Charge in Case 19-CA-32870 was filed by the Union on December 9, 2010, and was served on Respondent by regular mail on or about that date.

(b) The Charge in Case 19-CA-32911 was filed by the Union on January 20, 2011, and was served on Respondent by regular mail on or about that date.

2.

(a) Respondent is a State of Montana corporation with various offices and places of business in Idaho and Montana, including Bozeman and Kalispell, Montana, and Idaho Falls, Nampa, and Post Falls, Idaho, where it is engaged in the business of providing installation and repair services for satellite television systems.

(b) Respondent, during the past twelve months, which period is representative of all material times, in conducting its business operations described above in paragraph 2(a), derived gross revenues in excess of \$500,000.

(c) Respondent, during the past twelve months, which period is representative of all material times, in conducting its business operations described above in paragraph 2(a), provided goods and services valued in excess of \$50,000 directly to customers located outside the State of Montana.

(d) Respondent has been at all material times an employer engaged in commerce within the meaning of §§ 2(2), (6) and (7) of the Act.

3.

The Union is, and has been at all material times, a labor organization within the meaning of § 2(5) of the Act.

4.

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of § 2(11) of the Act and agents of Respondent within the meaning of § 2(13) of the Act:

Marvin Alstrand	--	Supervisor
Derek Bieri	--	Regional Manager
Jennifer Darr	--	Human Resource Manager
Mike Escott	--	Field Service Manager
Parker Estes	--	Field Service Manager
Leisl Mooer	--	Controller
Nola Perkins	--	Vice President
Steve Purkey	--	Field Service Manager
Andrew Sifford	--	Field Service Manager
Pete Sobrepena	--	Owner
Roman Uzarraga	--	Manager
David Welles	--	Manager

5.

On about December 3, 2010, a more precise date unknown to the Acting General Counsel but within Respondent's knowledge, Respondent, by Sifford at a jobsite near Nampa, Idaho, created an impression among its employees that their union activities were under surveillance by Respondent.

6.

(a) In late November 2010, a more precise date unknown to the Acting General Counsel but within Respondent's knowledge, Respondent, by Alstrand at Respondent's Post Falls, Idaho facility, interrogated employees about their union sympathies.

(b) On December 2, 2010, Respondent, by Darr and Mooer at Respondent's Post Falls, Idaho facility, interrogated employees about their union sympathies.

(c) On December 9, 2010, Respondent, by Escott at Respondent's Idaho Falls, Idaho facility, interrogated employees about their union sympathies.

7.

(a) On December 2, 2010, Respondent, by Darr and Mooer at Respondent's Post Falls, Idaho facility, solicited employee complaints and grievances.

(b) On December 9, 2010, Respondent, by Mooer at Respondent's Idaho Falls, Idaho facility, solicited employee complaints and grievances.

8.

(a) On at least one occasion beginning in July 2010, a more precise date unknown to the Acting General Counsel but within Respondent's knowledge, Respondent, by Estes at Respondent's Post Falls, Idaho facility, threatened employees by telling them that Sobrepena would either shut down the business or replace all employees with non-union employees if employees voted in the Union.

(b) On November 21, 2010, Respondent, by letter to its employees from Sobrepena, threatened to take away certain benefits if employees voted for the Union.

(c) In late November 2010, a more precise date unknown to the Acting General Counsel but within Respondent's knowledge, Respondent, by Sobrepena at Respondent's Kalispell, Montana facility, threatened to take away certain benefits if employees voted for the Union.

(d) In late November 2010, a more precise date unknown to the Acting General Counsel but within Respondent's knowledge, Respondent, by Sobrepena at Respondent's Kalispell, Montana facility, threaten to close the business if employees went on strike.

(e) On December 2, 2010, Respondent, by Sobrepena at Respondent's Post Falls, Idaho facility, threatened to close the business if employees voted in the Union.

(f) On December 2, 2010, Respondent, by Sobrepena at Respondent's Post Falls, Idaho facility, threatened to get rid of employees who support the Union.

(g) On December 9, 2010, Respondent, by Sobrepena at Respondent's Idaho Falls, Idaho facility, threatened to take away certain benefits if employees voted for the Union.

9.

(a) In late November 2010, a more precise date unknown to the Acting General Counsel but within Respondent's knowledge, Respondent, by Sobrepena at Respondent's Kalispell, Montana facility, made the following statements to employees indicating it would be futile for employees to select the Union as their bargaining representative:

- (i) he would reduce their wages and benefits before going into any negotiations;
- (ii) he would not agree to anything in bargaining;
- (iii) he could lower their wages; and

(iv) only he sets wages.

(b) On December 2, 2010, Respondent, by Sobrepena at Respondent's Post Falls, Idaho facility, made the following statements to employees indicating it would be futile for employees to select the Union as their bargaining representative:

- (i) he is the only one who decides wages and benefits;
- (ii) they could be paid less if they vote for the Union; and
- (iii) he would not negotiate with the Union and/or would not agree to anything the Union proposes.

(c) On December 9, 2010, Respondent, by Sobrepena at Respondent's Idaho Falls, Idaho facility, made the following statements to employees indicating it would be futile for employees to select the Union as their bargaining representative:

- (i) it did not matter if they voted for the Union because he was still in charge; and
- (ii) he would not agree to anything.

10.

(a) On about September 1, 2010, a more precise date unknown to the Acting General Counsel but within Respondent's knowledge, Respondent implemented new paid time off and paid holiday benefits.

(b) Respondent engaged in the conduct described above in paragraph 10(a) to discourage employees from engaging in union and/or protected, concerted activities.

11.

(a) On September 20, 2010, Respondent terminated the employment of its employee Brian Houchin.

(b) Respondent engaged in the conduct described above in paragraph 11(a) because the Houchin joined and assisted the Union and/or engaged in protected, concerted activities, and/or to discourage employees from engaging in these or other union and/or protected, concerted activities.

12.

(a) In early December 2010, a more precise date unknown to the Acting General Counsel but within Respondent's knowledge, Respondent prohibited its employees Alberto Banderas, Mario Diaz, and Joseph Rosales from working overtime hours.

(b) Respondent engaged in the conduct described above in paragraph 12(a) because the named employees joined and assisted the Union and/or engaged in protected, concerted activities, and/or to discourage employees from engaging in these or other union and/or protected, concerted activities.

13.

(a) On December 8, 2010, Respondent issued written discipline to its employee Don Olson for completing paperwork the day after having performed the work.

(b) On December 8, 2010, Respondent issued written discipline to Olson for failing to complete his assigned work on the previous day.

(c) On December 9, 2010, Respondent issued Olson written discipline for placing equipment in the wrong return box.

(d) On December 9, 2010, Respondent issued Olson a second written discipline for placing equipment in the wrong return box.

(e) Respondent engaged in the conduct described above in paragraph 13(a) through (d) because Olson joined and assisted the Union and/or engaged in protected, concerted activities, and/or to discourage employees from engaging in these or other union and/or protected, concerted activities.

14.

By the conduct described above in paragraphs 5 through 9, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in § 7 of the Act in violation of § 8(a)(1) of the Act.

15.

By the conduct described above in paragraphs 10 through 13, Respondent has been discriminating in regard to the hire or tenure or terms or

conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of §§ 8(a)(1) and (3) of the Act.

16.

The unfair labor practices of Respondent described above in paragraphs 5 through 15 affect commerce within the meaning of §§ 2(6) and (7) of the Act.

**WHEREFORE**, as part of the remedy for the unfair labor practices alleged above, the Acting General Counsel seeks an Order requiring that Respondent promptly have a representative approved by the Regional Director read the notice to the employees in approved locations on work time. The Acting General Counsel further seeks such other relief as may be appropriate to remedy the unfair labor practices alleged.

#### **ANSWER REQUIREMENT**

Respondent is notified that, pursuant to §§ 102.20 and 102.21 of the Board's Rules and Regulations, it must file an Answer to the Consolidated Complaint. The Answer must be **received by this office on or before March 18, 2011, or postmarked on or before March 17, 2011.** Unless filed electronically in a pdf format, Respondent should file an original and four copies of the Answer with this office and serve a copy of the Answer on each of the other parties.

An Answer may also be filed electronically by using the E-filing system on the Agency's website. In order to file an Answer electronically, access the Agency's website at <http://www.nlr.gov>, click on **E-Gov**, then click on the **E-Filing** link on the pull-down menu. Click on the "File Documents" button under "Regional, Subregional

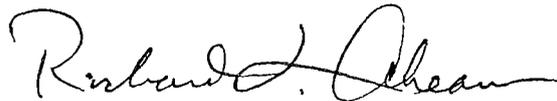
and Resident Offices” and then follow the directions. The responsibility for the receipt and usability of the Answer rests exclusively upon the sender. Unless notification on the Agency’s website informs users that the Agency’s E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the Answer will not be excused on the basis that the transmission could not be accomplished because the Agency’s website was off-line or unavailable for some other reason. The Board’s Rules and Regulations require that an Answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See § 102.21. If the Answer being filed electronically is a pdf document containing the required signature, no paper copies of the document need to be transmitted to the Regional Office. However, if the electronic version of an Answer to a Complaint is not a pdf file containing the required signature, then the E-filing rules require that such Answer containing the required signature be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the Answer on each of the other parties must be accomplished in conformance with the requirements of § 102.114 of the Board’s Rules and Regulations. The Answer may not be filed by facsimile transmission. If no Answer is filed or if an Answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Consolidated Complaint are true.

**NOTICE OF HEARING**

PLEASE TAKE NOTICE that, beginning on the 12<sup>th</sup> day of April, 2011, at 9:00 a.m., and on consecutive days thereafter until concluded, at locations to be determined in **Spokane, Washington, as well as Idaho and Montana**, a hearing will be conducted before an Administrative Law Judge of the National Labor Relations Board. At the hearing Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this Consolidated Complaint. The procedures to be followed at the hearing are described in the attached form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

DATED at Seattle, Washington, this 4<sup>th</sup> day of March, 2011.



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Richard L. Ahearn, Regional Director  
National Labor Relations Board, Region 19  
2948 Jackson Federal Building  
915 Second Avenue  
Seattle, Washington 98174

**SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
IN UNFAIR LABOR PRACTICE PROCEEDINGS PURSUANT TO  
SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT**

The hearing will be conducted by an administrative law judge of the National Labor Relations Board who will preside at the hearing as an independent, impartial finder of the facts and applicable law whose decision in due time will be served on the parties. The offices of the administrative law judges are located in Washington, D.C.; San Francisco, California; New York, New York; and Atlanta, Georgia.

At the date, hour, and place for which the hearing is set, the administrative law judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to ensure that the issues are sharp and clearcut; or the administrative law judge may independently conduct such a conference. The administrative law judge will preside at such conference, but may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record, for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the administrative law judge conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or make stipulations or concessions during any prehearing conference.

*(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)*

Parties may be represented by an attorney or other representative and present evidence relevant to the issues. All parties appearing before this hearing who have or whose witnesses have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.603, should notify the Regional Director as soon as possible and request the necessary assistance.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs or arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the administrative law judge for approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the administrative law judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the administrative law judge and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The administrative law judge will allow an automatic exception to all adverse rulings and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies of exhibits should be supplied to the administrative law judge and other parties at the time the exhibits are offered in evidence. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the administrative law judge before the close of hearing. In the event such copy is not submitted, and the filing has not been waived by the administrative law judge, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, on request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. In the absence of a request, the administrative law judge may ask for oral argument if, at the close of the hearing, it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

(OVER)

Any party shall be entitled, on request made before the close of the hearing, to file a brief or proposed findings and conclusions, or both, with the Administrative Law Judge who will fix the time for such filing. Any such filing submitted shall be double-spaced on 8½ by 11 inch paper.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations, with respect to the procedure to be followed before the proceeding is transferred to the Board:

No request for an extension of time within which to submit briefs or proposed findings to the Administrative Law Judge will be considered unless received by the Chief Administrative Law Judge in Washington, D.C. (or, in cases under the San Francisco, California branch office, the Deputy Chief Administrative Law Judge; or in cases under the branch offices in New York, New York, and Atlanta, Georgia, the Associate Chief Administrative Law Judge) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously on all other parties, and proof of such service furnished to the Chief Administrative Law Judge, Deputy Chief Administrative Law or the Associate Chief Administrative Law Judge, as the case may be. A quicker response is assured if the moving party secures the positions of the other parties and includes such in the request. All brief or proposed findings filed with the Administrative Law Judge must be submitted in triplicate, and may be printed or otherwise legibly duplicated with service on the other parties.

In due course the administrative law judge will prepare and file with the Board a decision in this proceeding, and will cause a copy thereof to be served on each of the parties. Upon filing of this decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, on all parties. At that point, the administrative law judge's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the administrative law judge's decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be served on the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the Act reduce Government expenditures and promote amity in labor relations. If adjustment appears possible, the administrative law judge may suggest discussions between the parties or, on request, will afford reasonable opportunity during the hearing for such discussions.

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

**NOTICE**

Star West Satellite Inc.  
Cases: 19-CA-32870  
19-CA-32911

March 4, 2011

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end. An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing.

However, unless otherwise specifically ordered, the hearing will be held at the date, hour and place indicated. Postponements **will not be granted** unless good and sufficient grounds are shown **and** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 C.F.R. 102.16(a) or with the Division of Judges when appropriate under 29 C.F.R. 102.16(b).
- (2) Grounds must be set forth in **detail**;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (*listed below*), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

**CERTIFIED MAIL NO.**  
**7006 3450 0001 6746 5440**

Star West Satellite Inc.  
580 Pronghorn Trail  
Bozeman, MT 59718-7595

**REGULAR MAIL**

George Basara, Attorney  
BUCHANAN INGERSOLL & ROONEY, PC  
One Oxford Centre  
301 Grant St, 20th Fl  
Pittsburgh, PA 15219-1410

Mr. Robert S. Brock  
IBEW Local 206  
PO Box 4704  
Butte, MT 59701-4704

**IMPORTANT NOTICE**

The date which has been set for hearing in this matter should be checked immediately. If there is proper cause for not proceeding with the hearing on that date, a motion to change the date of hearing should be made within ten (10) days from the issuance of the Complaint. Thereafter, the Regional Office will assume that the scheduled hearing date has been agreed upon and that all parties will be prepared to proceed to the hearing on that date. Also, note the attached new Rules pertaining to continuances.

All parties are encouraged to explore fully the possibilities of settlement. Early settlement agreements prior to extensive and costly trial preparation may result in substantial savings of time, money and personnel resources for all parties. The Board agent assigned to this case will be happy to discuss settlement at any mutually convenient time.



---

Anne Pomerantz, Regional Attorney  
National Labor Relations Board, Region 19  
2948 Jackson Federal Building  
915 Second Avenue  
Seattle, Washington 98174

**NATIONAL LABOR RELATIONS BOARD.**

**29 CFR Part 102**

**Rescheduling Unfair Labor Practice Hearings**

**AGENCY:** National Labor Relations Board.

**ACTION:** Final rule.

**SUMMARY:** The National Labor Relations Board issues a final rule permanently implementing its recent experimental modification of the procedures for rescheduling unfair labor practice hearings. The procedures are permanently modified so that the authority to reschedule hearings is transferred, subject to certain exceptions, from the Regional Directors to the administrative law judges.

**EFFECTIVE DATE:** December 1, 1989.

**FOR FURTHER INFORMATION CONTACT:** John C. Truesdale, Executive Secretary, 1717 Pennsylvania Avenue NW., Room 701, Washington, DC 20570, Telephone: (202) 254-9430.

**SUPPLEMENTAL INFORMATION:** On August 1, 1988, the National Labor Relations Board implemented a one-year experiment in all of its Regional Offices whereby the authority to reschedule unfair labor practice hearings was transferred, subject to certain exceptions, from the Regional Directors to the administrative law judges. [See 53 FR 26348]. The experiment was subsequently extended until November 30, 1989 (see 54 FR 31392), and a comment period was provided until October 2, 1989 (see 54 FR 37039).

The Board received comments by the Acting Associate General Counsel, from the Deputy Chief Administrative Law Judge, and from several private law firms or attorneys that practice before the Agency. Each are summarized below.

**Acting Associate General Counsel**

The comments by Acting Associate General Counsel William G. Stack indicated that, although most of the Regional Offices opposed the experimental rescheduling system, the data which they had accumulated during the experimental period showed that the experiment had actually had "minimal

impact" on their case processing. Thus, given the Board's expressed concern about the public's perception of the fairness of the old system, the Acting Associate General Counsel concluded that "permanently instituting the new system may create a more favorable image of the Agency with little, if any, adverse affect on casehandling."

**Deputy Chief Administrative Law Judge**

The comments from Deputy Chief Administrative Law Judge David S. Davidson indicated that while the experimental procedure had "somewhat increased" the workload of the administrative law judges, "most of the [rescheduling] requests require little time for disposition, and continuation of the procedure would present no problem" for the judges. However, noting that a postponement was virtually automatic in cases where there was no objection to the request, the Deputy Chief Administrative Law Judge suggested that an additional exception might be allowed to permit the Regional Directors to reschedule the hearing in such cases. Such an exception, the Deputy Chief Administrative Law Judge concluded, "would significantly reduce the number of requests coming to [the administrative law judges] and should have little impact on public perception of fairness."

**Private Practitioners**

Four comments were received from private law firms or attorneys that practice before the Agency. Two of these comments, from Edward Miller, former NLRB chairman and now Senior Counsel of Pope, Ballard, Shepard & Fowle, Ltd., and from Dean Denlinger of Denlinger, Rosenthal & Greenberg, were submitted at the outset of the experiment. Former Chairman Miller indicated that, although he had some concerns about how some of the exceptions would be applied, he was supportive of the experiment. Denlinger indicated that he generally supported the changes in the experimental procedure and recommended that the changes be made permanent, but urged that the exceptions in the experimental rule be eliminated and that all decisions concerning the rescheduling of hearings be made by the administrative law judges. The two other comments were submitted by G. Roger King of Bricker & Eckler, and Fred F. Holroyd of Holroyd, Yost & Merical. G. Roger King indicated that Bricker & Eckler was supportive of the experimental procedure, and recommended that the experiment "be made permanent." Fred F. Holroyd indicated that while he was also

supportive of changing the old procedure, he could see "no difference in the actual practice from the old system to the new," and recommended that the authority to reschedule hearings be transferred to the administrative law judges without exception.

Having considered all of the above comments, the Board has decided to make the experimental rescheduling procedure permanent. Virtually all of the comments indicate that the experimental procedure will help at least in some degree to change the apparent public perception of unfairness in this area. Accordingly, we conclude that the experimental procedure will serve its stated purpose and should be permanently implemented in a final rule.

We will, however, make one change in the experimental procedure. In agreement with Deputy Chief Administrative Law Judge Davidson, we see no reason not to permit the Regional Directors to continue to reschedule hearings in those instances where there is no objection. Accordingly, we will incorporate this change into the final rule.

Pursuant to section 805(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Board certifies that the rule will not have a significant impact on a substantial number of small businesses.

**List of Subjects in 29 CFR Part 102**

Administrative practice and procedure, labor management relations. Accordingly, 29 CFR part 102 is amended as follows:

**PART 102—RULES AND REGULATIONS, SERIES 8**

1. The authority citation for 29 CFR part 102 continues to read as follows:

Authority: Section 8, National Labor Relations Act, as amended (29 U.S.C. 161, 156). Section 102.117 also issued under section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)). Sections 102.143 through 102.155 also issued under section 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

2. Sections 102.16 and 102.26(a) are revised to read as follows:

**§ 102.16 Hearing; change of date or place.**

(a) Upon his own motion or upon proper cause shown by any other party, the Regional Director issuing the complaint may extend the date of such hearing or may change the place at which it is to be held, except that the authority of the Regional Director to extend the date of a hearing shall be limited to the following circumstances:

(1) Where all parties agree or no party objects to extension of the date of hearing;

(2) Where a new charge or charges have been filed which, if meritorious, might be appropriate for consolidation with the pending complaint;

(3) Where negotiations which could lead to settlement of all or a portion of the complaint are in progress;

(4) Where issues related to the complaint are pending before the General Counsel's Division of Advice or Office of Appeals; or

(5) Where more than 21 days remain before the scheduled date of hearing.

(b) Where in circumstances other than those set forth in subsection (a) of this section, motions to reschedule the hearing should be filed with the Division of Judges in accordance with section 102.24(a). When a motion to reschedule has been granted, the Regional Director issuing the complaint shall retain the authority to order a new date for hearing and retain the responsibility to make the necessary arrangements for conducting such hearing, including its location and the transcription of the proceedings.

**§ 102.24 Motions; where to file; contents; service on other parties; promptness in filing and response; summary judgment procedures**

(a) All motions under § 102.22 and 102.29 made prior to the hearing shall be filed in writing with the Regional Director issuing the complaint. All motions for summary judgment or dismissal made prior to the hearing shall be filed in writing with the Board pursuant to the provisions of § 102.50. All other motions made prior to the hearing, including motions to reschedule the hearing under circumstances other than those set forth in § 102.18(a), shall be filed in writing with the chief administrative law judge in Washington, DC, with the deputy chief judge in San Francisco, California, with the associate chief judge in New York, New York, or with the associate chief judge in Atlanta, Georgia, as the case may be. All motions made at the hearing shall be made in writing to the administrative law judge or stated orally on the record. All motions filed subsequent to the hearing, but before the transfer of the case to the Board pursuant to § 102.45, shall be filed with the administrative law judge, care of the chief administrative law judge in Washington, DC, the deputy chief judge in San Francisco, California, the associate chief judge in New York, New York, or the associate chief judge in Atlanta, Georgia, as the case may be. Motions shall briefly state the order or relief applied for and the grounds therefor. All

motions filed with a Regional Director or an administrative law judge as set forth above shall be filed therewith by transmitting three copies thereof together with an affidavit of service on the parties. All motions filed with the Board, including motions for summary judgment or dismissal, shall be filed with the Executive Secretary of the Board in Washington, DC, by transmitting eight copies thereof together with an affidavit of service on the parties. Unless otherwise provided in these rules, motions and responses thereto shall be filed promptly and within such time as not to delay the proceeding.

Dated, Washington, DC, December 1, 1989.  
By direction of the Board.

John C. Truesdale,  
Executive Secretary, National Labor  
Relations Board.

[FR Doc. 89-29172 Filed 12-12-89; 8:45 am]  
BILLING CODE 7545-01-M

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
REGION 19

STAR WEST SATELLITE, INC.,	)	
	)	
Respondent	)	
	)	Case No. 19-CA-32870
and	)	Case No. 19-CA-32911
	)	
INTERNATIONAL BROTHERHOOD OF	)	
ELECTRICAL WORKERS LOCAL UNION	)	
206 affiliated with INTERNATIONAL	)	
BROTHERHOOD OF ELECTRICAL	)	
WORKERS, AFL-CIO,	)	
	)	
Charging Party.	)	

**ANSWER**

Star West Satellite, Inc. ("Star West") hereby files the following Answer to the Complaint as follows:

**1.**

- (a) The averments contained in Paragraph 1(a) of the Complaint are admitted.
- (b) The averments contained in Paragraph 1(b) of the Complaint are admitted.

**2.**

- (a). The averments contained in Paragraph 2(a) of the Complaint are admitted.
- (b). The averments contained in Paragraph 2(b) of the Complaint are admitted.
- (c). The averments contained in Paragraph 2(c) of the Complaint are admitted.
- (d). The averments contained in Paragraph 2(d) of the Complaint are admitted.

**3.**

The averments contained in Paragraph 3 of the Complaint are admitted.

4.

The averments contained in Paragraph 4 of the Complaint are admitted.

5.

The allegation set forth in Paragraph 5 of the Complaint fails to comply with Section 29 C.F.R. 102.15 which requires the Regional Director to file a Complaint containing a "clear and concise description of the acts which are claimed to constitute unfair labor practices . . ." Said allegation is denied.

6.

(a). The allegation set forth in Paragraph 6(a) of the Complaint fails to comply with Section 29 C.F.R. 102.15 which requires the Regional Director to file a Complaint containing a "clear and concise description of the acts which are claimed to constitute unfair labor practices . . ." Said allegation is denied.

(b). The allegation set forth in Paragraph 6(b) of the Complaint fails to comply with Section 29 C.F.R. 102.15 which requires the Regional Director to file a Complaint containing a "clear and concise description of the acts which are claimed to constitute unfair labor practices . . ." Said allegation is denied.

(c). The allegation set forth in Paragraph 6(c) of the Complaint fails to comply with Section 29 C.F.R. 102.15 which requires the Regional Director to file a Complaint containing a "clear and concise description of the acts which are claimed to constitute unfair labor practices . . ." Said allegation is denied.

7.

(a). The allegation set forth in Paragraph 7(a) of the Complaint fails to comply with Section 29 C.F.R. 102.15 which requires the Regional Director to file a Complaint

containing a "clear and concise description of the acts which are claimed to constitute unfair labor practices . . ." Said allegation is denied.

(b). The allegation set forth in Paragraph 7(b) of the Complaint fails to comply with Section 29 C.F.R. 102.15 which requires the Regional Director to file a Complaint containing a "clear and concise description of the acts which are claimed to constitute unfair labor practices . . ." Said allegation is denied.

**8.**

(a). The averments contained in Paragraph 8(a) of the Complaint are denied.

(b). The averments contained in Paragraph 8(b) of the Complaint are denied.

By way of further answer, the Regional Director failed to attach a copy of the writing relied upon in making this allegation and failed to cite the alleged offending statement. The allegation set forth in Paragraph 8(b) of the Complaint fails to comply with Section 29 C.F.R. 102.15 which requires the Regional Director to file a Complaint containing a "clear and concise description of the acts which are claimed to constitute unfair labor practices . . ." Said allegation is denied.

(c). The allegation set forth in Paragraph 8(c) of the Complaint fails to comply with Section 29 C.F.R. 102.15 which requires the Regional Director to file a Complaint containing a "clear and concise description of the acts which are claimed to constitute unfair labor practices . . ." Said allegation is denied.

(d). The averments contained in Paragraph 8(d) of the Complaint are denied.

(e). The averments contained in Paragraph 8(e) of the Complaint are denied.

(f). The averments contained in Paragraph 8(f) of the Complaint are denied.

(g). The averments contained in Paragraph 8(g) of the Complaint are denied.

**9(a).**

- (i). The averments contained in Paragraph 9(a)(i) of the Complaint are denied.
- (ii). The averments contained in Paragraph 9(a)(ii) of the Complaint are denied.
- (iii). The averments contained in Paragraph 9(a)(iii) of the Complaint are denied.
- (iv). The averments contained in Paragraph 9(a)(iv) of the Complaint are denied.

**9(b).**

- (i). The averments contained in Paragraph 9(b)(i) of the Complaint are denied.
- (ii). The averments contained in Paragraph 9(b)(ii) of the Complaint are denied.
- (iii). The averments contained in Paragraph 9(b)(iii) of the Complaint are denied.

**9(c).**

- (i). The averments contained in Paragraph 9(c)(i) of the Complaint are denied.
- (ii). The averments contained in Paragraph 9(c)(ii) of the Complaint are denied.

**10.**

- (a). The averments contained in Paragraph 10(a) of the Complaint are admitted.
- (b). The averments contained in Paragraph 10(a) of the Complaint are denied.

**11.**

- (a). The averments contained in Paragraph 11(a) of the Complaint are admitted.
- (b). The averments contained in Paragraph 11(b) of the Complaint are denied.

**12.**

- (a). The averments contained in Paragraph 12(a) of the Complaint are admitted.
- (b). The averments contained in Paragraph 12(b) of the Complaint are denied.

**13.**

- (a). The averments contained in Paragraph 13(a) of the Complaint are admitted.
- (b). The averments contained in Paragraph 13(b) of the Complaint are admitted.
- (c). The averments contained in Paragraph 13(c) of the Complaint are admitted.
- (d). The averments contained in Paragraph 13(d) of the Complaint are admitted.
- (e). The averments contained in Paragraph 13(e) of the Complaint are denied.

**14.**

The averments contained in Paragraph 14 of the Complaint are denied.

**15.**

The averments contained in Paragraph 15 of the Complaint are denied.

16.

(a). The averments contained in Paragraph 16(a) of the Complaint are denied.

**ADDITIONAL DEFENSES**

17.

The Regional Director has failed, at least in part, to comply with the requirements of 29 C.F.R. 102.15. The Regional Director clearly has additional facts by which he can fulfill his obligation to provide a clear and concise description of the acts which are deemed to constitute unfair labor practices. Instead of pleading such facts so as to provide Star West with the proper notice of the claims asserted, the Regional Director has chosen to use such vague and undefined terms such as "created an impression of surveillance" (par. 5); "interrogated employees" (par. 6); "solicited employee complaints and grievances" (par. 7); and "take away certain benefits" (par. 8).

Further, based upon the U.S. Supreme Court's decision in *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949-50 (2009) and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556-67 (2007), Star West maintains that the Regional Director failed to properly state claims against Star West. Under *Twombly*, "it is no longer sufficient to allege mere elements of a cause of action; instead a complaint must allege facts suggestive of the [proscribed] conduct." *Phillips v. County of Allegheny*, 515 F.3d 224, 233 (3d Cir. 2008); *see also Iqbal*, 129 S.Ct. 1937, 1949 ("[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice."). Although Star West understands that the Regional Director is not necessarily bound by the *Twombly* decision, the fact remains that our U.S. Supreme Court has identified a certain standard for Federal pleadings which should be followed by the Regional Director and the Board.

Therefore, The Regional Director's allegations at Paragraphs 5, 6(a), (b), and (c), 7(a) and (b) and 8(b), (c), and (g) of the Complaint must be dismissed because those paragraphs fail to allege facts suggestive of the proscribed conduct. Thus, The Regional Director has failed to state claims upon which relief can be properly granted.

WHEREFORE, the Complaint should be dismissed in its entirety.

Dated: March 16, 2011

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY P.C.

By 

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(412) 562-1636

Counsel for Respondent,  
Star West Satellite, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **Answer to the Complaint** was served to the following, via e-mail and first-class U.S. mail, postage prepaid on this 16th day of March, 2011. Also filed and served at <http://www.nlr.gov/e-filing> system.

Mr. Robert Brock  
IBEW Local 206  
P.O. Box 4704  
Butte, MT 59701-4704

  
George Basara

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **Motion to Dismiss, or in the Alternative, for Summary Judgment** was served to the following, via facsimile and first-class U.S. mail, postage prepaid on this 17th day of March, 2011. Also filed and served at <http://www.nlr.gov/e-filing> system.

Mr. Robert Brock  
IBEW Local 206  
P.O. Box 4704  
Butte, MT 59701-4704



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George Basara

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ORDER SECTION