Tegna, Inc. d/b/a KGW-TV *and* International Brotherhood of Electrical Workers, Local 48, AFL–CIO. Case 19–CA–148474

January 17, 2019

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS MCFERRAN AND KAPLAN

On December 20, 2016, Administrative Law Judge Mara-Louise Anzalone issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel and the Union filed answering briefs, and the Respondent filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings,[1] findings, and conclusions only to the extent consistent with this Decision and Order.[2]

I. FACTS

The Respondent is a broadcast television station located in Portland, Oregon. In June 2014, agents of the Respondent met with representatives of the International Brotherhood of Electrical Workers, Local 48 (the Union) to negotiate a successor collective-bargaining agreement. The Respondent's lead negotiator, Tim Fair, opened with a lengthy presentation on the changing nature of the broadcast industry, the Respondent's need to stay relevant to consumers, and the Respondent's desire to remain competitive for advertising dollars. In doing so, Fair made several comparisons between broadcast television and the declining newspaper industry. He also spoke extensively about how consumers—particularly members of the "millennial" generation—were getting their news from alternative media sources, such as Google, Facebook, and Hulu. This opening presentation was meant to provide context for the Respondent's bargaining proposals, which were purportedly designed to give the Respondent the flexibility to meet this changing environment. The proposals would, among other things, remove restrictions on subcontracting, minimums for overtime pay, and the Union's exclusive jurisdiction. Regarding this last proposal, Fair stated that the Respondent needed to be able to assign the Union's historical bargaining-unit work to "anyone . . . regardless of their union designation." The Union found this last proposal particularly concerning.

The Union subsequently made a lengthy information request on July 30 to gain greater insight into the Respondent's proposals.[3] These requests were designed, among other things, to investigate the Respondent's specific proposals and to clarify Fair's otherwise unsubstantiated assertions about the competitive challenges facing the Respondent. Fair orally responded to some of the requests at bargaining sessions on July 30 and 31, and he provided a supplemental written response on August 29, which primarily referred back to the oral responses. Generally speaking, the Respondent stated that information about its market share and ratings, revenue, and expenses was confidential. With respect to information about its competitors and advertising, the Respondent initially provided a 36-page article about new media competition, which it supplemented on August 29 by providing three studies about the media consumption habits of millennials. With respect to the information requests relating to the Respondent's particular proposals—including, for example, information about its plans to assign bargaining-unit work to nonunit employees, to subcontract work, or to sell or otherwise restructure itself—Fair provided limited information without fully responding to the request or stated that the Respondent did not possess responsive documents. In response to the Union's information request, Fair also made clear, however, that the Respondent's proposals were "not the result of a drastic financial situation."

After following up with the Respondent at an October 10 bargaining session, the Union sent the Respondent a letter on November 18, clarifying and expanding its earlier information request. Throughout the negotiations, the Union repeatedly asked Fair why the Respondent's proposals were necessary. Fair asserted that the Re-

[1] We find that the judge did not abuse her discretion by denying the Respondent's motion to reopen the record in order to introduce a successor collective-bargaining agreement negotiated with the Union. See *McKenzie-Willamette Medical Center*, 362 NLRB 135, 135–136 (2015), enfd. mem. 671 Fed.Appx. 1 (D.C. Cir. 2016).

[2] We shall amend the judge's conclusions of law to conform to the violations found. We shall modify the judge's recommended Order to conform to our findings and in accordance with *Excel Container, Inc.*, 325 NLRB 17 (1997), and to provide for the posting of the notice in accordance with *J. Picini Flooring*, 356 NLRB 11 (2010). We shall substitute a new notice to conform to the Order as modified.

The Respondent argues that because the parties have reached a collective-bargaining agreement, the Union no longer requires the information requested. The Board has established that "[i]f evidence that the union has no need for the information first becomes available after the merits hearing has closed, the respondent may raise the issue in the compliance stage of the case." *Boeing Co.*, 364 NLRB No. 24, slip op. at 4–5 (2016). Accordingly, we leave this matter to compliance.

[3] These requests are fully outlined in the judge's decision.

spondent's proposals would provide the operational flexibility necessary for the Respondent to produce content that would attract the millennial audience and compete with new media. Although the Respondent and the Union met for additional bargaining sessions, the Respondent refused to provide further information or have any substantive discussion about the Union's requests, claiming that the Union was acting in bad faith to delay negotiations.

II. ANALYSIS

The judge found that the Respondent unlawfully failed to respond to each of the Union's information requests as to which the complaint alleged a violation of the Act, except for Request 8.[4] We adopt the judge's findings, for the reasons she stated, that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to provide information sought by the Union in its Requests 4, 7, 13, and 14. We further adopt the judge's conclusions that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to provide information sought by the Union in its Requests 2(a), 2(d), 2(e), 11(a), 11(f), 11(g), and 11(h), for the reasons expressed below. However, we reverse the judge and dismiss the allegations pertaining to Requests 2(b), 2(c), 3, 5, 9, 11(b), 11(c), 11(d), and 11(e).

Under the Board's well-established precedent, employers have a duty to provide, upon request of the union, information that is relevant and necessary to the union's performance of its duties as the exclusive collective-bargaining representative of the employees in the unit. *Cowles Communications, Inc.*, 172 NLRB 1909, 1909 (1968). Information related to terms and conditions of employment of bargaining-unit employees is presumptively relevant. *Southern California Gas Co.*, 344 NLRB 231, 235 (2005). If the requested information does not involve the bargaining unit, the union bears the burden of establishing the relevance of the information. Id. The union can satisfy this burden by showing that "there is a logical foundation and a factual basis for its information request. The standard to be applied in determining the relevance of information relating to nonunit employees is, however, a liberal 'discovery type standard.'" *Postal Service*, 310 NLRB 391, 391 (1993) (quoting *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437 (1967)). The Board only needs to find that the requested information is probably relevant. Id. at 391–392. Moreover, the union's burden of proving the relevance of information about nonunit employees is not exceptionally heavy. *Leland Stanford Junior University*, 262 NLRB 136, 139 (1982), enfd. 715 F.2d 473 (9th Cir. 1983).

A. Requests 2 and 11

The judge concluded that the Respondent was obligated to provide the information sought in Requests 2 and 11, which covered its market share, general revenue, general expenses, documents concerning competition from other media outlets or changes in advertising revenue, and additional competitor and advertiser information. In coming to this conclusion, the judge appeared to find that the Respondent based its bargaining proposals on claims that it would neither be able to compete in the market nor remain financially viable without certain concessions from the Union. In support of her finding, the judge relied on *Wayron, LLC*, 364 NLRB No. 60 (2016). We agree with the judge in part and disagree in part.

It is well established that a union may seek specific financial information necessary to assess an employer's claim that it needs certain bargaining concessions in order to remain competitive—i.e., a claim of "inability to compete." *CalMat Co.*, 331 NLRB 1084, 1096–1097 (2000) (finding information about competitors' productivity, labor and material cost, prices, profits and losses to be relevant); see also *National Extrusion & Mfg. Co.*, 357 NLRB 127, 127–128 (2011), enfd. sub nom. *KLB Industries, Inc. v. NLRB*, 700 F.3d 551 (D.C. Cir. 2012). It is equally well established that a claim of "inability to compete" does not require an employer to open its books to the union. Such cases are distinguished from the more grave "inability to pay" cases, where an employer's claim that it is unable to afford the union's demands within the life of the collective-bargaining agreement under negotiation allows the union to seek general access to the employer's financial records in order to substantiate the employer's claims. See, e.g., *Caldwell Mfg. Co.,* 346 NLRB 1159, 1160 (2006).

We agree with the judge that Fair's statements established a claim of "inability to compete." The record shows that the Respondent repeatedly justified its bargaining proposals by citing a need for flexibility in order to provide more content for the "millennial" generation in light of increasing competition from alternative media sources. Accordingly, the Union was entitled to the information sought in Requests 2(a), 2(d), 2(e), 11(a), 11(f), 11(g), and 11(h) to help it evaluate the Respondent's claims that it needed more flexibility to remain competitive in a changing media landscape. On this ba-

[4] No party excepts to the judge's finding that the Respondent did not violate the Act with respect to request 8 because, to the extent that request 8 sought relevant information, the Respondent satisfied its obligation to disclose such information.

sis, we agree with the judge that the Respondent unlawfully failed to respond to these requests.[5]

Requests 11(b), 11(c), 11(d), and 11(e), however, homed in on the specific details of the Respondent's advertising pricing structure and clients.[6] Although the Respondent consistently expounded on its "need to compete" for viewers and stated that its bargaining proposals would help it retain its audience and compete for advertising dollars in a changing media landscape, the Respondent never stated that it had experienced any particular increase or decrease in its advertising revenue in recent years. This information, moreover, would not provide the Union with any guidance as to how the Respondent's proposals would affect its ability to compete in the modern Internet age. Thus, we find that the information sought in Requests 11(b), 11(c), 11(d), and 11(e) is not relevant to the Union's performance of its duties as bargaining representative because it would not help the Union evaluate the Respondent's claimed "inability to compete."

Requests 2(b) and 2(c) go a step further than the foregoing requests, seeking general financial information: namely, the Respondent's general revenue and operating expenses. Such requests could only be justified if the Respondent had made an "inability to pay" claim. We find that it made no such claim.

Unlike the judge, we find this case is distinguishable from *Wayron*, supra. In that case, the employer claimed that it was in debt after suffering several years of losses and asked the union to agree to severe reductions in wages and benefits in order to secure much needed financing. 364 NLRB No. 60, slip op. at 4–5. Fair's statements here, on the other hand, do not paint a similar picture of immediate financial vulnerability, as he spoke in terms of ongoing, long-term changes in the industry. In fact, Fair explicitly stated that the Respondent was not claiming financial hardship and even mentioned the possibility of wage increases.

Under these circumstances, we find that the Union is not entitled to the information sought in Requests 2(b), 2(c), 11(b), 11(c), 11(d), and 11(e). Accordingly, we dismiss the allegations that the Respondent violated the Act for failing to provide the information sought in these requests.

B. Requests 3, 5(b), and 9

We agree, for the reasons stated by the judge, that Requests 3, 5(b), and 9[7] sought relevant information. In response to these requests, however, Fair stated orally at a bargaining session that there was no responsive information, a position the Respondent reiterated in its August 29 supplemental written response. In its November 18 letter, the Union renewed Requests 3(a), 3(b), 9(a), and 9(b), observing that the Respondent's "verbal response occurred almost four months ago and that such plans may have been created since July 30," and explaining that it sought an "updated response." With respect to Request 5(b), the Union "renewed" its request but did not explicitly state that there was a possibility that the Respondent's plans had changed. The Respondent made no further response to the Union's November 18 letter with respect to Requests 3(a), 3(b), 5(b), 9(a), or 9(b).

We find that the Respondent met its obligations with regard to these requests. An employer is not obligated to provide information in response to a union's information request if that information does not exist. *Harmon Auto Glass*, 352 NLRB 152, 153 (2008), affd. 355 NLRB 364 (2010), enfd. sub nom. *NLRB v. Leiferman Enterprises, LLC*, 649 F.3d 873 (8th Cir. 2011). Fair verbally explained to the Union that the Respondent did not possess (nor did there exist) documents or information responsive to Requests 3(a), 3(b), 5(b), 9(a), and 9(b). The Respondent further asserted this position in writing on August 29. We therefore find that the Respondent adequately responded to the Union's initial information request.

In our view, the Union's "renewed" requests in its November 18 letter, made less than 3 months after the Respondent's August 29 written response to the same requests, should not operate to "reset the clock" on the

[5] Requests 2(a), 2(d), 2(e), 11(a), 11(f), 11(g), and 11(h) sought information about the Respondent's market share, ratings, and indicia of viewership; reports, analyses, data, or other documents concerning competition from other media outlets, in Portland and nationally; reports, analyses, data, or other documents concerning changes in advertising placement and revenue for television stations, including the Respondent; a list of media content providers that the Respondent views as its primary competitors; documents, reports, and analyses concerning the Respondent's ratings and viewership; viewer/consumer comments and complaints relating to the Respondent's programming and service; and advertiser comments and complaints relating to the Respondent's programming and service.

[6] Specifically, Requests 11(b), 11(c), 11(d), and 11(e) sought a complete description of the Respondent's advertising pricing structure, a list of the Respondent's current advertisers, a list of all advertisers who had ceased buying advertising from the Respondent since October 2011, and a list of all advertising prospects that the Respondent had contacted about the purchase of advertising since October 2011.

[7] These requests sought, respectively, internal documents, analyses, or communications about the Respondent's potential plans to assign bargaining unit work to nonunit employees; information about the particular employees to whom the Respondent might assign work currently done by bargaining unit members; copies of the Respondent's policies or procedures that relate to the hiring of temporary employees; copies of reports concerning any possible sale, takeover, or restructuring; and copies of correspondence concerning the possibility of restructuring, sale, or takeover of the Respondent.

initial information request, as the Union did not appear to have any information that would reasonably suggest that the Respondent's plans had changed or that it would now have responsive information. Indeed, finding an obligation to respond under such circumstances might incentivize parties continually to ask for "updates" on information requests as a dilatory tactic, even when there is no evidence suggesting that there will be information responsive to the requests. We therefore dismiss the allegations that the Respondent violated the Act by failing to provide the information sought in Requests 3(a), 3(b), 5(b), 9(a), and 9(b).[8]

C. Request 5(a)

The Union, in its initial July 30 information request, requested that the Respondent provide it with "[a] list of all individuals who have been hired as temporary employees from October 24, 2011, through the present, the date of hire, the rate of pay, classification, the date of termination and the reason for hiring." In response to this request, Fair verbally informed the Union at a bargaining session that, although the Respondent had employed three temporary employees, none of them were performing bargaining-unit work. The Respondent did not provide any more information about the three temporary employees, such as their date of hire, rate of pay, classification, or any of the additional information requested by the Union; Fair suggested at a bargaining session that the information requested by the Union was not relevant to the extent that it encompassed employees who were not performing bargaining-unit work. In its November 18 letter, the Union renewed its request, observing that it had requested more information than was verbally provided to it at the bargaining sessions and that it had not "received any clear explanation of the nature of [the Respondent's] objection" to providing all of the information requested.

We agree with the judge that the information sought in Request 5(a) was relevant to the extent that it requested information about temporary employees who were performing bargaining-unit work. We find, however, that the Union failed to justify a need for information about employees who were not performing bargaining-unit work because it did not explain how such information would help the Union evaluate the potential effects of the Respondent's proposals on unit members. Therefore, the Respondent made a sufficient response to Request 5(a) by informing the Union that it had not employed any temporary employees who performed bargaining-unit work. We thus dismiss the allegation that the Respondent violated the Act for failing to provide the information sought in Request 5(a).[9]

[8] Member McFerrran agrees with her colleagues that the Respondent did not violate Sec. 8(a)(5) and (1) when the Respondent told the Union in July 2014, that it did not have any responsive documents pertaining to requests 3, 5(b), and 9. However, she would find that the Respondent unlawfully failed to respond to the Union's follow-up requests for any updates to the Respondent's initial responses. With respect to request 3, the Union specifically sought an update from the Respondent "as plans might have developed" about its plans to assign bargaining unit work outside the unit. Moreover, in seeking an update to request 9, the Union explicitly noted that several months had passed since the Respondent's initial oral response in July 2014, which made it eminently reasonable for the Union to seek any new documents about whether the Respondent, as the owner of the station for less than a year, had any new plans to sell or restructure it. Member McFerran notes that the burden on the Respondent here was minimal and that, if there were no updates, the Respondent could have simply stated as much instead of ignoring the Union and leaving it without a clear answer as to whether the Respondent's plans regarding important issues in the negotiations—which arose because of the Respondent's own bargaining proposals—changed over the preceding 3 months. She believes, moreover, that finding the violation in these circumstances is consistent with the Act's policy of fostering good-faith collective bargaining by ensuring that both parties have up-to-date information while at the negotiating table, and would not improperly incentivize parties to repeatedly ask for updates about information related to pending proposals.

[9] Member McFerran would find that the Respondent violated Sec. 8(a)(5) and (1) by failing to fully respond to the Union's information request about the Respondent's hiring of temporary employees. The Respondent's bargaining proposal provided that the Union would only receive information from the Respondent about its hiring of temporary employees after the Union had already somehow learned of the hiring and requested the information. To determine the legitimacy of the Respondent's claim that the expiring contract had actually restricted the Respondent's operational flexibility, the Union requested that the Respondent inform it of when it hired temporary employees under the expiring contract and for what position, at what pay rate, and the reason why. The Board uses a broad, discovery-type standard for determining relevance in information request cases, and potential or probable relevance is sufficient to give rise to an employer's obligation to provide information. *Shoppers Food Warehouse Corp.*, 315 NLRB 258, 259 (1994); see also *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437 (1967) (noting that the Board employs a discovery-type standard in request for information cases). Member McFerran observes that the Union requested information relevant to its reasonable concerns about the Respondent's use of temporary employees to supplant or undercut the terms and conditions of employment of bargaining unit employees. See *Castle Hill Health Care Center*, 355 NLRB 1156, 1182 (2010); see also *Amersig Graphics, Inc.,* 334 NLRB 880, 885 (2001) (finding employer violated Sec. 8(a)(5) by failing to furnish union with a list of temporary employees, including their wage rates, hire dates, and job descriptions). She disagrees with her colleagues that it was sufficient for the Respondent to inform the Union that it had hired three temporary employees who did not perform bargaining unit work because providing the additional requested information about when, where, and at what pay rate the Respondent had hired the temporary employees would have enabled the Union to better understand the effect of the Respondent's bargaining proposal on bargaining unit employees. See *Caldwell Mfg. Co.*, 346 NLRB 1159, 1160 (2006) (finding union's request for information relevant where it would assist union "in assessing the accuracy of the Respondent's proposals and developing its own counterproposals").

AMENDED CONCLUSIONS OF LAW

1. Substitute the following for Conclusion of Law 5:

5. Respondent has violated Section 8(a)(5) and (1) of the Act by failing and refusing to supply the following information to the Union:

KGW market share, ratings, and any other indicia of viewership from October 24, 2011 through the present.

Reports, analyses, data, or other documents concerning competition from other media outlets such as Google, Amazon, YouTube, Netflix, Hulu, and others from October 24, 2011 through the present, both nationally and in Portland.

Reports, analyses, data, or other documents concerning changes in advertising placement and revenue for television stations, including KGW, from October 24, 2011 through the present.

Any written agreements between KGW and any other entity for subcontracted work from October 24, 2011 through the present.

All documents concerning the customer, calendar period, and dollar volume of any subcontracted work from October 24, 2011 through the present.

Any documents, analyses, or communications concerning KGW's future plans to subcontract work currently done at KGW.

An accounting of all overtime paid to all bargaining unit members from October 24, 2011 through the present, with breakdowns showing the number of hours of overtime worked, the number of overtime hours paid, and the amount of overtime pay for each bargaining unit member, as well as whether each instance of overtime occurred during regular days off, holidays, or regular work days.

A list of media content providers that KGW views as its primary competitors.

All documents, reports, and analyses concerning the station's ratings, television viewership and web and/or mobile readership/viewership since October 24, 2011.

Viewer/consumer comments and complaints received by the station since October 24, 2011, concerning its programming and service.

Advertiser comments and complaints received by the station since October 24, 2011, concerning its programming and service.

Documents concerning all changes in job responsibilities for members represented by IATSE since October 24, 2011, including but not limited to changes in responsibilities concerning operation of news trucks.

Documents concerning IATSE members' training and qualifications for operation of new trucks.

All documents concerning the job title, job responsibilities, pay, benefits, and hours for employees Dave Tinkham (from January 1, 2011 to November 18, 2014) and John Morgan (from January 1, 2008 to November 18, 2014).

ORDER

The National Labor Relations Board orders that the Respondent, Tegna, Inc., Portland, Oregon, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with the International Brotherhood of Electrical Workers, Local 48, AFL–CIO (the Union) by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondent's unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish to the Union in a timely manner the following information requested by the Union on July 30, 2014, and November 18, 2014:

1. KGW market share, ratings, and any other indicia of viewership from October 24, 2011 through the present.

2. Reports, analyses, data, or other documents concerning competition from other media outlets such as Google, Amazon, YouTube, Netflix, Hulu, and others from October 24, 2011 through the present, both nationally and in Portland.

3. Reports, analyses, data, or other documents concerning changes in advertising placement and revenue for television stations, including KGW, from October 24, 2011 through the present.

4. Any written agreements between KGW and any other entity for subcontracted work from October 24, 2011 through the present.

5. All documents concerning the customer, calendar period, and dollar volume of any subcontracted work from October 24, 2011 through the present.

6. Any documents, analyses, or communications concerning KGW's future plans to subcontract work currently done at KGW.

7. An accounting of all overtime paid to all bargaining unit members from October 24, 2011 through the present, with breakdowns showing the number of hours of overtime worked, the number of overtime hours paid, and the amount of overtime pay for each bargaining unit member, as well as whether each instance of overtime occurred during regular days off, holidays, or regular work days.

8. A list of media content providers that KGW views as its primary competitors.

9. All documents, reports, and analyses concerning the station's ratings, television viewership and web and/or mobile readership/viewership since October 24, 2011.

10. Viewer/consumer comments and complaints received by the station since October 24, 2011, concerning its programming and service.

11. Advertiser comments and complaints received by the station since October 24, 2011, concerning its programming and service.

12. Documents concerning all changes in job responsibilities for members represented by IATSE since October 24, 2011, including but not limited to changes in responsibilities concerning operation of news trucks.

13. Documents concerning IATSE members' training and qualifications for operation of new trucks.

14. All documents concerning the job title, job responsibilities, pay, benefits, and hours for employees Dave Tinkham (from January 1, 2011, to November 18, 2014) and John Morgan (from January 1, 2008 to November 18, 2014).

(b) Within 14 days after service by the Region, post at its Portland, Oregon facility copies of the attached notice marked "Appendix."[10] Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 30, 2014.

(f) Within 21 days after service by the Region, file with the Regional Director for Region 19 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. January 17, 2019

John F. Ring, Chairman

Lauren McFerran, Member

Marvin E. Kaplan, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

[10] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively with the International Brotherhood of Electrical Workers, Local 48, AFL–CIO (the Union) by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL furnish to the Union in a timely manner the following information requested by the Union on July 30, 2014, and November 18, 2014:

KGW market share, ratings, and any other indicia of viewership from October 24, 2011 through the present.

Reports, analyses, data, or other documents concerning competition from other media outlets such as Google, Amazon, YouTube, Netflix, Hulu, and others from October 24, 2011 through the present, both nationally and in Portland.

Reports, analyses, data, or other documents concerning changes in advertising placement and revenue for television stations, including KGW, from October 24, 2011 through the present.

Any written agreements between KGW and any other entity for subcontracted work from October 24, 2011 through the present.

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TEGNA, INC. D/B/A KGW-TV

The Board's decision can be found at www.nlrb.gov/case/19-CA-148474 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

Carolyn McConnell, Esq., for the General Counsel.
Henry E. Farber and *John Hodges-Howell, Esqs. (Davis Wright Tremaine LLP),* for the Respondent.

DECISION

STATEMENT OF THE CASE

MARA-LOUISE ANZALONE, Administrative Law Judge. I heard this case on March 8–10, 2016, in Portland, Oregon. Based on a charge (as amended) filed by the International Brotherhood of Electrical Workers, Local 48, AFL–CIO (Local 48, the Union or Charging Party) in the above-captioned case, the Regional Director for Region 19 issued a complaint on November 30, 2015 (the complaint). The General Counsel alleges that Respondent Tegna, Inc. d/b/a KGW-TV (Tegna or Respondent) refused to provide certain information requested by the Union, in violation of Section 8(a)(5) and (1) of the National Labor Relations Act (the Act).

At trial, all parties were afforded the right to call, examine, and cross-examine witnesses, to present any relevant documentary evidence, to argue their respective legal positions orally, and to file post-hearing briefs. On April 21, 2016, posthearing briefs were filed by the General Counsel and Respondent and have been carefully considered. Accordingly, based upon the entire record herein, including the posthearing briefs and my observation of the credibility of the witnesses, I make the following

I. FINDINGS OF FACT

A. Jurisdiction

At all times material herein, Respondent, a Delaware corporation with an office and place of business located in Portland, Oregon (the "facility"), where it has been engaged in the business of operating television stations that, inter alia, advertise goods sold nationally and subscribe to national wire services. During the 12-month period immediately preceding the issuance of the instant complaint, Respondent, in the normal course and conduct of its business operations, derived gross revenues in excess of $100,000 and purchased and received at the facility goods valued in excess of $50,000 directly from points outside the State of Oregon. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. It is alleged, Respondent admits and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

Based on the foregoing, I find that this dispute affects commerce and that the National Labor Relations Board (the Board) has jurisdiction of this case, pursuant to Section 10(a) of the Act.

B. Respondent's Motion to Reopen the Record

On September 16, 2016, Respondent filed a motion to reopen the record for the purpose of introducing evidence that the parties, following the close of hearing, reached a non-Board resolution of the underlying unfair labor practices and ratified a successor collective-bargaining agreement, thereby obviating the Union's need for the requested information at issue here. Both Local 48 and the General Counsel oppose Respondent's motion, asserting that no such agreement was reached. Essentially, the parties disagree whether, following the close of hearing, the Union agreed to withdraw the unfair labor allegations before me.

The General Counsel further asserts that Respondent's motion is procedurally flawed in that the evidence Respondent would seek to offer in a reopened proceeding does not qualify as "newly discovered evidence" under the Board's standard. I agree. The Board has consistently held that, pursuant to § 102.48(d)(1) of the Board's Rules and Regulations, evidence warranting reopening the record must have been capable of being presented at the original hearing. *Rush University Medical Center*, 362 NLRB 218, 218 at fn. 2 (2015) (denying request to reopen record for election petitions that did not exist at the time of the hearing), enfd. 833 F.3d 202 (D.C. Cir. 2016); see also *Allis-Chalmers Corp.*, 286 NLRB 219, 219 fn. 1 (1987) (denying "the motion [to reopen] as it proffers evidence concerning an alleged event that occurred after the close of the hearing"). Because the evidence at issue here did not exist at the time of the hearing, it does not provide a basis for reopening the record. *APL Logistics, Inc*., 341 NLRB 994, 994 fn. 2 (2004), enfd. 142 Fed.Appx. 869 (6th Cir. 2005).

Moreover, even assuming that the evidence here otherwise met the requirements of § 102.48(d)(1), Respondent's motion is additionally flawed in that Respondent has failed, as required by that provision, to demonstrate that its proffered new evidence would mandate a different result in this case. *Fitel/Lucent Technologies, Inc.*, 326 NLRB 46, 46 fn. 1 (1998); *Opportunity Homes, Inc.*, 315 NLRB 1210, 1210 fn. 5 (1994), enfd. 101 F.3d 1515 (6th Cir. 1996); *NLRB v. Johnson's Industrial Caterers*, 478 F.2d 1208, 1209 (6th Cir. 1973). The Board recently applied this principle to an information request case; denying a motion to receive evidence that the parties had, posthearing, reached a collective-bargaining agreement, the Board explained that

> [t]he fact that the Union chose to bargain in the absence of complete information and that the parties were able to conclude a successor collective-bargaining agreement does not mean that the information would not have been useful to the Union in bargaining or rebut the presumption of relevance.

Mckensie-Willamette Medical Center, 362 NLRB 135, 135 (2015) (citations omitted). Indeed, the "most that can be inferred" from such a sequence of events is that the union, instead of waiting to receive the requested relevant information, chose a "contract in hand." Id. (citing *White Farm Equipment Co.*, 242 NLRB 1373, 1374 (1979); *NLRB v. Yawman & Erbe Mfg. Co.*, 187 F.2d 947, 949 (2d Cir. 1951)), enfd. 650 F.2d 334 (D.C. Cir. 1980)).

Accordingly, Respondent's motion to reopen is denied, based on its failure to meet the Board's test for newly discovered evidence.

C. Background Facts

For decades, Charging Party has represented the directors, maintenance technicians and broadcast operators at KGW-TV, a television station in Portland, Oregon (the bargaining unit). Prior to 2013, KGW-TV (KGW or the station) was owned and operated by a subsidiary of Belo Corporation (Belo). On December 23, 2013, Gannett Corp. (Gannett) acquired Belo's television stations; because regulatory requirements barred Gannett from owning the broadcast license for KGW, that li-

cense was transferred to Sander Operating Company III, LLC (Sander). Sander then entered into an agreement under which Gannett Corp. would operate KGW, including employing the bargaining unit employees. Gannett continued to recognize the Union as the representative of the bargaining unit and adopted the collective-bargaining agreement then in effect. That contract, however, expired on July 31, 2014. (Tr. 28; Jt. Exh. 1, 17.)[1]

Beginning on June 26, 2014,[2] Union representatives met with representatives of the station to bargain a new contract; over the course of the next 14 months, they met for bargaining on ten days. During this period, however, Gannett spun off its publishing business and (effective June 27, 2015) transferred operational responsibility for its television stations to Respondent Tegna, which (effective December 3, 2015) acquired the Sander entity and the KGW broadcast license. Throughout this reorganization, the bargaining unit employees remained employees of Respondent, which continued to recognize the Union as their exclusive bargaining representative. Id.

Local 48's bargaining team throughout the negotiations consisted of international representative Virgil Hamilton, business agent Donna Hammond (Hammond) and counsel John Bishop (Bishop); Bishop took the lead role early on. Representing Gannett—and then Respondent—were KGW executives Caryn Lilley (Lilley) and David Boyd, as well as director of labor relations and in-house employment counsel Timothy Fair (Fair), who was the station's principal spokesperson. Fair initially introduced himself as representing Gannett, but also stated that the proposals he was making came from KGW. (Tr. 29–31, 90–91, 249–250, 374–375; GC Exh. 2 at 10, 17; R. Exh. 6 at 10.)

The parties' first substantive bargaining session was held on July 16, and the parties exchanged initial proposals at that time. Before presenting the station's proposal, Fair made a lengthy statement (between 20—30 minutes) to provide "context" for the proposal. Introducing himself as having previously worked in the newspaper business, he said that industry had been too "nonchalant" and was therefore caught "off guard" by changing technology, found it "too late to react" and suffered significantly as a result. Fair then noted that, one day earlier, a news item had announced that the newspaper reporter job was "becoming extinct." The broadcast industry, he said, was "at that crossroads that newspapers faced in the 90s," and faced competition for advertising dollars from multiple new media outlets such as Google, AT&T, Apple, and Yahoo. (Tr. 111–112, 484–490.)

Consumers, Fair continued, were getting information from many sources outside broadcast television such that the amount of advertising dollars being allocated to these new forms of media had drastically increased. "This may seem like a broken record to you all," he stated, "but this time it's real." He then presented statistics on consumers in the age cohort labeled as "millennial," whom he claimed commanded $1.3 trillion in consumer spending; they were "brand loyal," he said, not to network television but rather to new media sources such as Amazon, Apple, Samsung, Netflix, and Facebook. Despite this gloomy assessment, Fair did not assert that KGW's own advertising revenue was actually declining; as Bishop admitted, Respondent's negotiating team never during the negotiations "made accusations or assertions in bargaining about declining advertising." (Tr. 112, 491.)

Fair then turned to Respondent's proposal, which he had yet to provide, saying that it was "designed to allow [Respondent] more flexibility to deal with the changing marketplace," build brand loyalty with millennials and allow the station "unlimited and unrestricted access to content." Specifically, he said, Respondent needed to be able to assign the Union's traditional bargaining unit work to "anyone . . . regardless of their union designation." These changes, he said, were necessary for Respondent to "compete in a quickly changing media market." As an example, Fair referred to an incident in which a KGW manager had resorted to performing bargaining unit work in order to ensure the station reported a news story that broke when no unit member was available. (Tr. 49–50, 111, 389–390; GC Exh. 2, R. Exh. 12.)

After concluding his remarks, Fair handed over Respondent's initial bargaining proposal (the July 16 proposal), which stated:

> 1. Delete current jurisdiction and replace with non-exclusive jurisdiction language and to further amend contract throughout to conform to a non-exclusive jurisdiction operation.
> 2. Amend subcontracting to remove any restrictions.
> 3. Amend and insert in Section 3.3 [which provided for Respondent to give the Union notice of its intention to use temporary employees] "Upon request" so that "Upon request the Union shall be provided... [with such notice]."
> 4. Eliminate Broadcaster Operator 1 & 2 classifications and pay scales; replace with new classification "Broadcast Technician" and new pay scale.
> 5. Delete section 17.3 [which guaranteed overtime pay in excess of that required by the Fair Labor Standards Act] so that all overtime (1.5x) is paid after 40-hours worked in a workweek and amend contract throughout to conform (17.3, 17.4, 17.5, 17.6 and 22.3).
> 6. Delete Article XXVII, "Successors and Assigns."
> 7. Term- to be negotiated.

(Jt. Exh. 2.) Upon reviewing the proposal, the Union negotiating team took a caucus and, determining that what Respondent was proposing was "drastic" and "dramatic,"[3] decided that the best course would be to respond at the next bargaining session, already scheduled for July 30-31. (GC Exh. 2 at 7; Tr. 44, 50–53, 385–86.)

D. The Union's July 30 Information Request and Respondent's Response

When the parties met on July 30, Local 48's Hamilton pre-

[1] Abbreviations used in this decision are as follows: "Tr." for transcript; "GC Exh. __" for General Counsel's Exhibit; "R. Exh. __" for Respondent's Exhibit; "Jt. Exh. ___" for Joint Exhibit; "GC Br. at __" for the General Counsel's posthearing brief and "R. Br. at __" for Respondent's posthearing brief.

[2] Unless otherwise noted, dates herein refer to the year 2014.

[3] Contrary to the General Counsel's characterization, I do not read Bishop's testimony as indicating that Fair *himself* described the changes as "drastic."

sented Fair with a 7-page written request for information, stating that the Union was willing to "talk through" the individual items, but ultimately wanted Respondent's answers in writing. (Jt. Exh. 4; Tr. 55, 75.) The General Counsel alleges that Respondent failed to respond to 7 of these requests (the July 30 requests), and each such allegation is discussed below. The July 30 requests fall into three categories:

(a) requests concerning Respondent's stated need for competitive advantage in the marketplace; (b) requests regarding specific Respondent bargaining proposals (on exclusive jurisdiction, subcontracting, temporary employees, overtime and successorship); and (c) requests for information about Respondent's corporate ownership and recent restructuring.

What follows is a recitation of the parties' communications regarding the individual requests organized by category. It is useful to note that, with certain exceptions, each request was handled in a similar pattern consisting of: a July 30 written information request by the Union— a preliminary, oral response given by lead negotiator Fair at the bargaining table on July 30 and 31— a written response by Fair on August 29—a November 28 clarification and re-request by the Union.

1. Requests related to claimed competitive disadvantage

a. July 30 request

Request 2 of the Union's July 20 request, titled, "Broadcast Trends," reads as follows:

> During our July 16, 2014, bargaining session, Mr. Fair explained described various trends in the U.S. broadcast and mobile media market. The union is interested in understanding how these trends are manifested in the national media market and in Portland area media market and how they affect KGW operations. In order to bargain over these issues, the Union would like to review any and all data, reports, analyses, communications and other documents concerning:
>
> (a) KGW market share, ratings, and any other indicia of viewership from October 24, 2011 through the present;[4]
>
> (b) KGW revenue from October 24, 2011 through the present;
>
> (c) KGW expenses from October 24, 2011 through the present;
>
> (d) Reports, analyses, data, or other documents concerning competition from other media outlets such as Google, Amazon, YouTube, Netflix, Hulu, and others from October 24, 2011 through the present, both nationally and in Portland; and
>
> (e) Reports, analyses, data, or other documents concerning changes in advertising placement and revenue for television stations, including KGW, from October 24, 2011 through the present.

(Jt. Exh. 4.)

As Bishop testified, the Union understood Fair's July 16 opening remarks to have been offered as a justification—based on the "need to compete"—for multiple aspects of Respondent's proposal, including those addressing exclusive jurisdiction and subcontracting. **Request 2**, he explained, was the Union's attempt to 'fact check' Fair's claims regarding the threat of increased competition from other media outlets, as well as to ascertain what effect such competition was having on Respondent's revenue and expenses. (Tr. 58–60)

b. Respondent's preliminary, oral response

Upon being presented with the July 30 request, Fair remarked that Respondent had not expressed an inability to pay and that its proposals were "not the result of a drastic financial situation." (Tr. 76; GC Exh. 2.) After Respondent's negotiating team caucused for approximately an hour, Fair stated that he had reviewed the information request and would further "study it and respond." Reserving the right to respond to some requests verbally, he opined that the parties might not get to an agreement at the table, but that Respondent did not intend to withdraw its proposal. Hamilton responded that the Union was willing to negotiate, but needed the requested information and did not foresee getting to impasse. (Tr. 90–91, 438; GC Exh. 2, R. Exh. 6, 11.)

The following day, when the parties reconvened for bargaining, Fair suggested they review the information request together, noting that Respondent was "working on" certain requests and required some clarifications. Fair then specifically addressed the Union's request for the station's market share and ratings, as well as revenue and expenses (**Requests 2(a)-(c)**), stating that it sought "confidential financial information." According to Fair, he told the Union that the station's ratings were confidential because they were "financial in nature" and "not information that we otherwise shared with . . . third parties or the public." (Tr. 473.) Admittedly, however, Fair did not offer to bargain over an accommodation (such as a nondisclosure agreement) to Respondent's asserted confidentiality concerns. (Tr. 473, 501–502.)

Fair then said that Respondent had some documents to share with the Union. In response to the Union's request for reports and analyses regarding competition from new media outlets and changes in advertising revenue (**Requests 2(d) and (e)**), Fair provided a 36-page scholarly paper entitled, "The New Network Compact: Consumers Are in Charge,"[5] adding that he had "additional information" that he would provide later. He then stated that Respondent had no specific report or analysis regarding new media competition or how it affected KGW's advertising revenues. Reiterating this, he remarked, "the answer is none—there is no KGW document." (Jt. Exh. 8, GC Exh. 2; Tr. 79–80.)

c. Respondent's August 29 written response

On August 29, Fair supplemented his oral responses with a

[4] As Bishop explained, October 24, 2011, was selected because it was the effective date of the parties' collective-bargaining agreement set to expire the day following the July 30 request. (Tr. 60.)

[5] This paper posits that a new regulatory structure is necessary for the evolving communications market within the United States, based in part on market data comparing traditional television mediums to those utilized by "cord cutters" (i.e., consumers who rely exclusively on wireless devices). The paper's analysis is not focused on the Portland market or on competition from specific new media outlets, such as those Fair had mentioned in his opening remarks (i.e., Facebook, Yahoo, etc.). (Jt. Exh. 8.)

2-page letter, attaching three additional documents focused on the media market for millennials: a demographic study, a business journal and an industry report. (See Jt. Exh. 9–12.) With respect to the Union's request regarding the station's market share and ratings, as well as revenue and expenses (**Requests 2(a)-(c)**), Fair stated that he had already responded orally, adding:

> KGW reiterates that at no time has it maintained that any of its proposals were based on or arising out of an "inability to pay." Therefore the Union is not entitled to review private and confidential financial information of the company; therefore, KGW will not provide the requested financial information.

(Jt. Exh. 9.)

d. The Union's November 18 clarification

On November 18, Local 48's attorney, Noah Barish, responded in writing to Fair's August 29 letter. Regarding the Union's request for KGW's market share and ratings, as well as revenue and expenses (**Requests 2(a)-(c)**), Barish stated that, separate from any inability-to-pay claim, Respondent was obligated to produce the requested information to substantiate its "claims that it suffers or will suffer a competitive disadvantage as compared to other media providers and/or advertisers in the industry." (Jt. Exh. 15.) Regarding the Union's request for reports and analyses regarding competition from new media outlets and changes in advertising revenue (**Requests 2(d) and (e)**), Barish noted that Respondent had failed to provide information focused on the Portland market or KGW itself; such information, he stated, was required for the Union to determine whether, as Respondent claimed, its proposals were necessary to address a real or threatened decline in advertising revenue due to competition from digital media. Id. Respondent provided no additional documents following receipt of Barish's letter.

2. Requests regarding specific bargaining proposals

a. The July 30 request

As noted, several of the Union's July 30 requests referred to specific portions of Respondent's July 16 proposal and stated that the requested information was necessary for the Union to bargain over Respondent's specific demands. These included the following requests and corresponding explanations of relevance:

July 16 Proposal	*July 30 Request Item*	*Stated Relevance*
1. Non-exclusive jurisdiction	**3(a)** Any documents, analyses, or communications concerning potential KGW's plans to assign work currently done by bargaining unit members to individuals outside of the bargaining unit **3(b)** Job descriptions and current wages of all KGW employees to whom KGW may assign work currently done by bargaining unit members, if a non-exclusive jurisdiction operation were implemented	"The union is concerned about the effect of non-exclusive jurisdiction on the future wages, hours, and working conditions of bargaining unit members."
2. Remove restrictions on subcontracting	**4(a)** Any written agreements between KGW and any other entity for subcontracted work from October 24, 2011 through the present **4(b)** All documents concerning the customer, calendar period, and dollar volume of any subcontracted work from October 24, 2011 through the present **4(c)** Any documents, analyses, or communications concerning KGW's future plans to subcontract work currently done by members of the bargaining unit	"The union is concerned about the effect of subcontracting on the future wages, hours, and working conditions of bargaining unit members."
3. Limit notice of temporary employees to "upon request"	**5(a)** A list of all individuals who have been hired as temporary employees from October 24, 2011 through the present, the date of hire, the rate of pay, classification, the date of termination and the reason for hiring. **5(b)** A copy of any company policies or procedures with respect to the hiring of temporary employees	"The union is concerned about the circumstances under which temporary employees are hired."
5. Delete contractual overtime pay	**7(a)** An accounting of all overtime paid to all bargaining unit members from October 24, 2011 through the present, with breakdowns showing the number of hours of overtime worked, the number of overtime hours paid, and the amount of overtime pay for each bargaining unit member, as well as whether each instance of overtime occurred during regular days off, holidays, or regular work days	"The union is concerned about the effect of this proposed change on the wages, hours, and working conditions of bargaining unit member[s]."
6. Delete successorship provision	**9(a)** Copies of any reports from consultants, investment advisors, certified public accounts or others concerning any possible sale, takeover, or restructuring of KGW **9(b)** Copies of any correspondence with [sic] concern the possibility of restructuring, sale, or takeover of KGW	"The union is concerned about the effect of this proposed change on the wages, hours, and working conditions of bargaining unit members, should KGW be sold, taken over, or restructured in the future."

As Bishop testified, each requested category of documents was necessary for the Union to evaluate the potential scope and/or effect of a Respondent proposal, as well as to test the veracity of Fair's claims on July 30 that each proposal was necessary to maintain Respondent's competitiveness in a changing media market. (Tr. 60–65.)

b. Respondent's preliminary, oral response

During the July 30–31 negotiations, Fair verbally addressed each of the above-described requests, but provided no documents. Regarding the Union's request for documents regarding Respondent's plan to assign bargaining unit work outside the unit (**Request 3**), Fair responded that, "as to KGW," no responsive documents existed. He further stated that, because there were no current plans to reassign bargaining unit work, Respondent could not identify the individuals to whom such work might be reassigned. In response to the Union's request for documents related to actual or planned subcontracting (**Request 4**), Fair stated that no responsive documents existed and that the station had no current subcontracts. By Fair's admission, however, this response was based on his own determination that this request was overbroad and should have been limited to the subcontracting of "IBEW's exclusive work." (GC Exh. 2; R. Exh. 12; Tr. 84, 475.)

Regarding the Union's request for information regarding temporary employees (**Request 5**), Fair responded that, informed the Union that no written policy existed regarding the use of temporary employees, adding that, during the last 3 years, the station had employed 3 temporary employees, including a program manager and a receptionist. (He did not indicate, as requested, why these workers were hired, their rate of pay or their position classifications). Fair stated that Respondent was "working on" Local 48's request for an accounting for overtime paid under the current contract (**Request 7(a)**), but then Lilly added that, due to a technological problem, Respondent might not be able to provide such information. Regarding the Union's request for documents related to a possible sale of the station (**Request 9**), Fair said there were no responsive documents and no current plans to sell KGW. (GC Exh. 2; Tr. 84–85, 433.)

c. Respondent's August 29 written response

With respect to **Requests 3, 4, 5, 7, and 9**, Fair's August 29 letter simply referred back to his oral responses, with one exception: in response to the Union's request for overtime figures (**Request 7(a)**), he attached to his email a spreadsheet that Bishop was unable to open. Later, on October 10, Respondent provided the Union with the spreadsheet, which listed overtime paid by pay period during a subset of the requested time period, but did not break down the overtime amounts as requested by the Union in order to evaluate the impact of Respondent's proposal to eliminate contractual overtime pay. According to Fair, this was all the responsive information the station was able to compile. Also on October 10, Respondent provided the Union with proposed language on non-exclusive jurisdiction. (J. Exh. 13, 14; Tr. 98, 101–106, 440.)

d. The Union's November 18 clarification

In his November 18 response to Fair, Local 48's counsel, Barish, re-requested documents relating to Respondent's plans to assign bargaining unit work outside the unit and job descriptions for employees to whom Respondent might assign such work (**Request 3**). Acknowledging that Fair had indicated in negotiations on July 30 that KGW had no such plans, Barish requested an update, "as plans might have developed" since that time. (Jt. Exh. 15.)

With respect to Fair's statement, in response to the Union's request in **Request 4**, Barish clarified that Local 48 was seeking current and past subcontracts (and related documents) for KGW broadly, not just for the subcontracting of bargaining unit work. Such documents, he asserted, were necessary for the Union to "test KGW's assertion that its purported lack of flexibility in subcontracting with respect to IBEW Local 48 places it at a competitive disadvantage," as well as to determine the necessity and effect of Respondent's proposed lifting of subcontracting restrictions. Id. Regarding the request for information regarding Respondent's use of temporary employees (**Request 5**), Barish stated that the Union was still waiting for a full response; he also indicated that the overtime spreadsheet Respondent had provided (in response to **Request 7(a)**) was incomplete and renewed that request. (Jt. Exh. 15; Tr. 102.)

By his letter, Barish also renewed the Union's request for information regarding a possible sale, takeover or restructuring of the station (**Request 9**), noting that several months had passed since Fair's verbal response during the July 30–31 bargaining session. Id.

3. Requests regarding corporate ownership, operation of KGW and the effects of the corporate restructuring

a. The July 30 request

The Union's July 30 request also included a request for documents relating to the station's ownership and operation (**Request 8**). Citing a concern over the effect of the recent change in ownership and corporate restructuring on "future wages, hours, and working conditions of bargaining unit members," Local 48 stated it required the following information to engage in bargaining:

> (a) A copy of any documents concerning the contracting relationship between KGW and Sander Media;
> (b) A copy of any documents concerning Gannett's operation of KGW through Sander Media or other intermediary entities;
> (c) A copy of the bylaws and articles of incorporation for Gannett, Sander Media, and KGW;
> (d) A list of the current shareholders for Gannett, Sander Media, and KGW showing the amount of shares and class of shares owned;
> (e) Copies of any reports from consultants, investment advisors, certified public accounts [sic] or others concerning the value of KGW, Sander Media, and Gannett and the effects of the 2013 corporate sale and restructuring;
> (f) Copies of all correspondence concerning the effects of the corporate sale and restructuring involving Gannett, Sander Media, and KGW;
> (g) Copies of minutes of the board of directors of Gannett, Sander Media, and KGW from since the date of the corporate sale and restructuring;
> (h) Minutes of all shareholder meetings for Gannett, Sander

Media, and KGW from since the date of the corporate sale and restructuring; and

(i) Copies of all filings with the Securities and Exchange Commission, as well as any state agency regulating corporate affairs, concerning Gannett, Sander Media, and KGW since the date of the corporate sale and restructuring.

Bishop testified as to the Union's rationale for requesting these documents. As he explained it, the items sought were generally necessary for the Union to understand which entity was now operating KGW. He also testified that the Union "basically assumed" that Respondent's proposals were the result of recent corporate restructuring, which may have involved some consultants or advisors suggesting that the proposed changes were necessary. With respect to the Union's request for a list of shareholders for the three entities (**Request 8(d)**, above), Bishop testified that the Union was interested in determining who actually owned and controlled the station, in keeping with its "overriding goal to get a better understanding of who was running the operations at KGW." Securities and Exchange Commission (SEC) and other regulatory filings (**Request 8(i)**), he testified, were necessary, Bishop testified, to get "accurate information" to verify Respondent's other responses. These proffered explanations of relevance, however, were not imparted—at least not initially—to Respondent. (Tr. 65–68, 73–75.)

b. Respondent's preliminary, oral response

During the July 30–31 negotiation session, Fair directly addressed **Request 8** and the relationship between Gannett, Sander and KGW. Promising more detailed information in the future, he explained that, based on regulatory requirements, the station's broadcast license had been transferred to Sander in connection with the merger. Neither this, he told the Union, nor the fact that he—a Tegna executive—was negotiating with the Union on KGW's behalf, changed the fact the day-to-day management was still in the hands of KGW's own management. (GC Exh. 2.)

In response to **Request 8(i)** (which requested SEC and other agency filings), Fair stated that the request was too broad and overly burdensome and referred the Union to "Yahoo! Finance," a website that provides financial news, data and commentary, including stock quotes, press releases and certain financial reports, including SEC filings.[6] He also provided the Union with hard copies of the station's FCC license,[7] Gannett's SEC Form 10-Q for the first and second quarters of 2014 and the Form 8-K disclosing the closing of the Gannett-Belo merger and accompanying restructuring whereby the operating licenses for Belo's television stations (including KGW) were transferred to Sander. (GC Exh. 2; R. Exh. 12; Jt. Exh. 5, 6, 7; Tr. 81–82, 424–429, 431–433.)

Fair also addressed the Union's request for shareholder information (**Request 8(d)**, above), demanding an explanation of its relevance and stating that, in any event, it would be impossible for Respondent to provide such a list for Gannett, a large, publically traded company. (Gannett's major shareholders, he said, could be found on the Yahoo! Finance website). With respect to the Union's request for Gannett shareholder meeting minutes (**Request 8(h)**), Fair appears to have responded that these minutes were available to shareholders only. He then explained that Sander Media and KGW were not corporate entities and therefore had no shareholders. Regarding the Union's request for documents reflecting the "value" of KGW, Sander and Gannett (**Request 8(e)**), Fair informed the Union that "the value of KGW is confidential" and they were not entitled to such information. Regarding **Request 8(f)**, which requested "correspondence regarding the effects of the corporate sale and restructuring involving Gannett, Sander and KGW," Fair asked the Union to clarify the "effects" to which it referred. (Tr. 429–430.)

c. Respondent's August 29 written response

In his August 29 letter, Fair essentially recapped his response to **Request 8**, but provided no further documents. Reiterating his confidentiality objection to documents concerning the "value" of KGW, Gannett and Sander Media and the "effects" of the 2013 transaction (**Request 8(e)**), he added that Respondent was making no claim of inability to pay. Regarding the Union's request for board of directors and shareholders meeting minutes (**Requests 8(g) and (h)**), Fair responded that KGW had no such minutes of its own and that he was not aware of any board of directors or shareholders for Sanders. Id. Regarding the Union's request regarding "effects" of the recent corporate sale and restructuring (**Request 8(f)**), Fair again requested clarification as to what documents Local 48 was seeking, and reiterating that "KGW's General Manager continues to guide and make business decisions on behalf of KGW" and that "KGW's business will continue to operate under the direction of the KGW General Manager as it did under 'Sander Operating Co.' and will do under 'Sander Media.'" (Jt. Exh. 9.)

d. The Union's November 18 clarification

By his November 18 letter, Barish addressed Fair's request that Local 48 clarify **Request 8(f)** (requesting correspondence regarding the "effects" of the restructuring), stating that the Union should be permitted to investigate whether "business advantages and/or disadvantages" caused by the corporate restructuring (as opposed to by the parties' existing contract language) were in fact responsible for Respondent's proposals. The request, he stated, was therefore seeking analyses of "the business advantages and/or disadvantages caused by the corporate sale and restructuring, as well as any business projections concerning KGW's competitive position in its markets." Id.

E. The Union's November 18 Information Request and Respondent's Response

As noted, Barish, by his November 18 letter, made new information requests, three of which the General Counsel alleges went unlawfully unanswered by Respondent. They are each described below:

1. Competitor and advertiser information

[6] See www.finance.yahoo.com.

[7] I credit Fair's specific recollection that he provided this document during negotiations, which was corroborated by Barish's written confirmation on November 18. (Tr. 427; Jt. Exh. 15.)

Barish set forth a new and expansive request for information regarding KGW's performance in selling advertising under the parties' last contract (**Request 11**). According to Bishop, bargaining unit members of Local 48's negotiating team had expressed the view that KGW's viewership was strong and ratings were up; the Union therefore concluded that, before acceding to Respondent's contractual demands, it should seek substantiation of Fair's claims that "the sky was falling." The Union, as Bishop explained, also wanted to ascertain whether the parties' current contractual language was placing the station at a disadvantage with respect to its competitors and having an actual impact on its advertising sales. The requested information included:

(a) A list of media content providers that KGW views as its primary competitors;
(b) A complete description of KGW's advertising pricing structure so the Union may compare the station's advertising prices to those of competitors;
(c) A list of KGW's current advertisers so the Union may contact them to determine if they have or will consider purchasing advertising from a different provider;
(d) A list of all of KGW advertisers who have ceased buying advertising from KGW since October 24, 2011, so the Union may contact them and determine why they stopped purchasing advertising from the station;
(e) A list of all KGW advertising prospects since October 24, 2011, that the station contacted concerning purchasing advertising but that ultimately did not choose to purchase advertising, so the Union may contact them and determine why they chose not to purchase advertising from KGW;
(f) All documents, reports, and analyses concerning the station's ratings, television viewership and web and/or mobile readership/viewership since October 24, 2011;
(g) Viewer/consumer comments and complaints received by the station since October 24, 2011, concerning its programming and service; and
(h) Advertiser comments and complaints received by the station since October 24, 2011, concerning its programming and service.

(Jt. Exh. 15 at 5; Tr. 111–113.)

2. Work assignment information

Barish also included a new request (**Request 13**) based on Respondent's stated desire to eliminate the Union's exclusive work jurisdiction. This item sought information regarding KGW employees represented by the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts (IATSE):

> (a) Documents concerning all changes in job responsibilities for members represented by IATSE since October 24, 2011, including but not limited to changes in responsibilities concerning operation of news trucks; and
> (b) Documents concerning IATSE members' training and qualifications for operation of new trucks.

As Bishop explained, the parties during bargaining had discussed the fact that bargaining unit members already had "overlapping duties" with those of IATSE-represented station employees, proof of which the Union believed would undermine Respondent's claimed need for greater flexibility in assigning work. (Jt. Exh. 15; Tr. 113–114.)

3. Specific instances of subcontracting

Barish's November 18 letter also included a request (**Request 14**) regarding two individuals that the Union believed (based on reports from bargaining unit members) had worked as subcontractors of Respondent. Specifically, this item requested "[a]ll documents concerning the job title, job responsibilities, pay, benefits, and hours" for these two individuals, in each case during the time period when the Union believed they had performed as subcontractors. (Jt. Exh. 15 at 6; Tr. 114–115.)

4. Respondent's November 20 verbal response

It is undisputed that Respondent did not provide any documents (or any written response) to the Union's November 18 requests. On November 20, the parties met for bargaining, and Bishop and Fair engaged in a "spirited debate" about the requests. Fair accused the Union making requests to stall discussions of Respondent's proposal; Respondent, he said, had satisfied its obligation to respond to any good-faith requests for relevant information. He then asked Bishop to identify what was "important" in the November 18 request; if the Union would "prioritize something," he suggested, "maybe" Respondent could provide information sufficient to allow the parties to bargain over Respondent's proposal. (Tr. 450–451.)

Bishop refused, stating that the Union wanted all of the requested information, to which Fair responded, "are you refusing to negotiate further until we've given you answers to that information request?" Bishop denied this, stating that the Union needed substantiation of Respondent's claims regarding its need to be more competitive in order to formulate effective counterproposals. According to Bishop, Fair immediately denied that Respondent's proposal had "anything to do with gaining competitive advantage or being at a competitive disadvantage"; Respondent, he said, simply "want[ed] to be relevant in the media marketplace." (Tr. 115–117, 452–453.)[8]

The parties then discussed Respondent's proposal to eliminate work jurisdiction.[9] When several bargaining unit members of the Union's negotiating committee questioned how this proposal would make the station more competitive, Lilly said there was a finite amount of advertising dollars in the market and Respondent needed flexibility to go after them. The Union's team then suggested that the station already had a successful website it could use to compete in the new media market, and suggested that Respondent could grow this part of the business, to which Lilly responded, "we don't have the budget for that." Bishop jumped in, saying that this sounded like it might be an issue of ability to pay, but Fair pushed back, saying it was *not* about an inability to pay. (Tr. 118–119.)

[8] Fair, for his part, did not deny recharacterizing Respondent's motivation from a concern over competitiveness to one over relevance.

[9] The discussion described in this paragraph is based on Bishop's credible testimony, which was corroborated by his notes and went unrebutted by either Fair or Lilly.

5. The parties' additional discussions regarding the Union's requests

On December 4, the parties met again for bargaining. When reminded by the Union about its information requests, Fair stated, "we're not going to open our books, you know, to you; that's not going to happen." On January 6, 2015, when the parties met again, Bishop asked about the November 18 request. Fair did not seem to recall the request and Bishop had to show him a copy, after which Respondent's negotiating team caucused for approximately an hour. Upon returning, Fair stated that he had looked at the request but that it would not be "useful" for him to review it line-by-line, and the parties should just discuss it instead. This attempt at discussion quickly devolved, with Fair stating that the Union would never be satisfied with Respondent's answers, so there was no point in giving any response. Local 48's latest request for information, he stated, was a "red herring." The meeting concluded with Bishop requesting that Fair identify his preferred means of communication (i.e., letter, email, telephone), because Respondent appeared to be ignoring the Union's written information requests and Fair responding that he was open to many forms of communication. (Tr. 125, 128–129, 131; GC Exh. 2.)

It is undisputed that, following the parties' January 6, 2015 session, Respondent provided no further response to any of the Union's information requests. (Tr. 115, 128, 132–134, 137–138.)

II. ANALYSIS

A. Credibility

The key aspects of my factual findings above incorporate the credibility determinations I have made after carefully considering the record in its entirety. I based my credibility resolutions on consideration of a witness' opportunity to be familiar with the subjects covered by the testimony given; established or admitted facts; the impact of bias on the witness' testimony; the quality of the witness' recollection; testimonial consistency; the presence or absence of corroboration; the strength of rebuttal evidence, if any; the weight of the evidence and witness demeanor while testifying. Credibility findings need not be all-or-nothing propositions, and it is common for a fact finder to credit some, but not all, of a witness' testimony. *Daikichi Sushi,* 335 NLRB 622, 622 (2001). My credibility findings are generally incorporated into the findings of fact set forth above.

I did not find the testimony of either lead negotiator, Fair or Bishop, to be especially reliable; my impression was that both men at times editorialized in their descriptions of events at the bargaining table. On the whole, however, I have tended to credit Bishop, who testified without reliance on his bargaining notes and appeared to make a good effort to answer questions fully and honestly. Fair, on the other hand, was observably nervous on cross examination and often appeared to dissemble when questioned about significant matters, such as what he meant to impart by his comparison to the economic downturn in the newspaper industry. (See Tr. 487–490.) As noted, infra, on various occasions, Fair also failed to rebut specific, potentially damaging testimony given by Bishop. See *LSF Transportation, Inc.*, 330 NLRB 1054, 1063 fn. 11 (2000), enfd. 282 F.3d 972 (2002); *Asarco Inc.*, 316 NLRB 636, 640 fn. 15 (1995), modified on other grounds 86 F.3d 1401 (5th Cir. 1996).

B. The Parties' Positions

As noted, the General Counsel argues that the demonstrated relevance of each of the Union's information requests was based on its need to: (a) evaluate and respond to specific Respondent bargaining proposals; (b) understand the recent corporate restructuring and its effects; and/or (c) assess Respondent's claimed lack of competitiveness as a rationale for its proposals as a whole. Respondent argues that it provided all nonconfidential information for which the Union demonstrated a basis of relevance, that it never made representations regarding its inability to pay contractual wages and benefits that would that would otherwise obligate it to provide financial information, and that the Union's requests were made in bad faith in order to delay bargaining with an eye towards staving off an impasse declaration.

C. The Applicable Law

An employer's duty to bargain includes a general duty to provide information needed by the bargaining representative to assess claims made by the employer relevant to contract negotiations. "The objective of the disclosure obligation is to enable the parties to perform their statutory function responsibly and 'to promote an intelligent resolution of issues at an early stage and without industrial strife.'" *Clemson Bros*., 290 NLRB 944, 944 fn. 5 (1988). Following an appropriate request, and limited only by considerations of relevancy, the obligation arises from the operation of the Act itself. *Ellsworth Sheet Metal*, 224 NLRB 1506 (1976). "The refusal of an employer to provide a bargaining agent with information relevant to the Union's task of representing its constituency is a per se violation of the Act without regard to the employer's subjective good or bad faith." *Piggly Wiggly Midwest, LLC*, 357 NLRB 2344, 2355 (2012) (citing *Brooklyn Union Gas Co.*, 220 NLRB 189, 191 (1975); *Procter & Gamble Mfg. Co.*, 237 NLRB 747, 751 (1978), enfd. 603 F.2d 1310 (8th Cir. 1979)).

Generally, information pertaining to terms and conditions of employees within the bargaining unit is presumptively relevant. *CVS Albany, LLC*, 364 NLRB No. 122, slip op. at 2 (2016). Where, by contrast, a union seeks information that does not concern the terms or conditions within the bargaining unit, such as financial information or information regarding competitors, there is no presumption of relevancy, and the "probable or potential relevance of the information must be shown." *Caldwell Mfg. Co.*, 346 NLRB 1159, 1166 (2006) (citations omitted). "Depending on the circumstances and reasons for the union's interest, information that is not presumptively relevant may have 'an even more fundamental relevance than that considered presumptively relevant.'" *Boeing Co.*, 364 NLRB No. 24, slip op. at 10 (2016) (citing *Prudential Insurance Co. of America v. NLRB*, 412 F.2d 77, 84 (2d Cir.), cert. denied 396 U.S. 928 (1969)).

The burden to show relevance is "not exceptionally heavy," *Leland Stanford Junior University*, 262 NLRB 136, 139 (1982), enfd. 715 F.2d 473 (9th Cir. 1983), and the Board employs "a

broad, discovery-type of standard." *Shoppers Food Warehouse Corp.*, 315 NLRB 258, 259 (1994). Ultimately, the question is whether there is a "probability that the desired information [is] relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities." *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437 (1967). The relevance of requested information may be established by the non-requesting party's statements and bargaining proposals themselves; it is well established that the duty to bargain "includes a general duty to provide information needed by the bargaining representative to assess claims made by the employer relevant to contract negotiations." *Caldwell Mfg. Co.*, 346 NLRB 1159, 1159–1160 (2006). As the Supreme Court has explicated, where a party asserts a position without providing for a means of verification of the same, "[t]his is not collective bargaining." *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 153 (1956) (quoting *Pioneer Pearl Button Co.*, 1 NLRB 837, 842–843 (1936)).

An employer that relies on its alleged "noncompetitiveness" to justify its proposals also makes relevant information that would assist the union in formulating counterproposals. Under such circumstances, the Board has explained, the Union is entitled to information that might permit it to "generate alternatives to wage and benefit concessions through which the [r]espondent could become more competitive, such as by increasing or reducing costs in other areas. *CalMat Co.*, 331 NLRB 1084, 1096–1097 (2000); see also *National Extrusion & Mfg. Co.*, 357 NLRB 127, 128 (2011) (where employer "premised its demand for substantial wage concessions on its asserted competitive disadvantage in the workplace," it was obligated to provide requested information regarding current and former customers, job quotes, outsourcing, pricing structure, market studies and competitors); *Caldwell Mfg.*, supra at 1160 (finding relevant union's request for detailed information involving costs, productivity, and competitor performance where employer asserted that concessions were necessary in order to make a less competitive facility viable and to become more competitive in the industry); *E. I. du Pont & Co.*, 276 NLRB 335, 336 (1985) (finding relevant production cost and competitor data where employer proposed a major restructuring of production jobs).

A somewhat different situation is presented where an employer supports its bargaining position by claiming not a concern about remaining competitive but remaining financially *viable* without concessions from the union; this has been traditionally referred to as "pleading poverty." An employer claiming to be in such a situation must disclose financial information to substantiate its claim, which may include financial statements disclosing its revenue and expenses. *NLRB v. Truitt Mfg. Co.*, supra at 152–153. This principle is not limited to situations in which the employer claims actual insolvency; it may also apply where an employer relies on past and ongoing financial losses to justify its bargaining position. *Cowin & Co.*, 277 NLRB 802 (1985). What has remained elusive for decades is a method of identifying what asserted degree and imminence of financial distress triggers an employer's obligation to 'open its books.'

In this regard, the Board has—for the past 25 years—attempted to distinguish an employer's claim of inability to afford wages and benefits during the life of the contract being negotiated, from claims that concessions are necessary to avoid placing it at a competitive disadvantage at some (undisclosed) point in the future. The latter type of claim, the Board has held, will not alone trigger a duty to disclose requested substantiating financial information. *Nielsen Lithographing Co.*, 305 NLRB 697 (1991), affd. sub nom. *GCIU Local 508 v. NLRB*, 977 F.2d 1168 (7th Cir. 1992).[10] Recently, however, the Board acknowledged that the concepts of "'competitive disadvantage' and 'inability to pay,' although different, are neither mutually exclusive nor separated by a sharp dividing line." *Wayron,* 364 NLRB No. 160, slip op. at 6 (2016). Thus, under certain circumstances, even absent express assertions of an inability to pay, an employer's statements amount to an effective assertion that "economic problems have led to an inability to pay or will do so during the life of the contract being negotiated." Id. (citing *Nielsen*, 305 NLRB at 700). Thus, an employer that claims it cannot "remain competitive" while paying what the union is demanding has been found to have made the equivalent of an inability-to-pay claim, where it makes other statements indicating looming economic peril.[11]

Indeed, the Board has long held that no "magic words" are required to find that an employer is claiming an inability to pay; this means that an employer whose overall conduct and statements reasonably suggest an inability to pay cannot avoid financial disclosure merely by scrubbing their talking points of references to financial hardship or playing "word games" by making "carefully phrased assertions" regarding competitive disadvantage. *Wayron,* supra at 5.[12] Instead, the Board will evaluate an employer's claims within their overall context, including its statements and actions, drawn from both credited testimony and the bargaining notes, in order to determine whether the union would reasonably have understood that the employer was asserting an inability to meet the union's demands during the life of the contract being negotiated. Id. at 4, 6 (citing *Nielsen*, supra).

[10] This distinction between these two situations has been characterized as a difference between an expressed inability to pay versus an unwillingness to do so; in deciding whether to strike or accede to the employer's proposals, it is argued, a union must understand which of these two situations it faces. See generally *Management's Duty to Back Up Competitive Disadvantage Claims*, 61 U. Chi. L. Rev. 675 (1994).

[11] In *Stanley Building Specialties Co.*, for example, the employer's bargaining representative told the union, "if we gave any more, at this time, that I didn't see how we could remain competitive"; the employer had previously told the union that it was "not making money" and "if we can't make it here, one of these days they will be closing the doors, because we have been losing money long enough." 166 NLRB 984, 985 (1967). Under such circumstances, the Board found, the respondent's claim that it was unable to pay more than it was offering and remain competitive was, "in effect, a plea of inability to pay" rendering its refusal to furnish financial information a violation of § 8(a)(5). Id. at 986 & fn. 5 (citations omitted).

[12] As the Board succinctly stated, ". . . good-faith bargaining in the context of financial hardship does not follow the rules of the game 'Password,' such that the Respondent wins if it effectively circles around a key word or phrase, successfully describing it without actually uttering it." *Wayron*, supra, slip op. at 7.

D. Respondent Failed to Provide Certain Relevant Information in Violation of Sections 8(a)(5) and (1) of the Act

As set forth below, I find that, with the exception of **Request 8**, Respondent failed to provide the information requested by the Union, in violation of the Act. What follows is an analysis, by category, of each of the Union's requests, as well as an assessment of Respondent's asserted affirmative defenses:

1. Requests related to claimed competitive disadvantage and competitor/advertiser data (**Requests 2 and 11**)

I find that **Requests 2 and 11** sought relevant information, and that, in each case, Respondent has failed to offer any valid defense to its failure to respond to these requests.

At the outset of the parties' negotiations, Fair presented—in fairly dramatic fashion—the specter of new media competition as the primary, if not sole, rationale for the concessions it sought from the Union. He spoke not in generalities, but of specific new media competitors (Google, Amazon, etc.) who enjoyed the brand loyalty of the coveted millennial market, and then held out this state of affairs as compelling that the Union abandon, inter alia, its exclusive work jurisdiction. Considering the "end times" tone of his presentation, it is hardly surprising that the Union sought information about the station's new, formidable competitors. See **Request 2(d)**. It is likewise unremarkable that, when in response Respondent provided only academic and/or industry publications and claimed to have no information pertinent to KGW itself, the Union called its bluff with its November 18 follow-up request (**Request 11**), specifically seeking documents regarding: (a) the station's competitors, as well as KGW's own advertising pricing structure; (b) the station's past and present advertisers (for the stated purpose of contacting them about their interest in KGW versus other media outlets); and (c) feedback from the station's advertisers and viewers on the station's programming and service. Tellingly, Respondent's sole response to this new request was Fair's attempt to walk back his original remarks and claim that Respondent was concerned not about competitiveness, but simply desired to "remain relevant."

Based on the credible record evidence, I find that the documents sought by **Requests 2(d) and 11** regarding KGW's competitors were made relevant by Fair's opening remarks in bargaining, as well as his insistence (at least until presented with the November 18 request) that competition from new media was to blame for the substantial concessions Respondent sought. See *Caldwell*, supra at 1169 (union entitled to information in respondent's possession regarding competitors, competitor's products and competitor's selling prices, given respondent's claims that its proposals were justified by a need to become more competitive); *CalMat*, supra at 1096–1097 (employer's claim that proposal was justified by its non-competitiveness entitles union to information the employer has regarding competitors' wages, benefits, productivity, prices, and labor and material costs); *E. I. du Pont & Co.*, supra at 335–336 (employer's claim that proposal was justified by need to "improve productivity" and "strengthen competitiveness at the plant" entitled to union to "known comparative per unit costs at other plants operated by … competitors").

Likewise, to the extent that Fair suggested that Respondent's proposals aimed to enhance KGW's ability to compete for advertising dollars, he put in play the question of whether a real threat existed that could be measured in falling ratings and/or advertisers dropping the station. It was sensible, under such circumstances, for Local 48 to seek to verify Respondent's concerns, as well as to investigate non-contractual causes for any loss of customers. See *National Extrusion*, 357 NLRB at 157. This is especially so considering how tenuous a connection Fair had drawn between Respondent's demanded contractual changes and its quest for competitiveness (or alternately, "relevance"). In support of its claim that bargaining unit employees must forgo contractual overtime pay and exclusive work jurisdiction, while accepting potentially unlimited subcontracting and use of temporary workers in an effort to provide the station with more access to content, Respondent offered a single example of a manager performing bargaining unit work in order to cover breaking news. Certainly the Union was entitled to probe further Respondent's rationale for its demands.

The remaining portions of Local 48's **Request 2** sought information regarding KGW's own market share, ratings, revenue and expenses; these documents, according to Bishop, were necessary to determine whether the new media competition Fair warned of was a ruse or a real threat and, if the latter, how imminent a threat in terms of impact on Respondent's finances. I find that Fair made this information relevant by his comments at the bargaining table and in particular, his prefatory remarks on July 16. In this regard, I reject Respondent's contention that Fair merely signaled a desire to make preemptive "adjustments for the future" based on the "oncoming problem that KGW saw" that was unrelated to Respondent's past or current performance. (R. Br. at 41.) Fair did not limit his remarks to prognostication; he presented the millennials' brand loyalty as a current problem that was worsening. Despite Fair's managing to avoid invoking any "magic words," every other aspect of his presentation suggested that the KGW's market share was *currently* being depleted by the "drastically increased" advertising dollars being allocated to its competitors; as he put it, "this time it's real."[13]

By alluding to the decline of the newsprint industry and the extinction of its jobs, Fair imparted a sense of urgency and impending crisis in terms of broadcast television in general, but also managed to sow confusion about KGW's own competitive position and the imminence of the danger it faced. Instead of providing a straight-forward appraisal of the financial situation KGW faced, Fair posited the allegorical "Chelsea" and told the Union it was at a "crossroads," (i.e., a point at which a critical decision—carrying far-reaching consequences—must be made).[14] By presenting Respondent's demands in this portentous but fact-free manner, Fair played coy with the critical information necessary for Local 48 to make a reasonable assessment as to whether Respondent was asserting an inability to

[13] It is true that Fair, obviously a skilled attorney, took care to avoid mentioning revenue losses and insisted that financial inability was not at issue; this, however, was cast into doubt by non-attorney Lilly's slip indicating that Respondent had in fact considered specific budgetary issues in its analysis of the new media competition concerns behind its proposals.

[14] See https://en.oxforddictionaries.com/definition/crossroads.

meet the requirements of the parties' expired contract during the next contract's term.[15] This is exactly the gamesmanship the Board has warned of in cases such as this. See *Wayron*, supra at 7. Under these circumstances, I find that the remaining (i.e., noncompetitor related) portions of the Union's **Request 2** sought information that meets the Board's standard for relevance.

I further reject Respondent's claims that its asserted confidentiality interests privileged it to ignore **Requests 2 and 11**. The Board recognizes that an employer's claim of confidentiality must be balanced against the requesting union's need for the information as it acts as the representative of its employee-members. *Midwest Division – MMC, LLC*, 362 NLRB No. 193, slip op. at 3 (2015) (citing *Kaleida Health, Inc.*, 356 NLRB 1373, 1378–1379 (2011), and *Detroit Edison Co. v. NLRB*, 440 U.S. at 318–319). In order to trigger this balancing test, however, an employer must first timely raise and prove that it has a legitimate confidentiality claim, *Detroit Newspaper Agency*, 317 NLRB at 1072–1074. "Legitimate and substantial confidentiality and privacy claims will be upheld, but blanket claims of confidentiality will not." *Pennsylvania Power Co.*, 301 NLRB 1104, 1105 (1991) (footnote omitted); see also *National Extrusion.*, supra at 157 fn.31 (finding respondent violated the Act where it failed to establish that names of current or past customers were confidential).

Even assuming that Fair's references to confidential financial and ratings information were sufficient to establish the confidentiality of certain requested documents, this triggered an obligation on Respondent's part to bargain an accommodation over its concerns, which Respondent indisputably failed to do. In the absence of any evidence of the Union failing to respect such accommodations, Respondent's failure to test the Union's willingness to safeguard Respondent's data demonstrates that it merely "raised confidentiality concerns as a reason to say no." *National Extrusion*, supra at 158; see also *Reiss Viking*, 312 NLRB 622, 622 fn. 4 (1993).

For the reasons expressed, the items sought by **Requests 2 and 11** of the Union's requests for information letter must be produced, and Respondent's failure to furnish this information constitutes a violation of Section 8(a)(5) and (1) of the Act.

2. Requests regarding specific bargaining proposals (**Requests 3-5, 7, 9, 13 and 14**)

I find that each of the Union's requests that it explicitly linked to specific Respondent bargaining proposals (**Requests 3-5, 7, 9, 13 and 14**), sought relevant information, and that, in each case, Respondent has failed to offer any valid defense to its failure to respond.

As a preliminary matter, I find that certain of this requested information—specifically, the documents regarding payment of overtime wages (**Request 7**)—was presumptively relevant. See, e.g., *Cerro Wire & Cable Co.*, 337 NLRB No. 63 (2002) (not reported in Board volumes) (overtime hours worked by bargaining unit employees for past 3 years presumptively relevant). In fact, the only document provided in response to this entire group of requests was a chart showing overtime paid over a portion of the requested time period, albeit missing the specific information sought: a breakdown of overtime by type that would reveal the financial impact of Respondent's proposal to eliminate overtime pay. Essentially, Respondent was asking the Union to give up contractually guaranteed wages without disclosing what actual dollar amount was at stake.[16]

The remaining information requests that the Union linked to specific Respondent proposals (**Requests 3-5, 9, 13 and 14**), while not presumptively relevant, meet the Board's standard for relevance as set forth supra. In this regard, I credit Bishop's testimony that these requests were made directly in response to Respondent's specific bargaining proposals and sought information necessary for the Union to meaningfully consider—and respond to—such proposals. Respondent's proposal to delete a standard "successors and assigns" clause from the parties' contract, for example, would certainly take on added significance were the Union to learn of documented steps taken by Respondent towards selling or restructuring KGW. (See **Request 9.**) Likewise, presented with a proposal to remove all contractual restrictions on Respondent's ability to assign bargaining unit work outside the unit, it was only logical—in order to formulate a counterproposal—for the Union to seek documents that would shed light on Respondent's current ability to assign work (**Request 13**), as well as Respondent's economic rationale for its proposal, including labor costs and qualifications of those to whom the work could potentially be assigned. (**Request 3.**) In each case, the information sought is directly relevant to the Union's assessment of Respondent's specific proposals and formulation of its own bargaining position as it related to the concessions Respondent sought.[17]

As noted, much of the information Respondent did provide took the form of Fair's verbal representations. While there is no per se requirement that an information request be satisfied in writing, providing information in a manner that actually impedes the process of bargaining is insufficient. *United Aircraft Corp.*, 192 NLRB 382, 389 (1971) (citing *Lasko Metal Product, Inc.*, 148 NLRB 976, 979 (1964)). Despite demanding sweeping changes to the parties' contract, Respondent—by Fair—played coy about its rationale for, and expected economic impact of, these proposed changes. In this regard, Fair frequently hedged and qualified his verbal responses, rendering them incomplete and therefore inadequate, as evidenced by the

[15] It is telling, in this regard, that Respondent in its initial proposal indicated its intent to renegotiate the very term of contract. (See Jt. Exh. 2.)

[16] I found Fair's claim that he believed Respondent had no such records to be wholly implausible.

[17] The same rationale applies to the Union's requests (**Requests 4, 5 and 14**, respectively) regarding the financial impact of Respondent's proposals on subcontracting and use of temporary employees. *West Penn Power Co.*, 346 NLRB 425 (2006) (information regarding extent of employer's subcontracting relevant and necessary for union to determine its negotiating position on subcontracting); *St. George Warehouse, Inc.*, 341 NLRB 904 (2004) (information regarding employer's use of temporary workers relevant and necessary in view of union's concern over employer's erosion of unit work by use of such workers), enfd. 420 F.3d 294 (2005).

fact that the Union was forced to renew these requests.[18] Proposing the Respondent retain an unfettered right to assign work away from unit employees, Fair fudged his answer to the Union's requests on the subject, stating that there were no "current plans" to do so and therefore it would be impossible to identify those to whom it *might* assign such work. (**Request 3.**) Months later, after Respondent had actually proposed specific, non-jurisdictional language, it refused to respond to the Union's November 18 request (**Request 13**) for an update on its plans for work assignments. Likewise, despite demanding the removal of successorship language, Respondent failed to respond in any way to the Union's request for documents relating to a potential sale or takeover of the station (**Request 9**) as renewed by the Union on November 18. Based on the record as a whole, it appears that Respondent's conduct, including Fair's hedging and word play, was calculated not to supply the data requested, but rather to provide "limited information designed to fashion conclusions for the [u]nion." *Wehr Constructors, Inc.*, 315 NLRB 867, 876 (1994).

Respondent argues that the Union had no valid motive for its requests and therefore acted in bad faith. I disagree. "[T]he presumption is that the union acts in good faith when it requests information from an employer until the contrary is shown." *Hawkins Construction Co.*, 285 NLRB 1313, 1314 (1987), enf. denied on other grounds 857 F.2d 1224 (8th Cir. 1988); *International Paper Co.*, 319 NLRB 1253, 1266 (1995) enf. denied on other grounds 115 F.3d 1045 (D.C. Cir. 1997). The requirement of good faith "is met if at least one reason for the demand can be justified." *Hawkins Construction*, supra at 1314. Nor will a union requesting an update of previously requested information be found to have engaged in bad faith. *Watkins Contracting*, *Inc*., 335 NLRB 222 (2001). Here, not only were the Union's requests directed at specific Respondent bargaining proposals, they were made early in bargaining and not in the face of a looming impasse declaration. Compare *ACF Industries, LLC*, 347 NLRB 1040 (2006) (finding information request purely tactical where it followed extensive bargaining and the union's rejection of the employer's final offer). I therefore find that Respondent has failed to provide that any of the Union's request were made in bad faith.[19]

For the reasons expressed, the items sought by **Requests 3-5, 7, 9, 13 and 14** of the Union's requests for information must be produced, and Respondent's failure to furnish this information constitutes a violation of Section 8(a)(5) and (1) of the Act.

3. Requests regarding corporate ownership, operation of KGW and the effects of the corporate restructuring (**Request 8**)

I find no merit to the General Counsel's allegations regarding the Union's **Request 8**, seeking various documents related to KGW's recent change in ownership and operational responsibility. Such information is not presumptively relevant, and therefore the Union must demonstrate its relevance. I find that, to the extent that the Union sought information meeting the Board's relevance standard, Respondent satisfied its obligation to disclose such information.

The Union's original request for documents related to the recent corporate restructuring sought a wide swath of documents ranging from board of directors meeting minutes to all documents relating to the "effects" of the transaction. Of course, it is well established that a request seeking voluminous documents, without more, will not be considered to have been made in bad faith. *Mission Foods*, 345 NLRB 788 (2005). Moreover, faced with new station ownership and a new bargaining partner (Fair) who demanded deep concessions in the name of management "flexibility," Local 48 had a legitimate interest in understanding Respondent's role in managing the station. I find, however, that Respondent provided information sufficient to satisfy these inquiries.

By his remarks on July 30–31, Fair assured the Union that day-to-day operations would remain in the hands of KGW managers. He also provided sufficient publically available documents for the Union to 'unpack' the admittedly complex (and largely regulatory driven) transaction that had occurred. Thus, while the Union legitimately sought to understand the nature of the recent restructuring, once Fair had provided an oral explanation supplemented by publicly available SEC filings, the remaining documents the Union sought (including articles of incorporation and bylaws, the identity of Respondent's shareholders and minutes for board of directors and shareholders meetings) became superfluous and Respondent's obligation to provide responsive information was satisfied.

The General Counsel argues that, following Fair's remarks on July 30-31 regarding the corporate transaction and his provision of SEC filings, the Union nonetheless required the items sought by its **Request 8** in order to vet its theory that the change in ownership, and not competition from new media outlets, was responsible for Respondent's proposals. Based on the credible record evidence, I cannot agree. As a preliminary matter, the Union waited 4 months to offer this explanation of relevance to Respondent. Moreover, as Bishop admitted, the rationale was itself based an *assumption* that Respondent, having taken over management of the station, had been advised to seek the concessions at issue. Nor is there any evidence that the Union was concerned that the admittedly complex series of acquisitions, mergers and spinoffs between Belo, Sanders Media, Gannett and Tegna in any way implicated the scope of the Union's bargaining role or represented an effort to avoid bargaining on behalf of the unit employees. Instead, the Union offered "at best . . . a hypothetical theory" about the relationship between Respondent's restructuring and its proposals insufficient to support its need for the array of documents sought

[18] For example, in response to the Union's request about plans to assign bargaining unit work outside the Union (**Request 3**), Fair (who identified himself as Gannett and then Tegna's representative) stated, "as to KGW," there were no such plans. Likewise, with respect to subcontracting (**Request 4**), Fair declared that no subcontracting was occurring and then qualified that his answer was limited to subcontracting of the Union's exclusive work.

[19] I find Respondent's reliance on the Board's *United Parcel Service (Teamsters Local 373)* decision misplaced, in that the Board in that case explicitly declined to rely on the administrative law judge's conclusion that the requesting union had acted in bad faith. See 362 NLRB 160, 162 and fn. 12 (2015).

by **Request 8**. *Sheraton Hartford Hotel*, 289 NLRB 463, 464 (1988) (mere suspicion alone does not suffice to support a request for non-presumptively relevant information).

Under the circumstances, I find that the Union has not established that the information sought by **Request 8** —beyond the scope of the information Respondent in fact provided—was necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the bargaining unit employees.[20] For the reasons expressed, I recommend dismissal of the General Counsel's allegations regarding the information sought by **Request 8**.

CONCLUSIONS OF LAW

1. Respondent Tegna, Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. International Brotherhood of Electrical Workers, Local 48, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act with Section 9(a) status under the Act.

3. The following employees of Respondent constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act (the unit):

> All technicians and engineers employed in Respondent's KGW-TV television engineering department, excluding all other employees, guards, supervisors, and professional employees as defined in the National Labor Relations Act.

4. At all material times, Respondent has recognized the Union as the designated exclusive collective-bargaining representative of the unit employees.

5. Respondent has violated Section 8(a)(5) and (1) of the Act by failing and refusing to supply the following information to the Union:

(a) Data reports, analysis, communications, and other documents, since October 24, 2011, concerning:

> (i) KGW's market share, ratings, and viewership;
> (ii) KGW's revenue;
> (iii) KGW's expenses;
> (iv) Competition from other media outlets such as Google, Amazon, etc., in Portland, Oregon, and nationally; and
> (v) Changes in advertising placement and revenue for television stations including KGW;

(b) Documents, analyses, or communications concerning plans to assign unit work to nonunit individuals;

(c) The job descriptions and current wage rates of employees to whom such work would be assigned if Respondent's non-exclusive jurisdiction proposal were implemented;

(d) Written agreements between KGW and other entities for subcontracted work since October 24, 2011;

(e) Documents about customer, calendar period, and dollar volume of subcontract work since October 24, 2011;

(f) Documents, analysis, and communications concerning any plans to subcontract unit work;

(g) A list of all individuals who have been hired as temporary employees since October 24, 2014, including date of hire, rate of pay, classification, date of termination, and reason for hiring;

(h) A copy of company policies and procedures for hiring temporary employees;

(i) An accounting of all overtime paid to all unit employees since October 24, 2011, with breakdowns showing the number of overtime hours worked and paid, the amount of overtime pay, and whether the overtime occurred on regular days off, holidays, or regular work days;

(j) Reports from consultants, investment advisors, certified public accounts or others concerning the possible sale, takeover, or restructuring of KGW;

(k) Correspondence about the possible sale, takeover, or restructuring of KGW;

(l) A list of media content providers that Respondent views as KGW's primary competitors;

(m) A description of KGW's advertising pricing structure so the Union may compare KGW's advertising prices to those of competitors;

(n) A list of KGW's current advertisers so the Union may contact them to determine if they have or will consider purchasing advertising from a different provider;

(o) A list of all of KGW's advertisers who have ceased buying advertising from KGW since October 24, 2011, so the Union may contact them and determine why they stopped purchasing advertising from KGW;

(p) A list of all KGW's advertising prospects since October 24, 2011, that KGW contacted concerning purchasing advertising but that ultimately did not choose to purchase advertising, so the Union may contact them and determine why they chose not to purchase advertising from KGW;

(q) All documents, reports, and analyses concerning KGW's ratings, television viewership and web and/or mobile readership/viewership since October 24, 2011;

(r) Viewer/consumer comments and complaints received since October 24, 2011, concerning KGW's programming and service;

(s) Advertiser comments and complaints received since October 24, 2011, concerning KGW's programming and service;

(t) Documents concerning all changes in job responsibilities for members represented by IATSE since October 24, 2011, including but not limited to changes in responsibilities concerning operation of KGW news trucks;

(u) Documents concerning IATSE members' training and qualifications for operation of KGW news trucks; and

(v) Documents concerning job title, responsibilities, pay, benefits, and hours for employees Dave Tinkham (from January 1, 2011 to the date of the Union's request) and John Morgan (from January 1, 2008, to the date of the Union's request).

6. The unfair labor practices, described above, affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that Respondent has engaged in certain unfair

[20] Of course, this does not excuse Respondent's failure to provide the remaining information sought by the Union. See *Excel Rehabilitation & Health Center*, 336 NLRB No. 10, slip op. at 2 fn. 1 (2001) (not reported in Board volumes).

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. Specifically, I shall recommend that Respondent be ordered to supply the requested information, set forth above, to the Union. Insofar as Respondent contends that supplying the Union with financial, market share, ratings or viewership information would compromise the confidentiality of proprietary information, Respondent shall furnish such requested information subject to bargaining in good faith regarding the conditions under which the information may be furnished, so that access is provided in a manner consistent with monitoring appropriate safeguards protective of the Respondent's confidentiality concerns.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[21]

ORDER

The Respondent, Tegna, Inc. d/b/a KGW-TV, Portland, Oregon, its officers, agents, successors and assigns, shall

1. Cease and desist from

(a) Failing and refusing to timely and completely supply information to the Union that is relevant and necessary to the Union's performance of its duties as the exclusive collective-bargaining representative of its employees in the following appropriate unit (the unit):

> All technicians and engineers employed in Respondent's KGW-TV television engineering department, excluding all other employees, guards, supervisors, and professional employees as defined in the National Labor Relations Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish to the Union, upon request, the following information subject to bargaining in good faith concerning the conditions under which any financial, market share, ratings or viewership information may be supplied such that access is provided in a manner consistent with maintaining appropriate safeguards protective of the Respondent's legitimate confidentiality interests:

> i. Data reports, analysis, communications, and other documents, since October 24, 2011, concerning:
>
> (a) KGW's market share, ratings, and viewership;
> (b) KGW's revenue;
> (c) KGW's expenses;
> (d) Competition from other media outlets such as Google, Amazon, etc., in Portland, Oregon, and nationally; and
> (e) Changes in advertising placement and revenue for television stations including KGW;
>
> ii. Documents, analyses, or communications concerning plans to assign unit work to non-unit individuals;
> iii. The job descriptions and current wage rates of employees to whom such work would be assigned if Respondent's non-exclusive jurisdiction proposal were implemented;
> iv. Written agreements between KGW and other entities for subcontracted work since October 24, 2011;
> v. Documents about customer, calendar period, and dollar volume of subcontract work since October 24, 2011;
> vi. Documents, analysis, and communications concerning any plans to subcontract unit work;
> vii. A list of all individuals who have been hired as temporary employees since October 24, 2014, including date of hire, rate of pay, classification, date of termination, and reason for hiring;
> viii. A copy of company policies and procedures for hiring temporary employees;
> ix. An accounting of all overtime paid to all unit employees since October 24, 2011, with breakdowns showing the number of overtime hours worked and paid, the amount of overtime pay, and whether the overtime occurred on regular days off, holidays, or regular work days;
> x. Reports from consultants, investment advisors, certified public accounts or others concerning the possible sale, takeover, or restructuring of KGW;
> xi. Correspondence about the possible sale, takeover, or restructuring of KGW;
> xii. A list of media content providers that Respondent views as KGW's primary competitors;
> xiii. A description of KGW's advertising pricing structure so the Union may compare KGW's advertising prices to those of competitors;
> xiv. A list of KGW's current advertisers so the Union may contact them to determine if they have or will consider purchasing advertising from a different provider;
> xv. A list of all of KGW's advertisers who have ceased buying advertising from KGW since October 24, 2011, so the Union may contact them and determine why they stopped purchasing advertising from KGW;
> xvi. A list of all KGW's advertising prospects since October 24, 2011, that KGW contacted concerning purchasing advertising but that ultimately did not choose to purchase advertising, so the Union may contact them and determine why they chose not to purchase advertising from KGW;
> xvii. All documents, reports, and analyses concerning KGW's ratings, television viewership and web and/or mobile readership/viewership since October 24, 2011;
> xviii. Viewer/consumer comments and complaints received since October 24, 2011, concerning KGW's programming and service;
> xix. Advertiser comments and complaints received since October 24, 2011, concerning KGW's programming and service;
> xx. Documents concerning all changes in job responsibilities for members represented by IATSE since October 24, 2011, including but not limited to changes in responsibilities concerning operation of KGW news trucks;
> xxi. Documents concerning IATSE members' training and

[21] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

qualifications for operation of KGW news trucks; and

xxii. Documents concerning job title, responsibilities, pay, benefits, and hours for employees Dave Tinkham (from January 1, 2011 to the date of the Union's request) and John Morgan (from January 1, 2008 to the date of the Union's request).

b. Within 14 days after service by the Region, post at its Portland, Oregon job location copies of the attached notice marked "Appendix."[22] Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by Respondent's authorized representative, shall be posted by Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at any time since January 30, 2014.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 19 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

It is further ordered that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. December 20, 2016

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to timely and completely supply information to the International Brotherhood of Electrical Workers, Local 48, AFL–CIO (the Union) that is relevant and necessary to its performance of its duties as the exclusive collective-bargaining representative of its employees in the following appropriate unit:

All technicians and engineers employed in KGW-TV's television engineering department, excluding all other employees, guards, supervisors, and professional employees as defined in the National Labor Relations Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL furnish to the Union, in a timely and complete manner, the following information:

(a) Data reports, analysis, communications, and other documents, since October 24, 2011, concerning:

(i) KGW's market share, ratings, and viewership;
(ii) KGW's revenue;
(iii) KGW's expenses;
(iv) Competition from other media outlets such as Google, Amazon, etc., in Portland, Oregon, and nationally; and
(v) Changes in advertising placement and revenue for television stations including KGW;

(b) Documents, analyses, or communications concerning plans to assign Unit work to non-Unit individuals;

(c) The job descriptions and current wage rates of employees to whom such work would be assigned if Respondent's nonexclusive jurisdiction proposal were implemented;

(d) Written agreements between KGW and other entities for subcontracted work since October 24, 2011;

(e) Documents about customer, calendar period, and dollar volume of subcontract work since October 24, 2011;

(f) Documents, analysis, and communications concerning any plans to subcontract Unit work;

(g) A list of all individuals who have been hired as temporary employees since October 24, 2014, including date of hire, rate of pay, classification, date of termination, and reason for hiring;

(h) A copy of company policies and procedures for hiring temporary employees;

(i) An accounting of all overtime paid to all Unit employees since October 24, 2011, with breakdowns showing the number of overtime hours worked and paid, the amount of overtime pay, and whether the overtime occurred on regular days off, holidays, or regular work days;

(j) Reports from consultants, investment advisors, certified public accounts or others concerning the possible sale, takeover, or restructuring of KGW;

(k) Correspondence about the possible sale, takeover, or restructuring of KGW;

(l) A list of media content providers that Respondent views as KGW's primary competitors;

(m) A description of KGW's advertising pricing structure so the Union may compare KGW's advertising prices to those of competitors;

(n) A list of KGW's current advertisers so the Union may contact them to determine if they have or will consider purchasing advertising from a different provider;

(o) A list of all of KGW's advertisers who have ceased buying advertising from KGW since October 24, 2011, so the Un-

[22] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

ion may contact them and determine why they stopped purchasing advertising from KGW;

(p) A list of all KGW's advertising prospects since October 24, 2011, that KGW contacted concerning purchasing advertising but that ultimately did not choose to purchase advertising, so the Union may contact them and determine why they chose not to purchase advertising from KGW;

(q) All documents, reports, and analyses concerning KGW's ratings, television viewership and web and/or mobile readership/viewership since October 24, 2011;

(r) Viewer/consumer comments and complaints received since October 24, 2011, concerning KGW's programming and service;

(s) Advertiser comments and complaints received since October 24, 2011, concerning KGW's programming and service;

(t) Documents concerning all changes in job responsibilities for members represented by IATSE since October 24, 2011, including but not limited to changes in responsibilities concerning operation of KGW news trucks;

(u) Documents concerning IATSE members' training and qualifications for operation of KGW news trucks; and

(v) Documents concerning job title, responsibilities, pay, benefits, and hours for employees Dave Tinkham (from January 1, 2011, to the date of the request) and John Morgan (from January 1, 2008, to the date of the request), who were employed as subcontractors after retiring from unit positions.

TEGNA, INC.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/19-CA-148474 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.