Nexstar Broadcasting, Inc. d/b/a KOIN-TV *and* National Association of Broadcast Employees & Technicians, The Broadcasting and Cable Television Workers Sector of the Communications Workers of America, Local 51, AFL–CIO. Case 19–CA–211026

April 24, 2019

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN AND EMANUEL

On September 25, 2018, Administrative Law Judge Eleanor Laws issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply brief. The Charging Party filed cross-exceptions and a supporting brief, and the Respondent filed an answering 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[1] and has decided to affirm the judge's rulings, findings,[2] and conclusions and to adopt the recommended Order as modified and set forth in full below.[3]

AMENDED CONCLUSIONS OF LAW

Replace the judge's conclusions of law with the following paragraphs.

1. By failing and refusing to provide relevant information requested by the Union on November 30, 2017, the Respondent has violated Section 8(a)(5) and (1) of the Act.

2. By unreasonably delaying in furnishing relevant information requested by the Union on June 21, 2017, the Respondent has violated Section 8(a)(5) and (1) of the Act.

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

ORDER

The National Labor Relations Board orders that the Respondent, Nexstar Broadcasting, Inc. d/b/a KOIN-TV, Portland, Oregon, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with the National Association of Broadcast Employees & Technicians, the Broadcasting and Cable Television Workers Sector of the Communications Workers of America, Local 51, 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) Refusing to bargain collectively with the Union by unreasonably delaying in furnishing 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.

(c) 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) To the extent not already provided, furnish to the Union in a timely manner the information requested by the Union on November 30, 2017.

(b) Within 14 days after service by the Region, post at its Portland, Oregon facility copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 19, after being

[1] No exceptions were filed to the judge's conclusion that the Respondent timely provided information regarding where the graphics work was being performed.

[2] In adopting the judge's finding that the Respondent violated Sec. 8(a)(5) and (1) by failing to provide information regarding which piece of equipment had replaced the still store, we find it unnecessary to rely on the description of the Respondent's reply as exhibiting a lack of good faith.

The provision of requested relevant information is critical to collective bargaining and the Board has developed an extensive body of law governing the duty to provide such information. To be sure, there are times when parties must exercise their legal right to have the Board resolve information request disputes in accord with these principles of law. However, in circumstances such as are present in this case, parties are more likely to obtain a satisfactory and timely resolution of these disputes through more extensive good-faith discussions between themselves rather than involving the Board through unfair labor practice litigation.

[3] The Charging Party has requested numerous additional remedies for the violations found. We deny this request because the Charging Party has not demonstrated that the Board's traditional remedies are insufficient to ameliorate the effects of the Respondent's unfair labor practices. *Fallbrook Hospital*, 360 NLRB 644, 644 fn. 3 (2014), enfd. 785 F.3d 729 (D.C. Cir. 2015).

We shall amend the judge's conclusions of law and modify the recommended Order to conform to the violations found. We shall further modify the judge's recommended Order to conform to the Board's standard remedial language and in accordance with our decision in *Excel Container, Inc.*, 325 NLRB 17 (1997). We shall substitute a new notice to conform to the Order as modified.

[4] 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

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. If 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 June 21, 2017.

(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. April 24, 2019

John F. Ring, Chairman

Marvin E. Kaplan, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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."

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 refuse to bargain collectively with the National Association of Broadcast Employees & Technicians, the Broadcasting and Cable Television Workers Sector of the Communications Workers of America, Local 51, 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 refuse to bargain collectively with the Union by unreasonably delaying in furnishing 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, to the extent not already provided, furnish to the Union in a timely manner the information requested by the Union on November 30, 2017.

NEXSTAR BROADCASTING, INC. D/B/A KOIN-TV

The Board's decision can be found at www.nlrb.gov/case/19-CA-211026 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.

J. Dwight Tom, Esq., for the General Counsel.
Charles W. Pautsch, Esq., for the Respondent.
Anne I. Yen, Esq., and *Caitlin E. Gray, Esq.*, for the Charging Party.

DECISION

STATEMENT OF THE CASE

ELEANOR LAWS, Administrative Law Judge. This case was tried based on a joint motion and stipulation of facts Associate Chief Administrative Law Judge Gerald Etchingham approved on July 32, 2018. The case was subsequently assigned to me on August 14.

The National Association of Broadcast Technicians, The Broadcasting and Cable Television Workers Sector of the Communications Workers of America, Local 51, AFL–CIO (the Union) filed the original charge on December 5, 2017, and an amended charge on December 22, 2017. The General Counsel issued the complaint on March 30, 2018. Nexstar Broadcasting Inc., d/b/a KOIN-TV (the Respondent) filed a timely answer denying all material charges.

The complaint alleges the Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) by failing or refusing to provide the Union with requested information relevant and necessary for the Union to discharge its duties.

On the entire record, and after considering the briefs filed by the General Counsel and the Respondent, and the Union, I make the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a corporation with an office and place of business in Portland, Oregon (the "facility"), and has been engaged in the operation of a television station. The parties admit, and I find, that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act. (Jt. Stip. ¶¶ 5, 8–11.)[1]

II. ALLEGED UNFAIR LABOR PRACTICES

On or about January 17, 2017, the Respondent purchased the business of LIN Television Corporation, a Media General Company, d/b/a KOIN-TV ("Media General KOIN-TV"), and since then has continued to operate the business of Media General KOIN-TV in basically unchanged form and has employed as a majority of its employees individuals who were previously employees of Media General KOIN-TV. (Jt. Stip. ¶ 6.) The Respondent has continued as the employing entity and is a successor to Media General KOIN-TV. (Jt. Sip. ¶ 7.)

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of § 2(11) of the Act and/or agents of the Respondent within the meaning of § 2(13) of the Act:

> Tim Busch - President
> Patrick Nevin - Vice President and General Manager
> Casey Wenger - Business Administrator

(Jt. Stip. ¶ 12.)

The following employees of the Respondent constitute units (the Units) appropriate for the purposes of collective bargaining within the meaning of § 9(b) of the Act:

> The first, as certified by the National Labor Relations Board, consists of all regular full-time and regular part-time engineers and production employees, but excluding chief engineer, office clericals, professionals, guards and supervisors as defined in the Act, and all other employees of KOIN-TV.
>
> The second, as voluntarily recognized by the parties, consists of all regular full-time and regular part-time news, creative services employees, and web producers, but excluding news producers, IT employees, on-air talent (aka "performer"), office clericals, professionals, guards and supervisors as defined in the Act and all other employees of KOIN-TV.

(Jt. Stip. ¶ 13.)

At all material times until January 17, 2017, the Union had been the exclusive collective-bargaining representative of the Units employed by Media General KOIN-TV, and during that time the Union had been recognized as such representative by Media General KOIN-TV. This recognition was embodied in successive collective-bargaining agreements, the most recent of which was in effect from July 29, 2015, to August 18, 2017 ("CBA"). (Jt. Stip. ¶ ¶ 14–16; Jt. Exh. E.)

Under the expired CBA, the Respondent's employees in the Units include Graphic Artists who are responsible for: (1) the creation of specialty on-air graphics, promotional material, video, and special web graphics; (2) posting content to web and any other platforms used by the Station; the operation of the graphics computer system and still store; and (3) Respondent's graphic needs. At all material times, Respondent and the Union were engaged in or were preparing to engage bargaining for a successor CBA. (Jt. Stip. ¶¶ 17–18.)

[1] "Jt. Exh." stands for "joint exhibit" and "Jt. Stip." stands for "joint stipulation of facts." Although I have included some citations to the record, I emphasize that my findings and conclusions are based not solely on the evidence specifically cited, but rather are based my review and consideration of the entire record.

The Respondent and the Union met for a bargaining session on about June 21, 2017. At that session the Respondent and the Union discussed the Graphic Artist position. The Union noted in a partial set of proposals passed to the Respondent, "13.1 Hubbing of Graphics, need to understand status of graphics at the station, impact on recall rights and jurisdiction." Union Business Representative Carrie J. Biggs-Adams, verbally asked when the graphics work would return to the Units' employees. Nevin verbally agreed to research the Union's question and provide an answer. (Jt. Stip. ¶ 19.)

The Respondent and the Union met for a bargaining session on about November 30, 2017. At that session, they discussed the Graphic Artist position and "Company Proposal #36" (originally presented on about June 21, 2017), which proposed to eliminate the "still store" from the list of equipment used for the creation of graphics used at KOIN-TV. (Jt. Stip. ¶ 20.) Company proposal 36 states:

> Graphic Artist
>
> For the purpose of this Agreement, the term Graphic Artist shall apply to any person whose principal duties include:
>
> Responsible for the creation of specialty on-air graphics, promotional material, video, and special web graphics, posting content to web and any other platforms used by the Station
>
> Operation of the graphics computer system ~~and still store~~ and responsibility for graphic needs of the Station including, but not limited to news graphics, Creative Services and promotion graphics;
>
> Performance of other related duties as assigned.

(Jt. Exh. H.)

On about November 30, 2017, Union Business Representative Carrie Biggs-Adams sent the following email to Wegner:

> At times during the current bargaining of the NABET-CWA Local 51 and KOIN-TV contract we have discussed the issue of Graphic Artist.
>
> We heard that Nexstar has ended hubbing of graphics (I believe in the spring of this year). When we asked when the graphics work was coming back to the station we were told the station would check and get back to us.
>
> Please now consider this a formal information request in regard to the work of "creating specialty on-air graphics, promotional material, video, and special web graphics" at KOIN TV. Where is the work being performed, and by whom? When did, or will, the work return to Portland?
>
> You have proposed to eliminate the "still store" from the list of equipment to be operated at KOIN TV for the creation of news graphics, Creative Services and promotion graphics. Please provide a comprehensive list of the equipment currently used to perform this work.
>
> Please also separate the equipment by category, so that we may understand what language should replace the phrase "still store".
>
> Please provide this information within 10 working days of your receipt of this communication.

(Jt. Stip. ¶ 21; Jt. Exh. F.)

> On December 8, Nevin emailed the following response to Biggs-Adams:
>
> In response to your graphics RFI dated 11/30/17 -
>
> Stating for the record, I am not sure why it is necessary to memorialize the conversation we had in person during the last round of our negotiations. As such, I express our continued disappointment that you obstruct any progress by directing your efforts to matters of insignificance, when we have more than 40-proposals in front of you that need to be negotiated. Nevertheless will now memorialize and I trust this time clear up any confusion you may have over the station's current production of graphic elements for broadcast.
>
> The Station's current graphics needs have been supported through the Nexstar Nashville Design Center. As I explained in detail to you in previous bargaining sessions, on air-graphics within KOIN newscasts may be produced at the local level using templates that have been pre-built, and prepopulated. With respect to your reference of an outdated and retired piece of equipment identified as a "Still Store", again that equipment is no longer relevant, nor in use. Someone with your production background should certainly be aware that a "Still Store" is a system out of production for many years, obsolete and technologically antiquated graphics generating equipment. Like many other television stations, KOIN retired and replaced the "Still Store" with a contemporary, state of the art device. Specifically, this piece of equipment was replaced at the Station in 2009. Furthermore, this is precisely the reason why we proposed to have it removed in our Company Proposal #36, which was originally presented to you on 6/21/17, which has been met with your strong opposition.
>
> Attached you will find the full job description and duties of the open Graphic Designer position that was posted on 10/20/17 (6 weeks ago), posted internally on KOIN Company bulletin boards, and externally published with over two dozen external sources, including NABET (see attached). As you should recall, during our meeting and in prior conversations, I have noted and continue to note herein we, seek to fill the position and once that candidate commences in that new role, you will be made aware through the normal course of action. As to the timeline, that will occur when we make the hire.

(Jt. Stip. ¶ 22; Jt. Exh. G.) The letter goes on to detail the job description and duties for the broadcast graphic designed position. There have been no other communications about the November 30 oral and written information requests. (Jt. Stip. ¶ 23.)

The Union and Respondent are currently engaged in or preparing to continue to engage in successor bargaining and have reached tentative agreements on several issues, including Company proposal 36. (Jt. Stip. ¶ 24.)

III. DECISION AND ANALYSIS

Section 8(a)(5) of the Act states, "It shall be an unfair labor practice for an employer . . . to refuse to bargain collectively with

the representatives of his employees. . . "Part of the obligation to bargain is that both sides must to furnish relevant information upon request. *NLRB v. Acme Industrial Co.,* 385 U.S. 432 (1967). This duty is statutory and exists regardless of whether there is a collective-bargaining agreement between the parties. *American Standard*, 203 NLRB 1132 (1973).

The employer's duty to provide relevant information exists because without the information, the union is unable to perform its statutory duties as the employees' bargaining agent. Like a flat refusal to bargain, "[t]he 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. *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).

In determining possible relevance of requested information, the National Labor Relations Board (the Board) does not pass upon the merits, and the labor organization is not required to demonstrate that the information is accurate, not hearsay, or even, ultimately reliable. *U.S. Postal Serv.,* 337 NLRB 820, 822 (2002). Information concerning employees in the bargaining unit and their terms and conditions of employment, is deemed "so intrinsic to the core of the employer-employee relationship" so as to be presumptively relevant. *Disneyland Park,* 350 NLRB 1256, 1257 (2007); *Sands Hotel & Casino,* 324 NLRB 1101, 1109 (1997).

A request need not be in writing and need only be made once. *Harvstone Mfg. Corp.,* 272 NLRB 939 (1984), enforced in part, 785 F.2d 570 (7th Cir.), cert. denied, 479 U.S. 821 (1986). Once the obligation to produce the requested information attaches, the employer cannot remain silent, and must either produce the information or provide an explanation for its refusal to provide it. *USPS,* 332 NLRB 635, 639 (2000). An employer meets its obligation by providing the information it possesses. *Whitesell Corp.,* 352 NLRB 1196, 1197 (2008), affirmed and adopted, 355 NLRB 635 (2010).

The Respondent concedes the Union's requests were for presumptively relevant information, and contends it met its obligations to comply with the requests.

A. The Equipment Request: Complaint Paragraph 6(a)(ii)

The Union's request regarding replacement of the "still store" reference in Company proposal 36 states:

> You have proposed to eliminate the "still store" from the list of equipment to be operated at KOIN TV for the creation of news graphics, Creative Services and promotion graphics. Please provide a comprehensive list of the equipment currently used to perform this work.
>
> Please also separate the equipment by category, so that we may understand what language should replace the phrase "still store".

In response, Nevin stated:

> With respect to your reference of an outdated and retired piece of equipment identified as a "Still Store", again that equipment is no longer relevant, nor in use. Someone with your production background should certainly be aware that a "Still Store" is a system out of production for many years, obsolete and technologically antiquated graphics generating equipment. Like many other television stations, KOIN retired and replaced the "Still Store" with a contemporary, state of the art device. Specifically, this piece of equipment was replaced at the Station in 2009.
>
> While acknowledging that a specific device replaced the still store in 2009, the Respondent is inexplicably silent as to what the device actually is. To say the Respondent replaced the still store with a " contemporary, state of the art device" without identifying the equipment by name deprives the Union of its ability to determine even the most basic information the impact of such equipment on its members.[2] The response does not aid the representative in looking into the new unnamed device, determining whether it constitutes a material change to the terms and conditions of the attorneys' employment, determining whether and/or how much training time will be required for the transition, etc. It begs the question: Why respond cryptically rather than simply naming the device? The response is plainly unreasonable, and exhibits a lack of good faith. See, e.g., *E. I. Du Pont & Co.,* 291 NLRB 759 fn. 1 (1988); Reasonable, good-faith effort to respond to the request as promptly as circumstances allow is required); *Good Life Beverage Co.,* 312 NLRB 1060, 1062 fn. 9 (1993).[3]

The Respondent argues, in its closing brief, that the job advertisement for a graphic designer position in Portland, attached as part of its response as to when the graphic designer work would return to bargaining unit employees, identifies the equipment that replaced the still store. The advertisement states in relevant part:

> Training/Equipment: In addition to Chyron Lyric and Cinema 4D, thorough knowledge of the Adobe Creative Suite, specifically After Effects, Photoshop, and Illustrator is needed.

This attachment does not purport to provide a list of the equipment, separated by category, that replaces the work previously performed using the still store. It is silent on the matter. In connection with the response that the still store was replaced with a singular "contemporary, state of the art device" in 2009, it is completely unclear which of the items enumerated in the job advertisement purports to be that device. While the Union may have been able to consult with its members to make an educated

[2] To put the response into terms to which attorneys would readily relate, suppose attorneys in a represented group have been using Westlaw to do their legal research. The Respondent's response to the Union regarding the still store is akin to the employer telling the attorneys' bargaining representative that it replaced Westlaw with a "revolutionary, cutting edge research engine."

[3] Though motivation is not an element to prove a violation of Sec. 8(a)(5), the snide nature of Nevin's response, incommensurate with the tone of Biggs-Adams' request, is further indication the response was not made in good faith. My analysis of the legal elements herein, however, is not altered by the response's tone.

guess on the matter, it was under no obligation to do so. *Metta Elec.,* 349 NLRB 1088 (2007); *King Soopers, Inc.,* 344 NLRB 842 (2005); *Illinois-American Water Co.,* 296 NLRB 715, 724–725 (1989) (rejecting employer's contention it was relieved from providing information it believed was in possession of union or available through union stewards or union records), enfd. 933 F.2d 1368 (7th Cir. 1991).

The response stating that the still store was replaced with another device in 2009 makes clear the Respondent knew, or could at the very least have found out, what that device was. As such, the Union was not required to request clarification or otherwise follow-up, as it is readily apparent the Respondent did not come forward with information it possessed. *Whitesell Corp.,* supra.

Finally, the Respondent argues that the request is moot because the parties have reached a tentative agreement on the issue. This contention fails, as it is contrary to Board law.[4] "[A] union's proffered reasons for demanding the information, as well as the employer's motives for refusing that demand, must be examined as of the time of the demand and the refusal." *Kraft Foods N. Am., Inc.,* 355 NLRB 753, 755 (2010) (citing *General Electric Co. v. NLRB*, 916 F.2d 1163, 1169 (7th Cir. 1990). I could find no support for the Respondent's argument that reaching a tentative agreement on an issue absolves the employer from responding to relevant information requests.

Based on the foregoing, I find the General Counsel has met his burden to prove complaint allegation 6(a)(ii).

B. The Graphics Work Request: Complaint Paragraph 6(a)(i)

> The Union's November 30, 2017, request regarding the graphics work states:
>
> Please now consider this a formal information request in regard to the work of "creating specialty on-air graphics, promotional material, video, and special web graphics" at KOIN TV. Where is the work being performed, and by whom? When did, or will, thework return to Portland? […]

The Union had initially requested information regarding when the work would return to bargaining-unit employees during the June 21, 2017 bargaining session.

> Nevin responded on December 8, 2017, in relevant part:
>
> The Station's current graphics needs have been supported through the Nexstar Nashville Design Center. As I explained in detail to you in previous bargaining sessions, on air-graphics within KOIN newscasts may be produced at the local level using templates that have been pre-built, and prepopulated.

The Response sets forth the location of the work but does not identify who is performing it by name, job title, or any other identifying information, either in Nashville or at the local level. It therefore fails to respond to the part of the Union's information request asking who was performing the work.

> With regard to the timeline, Nevin responded:
>
> Attached you will find the full job description and duties of the open Graphic Designer position that was posted on 10/20/17 (6 weeks ago), posted internally on KOIN Company bulletin boards, and externally published with over two dozen external sources, including NABET (see attached). As you should recall, during our meeting and in prior conversations, I have noted and continue to note herein we, seek to fill the position and once that candidate commences in that new role, you will be made aware through the normal course of action. As to the timeline, that will occur when we make the hire.

While this is not a precise response, it is unclear whether there was a set time period for advertising, conducting interviews, and eventually bringing a graphic designer on board in Portland, or whether the position was to remain open indefinitely. I will not assume the Respondent had a set time frame, as the General Counsel bears the burden of proof on the matter.

I find, however, that the Respondent unreasonably delayed in providing information regarding when the graphic designer work would return to the bargaining-unit employees. "In evaluating the promptness of the response, the Board will consider the complexity and extent of information sought, its availability and the difficulty in retrieving the information." *West Penn Power Co.,* 339 NLRB 585, 587 (2003), enfd. in pertinent part 394 F.3d 233 (4th Cir. 2005).

Biggs-Adams' initial request was made on June 21, 2017, and that same day Nevin said he would look into the matter and provide an answer. The request was singular and straightforward. Even if, after looking into the matter, the Respondent was unsure of precisely when the work would be returned to the bargaining-unit employees, this should have been conveyed to the Union in a timely manner. *USPS*, supra, 332 NLRB at 639. At the very least, it is clear that some time prior to the October 20, 2017, posting for the graphic designer position in Portland, the Respondent knew it would be returning the work to the bargaining unit. Under the circumstances, I find the Respondent's delay of more than 5 months was unreasonable.

Because the Respondent has not identified who is/was performing the work pursuant to the Union's request, and unreasonably delayed in providing other requested information, I find the General Counsel has met his burden to prove complaint allegation 6(a)(i).

CONCLUSIONS OF LAW

By failing to furnish relevant requested information to the Union, the Respondent has violated Section 8(a)(5) and (1) of the Act, and the Respondent has engaged in unfair labor practices affecting commerce within the meaning of and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Having found the Respondent failed or refuse to provide the Union with information that is relevant and necessary to its role as collective bargaining representative, including information

[4] As the Union's closing brief at p. 6 makes clear, many courts of appeals have agreed with the Board's position.

about which individuals were performing graphic artist work and information about what equipment has replaced the still store, the Respondent shall be ordered to furnish this information to the Union.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[5]

ORDER

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

1. Cease and desist from

(a) Failing or reusing to bargain in good faith with the Union as the exclusive representative of the following bargaining units:

> The first, as certified by the National Labor Relations Board, consists of all regular full-time and regular part-time engineers and production employees, but excluding chief engineer, office clericals, professionals, guards and supervisors as defined in the Act, and all other employees of KOIN-TV;
>
> The second, as voluntarily recognized by the parties, consists of all regular full-time and regular part-time news, creative services employees, and web producers, but excluding news producers, IT employees, on-air talent (aka "performer"), office clericals, professionals, guards and supervisors as defined in the Act and all other employees of KOIN-TV;

by refusing to provide the Union with information that is relevant and necessary to its role as collective bargaining representative, including information about which individuals were performing graphic artist work and information about what equipment has replaced the still store.

(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 the Union with the information it requested, including information about which individuals were performing graphic artist work and information about what equipment has replaced the still store.

(b) Within 14 days after service by the Region, post at its facility in Portland, Oregon, copies of the attached notice marked "Appendix."[6] 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.[7] In addition to physical posting of paper notices, the 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 August 20, 2017.[8]

(c) Within 21 days after service by the Region, file with the Regional Director 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. September 25, 2018.

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 refuse to bargain in good faith with the National Association of Broadcast Employees & Technicians, the Broadcasting and Cable Television Workers Sector of the Communications Workers of America, Local 51, AFL–CIO, by refusing to provide information that is relevant and necessary to its role as collective bargaining representative, including information about which individuals were performing graphic artist work and information about what equipment has replaced the still store.

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[5] 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.

[6] 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."

[7] The Union requests a longer posting and other enhanced remedies. I find the circumstances of this case do not warrant additional remedies. Moreover, a remedy that has not been issued in the past should not be granted in individual cases absent a full briefing. *Consumer Products Services, LLC*, 357 NLRB No. 87, slip op. at 2 fn. 3 (2011) (not reported in Board volume).

[8] The contingent mailing date is the date of the first unfair labor practice. *Hyndai Motors*, 366 NLRB No. 166 fn. 4 (2018). I find that the first unfair labor practice occurred 60 days after Biggs-Adams' June 21, 2017, request for information regarding when the graphics work would return to the bargaining units' employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish the National Association of Broadcast Employees & Technicians, the Broadcasting and Cable Television Workers Sector of the Communications Workers of America, Local 51, AFL–CIO, with the information it requested regarding information about which individuals were performing graphic artist work and information about what equipment has replaced the still store.

NEXSTAR BROADCASTING, INC. D/B/A KOIN-TV

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/19-CA-211026 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.