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Attorneys for Charging Party NATIONAL ASSOCIATION OF
BROADCAST EMPLOYEES AND TECHNICIANS -
COMMUNICATIONS WORKERS OF AMERICA, LOCAL 51,
AFL-CIO

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 19

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

Charging Party,

and

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

Respondent.

No. 19-CA-232897

**BRIEF IN SUPPORT OF CROSS
EXCEPTIONS**

Respondent should be required to post permanently the Board's ill-fated employee rights notice. <https://www.nlr.gov/poster>. The Courts that invalidated the rule noted that such a notice could be part of a remedy for specific unfair labor practices. It is time for the Board to impose the requirement for a lengthy posting of that notice as a remedy for unfair labor practices.

Additionally, any notice that is posted should be posted for the period of time from when the violation began until the notice is posted. The short period of sixty (60) days only encourages employers to delay proceedings, because the notice posting will be so short and so far in the future.

The Notice should be included with any payroll statements. *See* Cal. Lab. Code § 226.

The Board's Notice and the Decision of the Board should be mailed to all employees. Simply posting the notice without further explanation of what occurred in the proceedings is not adequate notice for employees. The Board Decision should be mailed to former employees and provided to current employees. Only with a mailing of the Notice and the full Decision can the employees understand what the notice is about and the background. The mailing of only the notice will be largely meaningless to those employees who receive the notice because they won't have the background or explanation.

Notice reading should be required in this matter. That Notice reading should require that a Board Agent read the Notice and allow employees to inquire as to the scope of the remedy and the effect of the remedy. Simply reading a Notice without explanation is inadequate. Behaviorists have noted that, "[t]aken by itself, face-to-face communication has a greater impact than any other single medium." Research suggests that this opportunity for face-to-face, two-way communication is vital to effective transmission of the intended message, as it "clarifies ambiguities, and increases the probability that the sender and the receiver are connecting appropriately." Accordingly, a case study of over five hundred NLRB cases, commissioned by the Chairman in 1966, strongly advocated for the adoption of such a remedy, recommending "providing an opportunity on company time and property for a Board Agent to read the Board Notice to all employees and to answer their questions." The employer should not be present. The Union should be notified and allowed to be present. This should be on work time and paid.

The traditional notice is also inadequate. The standard Board notice should contain an affirmative statement of the unlawful conduct. We suggest the following:

We have been found to have violated the National Labor Relations Act. We illegally implemented unilateral changes in matters affecting hours and terms and conditions of employment without providing the Union with advance notice and opportunity to bargain. We apologize. We have now been ordered to rescind the DMV background checks policy, and to restore the past practice of posting four months' schedules. We ask your forgiveness for violating the National Labor Relations Act.

Absent some affirmative statement of the unlawful conduct, the employees will not understand the arcane language of the notice. Nor is the notice sufficient without such an admission. In effect, the way the notice is framed is the equivalent of a statement that the employer will not do specified conduct, not an admission or recognition that it did anything wrong to begin with. Only through an affirmative recognition that misconduct has occurred will there be effective notice to the employees and appropriate recognition by the employer that the Act has been violated.

The Notice should be incorporated on any company screensavers or opening windows or screens for all computers for the length of the posting period.

The employees should be allowed work time to read the Board's Decision and Notice. To require that they read the Notice, whether by email, on the wall or at home, on their own time is to punish them for their employer's misdeeds.

Additionally, Respondent should be commanded to cause Casey Wenger and Pat Nevin, as the authors of the disciplinary letter (Joint Exhibit 2), to personally apologize to Ellen Hansen for the July 12, 2018 memorandum.

Dated: August 12, 2020

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