

**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’ REPLY BRIEF TO
THE GENERAL COUNSEL’S ANSWERING BRIEF**

Pursuant to Section 102.46(e) of the Rules and Regulations of the National Labor Relations Board, Respondents Stephens Media Group – Watertown, LLC (“SMG Watertown”) and Stephens Media Group – Massena, LLC (“SMG Massena”, and collectively, “SMG”) file this Reply Brief to the General Counsel’s Answering Brief to Respondents’ Exceptions to the Decision of the Administrative Law Judge (“Answering Brief”).

I. SMG TIMELY AND SUFFICIENTLY RAISED THE ISSUE OF WAIVER, AND EXCEPTION NO. 32 REGARDING WAIVER IS FULLY SUPPORTED IN THE RECORD.

The General Counsel’s argument that SMG failed to timely raise the issue of waiver by the Union in Exception No. 32 is without merit. [Answering Brief, at pp. 16-17]. As shown below, SMG timely raised waiver during the ALJ hearing and in the Post-Hearing Brief of Respondents Stephens Media Group-Watertown, LLC and Stephens Media Group- Massena, LLC (“Post-Hearing Brief”), and the arguments in support of Exception No. 32 are fully

supported in the record.

SMG clearly indicated during the ALJ hearing and in its Post-Hearing Brief that the Union waived its right to bargain on layoffs by (i) being informed on numerous occasions in August 2018 that SMG desired to bargain over Article 5 in the successive collective bargaining agreement (the layoff provisions), (ii) the Union ignoring and/or refusing SMG's requests to bargain about Article 5 on August 15, 16, and 17, 2018, and (iii) on August 20, 2018, the Union continuing to ignore and/or reject SMG's request to bargain on layoffs by cloaking its waiver as a bad faith and regressive bargaining proposal. [Post-Hearing Brief, at pp. 6-9; Tr. 349:20-355:18, 705:13-21]; see also *Taft Coal Sales & Assocs.*, 360 NLRB 96, 100 (2014) ("A waiver can be gleaned from... conduct (i.e.,... action or inaction)"). SMG's argument in support of waiver was raised during the ALJ hearing and in the Post-Hearing Brief, for instance, through the testimony of Michael J. King, attorney and negotiator for SMG.

King testified at the ALJ hearing in regards to the parties' first day of face-to-face bargaining on August 15, 2018:

A. [W]e quit with the understanding that we were going to get a proposal first thing in the morning, as it reflected, section 5 of the collective bargaining agreement.

Q. Okay. And what does section 5 relate to?

A. That's the provision that talks about layoffs.

[Tr. 331:10-15; R-1, p. 197-200]; see also Post-Hearing Brief, at pp. 6-7 ("Other than reject SMG's proposed changes to Article V, however, Gabalski's¹ [August 15, 2018] email did not include a counterproposal for the layoff clause").

King testified as follows about the second day of face-to-face bargaining:

A. [T]he way I would describe the day is that we would -- we would grab one

¹ Ronald Gabalski was the Union's primary negotiator.

or two of these issues. We would talk about them. We would make progress. Then the Company would try to steer the discussion back to section 5, and, well, we're going to have something for you on that here shortly. Let's talk about this. And so then we would go there with them, and we would talk about another issue. And we would make some progress. And then the Company would try to steer the -- the discussion back to section 5, and the response would be, we're working on it. We're going to get you something. So that's kind of how the day went.

...

Q. Okay. Now, on the evening of the 16th, do you and Mr. Gabalski have a discussion about the Union getting you something else on the morning -- on Thursday?

A. Well, that discussion began late morning on ... the 16th. It was continued into the afternoon. All right? So we were constantly asking for a proposal on section 5, big sticking point, and constantly being told something's coming.

...

Q. ... what was the Union's proposal on the Article 5, dealing with layoffs?

A. There wasn't one.

Q. Excuse me?

A. There wasn't one.

Q. Okay. And yet, had you continued to talk about that as a group -- about Article 5?

A. Well, I mean, as I said, I -- my view of it was that, from the Company's standpoint, I continued to try to steer the discussion back to it. And the responses that we got consistently were, we're working on something. And so, you know, there was a promise first that we were going to have it the morning of the second day, then the afternoon of the second day, and then that continued on.

[Tr. 339:17-340:3; 342:10-16; 344:17-345:5]; *see also* SMG's Post-Hearing Brief, at p. 7 ("King also continued to request repeatedly that the Union make a counterproposal on Article V... Despite its promise to do so the Union offered no counter proposal to Article V on the 16th").

On the third and final day of the parties' face-to-face bargaining, August 17, 2018,

despite SMG's repeated demands to bargain on the layoff provisions, Gabalski advised King that the Union would issue a "comprehensive proposal ... with regard to Article 5." [Tr. 350:4-22]. The Union submitted no proposal relating to Article 5 on August 17, 2018. [Tr. 350:23-25]. Then, after Alan Walts appeared late to the August 17, 2018 bargaining session, the Union returned at 1:00 P.M. and advised SMG without explanation that it would not present their so-called proposal to SMG that day. [Tr. 354:9-17; Post-Hearing Brief, at pp. 7-8]. In response, King said to Gabalski:

[W]e've been here for three days and we have gotten no proposal on Article 5, other than their continued assurances that they understand -- understood the needs of the Company. That they understood that this could be beneficial to both sides. And they were going to get us something that in their words we were happy with.

...

I've to go back and report to my client that, you know, we've made some progress on the peripheral but we've spent three days and basically never got through the issue.

[Tr. 355:1-18]; *see also* SMG's Post-Hearing Brief, at p. 8. Gabalski again assured King a comprehensive package proposal would thereafter be submitted on August 20, 2018, which would address Article 5. [Tr. 355:7-24; D. 11:21].

Rather than address SMG's stated needs, the Union in bad faith submitted a regressive bargaining proposal on August 20, 2018, as it relates to Article 5, likely in an attempt to preemptively avoid an argument of waiver by SMG. [Brief, at pp. 25-26; R-1, p. 239-42; Tr. 355:22-357:20]. The ALJ noted the Union's August 20 package proposal was "not the 'huge concessions' Gabalski believed them to be," and that the ALJ understood King's frustration with the substance of the proposal. [D. 23:9-14]; *see also* Post-Hearing Brief, at pp. 8-9 (after refusing to move off the regressive proposal submitted August 20, "[t]he Union made no new proposals regarding Article V and gave no indication that further discussions would be anything other than futile").

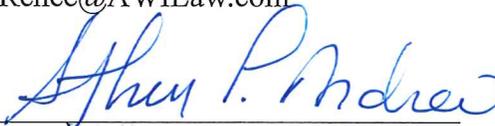
The General Counsel further argues that proper notice had not been given to the Union as “King did not tell the Union that Respondent SMG Watertown wanted to lay off full-time employees” and that SMG did not advise the Union it would lay off or eliminate shifts of employees. [Answering Brief, at p. 17]. King testified to the contrary and explained initial layoffs or changes in job responsibilities may occur as a result of the modernization of SMG. [Tr. 465:4-9; Brief, at 25; D. 22:38-23:3].

As shown above and as well-documented at the ALJ hearing through witness testimony and in SMG’s Post-Hearing Brief, SMG timely and appropriately raised Exception No. 32. Further, the SMG’s Exception No. 32 is fully supported in the record.

Respectfully submitted,

ANDREW & WILLIAMS, P.C.
2120 E. 15th Street
Tulsa, Oklahoma 74104
(918) 583-1111 (Phone)
(918) 587-4414 (Fax)
Steve@AWILaw.com
Renee@AWILaw.com

By:



Stephen L. Andrew
Renee Williams
ATTORNEYS FOR THE RESPONDENTS

STATEMENT OF SERVICE

The undersigned certifies that on the 15th day of May, 2020, the foregoing was e-filed with the National Labor Relations Board and a true and correct copy was emailed to the following:

Attorney for the Charging Party:

Judiann Chartier
NABET-CWA
501 Third Street, NW, 6th Floor
Washington, DC 20001
jchartier@cwa-union.org

Attorney for the General Counsel:

Alicia Pender
National Labor Relations Board
Leo O'Brien Federal Building
11A Clinton Avenue, Room 342
Albany, NY 12207
Alicia.Pender@nlrb.gov

By:


Stephen L. Andrew