

# GANNETT

Gannett Co., Inc.  
7950 Jones Branch Drive  
McLean, VA 22107

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William A. Behan  
*Senior Vice President/Labor Relations*

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November 11, 2011

*VIA OVERNIGHT MAIL*

Mr. Lester A. Heltzer  
Executive Secretary  
National Labor Relations Board  
Office of the Executive Secretary  
1099 14th Street, N.W.  
Washington, D.C. 20570

Re: WKYC-TV, Inc. Case No. 8-CA-39190

Dear Mr. Heltzer:

Attached for filing are the original and eight (8) copies of Respondent WKYC-TV's Cross-Exceptions in the above-captioned matter.

Very truly yours,

  
William A. Behan

WAB/mlb  
Enclosures

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ORDER SECTION

**UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
REGION 8**

**WKYC-TV, INC.**

**and**

**CASE NO. 8-CA-39190**

**NATIONAL ASSOCIATION OF BROADCAST  
EMPLOYEES AND TECHNICIANS, LOCAL 42  
a/w COMMUNICATION WORKERS OF AMERICA, AFL-CIO**

**RESPONDENT WKYC-TV, INC.'S CROSS-EXCEPTIONS  
AND BRIEF IN SUPPORT**

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COUNSEL FOR RESPONDENT  
WKYC-TV, INC.

On the Brief

Vincent P. Floyd  
Scott P. Feldman  
Cynthia L. Hale

Respondent WKYC-TV, Inc., pursuant to Section 102.46 of the National Labor Relations Board's Rules and Regulations, submits its Cross-Exceptions to the September 30, 2011 Decision of Administrative Law Judge Jeffrey D. Wedekind.

**CROSS-EXCEPTIONS**

- A. Question. Whether the Complaint is barred by Section 10(b) of the National Labor Relations Act.
- B. Portion of Decision. Decision, p. 4 fn. 6.
- C. Record Citation. Decision, p. 4 fn. 6, and facts cited in stipulated record.
- D. Grounds. The ALJ concluded that WKYC-TV lawfully ceased checkoff following contract termination and dismissed the Complaint. In light of his dismissal of the Complaint, the ALJ found it unnecessary to address WKYC-TV's Section 10(b) defense.

**BRIEF IN SUPPORT OF CROSS-EXCEPTIONS**

**A. Statement of the Case.**

WKYC-TV incorporates by reference the Statement of the Case in its Answering Brief.

The ALJ, in light of his dismissal of the Complaint on other grounds, found it unnecessary to rule on WKYC-TV's Section 10(b) defense. WKYC-TV's Cross-Exceptions are limited to the Section 10(b) issue. Specifically, NABET filed its charge over six months after WKYC-TV posted conditions following impasse. The posted conditions, which remain in effect, do not include a dues checkoff provision.

**B. Factual Background.**

WKYC-TV incorporates by reference the Factual Background section of its Answering Brief.

On September 30, 2011, Judge Wedekind issued his Decision dismissing the Complaint and the Board issued an Order Transferring Proceeding to the Board. On October 27, 2011, NABET filed Exceptions to the ALJ's Decision. On October 31, 2011, General Counsel also filed Exceptions. On November 11, 2011, WKYC-TV filed its Answering Brief to the Exceptions of General Counsel and NABET.

**C. Argument.**

WKYC-TV posted terms and conditions on January 4, 2010. The posted terms and conditions did not include the dues checkoff clause. NABET was on full notice at that time that it was WKYC-TV's intention to cease checkoff. Dues checkoff was inadvertently continued through October 6, 2010. NABET could have and should have challenged the omission of dues checkoff from the posted conditions commencing January 4, 2010. The present charge not having been filed until October 18, 2010, is well outside the six-month period of Section 10(b).<sup>1</sup>

Notably, NABET filed charges alleging that the posting of conditions on January 4, 2010 was unlawful. Those charges were in Case Nos. 8-CA-38736 and 8-CA-38866 and they were in fact timely filed relative to the posting of conditions. The Region reviewed all the documentation concerning the posting, including the prior contract and the posted conditions which omitted the provision for dues checkoff and ultimately validated the posted conditions and dismissed the charges. At no time during the investigation of those charges did NABET or the Region ever argue that WKYC-TV's decision to omit checkoff from the posted conditions was improper.

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<sup>1</sup> Section 10(b) states in relevant part "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made." 29 U.S.C. §160(b).

**D. Request for Oral Argument.**

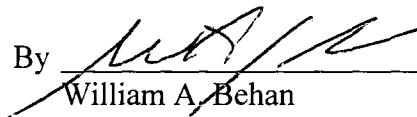
Respondent WKYC-TV requests oral argument in this matter pursuant to Section 102.46(i) of the Board's Rules & Regulations.

**CONCLUSION**

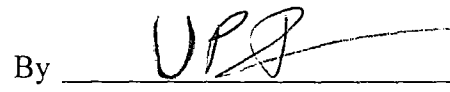
For all the reasons discussed above, WKYC-TV respectfully requests that the Board dismiss the Complaint.

DATED: November 11, 2011

RESPONDENT WKYC-TV, INC.

By   
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William A. Behan  
Senior Vice President/Labor Relations  
Gannett Co., Inc.  
Counsel for WKYC-TV, Inc.

RESPONDENT WKYC-TV, INC.

By   
\_\_\_\_\_  
Vincent P. Floyd  
Counsel/Labor & EEO  
Gannett Co., Inc.

CERTIFICATE OF SERVICE

This is to certify that the attached Respondent WKYC-TV, Inc.'s Cross-Exceptions and Brief in Support were filed with the National Labor Relations Board's Office of Executive Secretary and served on all parties by UPS Next Day Delivery, all costs pre-paid at McLean, Virginia and deposited with UPS on November 11, 2011.

National Labor Relations Board  
Office of Executive Secretary  
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Washington, D.C. 20570

(Original and 8 Copies)

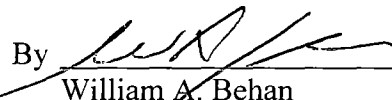
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