

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

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

Respondent- Employer

V.

Case 19-CA-21106

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

Charging Party - Union

BRIEF IN OPPOSITION TO CHARGING PARTY UNION'S CROSS-  
EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE'S DECISION

Nexstar Broadcasting, Inc. d/b/a KOIN-TV ("Nexstar", "Respondent" or "Company") hereby submits its Brief in Opposition to the Cross-Exceptions filed by the Charging Party Union from the Decision by Administrative Law Judge Eleanor Laws. At the outset of this Brief we repeat our baseline assertions that Nexstar has not violated the National Labor Relations Act in connection with this Charge and that Board should refuse to follow the recommendations in said Decision and should dismiss the Complaint against Nexstar for the reasons set forth in Nexstar's Exceptions, the supporting and reply Briefs filed with the Exceptions. In this Brief, we strongly object to the Charging Party Union's Cross-Exceptions to the ALJ's Decision which reject the remedy afforded by the Administrative Law Judge in her decision and instead asks for an unusual remedy involving use of a non-

standard Notice containing an apology and providing for a Board Agent to read the Notice to assembled unit employees during working hours. Such remedies have been confined to cases involve severe and pervasive unfair labor practices which this case most assuredly does not involve. This case presents, even if the General Counsel's arguments are accepted as true, only an isolated, technical and non-intentional violation of the Act's duty to furnish information upon request warranting only a standard, and not extraordinary remedy of the sort requested by the Union. Indeed, the Counsel for the General Counsel is in apparent agreement with this assertion, in that he has not filed Cross-Exceptions to the standard remedy recommended by the ALJ nor does the CGC take exception, in his Brief filed in Opposition to our Exceptions, to the scope or terms of the remedy recommended by the ALJ.

In the context of this argument, we renew our assertion that Nexstar adequately supplied the Union with the information that it requested regarding the Graphics Design work at this television broadcasting station. As we asserted in our Initial Brief, a violation of the Act is found herein "only by engaging in an unusual and unprecedented 'fly-specking' of the Nexstar's detailed response to a request for information on singular topic in the course of the parties' collective bargaining negotiations". As was discussed at length in our previous Briefs filed herein, the law cited by the CGC either deals with wholly different factual settings or reaches different conclusions with respect to the adequacy of information request responses. As such, we remain convinced that the ALJ's Decision is not properly supported by precedent of this Board or the courts.

As we have noted in our other Briefs, the ALJ's Decision is unprecedented under law and unsupported by the facts. The Counsel for the General Counsel failed to carry the burden to establish that the Company failed to respond adequately to the Union's singular request for information during the early stages of successor bargaining. Compounding this failure to carry this burden we point to the established fact that the CGC has submitted

absolutely no proof that the Union complained that it did not understand or comprehend the substantial amount of information that it was provided by the Company, or that it was harmed in any way by this alleged ‘failure to adequately disclose’. This is truly a case where it should be said, ‘no harm, no foul’.

Further, in the same vein, we submit that the ALJ misapprehended the thrust of our argument with respect to the undisputed fact that a tentative agreement had been reached on the proposal related to the singular request for information. (Exhibit H to Joint Stipulation of Facts). Nexstar raised this fact only as additional support for its’ contention that the pursuit of this Complaint does not serve to effectuate the purposes of the National Labor Relations Act. Likewise, this undisputed fact provides further support for the rejection of the punitive and shaming remedy that the Charging Party seeks in their Cross-Exceptions. In this regard we note additionally that there is no evidence that the alleged violation was in any way willful or that it involved a matter of seminal significance in the parties’ collective bargaining relationship. And again, there was no showing whatsoever that the Union was harmed in any way by the alleged failure to provide the information and the fact that the tentative agreement was arrived at on the sole related proposal supports that notion. And finally, we submit that the fact that a tentative agreement was arrived at is additional support for the conclusion noted above that it is apparent that the Union had no difficulty with the information provided in response to their request for information.

In the recent case of *Bodega Latina Corporation d/b/a El Super and United Food and Commercial Workers Union, Local 324*. Case 21–CA–183276 (December 3, 2018), a unanimous Board panel consisting of Chairman Ring and Members Kaplan and Emmanuel found merit to the Exceptions filed to an Administrative Law Judge’s

recommendation of extraordinary remedies, consisting of a broad order to cease and desist from violating the Act “in any other manner” and a public reading of the notice by a Board agent or responsible management official. In finding merit to the Exceptions filed by the Employer in that case challenging the extraordinary remedies, the Board panel stated:

“A broad cease-and-desist order is appropriate when a respondent has been shown to “have a proclivity to violate the Act or has engaged in such egregious or widespread misconduct as to demonstrate a general disregard for the employees’ fundamental statutory rights.” *Hickmott Foods*, 242 NLRB 1357, 1357 (1979). And the Board has recognized that a notice-reading remedy may be warranted “where the violations are so numerous and serious that the reading aloud of a notice is considered necessary to enable employees to exercise their Section 7 rights in an atmosphere free of coercion, or where the violations in a case are egregious.” *Postal Service*, 339 NLRB 1162, 1163 (2003). In this case, the Respondent violated Section 8(a)(3) and (1) of the Act by denying employee Beltran-Pineda’s request to receive accrued vacation pay and delaying payment of those funds because of her union support and violated Section 8(a)(1) by showing Beltran-Pineda a document indicating that her union support was a factor in its vacation-pay decisions. In recommending extraordinary remedies, the judge also relied on a March 10, 2016 formal settlement in Case 21–CA–160858. That formal settlement, which did not contain a non-admissions clause, resolved allegations that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to furnish the Union certain requested information relevant to the performance of its statutory duties. We find that the unfair labor practices found in this case and those formally settled in 21–CA–160858, taken together, do not warrant either of the judge’s recommended extraordinary remedies.

None of the factors recognized by the panel in *Bodega Latina*, supra, as justifying an extraordinary remedy are present in the instant case, even if the allegations are accepted as true. The alleged violations do not constitute “egregious or widespread misconduct as to demonstrate a general disregard for the employees’ fundamental statutory rights”. *Hickmott Foods*, 242 NLRB at 1357. As such even if a violation is found, the standard Board remedy recommended by the ALJ is adequate in this situation.

For the foregoing reasons, the Complaint should be dismissed in its' entirety and the Remedy proposed by the Charging Party should be denied.

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

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**AFFIDAVIT OF SERVICE**

I hereby certify that I served on 1/3/19 the foregoing Brief of Respondent Employer in Opposition to the Cross Exceptions from the Decision of the Administrative Law Judge filed by counsel for the Charging Party Union, the Regional Director for Region 19, counsel for the Charging Party Union and Counsel for the General Counsel by emailing a copy of same to their email addresses as noted below:

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