

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

**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**

**COUNSEL FOR THE GENERAL COUNSEL'S ANSWERING BRIEF
TO RESPONDENT'S EXCEPTIONS TO THE
ADMINISTRATIVE LAW JUDGE'S DECISION**

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Pursuant to § 102.46 of the Rules and Regulations of the National Labor Relations Board (“Board”), Counsel for the General Counsel (“General Counsel”) submits this Answering Brief to the Exceptions and Brief in Support (“Exceptions”) filed by Nexstar Broadcasting, Inc. d/b/a KOIN-TV (“Respondent”), to the August 27, 2020 decision of Administrative Law Judge Amita B. Tracy (“ALJ”) in the above-captioned cases [JD(SF)-18-20] (“ALJD” or “Decision”).¹

I. OVERVIEW

All ten of Respondent’s Exceptions are neither supported by the record evidence nor supported by caselaw. As discussed in detail below, the ALJ’s factual findings and legal conclusions were appropriate, proper, and fully supported by both record evidence and established precedent. Accordingly, the Board should reject Respondent’s Exceptions in their entirety and affirm the ALJ’s decision and recommended order.

II. THE ALJ’S FINDINGS WERE PROPER AND SHOULD BE AFFIRMED

The ALJ appropriately determined that, based on the record evidence, Respondent violated §§ 8(a)(1) and (5) of the Act when it failed to provide National Association of Broadcast Employees and Technicians, the Broadcasting and Cable Television Workers Sector of the Communications Workers of America, Local 51, AFL–CIO (“Union”), with requested information that is relevant and necessary for the Union to discharge its duties.²

¹ Respondent’s Brief in Support of its Exceptions will be referred to as (R. Br.), with citations to specific page numbers. Respondent’s Exceptions will be referred to as (R. Ex.), with citations to specific page numbers. References to the ALJD will be designated as (ALJD __:__), including appropriate page and line citations. References to the stipulated record will be designated as (Stip. R. __:__), including appropriate page and line citations. References to the stipulated record exhibits will be referred to as (Exh.__).

² The Union, via letter, requested the following information:

1. 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 Respondent for dues checkoff practice.

As discussed below, the arguments raised in Respondent's Exceptions are misplaced and do not warrant reversal of these ALJ findings.

A. The ALJ Properly Determined that the Requested Information Was Relevant

Respondent's Exceptions 2 through 5 argue that items one and two of the information request were not relevant to bargaining.³ Specifically, Respondent attempts to argue that it was not required to supply the information requested in items one and two because the information did not directly relate to bargaining unit members and the Union failed to appraise Respondent of the relevance of the requested information. (R. Br. 14). Respondent's argument is not supported by the record evidence or caselaw.

As the ALJ discussed in her decision, the Board has explained that "an employer's duty to bargain includes a general duty to provide information by the bargaining representative to assess claims made by the employer relevant to contract negotiations." (ALJD 6:34-35, citing to *Caldwell Mfg. Co.*, 346 NLRB 1159 (2006) (citing *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 152-53 (1956) ("Good-faith bargaining necessarily requires that claims made by either bargainer should be honest claims If such an argument is important enough to present in the give and take of bargaining, it is important enough to require some sort of proof of its accuracy. And it would certainly not be farfetched for a trier of fact to reach the conclusion that bargaining lacks good faith when an employer

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2. The actual cost to Respondent for the dues checkoff practice at each of the aforementioned broadcast stations, spelling out the costs and stations.
 3. The actual current cost to Respondent for dues checkoff processing at Respondent. Please itemize the costs.

(ALJD 3:25-4:2)

³ Because Respondent's Exceptions 1 and 7 are of broad relevance, the General Counsel has addressed them as part of its response to the specific Exceptions.

mechanically repeats a claim . . . without making the slightest effort to substantiate the claim.”))).

Under this precedent and as an initial matter, Respondent’s argument blatantly ignores the fact that Respondent itself made the information relevant *during bargaining* when, in support of its dues checkoff fee proposal, it specifically raised its other agreements with unions. Thus, from a factual standpoint, it is Respondent that established the relevancy of the request. The ALJ recognized this.

In fact, as the ALJ properly determined, Respondent itself specifically opened the door as to the relevance and the Union’s need for items one and two when it contended in bargaining that it had a practice of charging unions for dues checkoff costs in other union-represented locations, referenced its collective bargaining agreements with other unions that contain such provisions, and sought a similar provision with the Union. (ALJD 7:11-15). Based on this, the ALJ determined that the Union reasonably requested information about those agreements and the actual cost to Respondent for dues checkoff processing in those locations so that it could analyze Respondent’s proposed provision. (ALDJ 7:15-22). As she further found, the Union made it clear on the face of the information request that the information sought was for the purpose of evaluating Respondent’s dues checkoff proposal. (ALJD 7:20-33). As such, for Respondent to now argue that it was not on notice as to the items’ relevance is perplexing.

As the ALJ noted, the information sought by the Union greatly affects the Union’s ability to determine how to evaluate Respondent’s proposal and how to formulate a reasonable counterproposal regarding dues checkoff costs. (ALDJ 7:2-28). The

requested information would allow the Union to evaluate the proposal compared to the costs charged to the other unions, the terms of those agreements, and whether there were any extenuating circumstances that impacted the terms of the agreement between the parties, which would then inform the Union as to the reasonableness of Respondent's proposal, and is therefore very relevant. (ALJD 7:27-28). Thus, even if the Union had not provided the rationale for the request, which it repeatedly and specifically did, Respondent itself had already declared its relevance.

Respondent's reliance on its cited cases, including an ALJ decision in a prior case involving the same parties, is unavailing. Specifically, in Exception 5, Respondent attempts to argue that because an administrative law judge in a prior case found that the Union was not required to provide information to Respondent that was deemed not relevant under very different facts, the Board should find the information here not relevant. Respondent is mistaken.

In that prior case, the administrative law judge determined that Respondent's request for collective bargaining proposals exchanged between the Union and other Nexstar stations was not relevant in part because there was no logical connection between the requested information and any issue at the bargaining table or otherwise. *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). In the matter at hand, however, the information requested relates directly to a bargaining proposal that Respondent itself had made at the table. (ALJD 7:20-22). Respondent's attempt to tie the two cases together while ignoring the factual differences is disingenuous at best, as Respondent cannot

avoid the fact that the requested information here directly relates to a bargaining proposal it made at the table, and the Union specifically explained this relevance and its need for the information to Respondent.

The ALJ, having thoroughly and properly analyzed the information requests in light of the record evidence and appropriate caselaw, properly found the requested information relevant to bargaining and that its relevance had been explained to Respondent. (ALJD 7:1-22). Accordingly, her findings and recommended order should be affirmed.

B. The ALJ Properly Found Respondent Violated §§ 8(a)(1) and (5) of the Act by Failing to Provide the Requested Information

In light of her conclusion that all of the requested information was relevant, the ALJ determined that Respondent's failure to provide the requested information was violative of §§ 8(a)(1) and (5) of the Act. (ALJD 8:14-18). As discussed below, the arguments raised in Respondent's exceptions to such a conclusion are misguided and do not warrant reversal.

Respondent does not deny that it did not provide any information in response to information request items one and two, relying only on its failed argument that the information was not relevant to justify this failure. (ALJD 4:11-15). For the reasons stated in the ALJD and outlined above, Respondent was obligated to provide this information and its failure to do so is a violation of the Act, as the ALJ properly found. This leaves the third item of the information request to be addressed: the exact, itemized cost to Respondent currently to process dues. (ALJD 3:37-38).

Turning to that remaining item in the information request, Respondent contends in Exception 6 that, contrary to the ALJ's holding, it "fully supplied" the information in a "reasonably clear and understandable manner". (R. Ex. 3). However, as the record establishes and the ALJ properly found, in response to this request, Respondent provided only a general estimate of the amount of time it took to process payroll, including dues checkoff. (ALJD 4:16-17, 4:30-33, 5:2-3). This was not responsive, as Respondent patently ignored the request for an itemized breakdown of its dues checkoff processing costs. (ALJD 7:37-38).

Respondent attempts to argue that its response was sufficient because of caselaw holding that a party is not obligated to furnish requested information in the exact form requested, but that "it is sufficient that the information is made available in a manner not so burdensome as to impede the process of bargaining." *Cincinnati Steel Castings Co.*, 86 NLRB 592, 593 (1949) (an employer did not refuse to furnish information when it provided the requested information orally instead of in the requested hard-copy form). Again, Respondent's caselaw fails to support its contention.

Unlike in its cited cases, Respondent failed to actually provide the requested information in any form. The Union requested the itemized *cost* to Respondent for dues checkoff; Respondent provided only a general estimate of the amount of *time* it spent on dues checkoff. (ALJD 3:37-38, 4:16-17, 4:30-33, 5:2-3). This is not providing the requested information in an alternate form as Respondent attempts to argue. (R. Br. 19). The little information provided by Respondent – how long it takes to do payroll, including dues deduction – is completely non-responsive and wholly insufficient for the Union to determine Respondent's actual cost attendant to dues processing, much less what is in

other contracts that it is relying on.⁴ Thus, as the ALJ properly found, Respondent did not in any way provide the requested information, regardless of form. (ALJD 7:34-35, 8:14-18).

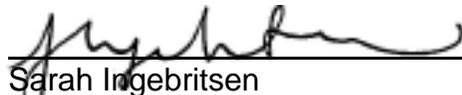
Since the ALJ's conclusions of law are appropriately based on the record evidence and relevant caselaw, Respondent's Exceptions to the ALJ's finding that Respondent violated §§ 8(a)(1) and (5) of the Act by failing to provide requested information should be rejected in their entirety and the ALJD affirmed.

III. CONCLUSION

Based on the foregoing, it is respectfully submitted that the Board should deny Respondent's Exceptions in their entirety and affirm Administrative Law Judge Tracy's decision that Respondent violated §§ 8(a)(1) and (5) of the Act when it failed and refused to provide the requested information since December 18, 2018.

DATED at Portland, Oregon, this 8th day of October, 2020.

Respectfully submitted,



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⁴ Respondent's remaining exceptions take issue with the ALJ's proposed remedy, order, and notice. While reasonable minds may differ as to interpretations of fact and law, as discussed throughout this brief, there are neither facts in the record nor applicable precedent to support Respondent's position as reasonable. They are simply without merit. As such, the ALJ's proposed remedy, order, and notice are eminently appropriate, given they are based on her precise application of law to facts in the record before her.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Counsel for the General Counsel's Answering Brief to Respondent's Exceptions to the Administrative Law Judge's Decision was served on the 8th day of October, 2020, on the following parties:

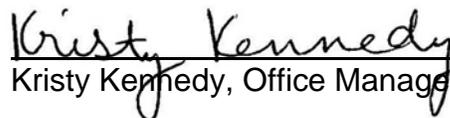
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