

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
SAN FRANCISCO BRANCH OFFICE

**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**

*Sarah C. Ingebritsen, Esq.*, for the General Counsel.  
*Anne I. Yen, Esq. (Weinberg Roger & Rosenfeld)*,  
for the Respondent.  
*Charles W. Pautsch, Esq. (Nexstar Media Group, Inc.)*,  
for the Charging Party.

DECISION

MARA-LOUISE ANZALONE, Administrative Law Judge. This case was submitted to me on a joint motion and stipulation of facts dated October 3, 2019. Nexstar Broadcasting, Inc. d/b/a KOIN–TV (KOIN–TV, the Employer or Charging Party) filed a charge on January 29, 2019, and the Regional Director for Region 19 issued a complaint on May 30, 2019 (the complaint). The General Counsel alleges that Respondent National Association of Broadcast Employees & Technicians, The Broadcasting and Cable Television Workers Sector of the Communications Workers of America, Local 51, AFL–CIO (Local 51, the Union or Respondent) refused to provide information requested by the Employer, in violation of Section 8(b)(3) of the National Labor Relations Act (the Act). Respondent filed a timely answer to the complaint, denying any wrongdoing.

By their joint motion and stipulation, the parties waived their right to a hearing in this matter. On November 8, 2019, post-hearing briefs were filed by each of the parties and have been carefully considered.<sup>1</sup> Accordingly, based upon the entire record herein, including the post-hearing briefs and my observation of the credibility of the witnesses, I make the following

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## I. FINDINGS OF FACT

### *A. Jurisdiction*

10 At all times material herein, Charging Party, a corporation with an office and place of  
business located in Portland, Oregon (Respondent’s facility), has been engaged in the operation  
of a television station. During the 12-month period ending January 29, 2019, Charging Party, in  
the normal course and conduct of its above-described business operations, derived gross  
15 revenues in excess of \$100,000, and purchased and received at its Portland facility goods in  
excess of \$50,000 directly from points outside the State of Oregon. At all material times,  
Charging Party has been an employer engaged in commerce within the meaning of Section 2(2),  
(6), and (7) of the Act, and Respondent has been a labor organization within the meaning of  
Section 2(5) of the Act.

20 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. Factual Background*

25 Respondent represents two units of employees at Charging Party’s Portland television station  
(the unit employees).<sup>2</sup> This recognition was embodied in successive collective-bargaining  
agreements between Respondent and Charging Party’s predecessor, LIN Television Corporation  
(LIN), 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”). On January 17, 2017, Charging  
30 Party purchased the station from LIN, continued its operations in basically unchanged form and  
continued to employ a majority of the station’s employees, thereby succeeding to LIN’s  
bargaining obligation to the Union. (Stip. ¶¶ 5, 6.)

35 The parties have stipulated that, as of the date of the Employer’s information request, they  
were engaged in bargaining for a successor contract to the expired CBA and had reached  
tentative agreements on several issues, including non-discrimination language, but not wages or  
severance. Local 51’s lead negotiator was its president, Carrie Biggs-Adams (Adams); KOIN–  
TV was represented by its in-house attorney, Charles Pautsch (Pautsch), who additionally served  
as its counsel in this proceeding. (Id. at ¶¶ 11, 16, 19, 22.)

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<sup>1</sup> Abbreviations used in this decision are as follows: “Stip.” for the parties’ stipulation of facts; and “Jt. Exh.” for joint exhibits.

<sup>2</sup> The first unit consists of Respondent’s engineering and production employees; the second consists of news, creative services employees and web producers, in each case with certain exclusions not pertinent here. (Stip. ¶ 12.)

On November 20, 2018, an article appeared on the website “peoplesworld.org”; it was titled, “TV chain Nexstar splits workers with different raise offers, shifts cash to shareholders” and stated as follows:

5 In another example of enormous corporate greed, a rich Texas-based TV chain—  
one whose own financial statements point to close to \$2 billion in revenue in the  
first nine months of this year—is offering raises of 1 percent to workers at one of  
its New York state TV stations, and 0.1 percent to workers at KOIN-TV in  
Portland, Ore.

10 And those skimpy sums get put on the bargaining table only when Nexstar Media  
Group is forced to hold talks with the National Association of Broadcast  
Employees and Technicians (NABET)-CWA locals who represent the workers at  
its stations in Buffalo and Syracuse, N.Y., Portland, Erie, Pa., and Youngstown,  
15 Ohio. In Syracuse, the National Labor Relations Board had to do exactly that,  
leaders of the NABET locals say.

Needless to say, the workers aren’t happy with this state of affairs. Nexstar  
offered the 84 Syracuse workers the 1 percent raise for each year of a 3-year  
pact—and demanded givebacks from the workers on company hiring rights and  
premiums to be paid for workers temporarily in higher-grade jobs.

20 That offer, the first in months after NABET won that NLRB ruling, was rejected.  
Meanwhile, the old Syracuse contract, which expired 18 months ago, stays in  
effect, but key worker protections, such as grievances, are stalled.

At Buffalo’s WIVB-TV, bargaining has foundered over Nexstar’s about-face on  
paid leave to work out management-labor differences.

25 When it bought WIVB, Nexstar inherited a policy from the former owner that said  
where the two sides were working on a cooperative project—such as  
negotiations—the station would still pay the union bargainers. If the two were in  
an adversarial face-off, it wouldn’t.

30 Five months ago, Nexstar dumped that policy—and presented the union with an  
\$8,700 bill to cover back pay for NABET’s own employee bargainers.  
Negotiations covering the station’s 60 workers have stalled.

The situation is even worse—if you can believe it—at KOIN, says local President  
Carrie Biggs-Adams, whose local represents TV station workers from San  
Francisco northwards.

35 Biggs-Adams also has a basis for comparison nationwide. Until recently she was  
a top worker at NABET-CWA headquarters in D.C. and has 45 years of  
experience negotiating for workers and organizing them, too.

5 KOIN offered its workers the 0.1 percent hike, and that wasn't all, she said. It wants to cut severance pay to two weeks. And in the first quarter of this year, Nexstar yanked company-paid cell phones, which gave stored numbers for sources and stored locations for stories, from broadcast reporters and techs who need both.

Staffers can now check out company phones one by one, “or use their own phones, for which they get \$45 a month” from Nexstar to pay for texts, stories, and downloads. Since TV downloads are expensive, workers “have to eat” any extra costs, Biggs-Adams says.

10 Nexstar would impose more extra costs on NABET by making the union—not the company—responsible for precisely checking and following every single state, local, and federal law before filing grievances on various issues, including discrimination. One slip-up or small omission and the grievance gets tossed.

15 The *coup de grace*, however, is in a non-financial area. In the #MeToo era, where opposition to sexual harassment on the job has become a nationwide cause, Nexstar wants to eliminate the current contract's protections against job discrimination, by sex, race, or anything else. “They won't go beyond federal law,” Biggs-Adams says.

20 The company, meanwhile, has other uses for its millions. In its public financial statement, Nexstar's revenue totaled \$693 million in the third quarter of the year, 13.3 percent more than in the third quarter of 2017. It earned \$485 million in the first nine months of this year—a 31.4 percent jump—on \$1.97 billion in overall revenue nationwide since Jan. 1.

25 As for what it wants to do with the money, besides not paying workers, Nexstar CEO Perry Sook said in the statement the network would “apply our growing free cash flow to drive shareholder returns... In the third quarter we allocated a total of approximately \$180 million to return of capital, leverage reduction, and strategic M&A initiatives.”

30 “M&A” stands for “mergers and acquisitions,” and Biggs-Adams suspects she knows where. From broadcast industry sources, she believes Nexstar is angling to buy the Tribune Company's stations, after federal regulators quashed a prior big Tribune sale.

35 Biggs-Adams doubts Nexstar would succeed, though, because its acquisition of Tribune's stations would put it over Federal Communications Commission limits on market concentration, just as the prior Tribune sale that collapsed did.

Still, “the impact on workers is pretty massive, and it's a structural problem with the capitalist system,” she says. It's especially acute, she notes, when hedge

funds take over media chains, run them for 18 months while milking profits by slashing staff, then selling them.

That’s what’s happened, Biggs-Adams notes, at KOIN.

(Jt. Exh. E.)

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Approximately 3 weeks later, on December 14, 2018, Charging Party presented Respondent with a letter entitled, “Request for information—peoplesworld.org article,” signed by KOIN’s Vice-President and General Manager (Nevin).<sup>3</sup> Specifically, Nevin’s letter stated as follows:

10

On November 20, 2018 an article was published which contained materially false statements regarding our current negotiations at KOIN-TV. In order to assess the impact of these statements on our bargaining we send you this Request for Information. Please review and respond to the following requests for information below:

15

1. Any and all correspondence to and from representative Carrie Biggs-Adams to agents or representatives of peoplesworld.org including but not limited to Mark Gruenberg from January 1, 2017 to present.

20

2. Any and all documents of any kind including but not limited to letters, emails, text messages referring or relating to wage proposals made by KOIN TV to NABET from January 1, 2017 to present.

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3. Any and all documents of any kind including but not limited to letters, emails, text messages referring or relating to severance pay proposals made by KOIN TV to NABET Local 51 from January 1, 2017 to present.

30

4. Any and all documents of any kind including but not limited to letters, emails, text messages, referring or relating to any proposals made by other Nexstar owned Stations to NABET from January 1, 2017 to present.

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5. Any and all documents of any kind including but not limited to letters, emails, text messages referring or relating to discrimination harassment proposals made by KOIN TV to NABET from January I, 2017 to present.

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7. Any and all documents of any kind including but not limited to letters, emails, text messages referring or relating to severance pay proposals made by NABET local 51 to KOIN TV from January 1, 2017 to present.

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<sup>3</sup> I adduce that this is Nevin’s title and position from the letter itself, as these issues were not addressed in the parties’ joint stipulation.

8. Any and all documents of any kind including but not limited to letters, emails, text messages referring or relating to any proposals made by NABET to other Nexstar Owned Stations from January 1, 2017 to present.

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9. Any and all documents of any kind including but not limited to letters, emails, text messages referring or relating to discrimination harassment proposals made by NABET to KOIN TV from January 1, 2017 to present.

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10. Any and all documents of any kind including but not limited to letters, emails, text messages referring or relating to your apparent assertion in the November 20, 2018 edition that “when hedge funds take over media chains, run them for 18 months while milking profits by slashing staff, then selling them. That’s what’s happened, Biggs-Adams notes at KOIN.”

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11. Any and all correspondence, including letters, leaflets, posters, emails and text messages from any NABET agent, including, but not limited to, Representative Carrie Biggs-Adams, to any bargaining unit employee at KOIN-TV, relating to or referring to the peoplesworld.org article dated November 20, 2018.

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(Jt. Exh. F.) The record is devoid of any first-hand explanation of Charging Party’s rationale for requesting this information, other than that stated in the request itself.

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As of January 25, 2019, the Union had failed to respond to the request for information. On that date, Biggs-Adams verbally informed Attorney Pautsch that she believed that the information request was “improper” because it sought a journalist’s sources. On January 29, 2019, Charging Party filed the unfair labor practice charge underlying this matter. (Stip. ¶ 19; Jt. Exh. A.)

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The parties had no further communication regarding the request until April 30, 2019, when Biggs-Adams emailed a letter to Nevin, in which she stated:

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NABET-CWA Local 51 does not believe that points 1, 10 or 11 relate to information that the employer needs for bargaining purposes.

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As to requests 2–9, please clarify whether you are seeking the communications and proposals that these parties have already exchanged. These should already be in your possession, but if you have reason to believe otherwise, please advise. There would be no other communications in the categories described in requests 2–9 except privileged communications, if any, between myself as the Union's representative and affected members or the Union's counsel.

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(Id. at ¶ 20; Jt. Exh. G.) There was no further communication between the parties regarding the information request. (Stip. ¶ 21.)

## II. ANALYSIS

A. *The Parties' Positions*

5 The complaint alleges that, since about December 14, 2017, Local 51 has unlawfully failed to provide the information requested by KOIN–TV, other than Items 1, 10 and 11, which Biggs-Adams challenged as irrelevant to bargaining. This consists of two categories of information: (a) documents related to bargaining over the unit employees (Requests 2, 3, 5, 6, 7 and 9); and 10 (b) documents related to bargaining between Local 51's sister locals who represent Charging Party's Buffalo, NY, Syracuse, NY, Erie, PA and Youngstown, OH employees (Requests 4 and 8).

15 In its defense, Local 51 asserts that it was privileged to not respond to the requests, because they were made in bad faith in an effort to harass Biggs-Adams, and alternately that Charging Party was already in possession of any non-privileged information, rendering the Union's April 30 correspondence a full and timely response to the requests.

B. *The Applicable Law*

20 The Board has long held that a labor organization's duty to furnish information pursuant to Section 8(b)(3) of the Act is parallel to that of an employer's obligation to furnish information pursuant to Section 8(a)(1) and (5) of the Act. *California Nurses Assn.* 326 NLRB 1362, 1362, 1366 (1998) (citing *Service Employees Local 144 (Jamaica Hospital)*, 297 NLRB 1001, 1003 25 (1990)); *Northern Air Freight*, 283 NLRB 922 (1987)); *Printing & Graphic Communications Local 13 (Oakland Press)*, 233 NLRB 994, 996 (1977). The refusal of a party to refuse to provide its bargaining partner with relevant information upon request constitutes a per se violation of the Act without regard to that party's subjective good or bad faith. *Piggly Wiggly Midwest, LLC*, 357 NLRB 2344 (2012), *Brooklyn Union Gas Co.*, 220 NLRB 189, 191 (1975); 30

Generally, information pertaining to terms and conditions of employees within the bargaining unit is considered "so intrinsic to the core of the employer-employee relationship" as to be presumptively relevant. *San Diego Newspaper Guild v. NLRB*, 548 F.2d 863, 867 (9th Cir. 1977); see also *Disneyland Park*, 350 NLRB 1256, 1257 (2007); *Sands Hotel & Casino*, 324 35 NLRB 1101, 1109 (1997). Where, by contrast, a party seeks information that does not concern the terms or conditions within the bargaining unit, such as information regarding extra-unit employees, 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). Essentially, this means that the burden is satisfied when the requesting party 40 demonstrates a reasonable belief, supported by objective evidence (which may include hearsay reports) that the information requested is relevant. *Shoppers Food Warehouse Corp.*, 315 NLRB 258, 259 (1994); *Reiss Viking*, 312 NLRB 622, 625 (1993); *Leland Stanford Junior University.*, 262 NLRB 136, 139 (1982), enfd. 715 F.2d 473 (9th Cir. 1983).

45 Extra-unit information will be found relevant where it is needed by the requesting party to engage intelligently in contract negotiations and administration. See *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 152–153 (1956); see also *Plasterers Local 346 (Brawner Plastering)*, 273 NLRB

1143, 1144 (1984) (finding information requested by the employer “unquestionably relevant to collective bargaining”). Documents related to bargaining proposals are deemed relevant where they would assist the requesting party in assessing the accuracy of its bargaining partner’s proposals and developing its own counterproposals. See, e.g., *Caldwell Mfg. Co.*, 346 NLRB at 1160. Likewise, in the broader context of collective-bargaining negotiations, where a party puts a particular matter in issue, good faith requires it furnish such information as is requested relevant to that issue. *NLRB v. Truitt Mfg. Co.*, supra.

The burden to show relevance for extra-unit information is not especially high. That said, a requesting party must offer more than a “hypothetical theory” about the relevance of requested documents, and “mere suspicion or surmise” will not suffice. *Disneyland Park*, 350 NLRB 1256, 1258 fn.5 (2007); *Sheraton Hartford Hotel*, 289 NLRB 463, 464 (1985); *Southern Nevada Builders Assn.*, 274 NLRB 350, 351 (1985). Nor is a party granted “carte blanche” to engage in a wholesale exploration into the records of its bargaining partner merely because it “can articulate some bargaining strategy that will render the information pertinent in some peripheral or theoretical fashion to the bargaining process.” See *E.I. du Pont & Co. v. NLRB*, 744 F.2d 536 (6th Cir. 1984). This standard prevents fishing expeditions; without it, a party requesting documents would effectively have “unlimited access to any and all data” in possession of its bargaining partner. *Southern Nevada Builders Assn.*, supra.

*C. The General Counsel Has Established a Violation of  
Section 8(b)(3) of the Act with Respect to Requests 2, 3, 5, 6, 7 and 9*

1. Requests 2, 3, 5, 6, 7 and 9 were presumptively relevant and made in good faith

As a preliminary matter, Requests 2, 3, 5, 6, 7 and 9 seek presumptively relevant information; on their face, each of these requests seeks documents related to specific bargaining proposals affecting unit employees (wages, severance pay and nondiscrimination/harassment) made by one of the parties during their ongoing bargaining. As noted, information regarding the terms and conditions of unit employees is presumptively relevant and the non-requesting party has the burden of rebutting that presumption. *Certco Distribution Centers*, 346 NLRB 1214, 1215 (2006); *AK Steel Corp.*, 324 NLRB 173, 183 (1997). Local 51 argues that it was privileged not to respond to KOIN-TV’s request for information because it was made in bad faith. As set forth below, I disagree.

A party requesting information is presumed to have acted in good faith until the contrary is shown. See *Island Creek Coal Co.*, 292 NLRB 480, 489 and fn.14 (1989), enf. mem. 899 F.2d 1222 (6th Cir. 1990); *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 that an information request be made in good faith is satisfied if at least one reason for the request can be justified. *Mission Foods*, 345 NLRB 788, 788 (2005); *Hawkins Construction Co.*, supra at 1314.

Here, Local 51 contends that Charging Party’s information request amounts “an attempt to harangue and harass [Biggs-Adams] in retaliation for the opinions attributed to her in the article.” As evidence of a bad-faith motive, Local 51’s post-hearing brief relies heavily on hearsay statements that Biggs-Adams herself subjectively believed the request to be an attempt at

harassment, as well as conjecture that Charging Party was likely already in possession of the information it sought. Such diffuse speculation does not meet the standard for a showing of bad faith.<sup>4</sup>

5 Local 51 additionally argues that, because certain items of the request (not alleged by the  
General Counsel) sought communications with unit members and the press, I should find that the  
entire request was made in bad faith. I disagree. To the extent Local 51 (albeit belatedly) raised  
privilege objections to these very items, its interests were protected and I do not find that  
10 Charging Party’s requests amounted to an abuse of the information request process warranting  
the denial of relief in this matter.

Accordingly, I find that Local 51 has failed to rebut the presumption that these the  
information requests were made in good faith. Rather, I find that KOIN–TV’s stated purpose—  
to “fact check” Biggs-Adams’ statements to the press about the parties’ ongoing negotiations—  
15 was reasonable and lawful and therefore the information sought must be provided. *Electrical  
Workers IBEW Local 292 (Sound Employers Assn.)*, 317 NLRB 275, 275 (1995) (“it is well  
settled that where a party requests information that is relevant to that party’s collective  
bargaining needs, it is irrelevant that there may also be other reasons for the request or that the  
information may be put to other uses”).

20 Nor am I convinced, as Local 51 urges, that it was at liberty to refuse to furnish the requested  
information because it believed KOIN–TV to be in possession of any non-privileged documents  
called for by the request. As a preliminary matter, I note that, because Respondent elected to  
waive the right to present evidence in this case, its argument lacks the necessary factual  
25 predicate. I therefore cannot credit Local 51’s conclusory assertion that Charging Party was  
already in possession of the information it requested.<sup>5</sup> In any event, the fact that a requesting  
party may obtain information by other means or from another source generally does not relieve a  
non-requesting party from its obligation to provide it. *Holyoke Water Power Co.*, 273 NLRB  
1369, 1373 (1985). This is especially the case here, where the record as a whole suggests that  
30 the parties—which obviously disagreed about the nature of KOIN–TV’s bargaining positions—  
may well have been in possession of differing versions of certain proposals or related  
documentation.

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<sup>4</sup> I note that, while Local 51’s answer states that Charging Party’s unfair labor practice charge was filed in bad faith, it makes no such claim about the information request itself. *Island Creek Coal Co.*, 292 NLRB 480, 489 fn. 14 (1989) (bad faith is an affirmative defense that must be pled by respondent) (citing *Hawkins Construction Co.*, 285 NLRB 1313, 1322 fn. 20 (1987)). Under the circumstances, Local 51’s contention that KOIN–TV acted in bad faith when it requested the information was arguably not raised in a timely manner. In any event, as stated, even giving Local 51’s pleading the most generous reading possible, I reject this defense as lacking factual support.

<sup>5</sup> I further reject Respondent’s suggestion that it was specifically not required to provide information related to antiharassment/discrimination proposals because the parties had reached a tentative agreement on that subject. I do not understand Board law to absolve a party from responding to an information request on such basis.

## 2. Local 51 failed to respond to Requests 2, 3, 5, 6, 7 and 9

It is undisputed that Local 51 provided no documents responsive to Requests 2, 3, 5, 6, 7 and 9, instead informing KOIN–TV approximately 4 months after its request (and 3 months after being served with the underlying unfair labor practice charge) that the only non-privileged documents responsive to its request “should” already be in its possession. The question is whether this constitutes a response adequate to discharge its obligations under the Act. I find that it does not.

A valid information request imposes a duty upon the non-requesting party to respond in a timely manner—either by complying with the request or by asserting its rationale for not doing so. “Failure to make either response in a reasonable time is, by itself, a violation of Section 8(a)(5) and (1) of the Act.” *Columbia University*, 298 NLRB 941, 945 (1990) (citing *Ellsworth Sheet Metal*, 232 NLRB 109 (1977)); see also *Daimler Chrysler Corp.*, 331 NLRB 1324, 1329 (2000); *Interstate Food Processing*, 283 NLRB 303, 304 at fn. 9 (1987). The same rule applies to privileged information; as the Board has explained, even where a party is ultimately not required to provide information subject to a privilege, it is not entitled to ignore a request but rather has a “duty to communicate the asserted privilege to the requesting party.” *Irontiger Logistics, Inc.*, 362 NLRB 324, 324, fn. 1 (2015).

Here, Respondent takes the position that Biggs-Adams’ April 30, 2019 correspondence constituted a full response to Charging Party’s request for various documents relating to the parties’ bargaining proposals, insofar as Respondent was already in possession of all non-privileged documents sought by the requests. Biggs-Adams’ April 30 response indicates that the privileges involved may include attorney-client privilege, attorney-work product privilege, a *Berbiglia* bargaining strategy privilege<sup>6</sup> and/or a “Section 7” privilege covering communication with individual unit members. It is true that certain of the documents sought by Charging Party’s requests may indeed have been properly withheld subject to one or more of these privilege-rationales. Regardless of whether this position may have ultimately prevailed, it does not excuse the failure to communicate it until 3 months after Charging Party resorted to the Board’s processes. Indeed, it is the very succinct nature of Biggs-Adams’ response—that the Union believed KOIN–TV to be already in possession of all responsive, non-privileged documents—that begs the question: why could this position not have been relayed in short order? Respondent adduced no evidence that it actually took several months to determine which documents it “believed” KOIN–TV to possess and the extent of any unspecified privilege it asserted. In the absence of such an explanation, I can only conclude that, as Local 51’s post-hearing brief itself suggests, it considered these requests to be an illegitimate attempt at harassment which it essentially ignored until a mere month before the complaint issued in this matter.

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<sup>6</sup> See *Berbiglia, Inc.*, 233 NLRB 1476, 1495 (1977) (“requiring the [u]nion to open its files to Respondent” would interfere impermissibly with the parties’ ability “to formulate their positions and devise their strategies without fear of exposure”).

Accordingly, because its eventual response demonstrates that the requests were conducive to a relatively quick response, I find that Respondent’s 4-month failure to provide it violated the Act.<sup>7</sup>

5 *D. The General Counsel Has Failed to Establish a Violation of*  
*Section 8(b)(3) of the Act with Respect to Items 4 and 8*

10 I turn now to Requests 4 and 8, which request documents related to proposals made between Local 51’s international, NABET, and “other Nexstar Owned Stations,” a term that is not defined by the request or stipulated to by the parties. Notably, Charging Party’s information request does not accuse Biggs-Adams of making “materially false statements” about any bargaining outside of KOIN-TV, nor does it contain any other rationale for seeking this extra-unit information. Because the parties elected to forgo witness testimony, the record contains no further evidence as to Charging Party’s rationale for demanding documents relating to extra-unit bargaining.

15 Clearly, Requests 4 and 8 sought extra-unit information for which Charging Party must demonstrate relevance. As noted, *supra*, information regarding an employer’s extra-unit employees may certainly be relevant to a bargainable issue and therefore to the union’s performance of its representative obligations. See *Curtis-Wright Corp., Wright Aeronautical Division v. NLRB*, 347 F.2d 61 (3d Cir. 1965), *enfg.* 145 NLRB 152 (1963); see also *General Electric Co.*, 199 NLRB 286 (1972). This typically results from the non-requesting party placing extra-unit terms and conditions at issue during bargaining. See, e.g., *Harmon Auto Glass*, 352 NLRB 152, 152 (2008) (union entitled to learn the dollar amount contributed by the employer’s non-union employees towards their health insurance, after employer proposed that unit employees contribute an equal amount), *reaffd.* 355 NLRB 364, 364 fn. 3 (2010), *enfd.* 649 F.3d 873 (8th Cir. 2011), *cert. denied* 565 U.S. 1259 (2012),

20 There is no requirement, however, that statements placing extra-unit information at issue be made physically at the bargaining table. Indeed, requesting parties have, on more than one occasion, been found to have properly relied on third-party publications, such as newspaper articles, in whole or in part to support a “reasonable belief” sufficient to trigger a request for non-unit information. See, e.g., *Dodgers Theatrical Holdings, Inc.*, 347 NLRB 953, 969 (2006) (union’s information request reasonably premised on newspaper article containing direct quotes from employer’s principal); see also *National Broadcast Co.*, 318 NLRB 1166, 1168–1169 (1995) (reliance on published article); *Maben Energy Co.*, 295 NLRB 147, 153 (1989) (reliance on newspaper articles). In such circumstances, the issue is “not whether the article is or is not accurate, but whether the requesting party acted reasonably in relying on the article.” *Dodgers Theatrical Holdings*, *supra* at 969.

35 Nor is the requesting party necessarily required to spell out explicitly its rationale for such information, provided that an obvious logical link exists between it and the bargaining unit, such

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<sup>7</sup> Beyond Biggs-Adams’ bare assertion, there is nothing in the record before me to indicate that any particular document sought in fact contains information subject to a claim of privilege and/or confidentiality; under the circumstances, I find it appropriate to permit Respondent at the compliance stage of this proceeding to make a such a particularized showing in this regard. See, e.g., *Jacksonville Area Assn.*, 316 NLRB 338, 340 fn. 14 (1995).

that the non-requesting party may be charged with notice of its relevance. For example, information regarding current retirees (considered extra-unit) will be deemed relevant when it would inform the requesting party’s bargaining position about future (unit) retirees. *FirstEnergy Generation LLC*, 362 NLRB 630, 634 (2015) (citing *National Extrusion & Mfg. Co.*, 357 NLRB 127, 155 (2011); *Allison Co.*, 330 NLRB 1363, 1367 fn. 23 (2000); *Ohio Power Co.*, 216 NLRB 987, 990 fn. 9 (1975)).

Applying these standards here, I find that Charging Party was entitled to rely on Biggs-Adams’ representations regarding bargaining over the KOIN–TV units as reported in the online peoplesworld.org article in requesting extra-unit information. What is missing from the record, however, is a logical connection between Biggs-Adams’ statements about bargaining over the KOIN–TV units and the Union’s records regarding bargaining in units other than the KOIN–TV units. On its face, the written request makes no claim that such documents would assist Charging Party in assessing the accuracy of any particular proposal made by Local 51 or in developing any particular counterproposal. Nor is the request for extra-unit information obvious from the surrounding circumstances. By giving an interview about bargaining in the KOIN–TV units, Local 51 president Biggs-Adams simply cannot be said to have placed the status of bargaining at other stations owned by Charging Party’s parent company, Nexstar, at issue such that the Union was required to open its books with respect to bargaining at those locations. See *Caldwell Mfg. Co.* and *NLRB v. Truitt Mfg. Co.*, supra.

The General Counsel nonetheless argues that the extra-unit information “could be relevant” to Charging Party’s efforts to analyze and promote unspecified bargaining proposals. This rationale, however, merely amounts to a generalization that reviewing every single proposal made between the that parties, nationwide, might somehow inform Charging Party’s bargaining position at KOIN–TV. This is precisely the type of “fishing expedition” that is disfavored in the world of information requests. Virtually any document could theoretically be relevant to some aspect of bargaining; the General Counsel’s bare assertion of possible relevance is insufficient to trigger the duty to provide the requested extra-unit information. See *Island Creek Coal Co.*, 292 NLRB at 490 fn. 19 (more than a “generalized, conclusionary explanation” is required to trigger the obligation to supply non-presumptively relevant information); see also *E.I. du Pont & Co. v. NLRB* and *Southern Nevada Builders Assn.*, supra.

Finally, it is argued that Charging Party was entitled to extra-unit bargaining documents because, based on Biggs-Adams’ reported statements, Local 51 “clearly relied upon and surveyed other proposals between Respondent and Charging Party” in formulating its own bargaining strategy and that Charging Party was entitled to “understand just how [Local 51] had used the information in the bargaining process.” I disagree. There is simply no evidence that the Union at any time undertook a survey of extra-unit proposals, made any proposal based on extra-unit information or otherwise “used” it in bargaining for the KOIN–TV unit. Indeed, it is unclear whether Biggs-Adams was even the source of the article’s various anecdotal references to bargaining in units at four stations other than KOIN–TV.

Thus, because the record reveals no logical connection—expressly stated or otherwise obvious—between the extra-unit documents sought and Charging Party’s need to assess the impact of Biggs-Adams’ alleged “material misrepresentations” regarding bargaining for the KOIN-TV unit employees, I find that the relevance of these requests has not been shown.

## CONCLUSIONS OF LAW

5 1. Charging Party Nexstar Broadcasting, Inc. d/b/a KOIN–TV (Charging Party) is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

10 2. Respondent National Association of Broadcast Employees & Technicians, The Broadcasting and Cable Television Workers Sector of the Communications Workers of America, Local 51, AFL–CIO (Respondent) is a labor organization within the meaning of Section 2(5) of the Act with 9(a) status under the Act.

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

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.

20 4. 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 performance unit):

25 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.

30 5. At all material times, Charging Party has recognized Respondent as the designated exclusive collective-bargaining representative of the maintenance/production and performance unit employees (the unit employees).

35 6. Respondent has violated Section 8(b)(3) of the Act by failing and refusing to supply the following information to Charging Party:

(a) Any and all documents of any kind including but not limited to letters, emails, text messages referring or relating to wage proposals made by KOIN–TV to NABET from January 1, 2017 to present.

40 (b) Any and all documents of any kind including but not limited to letters, emails, text messages referring or relating to severance pay proposals made by KOIN–TV to NABET Local 51 from January 1, 2017 to present.

45 (c) Any and all documents of any kind including but not limited to letters, emails, text messages referring or relating to discrimination harassment proposals made by KOIN–TV to NABET from January 1, 2017 to present.

(d) Any and all documents of any kind including but not limited to letters, emails, text messages referring or relating to wage proposals made by NABET to KOIN–TV from January 1, 2017 to present.

5 (e) Any and all documents of any kind including but not limited to letters, emails, text messages referring or relating to severance pay proposals made by NABET Local 51 to KOIN–TV from January 1, 2017 to present.

10 (f) Any and all documents of any kind including but not limited to letters, emails, text messages referring or relating to discrimination harassment proposals made by NABET to KOIN–TV from January 1, 2017 to present.

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

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REMEDY

20 Having found that Respondent has engaged in certain unfair labor practices in violation of Section 8(b)(3) of the Act, 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.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>8</sup>

25

ORDER

30 Respondent National Association of Broadcast Employees & Technicians, The Broadcasting and Cable Television Workers Sector of the Communications Workers of America, Local 51, AFL–CIO, Portland, Oregon, its officers, agents, and representatives, shall

1. Cease and desist from

35 (a) Refusing to bargain collectively with Nexstar Broadcasting, Inc. d/b/a KOIN–TV (KOIN–TV) by failing to provide it with requested information that is relevant and necessary to its performance of its duties as the exclusive collective-bargaining representative of its employees in the following appropriate units:

40 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; and

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<sup>8</sup> 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.

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.

(b) In any like or related manner, 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 KOIN-TV in a timely manner, the following information, requested by KOIN-TV on December 14, 2018:

- i. Any and all documents of any kind including but not limited to letters, emails, text messages referring or relating to wage proposals made by KOIN-TV to NABET from January 1, 2017 to present.
- ii. Any and all documents of any kind including but not limited to letters, emails, text messages referring or relating to severance pay proposals made by KOIN-TV to NABET Local 51 from January 1, 2017 to present.
- iii. Any and all documents of any kind including but not limited to letters, emails, text messages referring or relating to discrimination harassment proposals made by KOIN-TV to NABET from January 1, 2017 to present.
- iv. Any and all documents of any kind including but not limited to letters, emails, text messages referring or relating to wage proposals made by NABET to KOIN-TV from January 1, 2017 to present.
- v. Any and all documents of any kind including but not limited to letters, emails, text messages referring or relating to severance pay proposals made by NABET Local 51 to KOIN-TV from January 1, 2017 to present.
- vi. Any and all documents of any kind including but not limited to letters, emails, text messages referring or relating to discrimination harassment proposals made by NABET to KOIN-TV from January 1, 2017 to present.

It is understood that the Respondent retains the right to contest the production of information requests based on privilege and/or confidentiality.

(b) Within 14 days after service by the Region, post at Respondent’s office in Portland, Oregon copies of the attached notice marked “Appendix.”<sup>9</sup> 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 members are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such

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<sup>9</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in each of the notices referenced herein 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.”

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.

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(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 Respondent has taken to comply.

10 It is further ordered that the complaint allegations are dismissed insofar as they allege violations of the Act not specifically found.

Dated: Washington, D.C. March 10, 2020

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Mara-Louise Anzalone  
Administrative Law Judge

**APPENDIX**

**NOTICE TO MEMBERS AND 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 the National Labor Relations Act and has ordered us to post and abide by 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 benefits and protection
- Choose not to engage in any of these protected activities

**WE WILL NOT** do anything that restrains or coerces you in the exercise of these rights. Specifically:

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

**WE WILL** provide the Employer with the information they requested in December 2018 about bargaining proposals we exchanged with it.

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

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

\_\_\_\_\_  
(Labor Organization)

Dated \_\_\_\_\_

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

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies 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. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov).

915 2nd Avenue, Federal Building, Room 2948  
Seattle, Washington 98174-1078  
Hours: 8:15 a.m. to 4:45 p.m.  
206-220-6300

The Administrative Law Judge's decision can be found at [www.nlr.gov/case/19-CB-234944](http://www.nlr.gov/case/19-CB-234944) 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.



**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, 206-220-6284.