

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

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

Respondent- Employer

v.

Case 19-CA-240187

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

Charging Party –Union

**BRIEF IN SUPPORT OF EXCEPTIONS
TO ADMINISTRATIVE LAW JUDGE’S DECISION**

Nexstar Broadcasting, Inc. d/b/a KOIN-TV (“Nexstar”, “KOIN”, “Respondent” or “Employer”) hereby submits its Brief in Support of its’ Exceptions to a Decision by Administrative Law Judge Amita Baman Tracy issued on August 27, 2020. The Decision was entered upon stipulated facts and without hearing and upon a Complaint issued pursuant to the allegations of a Charge filed by the National Association of Broadcast Employees & Technicians The Broadcasting and Cable Television Workers of America, Local 51, AFL-CIO, CLC, Local 51 (“NABET-CWA” or “Union”). KOIN strongly denies that it has violated the National Labor Relations Act in any way in connection with its response to the request for information at issue here. We submit that this Board should refuse to follow the recommendations in said Decision and should dismiss the charge against KOIN for all of the reasons set forth in KOIN’s Exceptions and this supporting Brief.

I. FACTUAL AND PROCEDURAL BACKGROUND APPLICABLE TO ALL EXCEPTIONS:

The parties agreed to and filed a Joint Motion and Stipulation of Facts(hereinafter “JS”) obviating the need for a Hearing in this matter. 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. For the Board’s convenience of reference, we set out this Stipulation 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.

I. ARGUMENT IN SUPPORT OF EXCEPTIONS:

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 fee to cover Respondent's payroll processing of dues checkoff costs. 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 the following information from Respondent related to its proposal for dues checkoff processing costs:

- 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).

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** provided that checkoff would be continued under a successor agreement and that the processing fee would be \$50 per month.

At the time this revised proposal was presented, 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. (JS #22) 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. (JS# 23) The Union, through Ms. Biggs Adams, told Respondent that, after research, she had 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. (JS#23) 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 KOIN 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." J. Stip. at p.9

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" J.Stip.at 9.

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, and the ALJ erred in following the CGC's lead in applying these principles. Given this, 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 (1979); *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435-436 (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). However special rules apply when extra-unit information is sought, and information is not provided in

the precise and burdensome way it was demanded to be produced. See *infra*.

B. Supporting Argument for Exceptions 1 and 7: KOIN lawfully responded to the Union’s Request for Information dated December 18, 2018:

Exception #1: KOIN takes exception with the ALJ’s conclusion that:

“Respondent Failed to Provide Relevant and Necessary Information to the Union in the Performance of Its Duties as the Collective-Bargaining Representative of Employees in the Units” (JD 7:5-6)

on the grounds that all of the relevant information requested was sufficiently responded to and the Union failed to establish the relevance of extra-unit information requested.”

Exception #7: KOIN takes exception with the ALJ’s findings of facts and conclusions of law that:

“For these reasons, Respondent violated Section 8(a)(5) and (1) of the Act when it failed and refused since December 18, 2018 to list the collective-bargaining agreements, with broadcast call letters, union name and local number and copies of the current provisions with effective contract dates; the actual costs to Respondent for dues checkoff practice at each of those locals, and the actual current costs, itemized, to Respondent for dues checkoff practice at the facility” (JD 8:14-20)

on the grounds that the that all of the relevant information requested was sufficiently responded to and the Union failed to establish the relevance of extra-unit information requested”.

The two above-listed exceptions both relate to the ALJ’s overall conclusion that KOIN violated the Act in connection with NABET’s December 14, 2018 request for information. The portions of the ALJ’s Decision excepted to in Exceptions # 1 and #7 comprise the conclusions that she reached on the ultimate questions posed. In response to these conclusions, we assert that as our own conclusion, and one that this Board should adopt, that it is clear that KOIN lawfully responded to the request for information by sufficiently responding to the Union as to Item #3, and that the Union failed to establish the relevance of extra-

unit information requested in Items #1 and #2.

C. Supporting Argument for Exceptions 2-5: *The General Counsel Failed 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*

Exception #2: KOIN takes exception with the ALJ's findings of facts and conclusions of law that:

“Applying the foregoing standards, I find that the Union has satisfied its burden by showing that the desired information was relevant, and that it would be of use to the Union in carrying out its statutory duties and responsibilities” (JD 7:8-10)

on the grounds that the Union failed to establish the relevance of the extra-unit information requested.

Exception #3: KOIN takes exception with the ALJ's findings of facts and conclusions of law that:

“ Items 1 and 2 of the information request concern subjects not directly related to the bargaining unit, and thus, the Union must establish relevance. The Union established relevance by repeatedly explaining that it sought the other collective-bargaining agreements with similar provisions as proposed by Respondent to formulate its own counterproposal. Even during subsequent bargaining sessions, the Union requested this information as its own research did not match what Respondent had conveyed during the bargaining sessions. However, Respondent insisted that other NABET locals agreed to similar processes proposed by Respondent but continued to refuse to provide information requested at items 1 and 2, claiming proprietary confidential information” (JD 7:19-27)

on the grounds that the Union failed to establish the relevance of the extra-unit information requested”.

Exception #4: KOIN takes exception with the ALJ's findings of facts and conclusions of law that:

”In this instance, the information is relevant to assist the Union in assessing the accuracy of Respondent's proposals and developing its own

counterproposals. The Union’s request focused directly on Respondent’s bargaining proposal regarding reimbursement for dues checkoff processing. “Information is relevant under *Caldwell* only if the union is seeking ‘specific information to evaluate the accuracy of the Respondent’s specific claims and to respond appropriately with counterproposals.’” *Arlington Metals Corp.*, 368 NLRB No. 74, slip op. at 3 (2019) (quoting *Caldwell*, supra at 1160).¹² (JD 7:27-33)

on the grounds that the Union failed to establish the relevance of the extra-unit information requested”.

Exception #5 KOIN takes exception with the ALJ’s findings of facts and conclusions of law that:

“¹² Respondent cites to a decision issued by Administrative Law Judge (ALJ) Mara-Louise Anzalone where Respondent filed an unfair labor practice charge against the Union for refusing to provide requested information (R Br. at 14–15). 2020 WL 1156844 (March 10, 2020). However, this decision is non-binding as no exceptions were filed to the ALJ’s decision. See *Colorado Symphony Assoc.*, 366 NLRB No. 122, slip op. at 1 fn. 3 (2018).”(JD 7: fn. 12)

“on the grounds that the decision cited involving the finding of violation of the duty to bargain in good faith by NABET during these negotiations was not cited as “binding precedent” but rather for its’ persuasive value and as a declaration against interest or party/admission by NABET as to the relevance of the information requested”.

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, 109 S.Ct. 137, (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 should follow the ALJ in the instant case and 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. **But the Board should recognize, as the ALJ did not, that the Union failed to establish the relevance of the information sought in Items #1 and #2.**

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 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 enforced Administrative Law Judge Maralouise 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)(enf'd 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).

D. Argument in Support of Exceptions 6: KOIN responded in a reasonable and adequate fashion to the Union's Item #3 request for information.

Exception # 6: "KOIN takes exception with the ALJ's finding of facts of and conclusions of law that:

"Item 3 directly concerns information related to the bargaining unit, and is therefore presumptively relevant. Rather than providing specific information, Respondent provided estimates from Wenger to the Union. Again, the Union has established relevance since Respondent sought to receive a fee for processing the dues checkoff. The Union justifiably sought to learn the exact, itemized cost to Respondent currently to process dues. Thus, the Union has proven that items 1, 2 and 3 are relevant and necessary." (JD 7:33-39)

on the grounds that the information requested was adequately supplied in a reasonably clear and understandable manner".

We submit that the record is clear that KOIN responded in a reasonable and adequate fashion to the Union's Item #3 request for information and did so soon after the request was made. On January 3, 2019, by the letter attached to the Joint Stipulation as **Exhibit F**, Nevin responded in writing to the Union's request referenced above in **Exhibit E**, stating:

“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. (JS: **Exhibit F**) As a result it is clear that this simple presumptively relevant request was adequately responded to by KOIN within weeks of it being made. 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”. Additional information was provided in subsequent negotiating sessions which further fulfilled information request item #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** to the Joint Stipulation reduced the proposed administrative fee to \$50 per month. At the time this proposal was presented, 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 law 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.

II. CONCLUSION

In support of Exception 8, 9 and 10, KOIN assert that this Board should refuse to adopt the Recommended Order, Remedy and Notice in the Administrative Law Judge’s Decision which improperly sustained the General Counsel’s Complaint in this matter. Given the facts and the argument set forth herein in support of the Exceptions filed simultaneously herewith, we submit that there is no merit to the Complaint filed in this action and it should be dismissed in its entirety

Dated: September 24, 2020

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

/s/ Charles W. Pautsch

Charles W. Pautsch, Esq.
Associate Counsel
Nexstar Media Group, Inc.
545 John Carpenter Freeway
Suite 700
Irving, TX 75062
972-373-8800
cpautsch@nexstar.tv
Attorney for NEXSTAR BROADCASTING, INC. d/b/a KOIN-TV

AFFIDAVIT OF SERVICE

I hereby certify that I served on September 24, 2020 the foregoing Brief of Respondent Employer in Support of its Exceptions from the Decision of the Administrative Law Judge on counsel for the Charging Party Union, the Regional Director for Region 19 and Counsel for the General Counsel by emailing to ANNE YEN at ayen@unioncounsel.net RONALD HOOKS at Ronald.Hooks@nrlb.gov SARAH INGEBRITSEN, COUNSEL FOR THE GENERAL COUNSEL, NATIONAL LABOR RELATIONS BOARD REGION 19 at Sarah.Ingebritsen@nrlb.gov

/s/ Charles W. Pautsch, Esq.
Associate Counsel
Nexstar Media Group, Inc.
545 John Carpenter Freeway
Suite 700
Irving, TX 75062
972-373-8800
cpautsch@nexstar.tv