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Attorneys for Union

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
REGION 19

NEXSTAR BROADCASTING, INC. d/b/a  
KOIN-TV,

and

NATIONAL ASSOCIATION OF  
BROADCAST EMPLOYEES &  
TECHNICIANS, THE BROADCASTING  
AND CABLE TELEVISION WORKERS  
SECTOR OF THE COMMUNICATIONS  
WORKERS OF AMERICA, LOCAL 51, AFL-  
CIO,

No. 19-CA-211026

**BRIEF IN SUPPORT OF CROSS-  
EXCEPTIONS**

Respondent should be required to post permanently the Board's ill-fated employee rights notice. <https://www.nlr.gov/poster>. The Courts that invalidated the rule noted that such a notice could be part of a remedy for specific unfair labor practices. It is time for the Board to impose the requirement for a lengthy posting of that notice as a remedy for unfair labor practices.

Additionally, any notice that is posted should be posted for the period of time from when the violation began until the notice is posted. The short period of sixty (60) days only encourages employers to delay proceedings, because the notice posting will be so short and so far in the future.

The Notice should be included with any payroll statements. *See* Cal. Lab. Code § 226.

The Board's Notice and the Decision of the Board should be mailed to all employees. Simply posting the notice without further explanation of what occurred in the proceedings is not adequate notice for employees. The Board Decision should be mailed to former employees and provided to current employees. Only with a mailing of the Notice and the full Decision can the employees understand what the notice is about and the background. The mailing of only the notice will be largely meaningless to those employees who receive the notice because they won't have the background or explanation.

Notice reading should be required in this matter. That Notice reading should require that a Board Agent read the Notice and allow employees to inquire as to the scope of the remedy and the effect of the remedy. Simply reading a Notice without explanation is inadequate. Behaviorists have noted that, "[t]aken by itself, face-to-face communication has a greater impact than any other single medium." Research suggests that this opportunity for face-to-face, two-way communication is vital to effective transmission of the intended message, as it "clarifies ambiguities, and increases the probability that the sender and the receiver are connecting appropriately." Accordingly, a case study of over five hundred NLRB cases, commissioned by the Chairman in 1966, strongly advocated for the adoption of such a remedy, recommending "providing an opportunity on company time and property for a Board Agent to read the Board Notice to all employees and to answer their questions." The employer should not be present. The Union should be notified and allowed to be present. This should be on work time and paid. If the employees are working piece rate, the rate of pay should be equal to their highest rate of pay to avoid any disincentive to attend the reading.

The traditional notice is also inadequate. The standard Board notice should contain an affirmative statement of the unlawful conduct. We suggest the following:

We have been found to have violated the National Labor Relations Act. We illegally refused to turn over information that was relevant to bargaining and necessary to the Union's ability to perform its duties as the bargaining representative. We apologize. We have now been ordered to turn over all such requested information. We ask your forgiveness for violating the National Labor Relations Act.

Absent some affirmative statement of the unlawful conduct, the employees will not understand the arcane language of the notice. Nor is the notice sufficient without such an admission. In effect, the way the notice is framed is the equivalent of a statement that the employer will not do specified conduct, not an admission or recognition that it did anything wrong to begin with. Only through an affirmative recognition that misconduct has occurred will there be effective notice to the employees and appropriate recognition by the employer that the Act has been violated.

The Notice should be incorporated on any company screensavers or opening windows or screens for all computers for the length of the posting period.

The employees should be allowed work time to read the Board's Decision and Notice. To require that they read the Notice, whether by email, on the wall or at home, on their own time is to punish them for their employer's misdeeds.

Dated: December 6, 2018

WEINBERG, ROGER & ROSENFELD  
A Professional Corporation

By:



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ANNE I. YEN  
CAITLIN E. GRAY  
Attorneys for Union

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**PROOF OF SERVICE  
(CCP §1013)**

I am a citizen of the United States and resident of the State of California. I am employed in the County of Alameda, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years and not a party to the within action.

On December 6, 2018, I served the following documents in the manner described below:

**BRIEF IN SUPPORT OF CROSS-EXCEPTIONS**

- (BY U.S. MAIL) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for mailing with the United States Postal Service, and I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Postal Service at Alameda, California.
- (BY FACSIMILE) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of document(s) to be transmitted by facsimile and I caused such document(s) on this date to be transmitted by facsimile to the offices of addressee(s) at the numbers listed below.
- (BY OVERNIGHT MAIL) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for overnight delivery, and I caused such document(s) described herein to be deposited for delivery to a facility regularly maintained by United Parcel Service for overnight delivery.
- (BY ELECTRONIC SERVICE) By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from [mpiro@unioncounsel.net](mailto:mpiro@unioncounsel.net) to the email addresses set forth below.

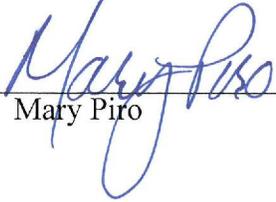
On the following part(ies) in this action:

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on December 6, 2018, at Alameda, California.

  
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Mary Piro