

**UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
REGION 19**

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

and

Case 19-CA-240187

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

BRIEF OF RESPONDENT

Nexstar Broadcasting, Inc. d/b/a KOIN-TV (“KOIN” or “Respondent”), pursuant to § 102.42 of the Rules and Regulations of the National Labor Relations Board (“Board”) hereby submits its BRIEF to the Administrative Law Judge responding to the Complaint filed in this matter upon the Charge filed by the National Association of Broadcast Employees & Technicians, the Broadcasting and Cable Television Workers Sector of the Communications Workers of America, Local 51, AFL-CIO (the “Charging Party,” “Union,” or “NABET”). The parties have agreed that the record in this case consists of the Charge in Case 19-CA-240187, the Complaint, the Answer to the Complaint, and a Stipulation of Facts, and the Exhibits attached thereto, a Statement of Issues Presented, and acknowledged each party’s Statement of Position. The Parties have agreed, and the Administrative Law Judge has approved of their agreement be submitted directly to the Administrative Law Judge for issuance of Findings of Fact, Conclusions of Law, and a

Recommended Order, waiving a hearing before the Administrative Law Judge.

Respondent submits that it did not violate the National Labor Relations Act, as amended, in any way, in connection with the events cited in the Complaint herein. Respondent believes the facts and law establish that it sufficiently responded to a largely irrelevant information request that the Union made on it made on it during the course of collective bargaining negotiations and that this Complaint should be dismissed in its entirety.

I. STIPULATION OF FACTS

As noted in the preface, the parties agreed to a Stipulation of Facts and they also agreed that this Stipulation was made without prejudice as to any objection that any party may have as to the relevance of any facts stated herein. That Stipulation of Facts is set forth below:

1. The Charge in Case 19-CA-240187, which is attached as **Exhibit A**, was filed by the Union on April 24, 2019, and was served on Respondent by U.S. mail on April 24, 2019.
2. On November 25, 2019, the Regional Director of Region 19 of the Board (“Regional Director”) issued a Complaint and Notice of Hearing in Case 19- CA-240187 (“Complaint”), which is attached as **Exhibit B**.
3. On December 7, 2019, Respondent filed a timely Answer to the Complaint, which is attached as **Exhibit C**, denying that it had violated the Act as alleged.
4. At all material times, Respondent 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 or about January 17, 2017, Respondent 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, Respondent 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 December 31, 2018, a representative period, Respondent derived gross revenues in excess of \$100,000.

In conducting its operations during the 12-month period ending December 31, 2018, a representative period, Respondent purchased and received at the facility goods valued in excess of \$50,000 directly from points outside the State of Oregon.

8. At all material times, Respondent has been an employer engaged in commerce within the meaning of §§ 2(2), (6), and (7) of the Act.
9. At all material times, the Union has been a labor organization within the meaning of § 2(5) of the Act.
10. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of § 2(11) of the Act and/or agents of Respondent within the meaning of § 2(13) of the Act, acting on Respondent’s behalf:

Patrick Nevin - Vice President and General Manager
Casey Wenger - Business Administrator

11. The following employees of Respondent (the “Units”), of which there are approximately 45, 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.

12. At all material times until January 17, 2017, the Union had been the exclusive collective-bargaining representative of the Units employed by Media General KOIN-TV and, during that time, recognized as such representative 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 having expired on September 8, 2017 (“expired CBA”). A complete copy of the expired CBA is attached as **Exhibit D**.
13. Since about January 17, 2017, based on the facts described above in paragraphs 4, 5, 6, 12, and 13, and based on § 9(a) of the Act, the Union has been the designated exclusive collective-bargaining representative of the Units.
14. At all material times, Respondent and the Union were engaged in or were preparing to

engage in bargaining for a successor agreement to the expired CBA.

15. Respondent and the Union began bargaining for a successor agreement on June 21, 2017. At this session, Respondent proposed to delete the dues checkoff clause.
16. Respondent and the Union met for a bargaining session on about December 14, 2018. At that session:
 - (a) Respondent proposed that the Union pay an offset of \$10 per member per month to cover Respondent's payroll processing of dues checkoff costs; and
 - (b) Respondent, by Vice President and General Manager Patrick Nevin ("Nevin"), stated that Respondent had a practice of charging other unions amounts to cover dues checkoff costs in collective bargaining agreements with other unions.
17. Although the Union did not provide a counterproposal to the dues checkoff processing costs between December 14, 2018, and April 23, 2019, it did request information from Respondent related to its proposal.
18. On about December 18, 2018, by the letter attached as **Exhibit E** from Union President Carrie Biggs-Adams transmitted via email, the Union requested information from Respondent related to its proposal for dues checkoff processing costs.
19. On about January 3, 2019, by the letter attached as **Exhibit F** from Nevin transmitted via email, Respondent responded in writing to the Union's request referenced above in Paragraphs 18 and 19. In the letter, Respondent set forth an estimated number of hours per pay period it spends on dues checkoff processing but did not otherwise provide any other information responsive to the Union's request attached as Exhibit E.
20. At the collective bargaining negotiations held between the parties on January 24, 2019, in

Portland, OR, Respondent's negotiators told Ms. Biggs-Adams that several other NABET represented bargaining units had agreed to a \$50 per month fee to process dues deduction.

21. As set forth in Exhibit F, Respondent refused to provide any additional information, including that related to other collective bargaining agreements, contending that the information would be proprietary and confidential. Respondent did not offer any accommodation.
22. On about April 23, 2019, during bargaining, Respondent provided a revised proposal to its December 14, 2018 proposal addressing dues checkoff processing costs. The revised proposal is attached as **Exhibit G**. At the time this proposal was presented, Respondent repeated that NABET had agree to a similar processing fee in other locations and noted that it had verified that the amount charged in these other locations was \$50 per month. Respondent's negotiator, Casey Wenger, spoke to the time it takes for him to process payroll, including dues checkoff, due to the varying hours, pay, other cash compensation, and the fact that dues vary from month to month given the fact that dues were based on a percentage of gross compensation.
23. At bargaining sessions held on June 27, 2019, and October 7, 2019, the Union reiterated its request for the information related to dues processing. Mr. Wenger again asserted that the amount of time spent on this work was approximately five (5) hours per pay period and again indicated that NABET had agreed to such a fee in at least two other locations. The collective bargaining agreements from these two locations were never provided to the Union. The Union, through Ms. Biggs Adams, told Respondent that, after research, she had only found one location in which another branch of the Union had agreed to a dues checkoff processing fee, and explained why that situation was distinguishable from that of Respondent and the Union, including the fact that the fee was contingent on the bank

being unable to process dues checkoff via automatic debit.

24. Other than the communications described herein and attached as Exhibits E, F and G, there have been no further written or oral communications between Respondent and the Union about the Union's December 18, 2018, written information request in response to Respondent's December 14, 2018, proposal in relation to dues checkoff processing costs.
25. On August 2, 2019, Respondent unilaterally discontinued dues checkoff.
26. The Union and Respondent have not yet reached a successor agreement to the expired CBA.

II. ISSUE PRESENTED

Whether the information requested by the Union on December 18, 2018, was relevant and necessary for the Union to discharge its duties as the collective bargaining representative of Respondent's employees in the Units and, if so, whether Respondent's failure and/or refusal to fully respond to that information request since on or about January 3, 2019, violates §§ 8(a)(1) and (5) of the Act.

III. ARGUMENT

A. Introduction

The issue involved in this Charge is straight-forward and simple. Respondent KOIN

and NABET, the charging party union were involved in bargaining for a successor agreement when they met for a bargaining session on about December 14, 2018. At that session. Respondent proposed that the Union pay an offset of \$10 per member per month to cover Respondent's payroll processing of dues checkoff costs; and Respondent, by Vice President and General Manager Patrick Nevin ("Nevin"), stated that Respondent had a practice of charging other unions amounts to cover dues checkoff costs in collective bargaining agreements with other unions. Although the Union did not provide a counterproposal to the dues checkoff processing costs between December 14, 2018, and April 23, 2019, it did request information from Respondent related to its proposal.

On about December 18, 2018, by the letter attached as **Exhibit E** from Union President Carrie Biggs-Adams transmitted via email, the Union requested information from Respondent related to its proposal for dues checkoff processing costs:

During bargaining you have contended that Nexstar has a practice of charging unions this amount in other union represented locations. For the purpose of our evaluation of your proposal of December 14, 2018, please provide the following information:

- 1) List of specific contracts, with broadcast call letters, Union name and Local number, and copy of the current provision (with effective dates of the contract) that contain provisions where the union reimburses Nexstar for "dues checkoff practice".
- 2) Actual cost to Nexstar for the "dues checkoff practice" at each of the aforementioned broadcast stations, spelling out the costs and stations.
- 3) Actual current cost to Nexstar for "dues checkoff" processing at KOIN-TV. Please itemize the costs.

Since our next bargaining dates are January 24th and 25th, please provide this information no later than January 2nd, 2019 so that we may understand the proposal and ask further questions should they arise once we study the information. **Exhibit E**

On January 3, 2019, by the letter attached as **Exhibit F** Nevin transmitted via email,

Respondent responded in writing to the Union's request referenced above in Exhibit E:

In response to your request for information dated 12/18/18 regarding due check off, we do not believe points #1 and #2, which call for the production of information from outside of the bargaining unit and do not involve the terms and conditions of employment of unit members, are relevant, and they seek the production of proprietary confidential information. As such, we respectfully object to provide a response to these requests on this basis.

Regarding point #3, we believe KOIN management currently spends 4-5 hours per pay period assembling and distributing this information. We believe the time spent on this bi-weekly task easily justifies the several hundred dollars proposed in the latest Company proposal, C-6 **Exhibit F**

In this responsive letter, Respondent set forth an estimated number of hours per pay period it spends on dues checkoff processing, answering the third inquiry or "item #3", but declined to answer items 1 and 2 indicating that they called for information "**from outside of the bargaining unit and do not involve the terms and conditions of employment of unit members**". (Exhibit F, Emphasis added). The letter went on to note that these items were proprietary confidential information. At the collective bargaining negotiations held between the parties on January 24, 2019, in Portland, OR, Respondent's negotiators told Ms. Biggs-Adams that several other NABET represented bargaining units had agreed to a \$50 per month fee to process dues deduction. On about April 23, 2019, during bargaining, Respondent provided a revised proposal to its December 14, 2018 proposal addressing dues checkoff processing costs. The revised proposal attached to the Joint Motion as **Exhibit G provides that checkoff would be continued under a successor agreement and that the processing fee would be \$50 per month.** At the time this proposal was presented, Respondent repeated that NABET had agreed to a similar processing fee in other

locations and noted that it had verified that the amount charged in these other locations was \$50 per month. Respondent's negotiator, Casey Wenger, spoke to the time it takes for him to process payroll, including dues checkoff, due to the varying hours, pay, other cash compensation, and the fact that dues vary from month to month given the fact that dues were based on a percentage of gross compensation. At bargaining sessions held on June 27, 2019, and October 7, 2019, the Union reiterated its request for the information related to dues processing. Wenger again asserted that the amount of time spent on this work was approximately five (5) hours per pay period and again indicated that NABET had agreed to such a fee in at least two other locations. The Union, through Ms. Biggs Adams, told Respondent that, after research, she had only found one location in which another branch of the Union had agreed to a dues checkoff processing fee, and explained why that situation was distinguishable from that of Respondent and the Union, including the fact that the fee was contingent on the bank being unable to process dues checkoff via automatic debit. Other than the communications described herein and attached as Exhibits E, F and G, there have been no further written or oral communications between Respondent and the Union about the Union's December 18, 2018.

A review of the requests leads to the conclusion that **items #1 and 2 calls for the production of information from outside of the bargaining unit.** Item #1 asks for a "List of specific contracts, with broadcast call letters, Union name and Local number, and copy of the current provision (with effective dates of the contract) that contain provisions where the union reimburses Nexstar for "dues checkoff practice". And Item #2 asks for the "Actual cost to Nexstar for the "dues checkoff practice" at each of the aforementioned broadcast stations, spelling out the costs and stations". Only Item #3 calls for the production of information specifically related to the KOIN bargaining

unit.

In the Joint Motion and Stipulation of Facts filed with the Division of Judges, dated May 22, 2020, the General Counsel contended:

“Under Board 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 requested information here greatly affects the Union’s ability not only to determine how to evaluate Respondent’s proposal but how to formulate a reasonable counterproposal regarding dues checkoff processing costs as well....., given Respondent’s proposal and its raising of the topic of other agreements, Respondent rendered the requested information as greatly affecting the Union’s overall ability to bargain. As such, all of the requested information has more than “some” bearing on the issues in bargaining and is presumptively relevant under the Board’s long-established standard.”

The General Counsel, in the same Joint Stipulation, went on to contend that:

Furthermore, when Respondent contended that it had a practice of charging unions for these costs in other union-represented locations and referenced its collective bargaining agreements with other unions that contain provisions similar to the one it proposed, it specifically opened the door as to their relevance and the Union’s need for such information. Finally, given Respondent’s proposal and its raising of the topic of other agreements, Respondent rendered the requested information as greatly affecting the Union’s overall ability to bargain. As such, all of the requested information has more than “some” bearing on the issues in bargaining and is presumptively relevant under the Board’s long-established standard.

We submit the General Counsel improperly argues and applies the controlling principles of law in this well-trodden and familiar area of labor relations jurisprudence. These principles bear repeating. The employer has an obligation to supply, upon reasonable request, to the bargaining representative of its employees with relevant information in order to assist the union's effective performance of its duties under a collective bargaining agreement. *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 303, 99 S.Ct. 1123, 1125, 59 L.Ed.2d 333 (1979); *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435-436,

87 S.Ct. 565, 567-568, 17 L.Ed.2d 495 (1967). Failure to fulfill that obligation to furnish relevant materials upon request is a violation of the employer's duty to bargain in good faith and may violate Sec. 8(a)(5) of the Act. Such conduct "conflicts with the statutory policy to facilitate effective collective bargaining." *Procter & Gamble Co. v. NLRB*, 603 F.2d 1310, 1315 (8th Cir.1979).

B. The General Counsel Fails to Establish a Violation of Section 8(b)(3) of the Act with Respect to Items 1 and 2 that Request Only Extra-Unit Information and the Relevance of Which was Not Established

It is well-settled that information sought that does not directly relate to bargaining unit employees is deemed not to be presumptively relevant. *Island Creek* 292 NLRB 480 (1989); *NLRB v. Postal Service*, 888 F.2d 1568, 1570 (11th Cir.1989); *Walter N. Yorder & Sons v. NLRB*, 754 F.2d 531, 535 (4th Cir.1985); *Oil Chemical & Atomic Workers v. NLRB*, 711 F.2d 348, 359 (D.C.Cir.1983) *Marshall v. Western Grain Co.*, **838 F.2d 1165** (11th Cir.1988), cert. denied, --- U.S. ----, 109 S.Ct. 137, 102 L.Ed.2d 110 (1988). The union bears the burden of establishing the relevance of the requested information, *NLRB v. Leonard B. Herbert, Jr. & Co.*, 696 F.2d 1120, 1124 (5th Cir.1983), and enjoys no presumption of relevance when the information does not concern bargaining unit employees. *NLRB v. A.S. Abell Co.*, 624 F.2d 506, 510 (4th Cir.1980) 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). 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.

The Board, in the instant case, should decide that the **information sought in items #1 and #2 did not have a presumption of relevance**, and impose upon the NABET a duty to show that it was relevant. NABET’s requests embodied in **items #1 and #2 sought the production of information from stations owned by other Nexstar television stations around the country other than KOIN-TV**. Here, as in cases such as *Island Creek*, supra, the union gave no detailed explanation nor reasonable notice of the purpose of this request for information. Also, as in *Island Creek*, the union failed to indicate before filing charges why the respondents’ responses and furnishing of at least some of the information was “insufficient”.

One does not have to look far for guidance and precedent in assessing whether or not KOIN violated section 8(b)(3) in connection with Items #1 and #2. In an earlier dispute over an information request sent by KOIN to NABET, the Board affirmed Administrative Law Judge Mara-Louise Anzalone’s Decision and Order, in the absence of exceptions, finding NABET guilty of Section 8(b)(3) in connection with a number of information requests calling for the production of presumptively relevant items regarding its’ proposals made during negotiations between the parties in 2018. *National Association of Broadcast Employees & Technicians, The Broadcasting and Cable Television Workers Sector of the Communication Workers of America*,

Local 51, AFL-CIO. JD (SF-08-20)(19-CB-234944)(Affirmed by Board April 22, 2020)
However, in the same Decision, ALJ Anzalone determined that two requested items, which called for the production of extra-unit information (collective bargaining proposals exchanged at other Nexstar stations) were not presumptively relevant and as a result, NABET did not violate the Act when it refused to furnish the information. Due to the pertinence of this Decision due to the similarity of the issues faced by the ALJ therein and the instant case, we quote the decision at length. The ALJ opened the analysis by stating:

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.....

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), *enf’d.* 649 F.3d 873 (8th Cir. 2011), *cert. denied* 565 U.S. 1259 (2012), 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. JD (SF-08-20) p.11.

While the ALJ in the *NABET* case sees some initial link to establish relevancy, as noted above, she ultimately decides that it is too tenuous to sustain:

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..... 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. JD (SF-08-20) p. 11-12.

As was the case in the *NABET* matter cited above, the Union's assertion in this case supporting information request items #1 and #2 was a "generalized, conclusionary explanation" that has been deemed insufficient to "trigger the obligation to supply non-presumptively relevant information" Here Biggs-Adams' only explanation for the request for a substantial amount of extra-unit information from other Nexstar stations was that KOIN "contended that Nexstar has a practice of charging unions this amount in

other union represented locations”. This bare assertion is simply not enough to sustain a claim of relevance under the case law cited above. There is no explanation or analysis that would suggest how receipt of this information would be of value to the Union in assessing whether it would accept the Company’s proposal C-6. Therefore, relevancy of the information of the information was not sufficiently established. 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).

KOIN also objected to the production of the information on the ground that the information was proprietary and confidential. Given that this extra-unit involved collective bargaining agreements with other international unions in other parts of the country, which contain economic data and other information which is not public information, this objection should be sustained if it is necessary to reach this point, which we, of course, contend it is not for the reasons set forth above.

C. The General Counsel Has Failed to Establish a Violation of Section 8(b)(3) of the Act with Respect to Item 3 as this Information was Sufficiently Supplied as Requested

Item #3 in the Charging Party’s December 18, 2018 request was:

Actual current cost to Nexstar for "dues checkoff" processing at KOIN-TV.
Please itemize the costs.

KOIN responded promptly to this request by stating on January 3, 2019:

Regarding point #3, we believe KOIN management currently spends 4-5 hours per pay period assembling and distributing this information. We believe the time spent on this bi-weekly task easily justifies the several hundred dollars proposed in the latest Company proposal, C-6

This simple presumptively relevant request was thus fulfilled immediately by this response. But additional information was provided in subsequent negotiating sessions which further fulfilled the information request #3. On April 23, 2019, during bargaining, Respondent provided a revised proposal to its December 14, 2018 proposal addressing dues checkoff processing costs. The revised proposal attached as **Exhibit G** reduced the proposed administrative fee to \$50 per month. At the time this proposal was presented, Respondent repeated that NABET had agree to a similar processing fee in other locations and noted that it had verified that the amount charged in these other locations was \$50 per month. Respondent's negotiator, Casey Wenger, spoke to the time it takes for him to process payroll, including dues checkoff, due to the varying hours, pay, other cash compensation, and the fact that dues vary from month to month given the fact that dues were based on a percentage of gross compensation. At bargaining sessions held on June 27, 2019, and October 7, 2019, the Union reiterated its request for the information related to dues processing. Mr. Wenger again asserted that the amount of time spent on this work was approximately five (5) hours per pay period and again indicated that NABET had agreed to such a fee in at least two other locations. The Union, through Ms. Biggs Adams, told Respondent that, after research, she had only found one location in which another branch of the Union had agreed to a dues checkoff processing fee, and explained why that situation was distinguishable from that of Respondent and the Union, including the fact that the fee was contingent on the bank being unable to process dues checkoff via automatic debit. In assessing whether the information supplied in response to Item #3 is sufficient, it is well -established that the information returned to the union by the employer need not be provided in any particular form, so long as it is not unduly burdensome upon

the union. *Cincinnati Steel Castings Co.*, 86 NLRB 592, 24 LRRM 1657 (1949). The employer need only provide such information to the union in a reasonably clear and understandable form. *Food Employers Council*, 197 NLRB 651, 80 LRRM 1440 (1972). The facts of each particular case will determine whether the information provided meets the “reasonably clear and understandable” threshold offered by *Food Employers*.

In sum, we believe that the record is clear that sufficient information was provided in response to Item #3.

IV. CONCLUSION

For the reasons stated herein, the Administrative Law Judge should enter an Order dismissing this Complaint and the underlying Charge.

Dated: July 1, 2020

NEXSTAR BROADCASTING, Inc. d/b/a KOIN-TV

Charles W. Pautsch

By: Charles W. Pautsch Esq.

Associate Counsel
Nexstar Media Group, Inc.
545 John Carpenter Drive Suite 700
Irving, TX 75062
(972)632-9623
cpautsch@nexstar.tv

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he served the foregoing Brief on Counsel for the General Counsel Sarah Ingebritsen by emailing a copy of same to SarahIngebritsen@nlrb.gov, and counsel for the Charging Party Union, Ann Yen, by emailing a copy of same to AYEN@unioncounsel.net. on July 1, 2020

Charles W. Pautsch

Charles W. Pautsch Esq.

Charles W. Pautsch Esq.
Associate Counsel
Nexstar Media Group, Inc.
545 John Carpenter Drive Suite 700
Irving, TX 75062
(972)632-9623
cpautsch@nexstar.tv