

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

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

Respondent- Employer

V.

Cases 19-CA-232897

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

Charging Party - Union

BRIEF IN OPPOSITION TO CHARGING PARTY UNION'S CROSS-
EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE'S DECISION

Nexstar Broadcasting, Inc. d/b/a KOIN-TV ("Nexstar", "KOIN", "Respondent" or "Company") hereby submits its Brief in Opposition to the Cross-Exceptions filed by the Charging Party Union from the Decision by the Administrative Law Judge.. At the outset of this Brief we repeat our baseline assertions that KOIN has not violated the National Labor Relations Act in connection with this Charge and that Board should refuse to follow the recommendations in said Decision and should dismiss the Complaint against it for the reasons set forth in its' Exceptions and the supporting and reply Briefs filed herein. In this Brief, we strongly object to the Charging Party Union's Cross- Exceptions to the ALJ's Decision which reject the remedy afforded by the Administrative Law Judge in his decision and instead asks

for an unusual remedy including a five-year posting of a non-standard Notice containing an apology and providing for a Board Agent to read the Notice to assembled unit employees during working hours. Such remedies have been confined to cases involve severe and pervasive unfair labor practices which this case most assuredly does not involve. This case presents, even if the General Counsel's arguments are accepted as true, only isolated violations of the Act, warranting only a standard, and not extraordinary remedy of the sort requested by the Union. Indeed, the Counsel for the General Counsel is in apparent agreement with this assertion, in that he has not filed Cross-Exceptions to the standard remedy recommended by the ALJ nor does the CGC take exception, in his Brief filed in Opposition to our Exceptions, to the scope or terms of the remedy recommended by the ALJ.

In *Bodega Latina Corporation d/b/a El Super and United Food and Commercial Workers Union, Local 324*, 367 NLRB No. 34 (2018), a unanimous Board panel consisting of Chairman Ring and Members Kaplan and Emmanuel found merit to the Exceptions filed to an Administrative Law Judge's recommendation of extraordinary remedies, consisting of a broad order to cease and desist from violating the Act "in any other manner" and a public reading of the notice by a Board agent or responsible management official. In finding merit to the Exceptions filed by the Employer in that case challenging the extraordinary remedies, the Board panel stated:

"A broad cease-and-desist order is appropriate when a respondent has been shown to "have a proclivity to violate the Act or has engaged in such egregious or widespread misconduct as to demonstrate a general disregard for the employees' fundamental statutory rights." *Hickmott Foods*, 242 NLRB 1357, 1357 (1979). And the Board has recognized that a notice-reading remedy may be warranted "where the violations are so numerous and serious that the reading aloud of a notice is considered necessary to enable employees to exercise their Section 7 rights in an atmosphere free of coercion, or where the violations in a case are egregious." *Postal Service*, 339 NLRB 1162, 1163 (2003). In this case, the Respondent violated Section 8(a)(3) and (1) of the Act by denying employee Beltran-Pineda's request to receive accrued vacation pay and delaying payment of those funds because of her union support and violated Section 8(a)(1) by showing Beltran-Pineda a document indicating that her union support was a factor in its vacation-pay

decisions. In recommending extraordinary remedies, the judge also relied on a March 10, 2016 formal settlement in Case 21–CA–160858. That formal settlement, which did not contain a non-admissions clause, resolved allegations that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to furnish the Union certain requested information relevant to the performance of its statutory duties. We find that the unfair labor practices found in this case and those formally settled in 21– CA– 160858, taken together, do not warrant either of the judge’s recommended extraordinary remedies.

None of the factors recognized by the panel in *Bodega Latina*, supra, as justifying an extraordinary remedy are present in the instant case, even if the allegations are accepted as true. The alleged violations do not constitute “egregious or widespread misconduct as to demonstrate a general disregard for the employees’ fundamental statutory rights”. *Hickmott Foods*, 242 NLRB at 1357. As such even if a violation is found, the standard Board remedy recommended by the ALJ is adequate in this situation.

For the foregoing reasons, the Complaint should be dismissed in its' entirety and the Remedy proposed by the Charging Party should be denied.

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

Charles Pautsch

By: Charles W. Pautsch, Its' Attorney
Dated: August 22, 2020

Charles W. Pautsch
Associate Counsel
Nexstar Media Group, Inc.
545 E. John Carpenter
Suite 700
Irving, TX 75062
972-373-8800

Attorney for NEXSTAR BROADCASTING INC. d/b/a KOIN-TV

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AFFIDAVIT OF SERVICE

I hereby certify that I served on August 22, 2020 the foregoing Brief of Respondent Employer in Opposition to the Cross Exceptions from the Decision of the Administrative Law Judge filed by counsel for the Charging Party Union, the Regional Director for Region 19, counsel for the Charging Party Union and Counsel for the General Counsel by emailing a copy of same to their email addresses as noted below:

ANNE YEN at ayen@unioncounsel.net

RONALD HOOKS, REGIONAL DIRECTOR REGION 19 at Ronald.Hooks@nlrb.gov

SARAH INGEBRITSEN, COUNSEL FOR THE GENERAL COUNSEL at Sarah.Ingebritsen@nlrb.gov

Charles Pautsch

Charles W. Pautsch