

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES**

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

and

Case 19-CB-234944

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

**COUNSEL FOR THE GENERAL COUNSEL'S  
BRIEF TO THE ADMINISTRATIVE LAW JUDGE**

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This matter was accepted by Administrative Law Judge Mara-Louise Anzalone (“ALJ”) on October 4, 2019, upon a Joint Motion and Stipulation of Facts (“Stipulation”)<sup>1</sup> based on a Complaint alleging that National Association of Broadcast Employees & Technicians, the Broadcasting and Cable Television Workers Sector of the Communication Workers of America, Local 51, AFL-CIO (“Respondent”), violated § 8(b)(3) of the National Labor Relations Act (the “Act”), 129 U.S.C. § 158(b)(3), by failing and refusing to provide bargaining proposals to Nexstar Broadcasting, Inc. d/b/a KOIN-TV (“Charging Party” or “KOIN-TV”).

The Charging Party made this request while bargaining for a successor contract with Respondent. Since the requested information clearly affects the Charging Party’s ability to bargain effectively for a contract with Respondent, it is undisputedly relevant. Counsel for the General Counsel (“General Counsel”) respectfully submits this brief in support of its position that Respondent has violated the Act as alleged and seeks an appropriate decision and order.

## **I. STATEMENT OF FACTS**

On or about January 17, 2017, Charging Party purchased the business of LIN Television Corporation, a Media General Company, d/b/a KOIN-TV (“Media General KOIN-TV”). Since then, it 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. (JM 3:5). Accordingly, Charging Party has continued as the employing entity and is a successor to Media General KOIN-TV. (JM 3:6).

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<sup>1</sup> References to the Stipulation are noted as (JM \_:\_), which shows the Stipulation page and paragraph, respectively. References to Joint Exhibits will be made as (JX \_).

Charging Party is a corporation with an office and a place of business in Portland, Oregon (the “KOIN-TV station”), where it engages in the operation of a television station. (JM 3:4). In conducting its operations during the 12-month period ending January 29, 2019, a representative period, Charging Party derived gross revenues in excess of \$100,000. (JM 4:7). In the same period, Charging Party purchased and received at the KOIN-TV station goods valued in excess of \$50,000 directly from points outside the State of Oregon. (JM 4:8).

At all material times, Respondent has been a labor organization within the meaning of § 2(5) of the Act. (JM 4:10). Respondent represents, and has represented at all material times, a certified unit of all of Respondent’s regular full-time and regular part-time engineers and production employees (“Certified Unit”). It has also represented, at all material times, a voluntarily recognized unit encompassing all of Respondent’s regular full-time and regular part-time news, creative services employees, and web producers (“Recognized Unit”) (collectively, the “Units”). (JM 4:12-5:13). This representation has been reflected in the parties’ successive bargaining agreements, the most recent of which was in effect from July 29, 2015, to August 18, 2017, with the last extension expiring on September 7, 2017 (“expired CBA”). (JM 5:13).

At all material times, Respondent and Charging Party were engaged in bargaining for a successor to the expired CBA. (JM 5:16). At all material times Local Union President Carrie Biggs-Adams (“Biggs-Adams”) and Bargaining Representative Ellen Hansen have been agents of Respondent within the meaning of § 2(13) of the Act at. (JM 4:11).

On around November 20, 2018, People’s World, a daily online news publication, published an article entitled “TV chain Nexstar splits workers with different raise offers, shifts cash to shareholders.” This article portrayed Charging Party and its bargaining proposals in a very negative light. (JM 5:17; JX E). Biggs-Adams was the article’s source regarding the status of bargaining and proposals between Charging Party and Respondent. (JX E).

Specifically, the article accused Charging Party of “enormous corporate greed,” and attacked a 0.1 percent wage raise proposal allegedly made by Charging Party to Respondent at the bargaining table. (JX E). It also accused Charging Party of insisting on eliminating certain elements of the expired CBA’s protections against job discrimination and reducing severance pay. (JX E). As one basis for its attacks on Charging Party, the article compared bargaining proposals between Respondent and Charging Party with bargaining proposals between Respondent and other stations owned by Charging Party’s parent company, Nexstar Broadcasting. (JX E). Charging Party viewed several statements in the article regarding current negotiations as materially false. (JX F).

On or about December 14, 2018, the Charging Party’s General Manager, Patrick Nevin (“Nevin”), hand delivered and emailed Respondent a letter entitled “Request for information – peoplesworld.org article dated 11/20/18.” Included in the request and at issue in this proceeding are request items 2-9, which seek documents regarding proposals between Charging Party and Respondent and between Respondent and other Nexstar-owned stations about subjects referenced in the article. (JX F). In its letter, Charging Party informed Respondent that it needed the requested information by

December 21, 2018, in order to assess the impact of the article's statements on its bargaining. (JX F).

Respondent did not respond to the information request in any way until January 25, 2019. On that day, Biggs-Adams and Charging Party's bargaining spokesman, Charles Pautsch ("Pautsch"), had a conversation in which Biggs-Adams stated she believed Charging Party's information request was improper because several items sought journalistic sources. (JM 6:19). However, the only items in the information request that relate to journalistic sources are items 1, 10, and 11, which are not at issue in this proceeding. (JX F).

On May 30, 2019, four months after the conversation, and five and a half months after receiving the information request, Respondent sent a letter to Charging Party requesting clarification. (JE 6:20; JX G). Respondent did not provide any of the requested information to Charging Party with the letter. Instead, Respondent claimed that the only documents that were not already in Charging Party's possession would be privileged communications, despite some of them being between Biggs-Adams and bargaining unit members. (JE 6:20; JX G). Respondent did not assert any basis for this claim of confidentiality, nor did Respondent address the requested documents exchanged between Respondent and other Nexstar-owned stations. (JX G).

As of December 13, 2018, Respondent and Charging Party reached a tentative agreement on non-discrimination language in bargaining. (JM 6:22). Respondent and Charging Party have not yet reached any tentative agreements on wages or severance and, at all material times have been engaged in successor contract bargaining. (JM 5:16; 6:22).

There has been no further communication between Respondent and Charging Party about the December 14, 2018, information request and May 30, 2019 response. (JM 6:21). Despite this, Respondent proffered in its Answer to the Complaint (“Answer”) the defenses that Charging Party’s request for information was not in good faith and that Respondent had already responded to the request for information. (JX C).

## **II. RESPONDENT VIOLATED THE ACT BY REFUSING TO PROVIDE PRESUMPTIVELY RELEVANT INFORMATION NECESSARY TO BARGAIN THE CBA**

Under the long-established Board precedent discussed below, Respondent was obligated to timely provide the Charging Party the information it requested in writing on December 14, 2018, regarding bargaining proposals between Respondent and Charging Party and between Respondent and other Nexstar-owned stations or, at a bare minimum, timely respond to the Charging Party with its position as to the information request. Respondent admits it has not produced any documents in response to Charging Party’s information request and did not respond to the items at issue in the information request for five and a half months. As discussed, its asserted defenses are without merit. As such, Respondent violated § 8(b)(3) of the Act as alleged.

### **A. Legal Standard for Information Requests**

A labor organization's duty to furnish information pursuant to § 8(b)(3) of the Act is “commensurate with and parallel to an employer's obligation to furnish it to a union” pursuant to §§ 8(a)(1) and (5) of the Act. *In Re Food Drivers, Helpers & Warehousemen Employees, Local 500 affiliated with Int'l Bhd. of Teamsters, AFL-CIO*, 340 NLRB 251, 252 (2003), citing *Iron Workers Local 207 (Steel Erecting Contractors)*, 319 NLRB 87, 90

(1995). See also *Firemen & Oilers Local 288 (Diversy Wyandotte)*, 302 NLRB 1008, 1009 (1991).

Information requests pertaining to terms and condition of employment of bargaining unit employees are “presumptively relevant” and the party in receipt of such a request must provide the information unless it puts forth an effective rebuttal of relevance. *Disneyland Park*, 350 NLRB 1256, 1257 (2007). See also *Whitesell Corp.*, 355 NLRB No. 134 (2010); *CalMat Co.*, 331 NLRB 1084 (2000); *Cowles Comm’s, Inc.*, 172 NLRB 1909 (1968); *Curtiss-Wright Corp. v. NLRB*, 347 F.2d 61, 69 (3rd Cir. 1965).

Where the requested information concerns matters outside of the bargaining unit, the burden is on the requesting party to demonstrate the relevancy and need for that information. *In re Saganaw Control and Engineering, Inc.*, 339 NLRB No. 76 (2003), citing *Tri-State Generation & Transmission Assn.*, 332 NLRB 910 (2000); *Public Service Electric & Gas Co.*, 323 NLRB 1182, 1186 (1997), *enfd.* 157 F.3d 222 (3rd Cir. 1998). This burden, however, is not very high; it requires only a showing of probability that the desired information is relevant and would be of use to the party. *In re Saganaw Control and Engineering, Inc.*, 339 NLRB No. 76 (2003), citing *Tri-State Generation & Transmission Assn.*, 332 NLRB 910; *Public Service Electric & Gas Co.*, 323 NLRB at 1186.

The relevance standard is a liberal “discovery-type standard.” *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 436 (1967). The requested information need not be dispositive of the issue for which it is sought; it need only have some bearing on it. *Pennsylvania Power & Light*, 301 NLRB 1104, 1105 (1991). That means a union or employer “must furnish information that is of even probable or potential relevance.” *Conrock Co.*, 263 NLRB 1293, 1294 (1982).

Indeed, a union, and therefore an employer, is entitled to request and receive information that substantiates, undercuts, or in any way informs its good faith efforts at contract administration; the Board need only decide whether the information sought has some “bearing” on these issues or would be of use to the requesting party. *Dodger Theatrical Holdings*, 347 NLRB 953, 970 (2006). That potential use includes use in bargaining. *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 150 (1956).

The Board has also consistently held that a party in receipt of an information request is not permitted to simply refuse to respond to what it perceives to be an ambiguous or overbroad request. Rather, the receiving party must request a clarification or comply to the extent that the request asks for necessary and relevant information. *Mobay Chem. Corp.*, 233 NLRB 109 (1997); *Azabu USA (Kona) Co.*, 298 NLRB 702 (1990); *Masonic Hall & Asylum Fund*, 261 NLRB 436 (1982). Indeed, there is a presumption that a party acts in good faith when requesting information; it is for that reason that a party asserting that an information request was made in bad faith must prove the contrary. *O & G Industries*, 269 NLRB 986, 987 (1984).

A party’s obligation to provide information includes the obligation to do so in a timely manner. See *American Signature Inc.*, 334 NLRB 880, 885 (2001); *Woodland Clinic*, 331 NLRB 735, 736 (2000); *Columbia University*, 298 NLRB 941, 945 (1990). An unlawful delay is not defined by a *per se* rule. *Samaritan Med. Ctr.*, 319 NLRB 392, 398 (1995). What is required is that the party make a reasonable, good faith effort to respond to the information request promptly under the circumstances, considering factors such as the complexity and extent of information sought, its availability, and the difficulty in

retrieving the information. *Id.* See also *Accord Endo Painting Service, Inc.*, 360 NLRB 485, 486 (2014), *enfd.* 679 Fed. Appx. 614 (9th Cir. 2017).

Assessing timeliness of response is objective, based on whether or not the party supplied the requested information in a reasonable time. *Management and Training Co.*, 366 NLRB No. 134 (2018), *citing* *Champion Home Builders Co.*, 350 NLRB 788, 788 n.7 (2007). The burden is on the party to adequately prove that it provided the information promptly under the circumstances. *Samaritan Med. Ctr.*, 319 NLRB at 398. To justify a delay, the party must prove that the requested information was not readily available, was unduly burdensome, did not exist, that the requesting party already had the information in its possession or some other valid and acceptable reason for the delay. *Id.* See also *Woodland Clinic*, 331 NLRB at 736 (2000); *Yeshiva University*, 315 NLRB 1245 (1994); *Tower Books*, 273 NLRB 671 (1984); *Kroger Co.*, 226 NLRB 512 (1976).

Finally, a party's right to receive information from another party is not defeated merely because the requesting party may acquire the information through an independent investigation or some other source. *Iron Workers Local No. 207*, 319 NLRB No. 17 (1995). See also *New York Times Co.*, 265 NLRB 353 (1982); *Kroger Co.*, 226 NLRB 512, 513 (1976).

**B. The Charging Party Sought Presumptively Relevant Information and Had a Legitimate and Substantial Need for the Information to Bargain**

After reading what it saw as false statements by Respondent about bargaining proposals in the *People's World* article, Charging Party decided to seek information from Respondent. It sought information about the proposals referenced in the article between Respondent and other Nexstar-owned stations as well as about the bargaining proposals that had actually been made between the parties. The purpose of the information request

was to determine whether such proposals had in fact been exchanged, discussed, or referenced to and the impact that such statements may have had on bargaining. Charging Party specifically provided this rationale to Respondent in its information request.

Most of Charging Party's information request pertained directly to terms and conditions of bargaining unit employee and was therefore presumptively relevant and subject to production, particularly in light of successor bargaining. *Disneyland Park*, 350 NLRB at 1257; *Ellsworth Sheet Metal*, 224 NLRB 1506 (1976). The remaining requests related to proposals referenced in the article as being between Respondent and other Nexstar-owned stations. Charging Party set forth the relevance of its request to Respondent in the request for the information.

In addition to the reasons outlined explicitly by Charging Party, the information could also be relevant and of particular use in analyzing or promoting bargaining proposals between Charging Party and Respondent, and to understand just how Respondent had used the information in the bargaining process.<sup>2</sup> It is clear from the article that Respondent was aware of the proposals exchanged with other Nexstar-owned stations and used it in its analysis of bargaining proposals with Charging Party. To date, Respondent has never raised any issue as to the relevancy of the request.

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<sup>2</sup> Here, Respondent clearly relied upon and surveyed other proposals between Respondent and other Nexstar-owned stations when analyzing the proposals offered by Charging Party, as demonstrated in the article. Therefore, the information was relevant to bargaining between Respondent and Charging Party, and Respondent was obligated to provide the information to Charging Party upon its request. These facts clearly distinguish this situation from the one before the Board in *In re Saganaw Control and Engineering, Inc.*, where it ruled adversely on the relevance of a union's request for agreements of any duration less than two years between the employer and other unions. In that case, the union had requested the information because it believed that a 1-year contract was uncommon. In finding the information not relevant, the Board relied on the fact that there was no evidence that the employer had claimed to survey other agreements in the industry, asserted that a 1-year contract was common, or relied in any way on the existence of such agreements in the industry. 339 NLRB No. 76.

**C. Respondent has Not Provided the Presumptively Relevant Information to Charging Party**

The Board recognizes that the unobstructed flow of relevant information provides the buttressed foundation of a stable bargaining process. *Cowles Comm's, Inc.*, 172 NLRB at 1910. The duty to provide presumptively relevant information includes information relevant to bargaining negotiations. *NLRB v. Acme Industrial Co.*, 385 U.S. 432; *NLRB v. Truitt Mfg. Co.*, 351 U.S. at 150. *CEC, Inc.*, 337 NLRB 516, 518 (2002); *Barnard Engineering Co.*, 282 NLRB 617, 619 (1987). Thus, absent a timely provided justification to Charging Party for why it was not required to produce the relevant requested information, Respondent was obligated to provide the information.

Respondent did not address any of the information requests at issue in this proceeding during its January 25, 2019 conversation with Charging Party. In fact, Respondent only mentioned three of eleven items from the December 14, 2018 request; three items that sought journalistic sources and are not at issue in this proceeding. Respondent patently ignored all other parts of the information request, including those attendant to this proceeding, until five and a half months later. Then, Respondent provided no justification for the delay in responding or providing information.

Respondent has not claimed that the information request was too broad, overly burdensome, or would take substantial time and effort to satisfy. In fact, its response was that it believed Charging Party had all non-confidential information already in its possession.<sup>3</sup> This argument completely ignores the request for proposals between

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<sup>3</sup> As discussed above, the mere fact that Charging Party could have plausibly gotten the evidence through other means does not relieve Respondent of its obligation to produce the information. See *Iron Workers Local No. 207*, 319 NLRB No. 17 (1995). See also *New York Times Co.*, 265 NLRB 353 (1982); *Kroger Co.*, 226 NLRB 512, 513 (1976).

Respondent and other Nexstar-owned stations, which Charging Party would not have in its possession.

The only excuses Respondent offers for its failure to respond to the information request are that Charging Party's information request was not in good faith, and that it already responded to the information request. As outlined above, despite Respondent's averments, it did not respond to the information requests at issue here for five and a half months. In order for its good-faith argument to pass muster, Respondent must have proven that in fact there was no legitimate reason for Charging Party to request the information and did so only to harass or burden Respondent. However, Respondent has made no such showing.

As discussed above, there can be no dispute that the requested information relates to either terms and conditions of bargaining unit employees, or current negotiations at the bargaining table that Respondent itself made relevant by raising in the *People's World* article. As such, any defense that the information requested was neither relevant nor material must also fail. Even in light of a tentative agreement regarding discrimination language, any defense that the information sought is no longer relevant also fails. The parties still have not reached an overall agreement and are actively bargaining over terms and conditions of employment, including wages and severance pay.

Thus, not only has there been no legitimate reason proffered for the failure to provide the information, but it defies logic that there could be any justifiable reason Respondent took almost 6 months to generate such a simple response. Respondent has not and cannot proffer an excuse for such a delay; it is an overt violation of its duty to bargain in good faith. See, e.g., *Michigan Bell Telephone Co.*, 367 NLRB No. 74 (2019)

(seven week delay unlawful); *Linwood Care Ctr.*, 367 NLRB No. 14 (2018) (six week delay unlawful); *Samaritan Med. Ctr.*, 319 NLRB at 398 (three-month delay unlawful); *Beverly California*, 326 NLRB 153, 157 (1998) (two-month delay unlawful); *Bundy Corp.*, 292 NLRB at 672 (1989) (2.5-month delay unlawful).

Simply stated, Respondent failed and refused to provide relevant information related to bargaining and terms and conditions of employment for bargaining unit members for five and a half months with no justification. Respondent's failure to respond to the information request clearly affects the Charging Party's ability to determine how to evaluate Respondent's bargaining proposals and negotiate a successor contract. As such, by failing and refusing to provide Charging Party with relevant and necessary information, Respondent has violated § 8(b)(3) of the Act as alleged.

### **III. CONCLUSION**

In light of the above and the stipulated record as a whole, the General Counsel respectfully submits that Respondent has violated § 8(b)(3) of the Act as alleged. Accordingly, the General Counsel urges the Administrative Law Judge to Order that Respondent remedy these unfair labor practices by posting a Notice to Employees, as well as any other remedies deemed appropriate by the Administrative Law Judge.

Dated at Portland, Oregon, this 8<sup>th</sup> day of November, 2019.

  
\_\_\_\_\_  
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## **PROPOSED ORDER**

Respondent, National Association of Broadcast Employees & Technicians, the Broadcasting and Cable Television Workers Sector of the Communication Workers of America, Local 51, AFL-CIO, its officers, agents, successors, and assigns, shall

1. Cease and desist from:

- (a) Failing to provide relevant information to Nexstar Broadcasting, Inc. d/b/a KOIN-TV ("Employer") upon request.
- (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) On request, provide the Employer with the information it requested by letter dated December 14, 2018.
- (b) Within 14 days after service by the Region, post at all of its facilities, copies of the attached notice marked Appendix. 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 Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted, as well as on any bulletin board maintained by Respondent at the Employer's facility. 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 Respondent customarily communicates with its members by such means. 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, the Employer 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 members and former employees and members employed by the Employer.
- (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.

**NOTICE TO EMPLOYEES AND MEMBERS**  
**Posted by Order of an Administrative Law Judge**  
**of the National Labor Relations Board**  
**an Agency of the United States Government**

An Administrative Law Judge of the National Labor Relations Board (“Board”) has found that we, the National Association of Broadcast Employees & Technicians, the Broadcasting and Cable Television Workers Sector of the Communication Workers of America, Local 51, AFL-CIO (“Union”), violated the 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 a representative 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** restrain or coerce you in the exercise of the above rights.

**WE WILL NOT** delay, fail or refuse to provide the Nexstar Broadcasting, Inc. d/b/a KOIN-TV (“Employer”) with information that is relevant to its role in collective bargaining, including information about proposals we exchange with both the Employer and other Nexstar-owned stations.

**WE WILL** provide the Employer with the information they requested in December 2018 about proposals we exchanged with the Employer and other Nexstar-owned stations.

**WE WILL NOT** in any like or related manner interfere with your rights under Section 7 of the Act.

**National Association of Broadcast Employees &  
Technicians, the Broadcasting and Cable  
Television Workers Sector of the  
Communication Workers of America,  
Local 51, AFL-CIO**  
\_\_\_\_\_  
(Labor Organization)

**Dated:** \_\_\_\_\_ **By:** \_\_\_\_\_  
(Representative) (Title)

**19-CB-234944**

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*The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board’s Regional*

*Office set forth below or you may call the Board's toll-free number 1-866-667-NLRB (1-866-667-6572). Hearing impaired persons may contact the Agency's TTY service at 1-866- 315-NLRB. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov).*

1220 SW 3<sup>rd</sup> Ave., Suite 605  
Portland, OR 97204

**Telephone:** (503) 326-3085

**Hours of Operation:** 8:00 a.m. to 4:30 p.m.

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**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Officer.

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the Counsel for the General Counsel's Brief to the Administrative Law Judge was served on the 8<sup>th</sup> day of November, 2019, on the following parties:

### **E-File:**

The Honorable Mara-Louise Anzalone  
Administrative Law Judge  
National Labor Relations Board  
Division of Judges  
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