

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

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

Respondent,

--and--

NATIONAL ASSOCIATION OF
BROADCAST EMPLOYEES &
TECHNICIANS-
COMMUNICATIONS WORKERS
OF AMERICA, AFL-CIO,

Charging Party.

NLRB Case No. 03-CA-210156

**Charging Party's Opposition to Respondent's
Motion for Summary Judgment**

The National Association of Broadcast Employees & Technicians - Communications Workers of America, AFL-CIO ("NABET-CWA" or "Charging Party") files this brief Opposition to Respondent's Motion for Summary Judgment in accordance with §102.24(b) of the National Labor Relations Board's ("Board") Rules and Regulations.¹ NABET-CWA joins in the arguments well-stated in the Brief submitted by Counsel for the General Counsel.

NABET-CWA writes separately to emphasize two points. First, in its First Amended Answer, Respondent denies that the term and condition of employment at

¹ NABET-CWA submits that Respondent ignored §102.5(a) of the Board's Rules, which requires that any brief which exceeds twenty (20) pages, filed with the Board, must contain an index with page references and an alphabetical table of cases and other authorities cited.

issue in the Complaint - compensation to bargaining unit employees serving on the Charging Party's bargaining committee - is a mandatory subject for the purpose of collective bargaining. (Answer, p. 2, ¶7(b)). Indeed, Respondent filed an unfair labor practice charge (03-CB-213176) against Charging Party, and alleged the Union's demand that Respondent continue to compensate bargaining unit employees was unlawful and violated §8(b)(3) of the National Labor Relations Act, 29 U.S.C. §151 *et seq.* The Regional Director for Region 3 refused to issue a Complaint. Respondent exercised its right to appeal, and that matter remains pending.

Respondent in its Motion and supporting Brief makes no mention of its denial in the First Amended Answer that the employees' compensation is a mandatory subject of bargaining under §8(d). If, as Respondent asserted in the First Amended Answer, the subject is not mandatory, all of its arguments in the Brief are for naught, as the cases cited pertain to unilateral changes and bargaining over mandatory subjects.

Respondent in its First Amended Answer denied the allegation that payment for bargaining unit employees for time served on the Union's bargaining committee is a mandatory subject for the purposes of collective bargaining. Thus, a substantial and material factual dispute exists. Respondent is not entitled to summary judgment.

Second, buried in Respondent's Brief is an acknowledgement that Respondent first acquired the television station in January 2017. (R. Brief p. 2). Respondent purchased Media General, which operated the television station for roughly three (3) years, after it merged with LIN Media. (R. Brief, p. 2). The collective bargaining

agreement ("CBA") between NABET-CWA and LIN Media expired March 2017. (R. Brief, p. 2).

Throughout its lengthy argument, Respondent makes repeated references to the parties' "past practice." However, Respondent did not provide an Affidavit from any manager at the television station as to how the issue was handled in the past. It failed to provide payroll records and other documents that would establish how the issue was handled in the past. NABET-CWA and Media General had established practices. NABET-CWA and LIN Media likewise had established practices. Respondent failed to provide any evidence or factual support as to how employee members of the NABET-CWA bargaining committee were compensated during bargaining for prior agreements, arbitrations and grievance handling.

NABET-CWA understand Raytheon Network Centric Systems, 365 NLRB No. 161 (2017) dramatically enhanced an employer's ability to make unilateral changes to mandatory subjects of bargaining without prior notice to and negotiations with the employees' exclusive representative. However, even the Board in Raytheon required the Respondent to show an established past practice supported the unilateral change. In Raytheon, this was met by the Respondent's evidence which demonstrated it had made annual changes in health benefits over a twelve (12) year period.

NABET-CWA filed its Charge because Respondent unilaterally changed a long-standing, significant term and condition of employment: compensation to employees who serve on NABET-CWA's bargaining committee. Respondent seemingly disputes the lengthy past practice at the television station, warranting the denial of its Motion.

Respectfully submitted,



Judiann Chartier
General Counsel

September 18, 2018

NABET-CWA, AFL-CIO
501 Third Street NW
Washington, DC 20001
(202) 434-1234
jchartier@cwa-union.org

Certification of Service

I hereby certify that on this day I filed electronically Charging Party's Opposition to Respondent's Motion for Summary Judgment with the Board, using the agency's e-filing system. I further certify that copies of the same were served upon the following via electronic mail on this day:

Charles W. Pautsch, Esq. cwa@psb-attorneys.com

Eric Duryea, Field Attorney Eric.Duryea@nlrb.gov

September 18, 2018

