

**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,**

Charged Party Union

Case 19-CB-234944

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

Charging Party Employer

CHARGING PARTY’S BRIEF TO ADMINISTRATIVE JUDGE

NEXSTAR BROADCASTING, INC., d/b/a KOIN-TV (hereinafter "Nexstar", "Employer" or "Charging Party") by its attorney, Charles W. Pautsch, hereby provides its BRIEF TO THE ADMINISTRATIVE LAW JUDGE filed herein pursuant to the NLRB’s Rules and Regulations, containing a statement of stipulated facts arrived at by Joint Motion of the parties on October 4, 2019, and its’ arguments in support of the entry of an Order providing that the allegations of the Complaint filed by the General Counsel against the National Association of Broadcast Employees &Technicians Local 51 (“NABET”, “Respondent”, or “Union”) are true and correct and finding that the Union has violated Sections 8(b)(1)(A) and (3) of the National Labor Relations Act by refusing to provide information relevant to bargaining over mandatory subjects of bargaining.

I. STIPULATION OF FACTS

1. The Charge in Case 19-CB-234944, which is attached as **Exhibit A**, was filed by the Charging Party on January 29, 2019, and was served on Respondent by U.S. mail on February 1, 2019.
2. On May 30, 2019, the Regional Director of Region 19 of the Board (“Regional Director”) issued a Complaint and Notice of Hearing in Case 19-CB-234944 (“Complaint”), which is attached as **Exhibit B**.
3. On June 5, 2019, Respondent filed a timely Answer to the Complaint, which is attached as **Exhibit C**, denying that it had violated the National Labor Relations Act (“Act”) as alleged.
4. At all material times, Charging Party 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.
5. On 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”), 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.
6. Based on its operations described above in paragraphs 4 and 5, Charging Party has continued as the employing entity and is a successor to Media General KOIN-TV.
7. 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.
8. In conducting its operations during the 12-month period ending January 29, 2019, a

representative period, Charging Party purchased and received at the facility goods valued in excess of \$50,000 directly from points outside the State of Oregon.

9. At all material times, Charging Party has been an employer engaged in commerce within the meaning of §§ 2(2), (6), and (7) of the Act.
10. At all material times, Respondent has been a labor organization within the meaning of § 2(5) of the Act.
11. At all material times, the following individuals held the positions set forth opposite their respective names and have been agents of Respondent within the meaning of § 2(13) of the Act:

Carrie Biggs-Adams - Lead Negotiator and Local President

Ellen Hansen - Bargaining Representative

12. The following employees of Charging Party (the “Units”) constitute 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.

13. At all material times until January 17, 2017, Respondent has been the exclusive collective-bargaining representative of the Units employed by Media General KOIN-TV and recognized as such 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, with the last extension expiring September 8, 2017 (“expired CBA”). A complete copy of the CBA is attached as **Exhibit D**.
14. Since about January 17, 2017, based on the facts described above in paragraphs 4, 5, 6, 12, and 13, Respondent has been the designated exclusive collective- bargaining representative of the Units.
15. At all material times, based on § 9(a) of the Act, Respondent has been the exclusive collective-bargaining representative of the Units.
16. At all material times, Respondent and Charging Party were engaged in bargaining for a successor to the expired CBA.
17. On around November 20, 2018, an article entitled “TV chain Nexstar splits workers with different raise offers, shifts cash to shareholders,” attached as **Exhibit E**, was published in *People’s World*. The article discussed the state of negotiations between Respondent and Charging Party and referenced wage proposals and discrimination proposals made by the parties.
18. On about December 14, 2018, Charging Party hand delivered and emailed to Respondent the letter entitled “Request for information – peoplesworld.org article

dated 11/20/18” attached as **Exhibit F**. At issue in this proceeding are requested items 2-9.

19. On or about January 25, 2019, Carrie Biggs-Adams and Charging Party’s bargaining spokesperson, Charles Pautsch, had an oral conversation in which Biggs-Adams commented that she believed the December 14 request was improper because it was seeking a journalist’s sources. Apart from that conversation, from around December 14, 2018, to April 30, 2019, Respondent did not substantively respond to Charging Party’s letter, Exhibit F.
20. On about April 30, 2019, by the letter transmitted by email from Carrie Biggs- Adams to Patrick Nevin, attached as **Exhibit G**, Respondent responded to Charging Party’s letter by requesting clarification on the requested documents and stating that it believed Charging Party was already in possession of all responsive documents other than privileged communications.
21. Other than the communications described herein and attached as Exhibits F and G, there have been no further written or oral communications between Respondent and Charging Party about the December 14, 2018 letter at issue.
22. Respondent and Charging Party are currently engaged in successor bargaining and have reached tentative agreements on several issues including non- discrimination language as of December 13, 2018. The parties have not reached a tentative agreement on wages or severance.

II. ISSUES PRESENTED

Whether the information requested by the Charging Party on December 14, 2018, was relevant and necessary for Respondent for the purpose of collective bargaining and,

if so, whether Respondent has failed and/or refused to provide that information in violation of § 8(a)(5) of the Act since on or about December 14, 2018?

II. ARGUMENT

NABET-CWA Local 51 has been in violation of §§ 8(b)(3) of the Act by failing and refusing to provide the requested information outlined in the Complaint. For months Respondent failed to respond to the request for information that called for the production of information relevant to ongoing collective bargaining over mandatory subjects of bargaining. Respondent provided no response at all for over five (5) months from the date of the information request, December 14, 2018, except for a brief comment that the request was improper because ‘it was seeking a journalist’s sources. When Respondent finally responded to the request on April 30, 2019, *after the Complaint issued*, it did so in a disingenuous manner claiming unspecified privilege as justification for not producing the documents relevant to the ongoing negotiations and asserting that it believed that the Charging Party was already in possession of any un-privileged’ communications. It is axiomatic that it is not proper to object to production on this latter basis. And it is certainly improper to do so on such a tardy basis.

Under well-settled Board and court law, information that implicates terms and conditions of employment of bargaining unit employees is presumptively relevant. *CalMat Co.*, 331 NLRB 1084 (2000); *Whitesell Corp.*, 355 NLRB No. 134 (2010). 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 but need only have some bearing on

it. *Pennsylvania Power & Light*, 301 NLRB 1104, 1105 (1991). An employer “must furnish information that is of even probable or potential relevance to the union’s statutory duties.” *Conrock Co.*, 263 NLRB 1293, 1294 (1982). Indeed, a union (requesting party) 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 union. *Dodger Theatricals Holdings*, 347 NLRB 953, 970 (2006). That includes use in bargaining. *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 150 (1956).

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 a/w 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 (Diversey Wyandotte)*, 302 NLRB 1008, 1009 (1991). The General Counsel alleges that Respondent is in violation of § 8(b)(3) because it failed and refused to provide information related to ongoing bargaining. Further, Respondent’s failure to provide the information clearly affected the Charging Party’s ability to bargain the successor contract and evaluate Respondent’s proposals at the bargaining table. Respondent did not provide this presumptively relevant information. Indeed, it did not respond at all to the Charging Party’s request, except for an objection to production occurring four and a half months after the request was made and after the Complaint was filed, thereby preventing the Charging Party from effectively bargaining and evaluating

Respondent's proposals. Given that the requested information is presumptively relevant under the Board's long-established standards, Respondent's refusal to provide it violates the Act as alleged.

Respondent Union contends that the December 14, 2018 request for information was not a good-faith request for information relevant to bargaining, asserting that "it was calculated to harass and annoy Respondent in retaliation for the November 20, 2018 People's World Daily article referenced in the memorandum." (Joint Motion, p. 9).

This assertion is made without any factual support or other foundation. Charged Party notes correctly that "Nevin claimed in the memorandum that his purpose was to assess the impact of the article upon bargaining" and that while "Three of the "requests" were directly about the article, demanding the People's World Daily journalist's sources, and demanding communications between the union and bargaining unit employees about the article, which, if any existed, would be privileged", and "the other eight "requests" did not call for information about the article". (Joint Motion, p. 9-10)

It is only these eight requests that are the subject of this Complaint. While "Respondent recognizes that the Complaint was not issued regarding the three "requests" directly about the article", (Joint Motion, p. 9-10) they submit those "requests" together with the subject line and prefatory paragraph demonstrate the harassing nature of the memorandum. However, Respondent produces no evidence to support this baseless assertion.

Finally, Respondent asserts that "the Complaint is moot, because Respondent responded to all items in the December 14, 2018 memorandum in the April 30, 2019

letter, and the Employer has not identified any documents or information allegedly sought that was not already in its possession at any relevant time”. These assertions fail. As noted above, the failure to provide relevant information to these requests constitutes a failure to bargain in good faith in violation of Section 8(a)(5) of the National Labor Relations Act. *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 152 (1956). The Union failed to make timely objections applicable to the eight items that are the subject of this Complaint-----waiting four and a half months to reply to these at all. This delay undermines any tardily asserted claims of overbreadth, burden, or relevance. See e.g., *Gruma Corporation d/b/a Mission Foods and United Food and Commercial Workers Union, Local 99.1* Case 28–CA–20161 (2005) (objections must be timely made---at the time information is requested, and not after Complaint is issued or they are considered waived). Indeed, it has been recognized, and properly so, that a delay in responding to an information request is just as much a violation of the National Labor Relations Act as not responding at all. Further, a delay in raising objections to requested information may result in the objecting party losing valid confidentiality, burdensome, overbroad, and irrelevancy objections. The Board so found in *Salem Hospital*, 359 NLRB No. 82 (March 22, 2013) where the employer waited months before raising such objections. And moreover, as stated in *Salem Hospital*, an objecting party must not only timely raise objections, but also must “substantiate its defense.” In other words, merely stating that a request is overbroad, unduly burdensome and the like is not enough. The objecting party must explain the reason for the objection. Here, the Union’s assertion that the Employer already had the information, along with a vague assertion of privilege is simply not enough to avoid or minimize this violation of its’ duty under law.

III. CONCLUSION

Given these facts and the argument set forth herein, it is apparent that there is merit to the Complaint filed against NABET-CWA, and as a result, an Order should be entered that the Union has violated sections 8(b)(1)(A) and (b)(3) and a remedy entered that it should immediately provide the requested information and take other actions to remedy this blatant violation of the Act.

For all of the reasons set forth herein, this Board should enter an Order, including an appropriate remedy against NABET-CWA based on the allegations set forth in the Complaint.

Respectfully submitted this 8th day of November 2019.

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AFFIDAVIT OF SERVICE

I hereby certify that I served the foregoing BRIEF TO THE ADMINISTRATIVE LAW JUDGE on Anne Yen counsel for the Charged Party Union by e-mailing a copy of same in to ayen@unioncounsel.net, to Sarah Ingebritsen, Counsel for the General Counsel at sarah.ingebritsen@nlrb.gov, and Ronald Hooks, the Regional Director of Region 19, at Ronald.hooks@nlrb.gov.

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