UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

NEXSTAR BROADCASTING GROUP, INC.,
d/b/a WETM-TV

Respondent Employer,

and 03-CA-125618

INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE TECHNICIANS, ARTISTS AND ALLIED CRAFTS OF THE UNITED STATES, ITS TERRITORIES AND CANADA, AFL-CIO

Charging Party Union.

RESPONDENT'S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION

Pursuant to §102.46 of the National Labor Relations Board's Rules and Regulations, Respondent Nexstar Broadcasting, Inc. ("Nexstar" or "Respondent") files exceptions to the Decision of the Administrative Law Judge Steven Davis ("ALJ") and states that it takes exception with each of the below listed finding of facts and conclusions of the ALJ because they are not supported by substantial evidence and contain error of fact or law:

1. Nexstar takes exception with the ALJ's findings of facts that: "Although Busch testified on direct examination that George Kastenhuber was discussed during bargaining, he testified, inconsistently on cross examination, that Kastenhuber, specifically, was not referred to during bargaining" and that " In addition, Busch denied that Kastenhuber was mentioned by name during the bargaining, noting that Iddings wrote him a note with

Kastenhuber's name at a time when they were away from the bargaining table". (JD 4: 10-20)

2. Nexstar takes exception with the ALJ's findings of facts and conclusions of law that: "Doland has been the chief videographer at the facility for 18 years. His work, shooting news stories with a reporter which are then aired by the Respondent, is essentially the same as that performed by the four other videographers. One of his responsibilities which can arguably be described as supervisory is occasionally critiquing the video shoots of other videographers when he has the time to do so, giving "pointers" on making more effective videos. However, advice by an experienced employee to a worker with less time on the job does not constitute Section 2(11) supervisory authority. *Sears, Roebuck & Co.,* 292 NLRB 753, 754 (1989); *Sanborn Telephone Company, Inc.*, 140 NLRB 512,515 (1963)." (JD 12:50-52; 13:1-6)
3. Nexstar takes exception with the ALJ's findings of facts and conclusions of law that: "Doland performed evaluations of the other videographers twice, in 2013 and 2014. He stated that he reviewed the evaluation with the employee, signed it as his supervisor, and then gave the form to supervisor Rockstroh. Rockstroh did not testify. Doland denied that the evaluation process led to any benefit for the employee being evaluated. The authority to "evaluate" is not one of the indicia of supervisory status set out in Section 2(11). *Elmhurst Extended Care Facilities*, 329 NLRB 535,536 (1999). "When an evaluation does not, by itself, affect the wages and/or job status of the employee being evaluated, the individual performing such an evaluation will not be found to be a statutory supervisor." *Elmhurst,* above, at 536. "The authority simply to evaluate employees without more is

insufficient to find supervisory status." *Passavant* Health Center, 284 NLRB 887, 891 (1987).(JD 13:7-17)

4. Nexstar takes exception with the ALJ's findings of facts and conclusions of law that: "Other evidence, that Doland's name appears as "supervisor" on his evaluations of employees and his higher salary, do not establish that he is a statutory supervisor. *Training School at Vineland,* 332 NLRB 1412, 1416 (2000). His undenied testimony that his salary, which was higher than other videographers, was obtained by agreement with a former employer similarly does not support a finding of fact that such salary was attributed to his supervisory responsibilities." (JD 13: 18-24)
5. Nexstar takes exception with the ALJ's finding of facts of and conclusions of law that: "The Respondent also asserts that Doland recommended the hire of certain videographers. There was some dispute as to whether Doland recommended the hire of Brame and Martin. Iddings stated that he did but Doland denied doing so. Doland has a prospective videographer shoot a "mock" story and then recommends to news director Rockstroh whether he should be hired. Rockstroh did not testify. There is no evidence as to what weight Rockstroh gave to Doland's alleged recommendation. Doland's participation in part of the interview process is "insufficient to establish supervisory authority under the Act because there is no evidence that the [disputed supervisor] effectively recommended that the [candidate] be hired. "*North General Hospital,* 314 NLRB 14, 16 (1994). (JD 13:26-35)
6. Nexstar takes exception to the ALJ's finding of facts of that: "the one instance in which he reported an employee for laziness was dismissed and no discipline was taken against the

employee. Doland does not assign employees to cover breaking news stories." (JD 13:36-39)

7. Nexstar takes exception to the ALJ's findings of facts that: "the assignment of equipment to a videographer, taking the equipment to be repaired, directing that vehicles be cleaned, even assuming that Doland performed all those tasks, does not establish that he is a statutory supervisor where there is no showing that he exercised independent judgment in the execution of those tasks. Those tasks are routine in nature." (JD 13: 41-44)

8. Nexstar takes exception to the ALJ's findings of facts that: "I find, in contrast to Iddings' testimony, that the news director and producer, and not Kastenhuber, assign those stories to the reporters and videographers. At most, the assignments are part of a collaborative effort. Even as Iddings testified, Kastenhuber "is part of that process of let's assign who goes where." It is more likely, as the morning meeting is a group effort of determining which stories to cover, that the assignments are also part of a combined exercise, where the two undisputed supervisors, the news director and producer, are actually making the assignments." (JD 14: 1-7)

9. Nexstar takes exception to the ALJ's findings of facts and conclusions of law that: "Kastenhuber conceded that he assigns the closest team to a breaking news story. However, such assignment does not constitute the exercise of independent judgment. Rather, he mechanically determines which team is geographically closer to the story. Moreover, he later tells his news director that he took such action. Furthermore, he stated that he only makes such an assignment if no one else is in the newsroom at that time. Such routine, mechanical assignments, involving only the determination of which team is closer to a

breaking news story, does not involve the exercise of independent judgment and is not evidence of supervisory authority. *Sears, Roebuck, above*, at 754. Kastenhuber is not authorized to assign overtime work without his news director's agreement". (JD 14:9-17)

10. Nexstar takes exception to the finding of fact and the conclusion of law that: "In *King Broadcasting Co.*, 329 NLRB 378, 381 (1999), the Board found that assignment editors working at a television station were not statutory supervisors. Many of their responsibilities were similar to Kastenhuber's, including their selection of stories as prospective news items to be covered and participation in group meetings to determine which stories should be aired. In *King,* and here, the editor was described as a "traffic cop" who monitors information coming into the newsroom. (JD 14: 19-24)

11. Nexstar takes exception to the finding of fact and conclusion of law that: "In *King,* the Board held that the assignment editor was not a supervisor, notwithstanding that he made assignments. The Board found that such assignments were not based on the exercise of independent judgment even though they were based on an assessment of employees' skills. 329 NLRB at 381. Here, likewise, there was no evidence that any assignment made by Kastenhuber was based on his exercise of independent judgment, or his assessment of the assignee's skills. (JD 14:26-31)

12. Nexstar takes exception to the ALJ's finding of fact and conclusion of law that: "I accordingly find and conclude that John Doland and George Kastenhuber are not supervisors within the meaning of Section 2(11) of the Act." (JD 14:35-36)

13. Nexstar takes exception to the ALJ's finding of fact and conclusion of law that: "In *Hill-Rom Co., Inc., v. NLRB*, 957 F.2d 454, 457 (7th Cir. 1992), the court defined permissive subjects of bargaining as those "which fall outside the scope of Section 8(d) of the Act and

cannot be implemented by the employer without union or Board approval." The court stated, as adopted by the Board in *Hampton House*, 317 NLRB 1005, 1005 (1995): (Full cited quotation from case omitted from this statement of exception for purpose of brevity, but should be considered part of the exception) (JD 14: 47-51, 15: 1-16)

14. Nexstar takes exception with the ALJ's finding of fact and conclusion of law that: "If the subject is a permissive one, the other party may refuse to discuss it; a proposal cannot thereafter be implemented absent an agreement to do so. A proposal to alter the scope (composition) of an existing bargaining unit is a permissive subject of bargaining. Thus, an employer cannot unilaterally change a bargaining unit, even after bargaining to impasse." *Aggregate Industries*, 359 NLRB No. 156, slip op. at 3 (2013). (JD 15: 16-22)
15. Nexstar takes exception with the ALJ's finding of fact that: "the positions of assignment editor and chief videographer were included within the scope of the bargaining unit by the consent of the parties." (JD 15: 24-25)
16. Nexstar takes exception with the ALJ's findings of facts of that: "Accordingly, that contract's unit description which broadly included of all of its employees, of course included Doland and Kastenhuber. The Respondent claims that they are supervisors. However, during that period of time, and indeed, during their entire lengthy employment at the Station, they were admittedly included in that unit and were considered and treated as unit employees represented by the Union." (JD 15: 27-32)

17. Nexstar takes exception with the ALJ's findings of facts that:" Indeed, the Respondent, at the start of negotiations, gave the Union a list of Union members which included the names of Doland and Kastenhuber. The Respondent apparently made no claim during their employment that they were statutory supervisors who should be excluded from the unit. Rather, that claim was made for the first time after the bargaining concluded and the contract was signed." (JD 15:40-44)

18. Nexstar takes exception with the ALJ's findings of facts and conclusions of law that: "As set forth above, immediately following the execution of the renewal contract, the Respondent informed Doland and Kastenhuber that they were no longer in the bargaining unit. It is clear that the Respondent did not first secure the consent of the Union when it took such action. It could not lawfully do so." (JD 15: 46-48)

19. Nexstar takes exception with the ALJ's findings of facts and conclusions of law that: "Once a specific job has been included within a bargaining unit, the employer cannot remove it without the consent of the union or action by the Board. *Hampton House,* 317 NLRB 1005, 1005 (1995). Where the same employees continue to perform the same work that they had, an employer may not lawfully attempt to change the scope of the bargaining unit by taking the position that these represented employees and their work were now outside the bargaining unit. *Bay Shipbuilding Corp.*, 263 NLRB 1133, 1140-1141 (1982), *enfd.* 721 F.2d 187 (7th Cir. 1983). An employer may not, under the guise of transferring unit work, alter the scope of the bargaining unit. *Facet Enterprises, Inc. v. NLRB*, 907 F.2d 963,975-976 (10th Cir. 1990); *Aggregate Industries, above, slip op.* at 3." (JD 15:50-55)

20. Nexstar takes exception with the ALJ's finding of fact and conclusion of law that: "Because the Employer took this action without the Union's consent, it violated Section 8(a)(5) and (1) of the Act. *Aggregate Industries*, above." (JD 16:9-10)

21. Nexstar takes exception with the ALJ's finding of fact and conclusion of law that: "In *Arizona Electric*, 250 NLRB 1132 (1950), the employer withdrew recognition from the union, during mid-term negotiations, for previously included unit employees on the ground that they were statutory supervisors. The Board, in finding a violation, stated: It is axiomatic that parties to a collective-bargaining relationship cannot bargain meaningfully unless they know the scope of the unit for which they are to bargain. Thus, it is well established that the integrity of a bargaining unit cannot be unilaterally attacked, and that once a unit is certified, it may be changed only by mutual agreement of the parties or by Board action. 250 NLRB 1132, 1133." (JD 16:12-22)

22. Nexstar takes exception with the ALJ's finding of fact and conclusion of law that: "Here, as in, *Arizona Electric*, "where a contract executed with full knowledge of the nature of the present duties of the [disputed employees] is currently in force, to permit Respondent to alter unilaterally the scope of the established bargaining unit would unnecessarily encourage parties to productive and viable collective-bargaining relationships to refuse to bargain over wages and other terms and conditions of employment of individuals who were intended to benefit from these relationships. 250 NLRB at 1133." (JD 16:24-29)

23. Nexstar takes exception with the ALJ's finding of fact and conclusion of law that: "Later cases have affirmed this long-standing policy. In *Dixie Electric Membership Corp.*, 358 NLRB No. 120, slip op. at 3-4 (2012), affirmed in 361 NLRB No. 107, fn. 1 (2014),the Board found that the employer violated the Act by modifying the unit's scope by

eliminating certain positions from the unit without the union's consent. The Board also found that the employees, who were removed from the unit allegedly because they were supervisors, continued to perform essentially the same work as they did prior to their removal. Here, as in *Dixie Electric*, it is undisputed that the positions were covered by the expiring collective-bargaining agreement. *NLRB v. Quinn Restaurant Corp.,* 14 F.3d 811, 815 (1994); *Wackenhut Corp.*, 345 NLRB 850, 855 (2005); *Mt. Sinai Hospital*, 331 NLRB 895, 895 fn. 2. (2000)". (JD 16: 30-40)

24. Nexstar takes exception with the ALJ's finding of fact and conclusion of law that: "As discussed above, the Respondent has not met its burden of proving that the assignment editor and the chief videographer were statutory supervisors. As a result, the Respondent cannot rely on their alleged supervisory status as a justification for its elimination of the two disputed positions from the bargaining unit. *Wackenhut,* above, at 855." (JD 16: 41-44)
25. Nexstar takes exception with the ALJ's finding of fact and conclusion of law that: "The Respondent withdrew recognition from the Union as the representative of unit positions assignment editor and chief videographer by unilaterally removing their positions from the unit. There can be no doubt, as the complaint alleges, that such action was done without the Union's consent". (JD 16: 46-49)
26. Nexstar takes exception with the ALJ's finding of fact that: "There was no agreement by the Union that those positions be removed from the unit. I find, as testified by the Union's witnesses, that there was no discussion during negotiations about the two men's positions. (JD 16:51-52)

27. Nexstar takes exception with the ALJ's finding of fact that: "I cannot credit Busch's less than definitive testimony that the two men were discussed. Even if there was discussion about supervisory responsibilities, there is no credible evidence that the Union was on notice, or that it gave its consent to the removal of Doland and Kastenhuber from the unit. Indeed, Busch testified that he spoke about supervisors being excluded from the unit, but that "it had nothing to do with any specific person," and that the Employer decided to remove the two men from the unit "after the contract was ratified and signed." (JD 17: 1-9)

28. Nexstar takes exception with the ALJ's finding of fact and conclusion of law that: "I accordingly find and conclude, as alleged in the complaint, that the Respondent violated Section 8(a)(5) and (1) of the Act by the removing the positions of assignment editor and chief videographer from the bargaining unit without first obtaining the Union's consent to such actions".(JD 17: 9-12)

29. Nexstar takes exception with the ALJ's finding of fact and conclusion of law that: "I also find, as alleged in the complaint, that the Respondent unilaterally removed the bargaining unit work of the assignment editor and chief videographer from the unit. The Respondent did so with respect to such mandatory subjects of bargaining, without prior notice to the Union and without affording the Union an opportunity to bargain with it regarding such conduct".(JD 17: 19-23)

30. Nexstar takes exception with the ALJ's finding of facts and conclusions of law that: "After the contract was signed, Doland and Kastenhuber were informed that they were supervisors and were removed from the bargaining unit. It is undisputed that they continued to perform their duties, under the same working conditions, as they had before they were removed

from the unit. The Board in *Hampton House*, 317 NLRB 1005, 1005 (1995) stated: (Full quotation from case omitted herein for purpose of brevity, but it should be considered part of exception)", and that: "No notice was given to the Union that the removal of Doland and Kastenhuber's work from the unit was being contemplated or considered by the Respondent. Rather, their elimination from the unit was presented as a fait accompli, following the execution of the new contract, which, the Respondent believed would automatically operate to accomplish its goal of removing their work from the unit. *Wire Products Mfg Corp.*, 328 NLRB 855, 857 (1999). I accordingly find and conclude, as alleged in the complaint, that by unilaterally removing the bargaining unit work of the assignment editor and chief videographer form the bargaining unit, the Respondent violated Section 8(a)(5) and (1) of the Act." (JD 17: 25-50)

31. Nexstar takes exception with the ALJ's finding of facts and conclusions of law that: "In both cases, the employers modified or implemented a contract term. In *Pittsburgh Plate Glass,* it changed retirees' benefits. In *Star Tribune*, it sought to implement a drug and alcohol program. Accordingly, the Respondent's reliance on those cases is misplaced. (JD 18: 13-15)

32. Nexstar takes exception with the ALJ's finding of facts and conclusions of law that: "It is not alleged that the Respondent modified a contract term. This is not a case involving a mid-term modification of a contract. The Respondent did not change a "contract term." It changed the scope of the bargaining unit. The "legal principles applicable to a change- of-unit-scope allegation differ from those applicable to a midterm contract modification." *Walt Disney World Co.*, 359 NLRB No. 73, slip op. at 4 (2013)". (JD 18: 17-21)

33. Nexstar takes exception with the ALJ's finding of fact that: "Here, the Respondent did not modify the recognition clause. That clause remained the same from the time it was proposed by the Employer in February, 2013 until it was included in the executed contract one year later. The clause remained intact and unchanged. It was not modified at all during that time, nor after the contract was executed". (JD 18: 17-26)

34. Nexstar takes exception with the ALJ's finding of fact that: "Rather, the scope of the unit contained in the contract was altered by the Respondent when it unilaterally removed the two positions from that unit. The clause itself was not modified." (JD 18: 28-29)

35. Nexstar takes exception with the ALJ's finding of fact and conclusion of law that: "Here, the elimination from the unit of the positions of assignment editor and chief videographer were clearly an alteration of the scope of the unit. Those two positions were included in the bargaining unit which was recognized by the Employer. The prior contract which was the subject of renewal bargaining was applied to those two positions. Accordingly, the Respondent's elimination of the two positions from the bargaining unit was a change in the scope of the unit. The Respondent's argument that the two men occupying those positions were statutory supervisors is unavailing since, as I have found above, it has not been proven that they were statutory supervisors". (JD 18: 31-38)

36. Nexstar takes exception with the ALJ's finding of fact that: "By eliminating the two disputed positions from the unit the Respondent did not modify a contract term. It changed the scope of the bargaining unit. I accordingly reject the Respondent's argument that it lawfully unilaterally changed a term of the contract." (JD 18: 40-42)

37. Nexstar takes exception with the ALJ's finding of fact that: "Indeed, here the parties applied the terms of the expired collective-bargaining agreement to alleged supervisors Doland and Kastenhuber". (JD 19: 2-3)

38. Nexstar takes exception with the ALJ's finding of facts that: "It is true that the parties engaged in prolonged negotiations. Discussions began in February, 2013 and the contract was executed one year later, in March, 2014. In the interval, they met once per month for seven months. However, it is not the length of the negotiations which is the key. Rather, the question is whether the parties discussed the matter at issue, and whether the Union was on notice of the Respondent's proposed changes". (JD: 19: 19-23)

39. Nexstar takes exception with the ALJ's finding of facts that: "As noted above, Employer official Busch did not testify that there was a specific discussion during negotiations in which he identified Doland and Kastenhuber as being supervisors who therefore must be excluded from the unit. The most that could be said was that he mentioned that "Doland, who was at the table as a supervisor, has responsibilities and oversight that included training and evaluations .... We talked about others that could be supervisors ... I specifically talked about John at that table." His testimony that Doland "nodded" when he characterized him as a supervisor could only be interpreted as an imprecise description of Doland's motion of his head which could have multiple meanings, and certainly not as Doland's affirmation that he was a statutory supervisor with all its ramifications." (JD 19:25-34)

40. Nexstar takes exception with the ALJ's finding of fact that: "Although Busch testified that he spoke about Kastenhuber during bargaining, he gave contradictory testimony by stating

that Kastenhuber was not referred to during bargaining. Rather, he stated that his name came up in a private conversation with Iddings." (JD 19: 35-37)

41. Nexstar takes exception with the ALJ's finding of fact that: "In contrast, Union bargainers credibly testified that during the negotiations there was no mention of the removal of the two men from the unit. Union agent Hartnett further credibly stated that it was not the parties' intent to do so." (JD 19:39-41)

42. Nexstar takes exception with the ALJ's finding of fact that: "Hartnett conceded that the Union was given the Respondent's proposals which changed the scope of the unit, and which included only certain job titles and eliminated the list of excluded job titles and "supervisors or managers." Nevertheless, Hartnett did not believe that those changes would result in the loss of the positions held by Doland and Kastenhuber because those job titles were always included in the bargaining unit, and they were not supervisory. Rather, according to Hartnett, the only person discussed as someone who should be excluded from the unit was Chorney." (JD 19: 43-49)

43. Nexstar takes exception with the ALJ's finding of fact and conclusion of law that: "I find that it would have been "unlikely that the Union intended to relinquish the right to bargain about what traditionally had been a bargaining unit position ... with virtually no discussion of the issue .... *Land O'Lakes,* 299 NLRB 982, 982, fn. 2 (1990)." (JD 19: 51-52)

44. Nexstar takes exception with the ALJ's finding of facts of factthat: "This finding of fact is supported by the Union's actions when, immediately after being informed by the two men that they had been removed from the unit, Union agent Hartnett told Iddings that he was "shocked," and "adamantly" protested that "this was not what was collectively bargained"

and that he would pursue his legal remedies. He immediately filed a charge. *Land O'Lakes,* above, at 982, fn. 2." (JD 20:2-7)

45. Nexstar takes exception with the ALJ's finding of facts that: "In addition, the Respondent could not have believed that the Union would consent to the removal from the unit of the positions occupied by Doland and Kastenhuber. Doland was at the bargaining table and took part in all the negotiations. If he was a supervisor he would not have been present as a member of the Union's bargaining team." (JD 20: 9-12)

46. Nexstar takes exception with the ALJ's finding of facts and conclusions of law that: "It is true that the Union did not request bargaining over this issue. It did discuss the removal of Chorney from the unit as a confidential employee and it agreed to such change. However, the Union did not request bargaining as to the removal of the two disputed positions because, as testified by Hartnett, there was no discussion of the subject. The Respondent presented the Union with a fait accompli. It was not presented with any notice, much less timely and meaningful notice under circumstances which at least afforded a reasonable opportunity for counter arguments or proposals. *Dixie Electric*, above, slip op. at 4." (JD 20: 14-20)

47. Nexstar takes exception with the ALJ's finding of facts and conclusions of law that: "There was no evidence that the issue of the removal of the two positions had been mentioned at all during contract negotiations, much less "fully discussed and consciously explored. *Provena St. Joseph Medical Center*, 350 NLRB 808,810 (2007). The Union was therefore relieved of its obligation to request bargaining as to the removal of the two positions. If any request to bargain was necessary, the Union did so in Hartnett's protest to Iddings and by its filing of the instant charge. *Solutia, Inc.*, 357 NLRB No. 15, slip op. at 7 (2011),

enfd. 699 F.3d 50 (1st Cir. 2012). A waiver of the right to bargain must be clear and unmistakable. *Metropolitan Edison Co. V. NLRB*, 460 U.S. 693, 709 (1983)". (JD 20:22-29)

48. Nexstar takes exception with the ALJ's finding of facts and conclusions of law that: "I also reject the Respondent's argument that this decision would unlawfully force the Respondent to agree to and implement a term in the contract that it did not agree to. Here, the Respondent always treated the positions of assignment editor and chief videographer as being part of the recognized collective-bargaining unit. This decision does not require the Respondent to do anything more than to honor its agreement to continue to recognize those job positions." (JD 20:42-46)

49. Nexstar takes exception with the ALJ's finding of facts and conclusions of law that: "By unilaterally removing the positions of assignment editor and chief videographer from the collective-bargaining unit set forth above, the Respondent has altered the scope of the unit without the Union's consent, and has violated Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act. (JD 21: 15-18)

50. Nexstar takes exception with the ALJ's finding of fact and conclusion of law that: "By unilaterally removing the bargaining unit work of the assignment editor and chief videographer without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct, the Respondent violated Section 8(a)(S) and (1) and Section 2(6) and (7) of the Act." (JD 21: 20-24)

51. Nexstar takes exception with the ALJ's findings of fact and conclusions of law that: The positions of assignment editor and chief videographer are not statutory supervisory

positions within the meaning of Section 2(11) of the Act." and that the "unfair labor practices of the Respondent , found above, effect commerce within the meaning of 2(2), (6) and (7) of the Act." (JD 21: 25-26)

52. Nexstar takes exception with the ALJ's finding of fact and conclusion of law that: "Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act." (JD 21: 33-35)

53. Nexstar takes exception with the ALJ's finding of fact and conclusions of law that: "In order to restore the *status quo ante*, the Respondent shall be required to rescind its March 26, 2014 removal of the unit positions of assignment editor and chief videographer and its consequent removal of the bargaining unit work of those two positions outside the bargaining unit. The Respondent shall also be ordered to reinstate John Doland and George Kastenhuber to the bargaining unit." (JD 21: 36-41)

54. Nexstar takes exception with the ALJ's finding of fact and conclusions of law that: "The Respondent shall also be required to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees occupying the positions of assignment editor and chief videographer, and, upon request, bargain with the Union regarding those employees' wages, hours, and other terms and conditions of employment." (JD 21: 43-46)

55. Nexstar takes exception with the ALJ's finding of fact and conclusions of law that: "The Respondent shall also be required to apply the terms of the collective-bargaining agreement, effective February 26, 2014 through February 25, 2017, between the Union and the Respondent, to employees occupying the positions of assignment editor and chief

videographer. However, nothing herein shall be construed to authorize or require the withdrawal or elimination of any wage increase or other improved benefits or terms or conditions of employment, which may have been afforded to the assignment editor and chief videographer employees, as compared to the wages, benefits, and terms or conditions of employment of bargaining unit employees". (JD 21: 48-52, 22: 1-4)

56. Nexstar takes exception with the ALJ's finding of facts of fact and conclusions of law that: "Although the record does not establish that John Doland or George Kastenhuber suffered any economic loss as a consequence of the Respondent's actions, it nevertheless shall be ordered to make them whole, if it can be shown that they have suffered any loss of earnings and other benefits as a result of the discrimination against them. If backpay is warranted, it shall be computed in accordance with *F. W Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons for the Retarded,* 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No.8 (2010), denied on other grounds sub. nom. *Jackson Hospital Corp. v NLRB*, 647 F.3d 1137 (D.C. Cir. 2011)" and "In accord with *Tortillas Dan Chavas*, 361 NLRB No.10 (2014), my recommended Order also requires the Respondent to (1) submit the appropriate documentation to the Social Security Administration so that when backpay is paid to Doland and Kastenhuber, it will be allocated to the appropriate calendar quarters, and/or (2) reimburse them for any additional Federal and State income taxes they may be assessed as a consequence of receiving a lump-sum backpay award covering more than 1 calendar year". (JD 22: 5-18)

57. Nexstar takes exception with the ALJ's finding of fact and conclusion of law that: There was testimony that, following the removal of Doland and Kastenhuber from the bargaining

unit, the Respondent ceased making contributions to their pensions. Accordingly, the Respondent shall be required to remit all contributions it would have made on the employees' behalf to employee retirement, 401 (k), and/or health care funds absent its unlawful unilateral changes, including any additional amounts due the funds in accordance with *Merryweather Optical Co.,* 240 NLRB 1213, 1216 fn. 6 (1979). In addition, the Respondent shall reimburse the employees for any expenses they may have incurred as a result of its failure to make such benefit fund contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), with interest as prescribed in *New Horizons for the Retarded,* above." (JD 22: 20-28)

58. Nexstar takes exception with the ALJ's finding of fact and conclusion of law that: The Respondent shall also be required to reimburse the Union for any dues that it would have deducted from Doland and Kastenhuber and remitted to the Union under the collective-bargaining agreement absent its unlawful unilateral changes. Such sums shall likewise be calculated in the manner set forth in *Ogle Protection Service*, above, with interest as prescribed in *New Horizons for the Retarded,* above." And, "that in accordance with the Board's decision in *J. Piccini Flooring*, 356 NLRB No.9, slip op. at 5-6 (2010), I shall recommend that the Respondent be required to distribute the attached notice to members and employees electronically, if it is customary for the Respondent to communicate with employees and members in that manner. Also in accordance with that decision, the question as to whether a particular type of electronic notice is appropriate should be resolved at the compliance stage. *J. Piccini Flooring*, above, slip op. at 3. See *Teamsters Local 25*, 358 NLRB No. 15 (2012)". (JD 22: 36-42)

59. Nexstar takes exception to the proposed Order in its entirety. (JD 23:1-52, 24: 1-32)

60. Nexstar takes exception to the proposed "Notice to Employees" in its entirety. ("Appendix")

Nexstar submits herewith a Brief in Support of its Exceptions this 16th day of March 16, 2015.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on March 16, 2015, a copy of the foregoing Respondent's Exceptions to Administrative Law Judge's Decision, was filed with the NLRB's electronic filing system. Notice of filing will be sent to all Parties by operation of the NLRB's electronic filing system where the Parties then may access this filing.

Respectfully submitted,

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