

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

PG PUBLISHING CO., INC. d/b/a)	
PITTSBURGH POST-GAZETTE,)	
)	
and)	
)	Case 06-CA-233676
GRAPHIC COMMUNICATIONS)	
INTERNATIONAL UNION, GCC/)	
INTERNATIONAL BROTHERHOOD)	
OF TEAMSTERS LOCAL 24M/9N)	

**RESPONDENT PG PUBLISHING CO., INC.'S
CROSS-EXCEPTIONS TO THE DECISION OF
THE ADMINISTRATIVE LAW JUDGE**

Cross-Exceptions to the Decision of the Administrative Law Judge

COMES NOW, Respondent PG Publishing Co., Inc. and respectfully requests the Board to consider the following Cross-Exceptions to the Decision of the Administrative Law Judge. Respondent files the below Cross-Exceptions to the findings, conclusions, omissions and/or errors contained in the Decision of Administrative Law Judge David Goldman, which issued in the above-captioned matter September 14, 2020. In support of these Cross-Exceptions, Respondent relies on the citations contained in each Cross-Exception as well as the accompanying Brief in Support of Cross-Exceptions and the record as a whole.

Cross-Exception 1. To the Administrative Law Judge's (ALJ's) failure to find that the complete stipulated record in this case included the Joint Motion, Stipulation of Facts, Joint Exhibits, and the parties' Briefs to the ALJ. (ALJD p. 2, lines 16-24). In support thereof,

Respondent relies on the stipulated record and accompanying Brief in Support of Cross-Exceptions.

Cross-Exception 2. To the ALJ's failure to conclude as a matter of law that the Respondent's decision to become a digital-only news organization and eliminate its print operations is an entrepreneurial decision under *First National Maintenance Corp. v. NLRB*, 452 U.S. 666 (1981) and the First Amendment. (ALJD p. 19, lines 6-20). In support thereof, Respondent relies on the stipulated record and accompanying Brief in Support of Cross-Exceptions.

Cross-Exception 3. To the ALJ's failure to conclude that the overall impasse principle of law recognized in *Bottom Line Enterprises*, 302 NLRB 373, 374 (1991), *enfd. mem.* 15 F.3d 1087 (9th Cir. 1994) and *RBE Electronics of South Dakota, Inc.*, 320 NLRB 80, 81-82 (1995) has no applicability when the changes in terms and conditions involve the effects of a nonbargainable business decision. (ALJD p. 17, lines 32-39; ALJD p. 18, lines 2-3). In support thereof, Respondent relies on the stipulated record and accompanying Brief in Support of Cross-Exceptions.

Cross-Exception 4. To the ALJ's failure to find an exception to the overall impasse principle of law recognized in *Bottom Line Enterprises*, 302 NLRB 373, 374 (1991), *enfd. mem.* 15 F.3d 1087 (9th Cir. 1994) and *RBE Electronics of South Dakota, Inc.*, 320 NLRB 80, 81-82 (1995) when the changes in terms and conditions involve the effects of a nonbargainable business decision. (ALJD p. 17, lines 32-39; ALJD p. 18, lines 2-3). In support thereof, Respondent relies on the stipulated record and accompanying Brief in Support of Cross-Exceptions.

Cross-Exception 5. To the ALJ's conclusion that the October 6, 2018 layoffs constituted a unilateral change in terms and conditions of employment. (ALJD p. 18, lines 7-10). In support

thereof, Respondent relies on the stipulated record and accompanying Brief in Support of Cross-Exceptions.

Cross-Exception 6. To the ALJ's finding that neither party cites a single case directly treating whether the duty to bargain over the layoffs required bargaining to an overall impasse in contract negotiations before the Respondent could implement its effects bargaining layoff proposal. (ALJD p. 20, line 8). In support thereof, Respondent relies on the stipulated record and accompanying Brief in Support of Cross Exceptions.

Cross-Exception 7. To the ALJ's confusing and contradictory statement that Respondent "...has committed an effects bargaining violation—unlawfully laying off employees as an effect of a nonbargainable management decision...". (ALJD p. 1, second paragraph; ALJD p. 20, lines 33-35). In support thereof, Respondent relies on the stipulated record and accompanying Brief in Support of Cross-Exceptions.

Cross-Exception 8. To the ALJ's failure to find that Respondent after having provided notice and offering to discuss the effects of its non-bargainable decision, Respondent bargained to a lawful impasse before lawfully implementing its layoff effects proposal. (ALJD p. 19, note 9; ALJD p. 20, lines 2-4; ALJD p. 23, note 13). In support thereof, Respondent relies on the stipulated record and accompanying Brief in Support of Cross-Exceptions.

Cross-Exception 9. To the ALJ's failure to find that Respondent after having provided notice and offering to discuss the effects of its non-bargainable decision, and bargaining, Respondent lawfully implementing its layoff effects proposal even assuming the absence of an impasse because Respondent was privileged to do so as a result of the Union's dilatory tactics in effects bargaining. (ALJD p. 19, note 9; ALJD p. 20, lines 2-4; ALJD p. 23, note 13). In support

thereof, Respondent relies on the stipulated record and accompanying Brief in Support of Cross-Exceptions.

Cross-Exception 10. To the ALJ's failure to find that the narrow exception to the impasse rule based on a union's dilatory tactics applies to effects bargaining. (ALJD p.23, note 13). In support thereof, Respondent relies on the stipulated record and accompanying Brief in Support of Cross-Exceptions.

Cross-Exception 11. To the ALJ's conclusion that the record contains no evidence, and there is no argument offered, that the shift guarantee ended in any tangible way other than as a result of the October 6 layoffs. (ALJD p. 23, lines 39-40; ALJD p. 23, lines 39-40). In support thereof, Respondent relies on the stipulated record and accompanying Brief in Support of Cross-Exceptions.

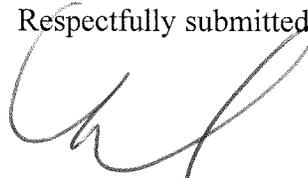
Cross-Exception 12. To the ALJ's failure to find that Section 10.2 in its entirety from the expired collective bargaining agreement ended and had no further effect after March 31, 2017 with the expiration of the collective bargaining agreement on March 31, 2017. (ALJD p.18, note 7; ALJD p. 23, lines 39-40). In support thereof, Respondent relies on the stipulated record and accompanying Brief in Support of Cross-Exceptions.

Cross-Exception 13. To the ALJ's failure to find that Section 10.2 in its entirety from the expired collective bargaining agreement ended with the expiration of the collective bargaining agreement on March 31, 2017 and therefore the guarantee and the layoff limitation conditions and procedures in that section and subsections did not become part of the post-expiration status quo. (ALJD p.18, note 7). In support thereof, Respondent relies on the stipulated record and accompanying Brief in Support of Cross-Exceptions.

Cross-Exception 14. To the ALJ's failure to find that under ordinary contract interpretation principles, Section 10.2 in its entirety from the expired collective bargaining agreement did not survive the expiration of the collective bargaining agreement. (ALJD p. 18, note 7). In support thereof, Respondent relies on the stipulated record and accompanying Brief in Support of Cross-Exceptions.

Dated this 13th day of November, 2020

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that the foregoing Respondent PG Publishing Co., Inc.'s Cross-Exceptions To The Decision Of The Administrative Law Judge was electronically filed via the NLRB E-Filing System with the National Labor Relations Board and served on the following via email on this 13th day of November, 2020:

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