

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRD REGION**

STEPHENS MEDIA GROUP – WATERTOWN, LLC

**Cases 03-CA-226225
03-CA-227946**

and

STEPHENS MEDIA GROUP – MASSENA, LLC

Case 03-CA-227924

and

**NATIONAL ASSOCIATION OF BROADCAST
EMPLOYEES AND TECHNICIANS –
COMMUNICATIONS WORKERS OF AMERICA,
AFL-CIO**

**RESPONDENTS STEPHENS MEDIA GROUP- MASSENA, LLC AND STEPHENS
MEDIA GROUP- WATERTOWN, LLC’S EXCEPTIONS TO THE ADMINISTRATIVE
LAW JUDGE’S DECISION**

Counsel for Stephens Media Group – Watertown, LLC (“SMG Watertown”) and Stephens Media Group – Massena, LLC (“SMG Massena”, and collectively, “SMG”), pursuant to Section 102.46(a) of the Board’s Rules and Regulations, files the following exceptions to the January 24, 2020 decision of Administrative Law Judge, Charles J. Muhl (“ALJ”):

I. EXCEPTIONS RELATING TO SMG VIOLATING THE NLRA BASED UPON THEIR BARGAINING, DECLARATION OF IMPASSE, AND ACTIONS THEREAFTER

1. The ALJ’s finding that the parties did not reach impasse in August 2018. [D. 3:5, 7:13-11:22, 12:4-13:37, 16:32-20:7, 21:8-24:31, 25:27-28, 33:31-32, 34:19-21, 35:1-2, fn. 14, 31, 48, 50-54, 57-58, 65, 85].

2. The ALJ's finding that negotiations for a successor contract began in August 2018. [D. 2:5-7, 4:32-7:9].

3. The ALJ's findings regarding King's testimony on direct and cross-examination about "whether he told the union's bargaining team that layoffs would occur from the implementation of voice tracking" and that "King was aware of the company's intention, but did not communicate it to the Union at the start of negotiations." [D. fn. 14].

4. The ALJ's finding that "[t]he Union continued to reject King's proposal to allow SMG Watertown to implement layoffs for a valid business reason in good faith and to reduce dues collection by excluding non-unit worktime." [D. 10:35-37].

5. The ALJ's limited factual findings relating to King's September 20, 2018 letter to Gabalski relating to the valid and lawful impasse. [D. 16:34-17:1].

6. The ALJ's misapplication of *First Nat'l Maint. Corp. v. NLRB*, 452 U.S. 666 (1981), *H & H Pretzel Co.*, 227 NLRB 1327 (1985), and *KGTV*, 355 NLRB 1238 (2010), and finding that that SMG's decision to modernize from live to voice-tracked programming was not a change in the scope and direction of business. Further, the ALJ erred in finding SMG was not privileged from unilaterally laying off employees, reducing hours, transferring bargaining work to non-unit employees. [D. 23:37-24:18, 25:7-29:6, fn. 52-54, 57-58].

7. The ALJ's failure to find that SMG Watertown's actions immediately following declaration of impasse were not mandatory subjects of bargaining. [D. 25:7-29:6].

8. The ALJ's finding that the parties' original plan was to conduct bargaining for Watertown on August 15, 2018 and Massena on August 16, 2018. [D. 7:8-9; 10:14].

9. The ALJ's finding that the parties did not discuss layoffs on August 16, 2018 and failure to recognize the Union only wanted to discuss peripheral issues outside the layoff provision. [D. 10:31-38].

10. The ALJ's failure to recognize that Gabalski's "big-picture proposal" only needed Waltz's approval, that half of a day of bargaining was wasted based upon the Union's insistence to wait for Waltz, and the Union's bad faith statements to SMG that they had to wait for Waltz. [D. 11:8-11:19].

11. The ALJ's finding that SMG "adopting voice tracking in Watertown and Massena would mean some degree of less unit work for on-air employees." [D. 7:25-27].

12. The ALJ's failure to find bad faith bargaining, no interest in making progress, and delays by the Union in the August 2018 bargaining sessions and immediately thereafter, and that the Union's "big picture" proposal did not demonstrate an intent by the Union to never reach an agreement on the voice track/layoffs other than seniority. [D. 7:13-11:22, 12:4-13:37, 16:32-20:7, 21:8-24:31, fn. 50].

13. The ALJ's finding that the Union's August 20, 2018 counterproposal opened the door to SMG implementing its "voice track programs, but only on a temporary, as-needed basis without any reduction in bargaining-unit size." [D. 2:13-16, 24:13-14, 24:23-28].

14. The ALJ's finding that Dianne Chase's statements to SMG during August 2018 negotiations was not indicative of the Union's bad faith bargaining and a valid and lawful impasse. [D. 23:25-35].

15. The ALJ's failure to recognize the Union did not respond to SMG's attempt to continue to negotiate on layoffs after the August 2018 bargaining, indicating actual impasse. [D. 12:4-13:37, 16:32-17:9].

16. The ALJ's finding that "King did not respond regarding Massena bargaining." [D. 17:8-9].

17. The ALJ's determination that "the expired contract" required SMG to fill positions with part-time employees. [D. fn. 31].

18. After crediting the testimony of King and Woolf and discrediting the Union and General Counsel's positions, the ALJ's finding that the parties had not reached a tentative agreement on October 22, 2018. [D. 18:3-5, fn. 42].

19. The ALJ's exclusion of King's bargaining notes from the October 22, 2018 session as a sanction. [D. fn. 42].

20. The ALJ's failure to acknowledge King's response correspondence to Gabalski offering additional bargaining dates, and failure to find that King and Gabalski's communications after May 1, 2019 did not demonstrate bad faith by the Union for the Union failing to agree to meet to negotiate successor agreements with SMG. [D. 19:42-20:7].

21. The ALJ's misapplication of *Taft Broadcasting Co.*, 163 NLRB 475 (1967), (with the exception of D. 24:20-24:23), *CalMat Co.*, 331 NLRB 1084 (2000), and *Atlantic Queens Bus Corp.*, 362 NLRB No. 65 (2015), to find no impasse existed between the parties in August 2018 (D. 21:8-24:31, D. fn. 48, 51), including but not limited to:

a. The finding that the "representatives' lack of negotiation experience, including with each other, and the substantial contract modifications sought by SMG Watertown weighed against finding impasse" (D. 21:39-22:1);

b. Reliance upon *Ead Motors Eastern Air Devices, Inc.*, 346 NLRB 1060 (2006) to find the scope and breadth of SMG Watertown's proposed changes

“render[ed] it dubious, at best, that the parties could reach impasse in such a limited timeframe” (D. 22:7-10);

c. The finding that the bargaining from August 15 to 17, 2018 was unremarkable (D. 22:21-22);

d. The finding that the parties bargained over “critical contract provisions, including on layoffs” in August 2018 (D. 22:4-7);

e. The finding that the Union “demonstrated flexibility and willingness to compromise in an effort to reach agreement” supporting a finding of no impasse (D. 22:25-27); and,

f. The finding that the Union’s bargaining in August 2018 was in good faith and with interest in making progress toward a new agreement, including ignoring the statements of Dianne Chase relating to the Union never agreeing to SMG’s proposals on layoffs or moving toward merit-based seniority. [D. 22:29-30].

22. The ALJ’s misapplication of *Torrington Ind.*, 307 NLRB 809 (1992) and *Fibreboard Paper Products Corp v. NLRB*, 379 U.S. 203 (1964) and finding that SMG Watertown’s use of an independent contractor was a mandatory subject of bargaining, and failing to find SMG’s implementation of voice tracking required a substantial commitment of capital or change in scope of SMG’s business. [D. 27:5-29:6, fn. 53-54].

23. The ALJ’s finding that “SMG Watertown was motivated to implement voice tracking, in part, because it would lower labor costs.” [D. 28:3-24, fn. 54].

24. The ALJ’s finding that the use of “best talent” would be a mandatory subject of bargaining, and that the use of talent in Tulsa, Oklahoma would have “nothing to do with talent.” [D. fn. 54].

25. The ALJ's orders relating to SMG Watertown requirement to continue bargaining with the Union before implementing changes to employees' wages, hours, or other terms and conditions of employment. [D. 50:32-51:6].

26. The ALJ's finding that SMG unilaterally changed unit employees' terms and conditions of employment and working conditions. [D. 2:18-20, 3:5-6, 14:3-15:30, 25:4-29:6, 33:29-31, 34:19-21, 35:1-2, fn. 35, 52-54, 57-58, 85].

27. The ALJ's finding that "[a]lmost immediately after Stoffel was laid off, Stephens and Curry offered and Stoffel accepted a newly created, supervisory position of 'production and social media director.'" [D. 15:16-18].

28. The ALJ's finding that Brian Best's work hours decreased and failure to acknowledge Best's increase in wages. [D. 15:29-30]

29. The ALJ's finding that Gaskin was not rehired when she had been offered other hours. [D. fn. 35].

30. The ALJ's finding that subcontracting of voice tracking was a mandatory subject of bargaining. [D. 27:5-29:6]

31. The ALJ's finding that Stoffel's new position as production and social media director was a mandatory subject of bargaining and involved the transfer of bargaining unit work. [D. 30:38-31:3].

32. The ALJ's failure to find that the Union waived its statutory right to bargain over layoffs. [D. 21:8-24:31].

33. The ALJ's conclusions of law that SMG Watertown violated the NLRA by making unilateral changes to unit employees' terms and conditions of employment when not at a valid impasse. [D. 48:6-17].

34. The ALJ's orders relating to SMG Watertown violating the NLRA by making unilateral changes to unit employees' terms and conditions of employment and working conditions when not at a valid impasse. [D. 50:20-22, 50:27-28, 51:8-30].

35. The ALJ's proposed remedies based upon the finding that SMG Watertown violated the NLRA by prematurely declaring impasse and unilaterally changing the working conditions and terms and conditions of employment for unit employees, including (i) proposing a make-whole remedy, and (ii) a failure to limit the remedy to the *Transmarine* remedies. [D. 49:23-50:5, fn. 85].

36. The ALJ's finding that SMG Massena failed to meet at reasonable times to negotiate a successor contract, and that the parties did not agree to merge the SMG Watertown and Massena agreement negotiations. [D. 3:7-8, 5:8-23, 6:32-34, 10:12-14, 17:8-9, 17:11-18, 34:31-32, 35:9-36:28, fn. 65].

37. The ALJ's finding that "[t]he Union never received counterproposals from King to its initial contract proposals for SMG Massena, save for the proposed wage increases which would apply at both Watertown and Massena." [D. 20:5-7]

38. The ALJ's finding that "[t]he parties never held a session to bargain a successor contract for SMG Massena." [D. 35:34].

39. The ALJ's finding that the parties had not agreed to use the SMG Watertown agreement as a baseline for SMG Massena. [D. 35:34-36:28].

40. The ALJ's finding that the parties' conduct and inclusion of Romigh and Laverghetta at the August 2018 and October 2018 bargaining sessions did not demonstrate the parties were bargaining both collective-bargaining agreements, including the SMG Massena CBA. [D. 10:12-14, 17:11-18].

41. The ALJ finding King did not respond to Gabalski about bargaining with SMG Massena, and that the Union's representations and actions during the August 2018 and October 2018 face-to-face bargaining sessions, such as acknowledging it was bargaining with SMG Massena, demonstrated the Union was bargaining with SMG Massena. [D. 36:7-18].

42. The ALJ's conclusions of law that SMG Massena violated the NLRA by not meeting at reasonable times with the Union to negotiate a successor agreement. [D. 48:23-25].

43. The ALJ's orders relating to SMG Massena not meeting at reasonable times to bargain with the Union. [D. 52:21-36].

44. The ALJ's proposed remedies to the extent the remedies fail to provide SMG the opportunity to introduce evidence at the compliance stage showing the recommended remedies are unduly burdensome and/or that the laid off unit employees failed to mitigate damages. [D. 49:3-50:8].

II. EXCEPTIONS RELATING TO SMG WATERTOWN DIRECTLY DEALING WITH AND INTERROGATING EMPLOYEES.

45. The ALJ's finding that SMG directly dealt with unit members. [D. 3:6-7, 30:3-31:3, 33:31-32].

46. The ALJ's finding that "SMG Watertown's creation of the new production and social media director position was a mandatory subject of bargaining, because it involved a transfer of bargaining unit work." [D. 30:38-40].

47. The ALJ's finding that Stoffel's bargaining unit work was transferred to a supervisory position, and the finding that SMG was not free to unilaterally move Stoffel's bargaining unit work to the supervisory position. [D. 30:38-31:3]

48. The ALJ's conclusions of law that SMG Watertown violated the NLRA by directly dealing with Stoffel. [D. 48:19-21].

49. The ALJ's orders relating to SMG Watertown directly dealing with unit employees or restraining/coercing employees under the NLRA. [D. 50:24-28].

50. The ALJ's finding that SMG Watertown violated the NLRA by interrogating unit employees about union activities. [D. 11:26-33, 36:33-38:2, fn. 62].

51. The ALJ relying solely upon the testimony of Lavergetta and not Curry in making his findings of fact and conclusions of law. [D. 11:26-33, 36:33-38:2, fn. 24].

52. The ALJ's finding that Laverghetta's testimony was more credible than Curry's relating to the August 16-17, 2018 conversation, and that Curry's account of the incidents were "inconsistent and implausible." [D. fn. 24].

53. The ALJ's misapplication of *Rossmore House*, 269 NLRB 1176 to find that Curry approached and interrogated Laverghetta concerning union activities. [D. 36:33-38:2].

54. The ALJ's findings that Curry (i) advised Laverghetta the "negotiations were not going well" and that the negotiations "were heated," (ii) asked Laverghetta whether he would cross the picket line, and (iii) told Stephens Laverghetta would cross the picket line. [D. 11:26-33, 37:11-15, fn. 62].

55. The ALJ failing to find the conduct of Curry, if an interrogation, was not de minimus. [D. 11:26-33, 36:33-38:2].

56. The ALJ's conclusions of law that SMG Watertown violated the NLRA by interrogating unit employees about union activities. [D. 47:39-48:1].

57. The ALJ's orders relating to SMG Watertown interrogating employees about union activities. [D. 50:17-18].

III. EXCEPTIONS RELATING TO SMG MASSENA'S DISCHARGE OF ROMIGH.

58. The ALJ's finding that SMG Massena violated the NLRA when discharging Romigh. [D. 3:11-29, 38:7-47:14, fn. 83].

59. The ALJ's finding that SMG Massena never disciplined Romigh for his job-related issues (D. 3:15-16, 39:20, fn. 66) and that SMG Massena was aware of and harbored animus towards Romigh's protected union activity (D. 3:25-29, 46:4-20).

60. The ALJ's findings that SMG Massena discharged Romigh due to union and protected concerted activities. [D. 38:3-47:14, fn. 83].

61. The ALJ's finding that Tracey "submitted a complaint" to Chase. [D. 40:3-4].

62. The ALJ's misapplication of *Wright Line*, 251 NLRB 1083 (1980) and finding the General Counsel established the *Wright Line* elements. [D. 44:5-47:14]

63. The ALJ's finding that "is not clear why Romigh stated Curry was accused of sexual harassment, as opposed to verbal abuse as testified to by Chase" and "[i]t also is not clear why Romigh said 'a couple' of disc jockeys were involved." [D. fn. 71].

64. The ALJ's finding that Romigh's disclosure to other Massena bargaining-unit employees about Curry's harassment allegation and anger management training was directly related to union members' employment concerns, that Romigh did so solely in his role as union official because he "believed it was his responsibility to do so as steward," and that Romigh's conduct was protected union activity. [D. 45:9-20, fn. 83].

65. The ALJ's finding that "Curry perceived that Romigh engaged in union activity." [D. 45:22-46:2, fn. 83].

66. The ALJ's finding that Romigh engaged in and was perceived to have engaged in protected conduct. [D. 46:1-2].

67. The ALJ's finding that Curry "heighten[ed] his scrutiny" of Romigh after the spreading of rumors. [D. 47:6-47:8].

68. The ALJ's failure to find that Romigh lost his NLRA protections by spreading false rumors about Curry. [D. 38:7-47:14, fn. 71, 83].

69. The ALJ's finding that "SMG Massena had an obligation to show more than that it had legitimate reasons for discharging Romigh. It had to demonstrate that it previously discharged employees under similar circumstances or never before encountered a situation like Romigh's. SMG Massena presented no evidence to establish either thing." [D. 47:9-12].

70. The ALJ's conclusion of law that SMG Massena violated the NLRA when discharging Romigh. [D. 48:3-4].

71. The ALJ's proposed remedies for Romigh based upon the finding that SMG Massena violated the NLRA by discharging Romigh. [D. 49:5-21].

72. The ALJ's orders for SMG Massena relating to the discharge of Romigh. [D. 52:19, 52:24-25, 52:38-53:21].

73. SMG generally excepts to the ALJ's Conclusions of Law, with the exception of D. 47:16-37, fn. 84, and 48:30-48:31. [D. 47:39-48:28].

74. SMG generally excepts to the ALJ's Remedy, with the exception of fn. 86. [D. 49:3-50:8, fn. 85].

75. SMG generally excepts to the ALJ's Order. [D. 50:12-54:3].

76. To the extent SMG's Brief in Support of its Exceptions reference any of the ALJ's findings, conclusions, or remedies not excepted above, SMG excepts to those findings, conclusions, or remedies.

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STATEMENT OF SERVICE

The undersigned certifies that on the 20th day of March, 2020, the foregoing was e-filed with the National Labor Relations Board and a true and correct copy was emailed to the following:

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