

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of:

NBCUNIVERSAL MEDIA, LLC

and

NEWSGUILD OF NEW YORK, LOCAL
31003, TNG/CWA

Case 02-CA-262640

**RESPONDENT'S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S
DECISION AND RECOMMENDED ORDER**

Dated: March 12, 2021

Respectfully submitted,



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INTRODUCTION

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board (“NLRB”), NBCUniversal Media, LLC (“Respondent” or “Company”) hereby files Exceptions to the Decision and Recommended Order (“Decision”) of Administrative Law Judge Kenneth W. Chu (“ALJ”), issued in the above-captioned case on February 12, 2021. See JD(NY)-02-21. The grounds for these Exceptions are set forth in the Brief in Support of Exceptions that is combined with and incorporated into this filing.

EXCEPTIONS

1. Respondent excepts to the ALJ’s recitation, at p. 7, lines 15-18, of Respondent’s defense(s).
2. Respondent excepts to the ALJ’s finding, at p. 7, lines 23-24, that Charging Party did not waive its right to bargain over the June 2020 rollback.
3. Respondent excepts to the ALJ’s finding, at p. 7, lines 37-39, that “there were no reasons for the union to request bargaining” as there is insufficient record evidence to support this conclusion.
4. Respondent excepts to the ALJ’s rejection, at p. 7, lines 41-42, of Respondent’s contention that Charging Party’s January 17 email (GC Ex. 5, p. 3) constitutes a bargaining waiver with respect to the 2020 merit planning process in general and is not limited to the June 2020 rollback of the 2020 merit planning process salary increases.
5. Respondent excepts to the ALJ’s finding, at p. 8, lines 6-7, that Charging Party did not waive its right to bargain over the rollback of the 2020 merit planning process salary increases.

6. Respondent excepts to the ALJ's finding, at p. 8, lines 7-10, that Charging Party's January 7 email (GC Ex. 5, p. 3) contained a reservation of rights with respect to "any proposals the Respondent might make concerning wages or evaluations."

7. Respondent excepts to the ALJ's finding, at p. 8, lines 23-24, that any rescission in wages of unit employees necessarily constitutes a "change" under extant Board law which requires notice and an opportunity to bargain.

8. Respondent excepts to the ALJ's finding, at p. 8, lines 24-27, that there was no clear and unmistakable waiver of the union's right to bargain regarding the rollback of the 2020 merit planning process salary increases.

9. Respondent excepts to the ALJ's finding, at p. 8, lines 30-31, to the extent it suggests that Charging Party only gave consent to Respondent proceeding with the 2020 merit planning process salary increase, as opposed to consent to Respondent proceeding with the merit planning process in its entirety.

10. Respondent excepts to the ALJ's finding, at p. 9, lines 23-26, that Respondent's June 2020 roll back of the 2020 merit planning process salary increases violated Section 8(a)(5) and (1) of the Act.

11. Respondent excepts to the ALJ's recitation, at p. 9, lines 31-34, of Respondent's contentions.

12. Respondent excepts to the ALJ's recitation, at p. 9, lines 34-36, of Respondent's contentions.

13. Respondent excepts to the ALJ's erroneous recitation, at p. 10, lines 12-14, of the applicable legal standard in a *Raytheon* past practice analysis.

14. Respondent excepts to the ALJ's finding, at p. 10, lines 27-28, that Respondent failed to show that the roll back of the 2020 merit planning process salary increases was consistent with past practice.

15. Respondent excepts to the ALJ's finding, at p. 10, lines 30-31, that the roll back of the 2020 merit planning process salary increases was a "meaningful departure and varied significantly and materially" from Respondent's annual merit planning process.

16. Respondent excepts to the ALJ's erroneous recitation, at p. 10, lines 31-32 and p. 11, lines 1-4, of the applicable past practice standard.

17. Respondent excepts to the ALJ's finding, at p. 11, lines 6-8, that the roll back of the 2020 merit planning process salary increases was "materially different and not a similar action from the increase in wages that employees would recognize as a familiar pattern of Respondent's usual operations."

18. Respondent excepts to the ALJ's recitation, at p. 11, lines 8-10, of legal standards that are inapplicable and/or do not comport with the *Raytheon* past practice similarity standard.

19. Respondent excepts to the ALJ's findings, at p. 11, lines 14-17, that "[e]mployees expected an annual pay increase based upon their performance" and "employees had no reasonable expectation that their merit wage increase would be taken away."

20. Respondent excepts to the ALJ's finding, at p. 11, lines 20-23, that the roll back was a "clear departure from the existing past practice" and "cannot be viewed as a familiar pattern of the Respondent's usual operations."

21. Respondent excepts to the ALJ's finding, at p. 11, lines 25-26, that the roll back was "not a not a frequent, recurrent event that employees would recognize as part of the familiar pattern in the merit pay evaluation process."

22. Respondent excepts to the ALJ's finding, at p. 11, lines 32-36, that the Respondent was required to bargain over the decision to roll back the 2020 merit planning process salary increases upon request by Charging Party regardless of whether such roll back was part of a past practice.

23. Respondent excepts to the ALJ's conclusions of law (4) and (5), at p. 12, lines 21-25.

24. Respondent excepts to all of the remedies and proposed order, at pp. 12-14.

25. Respondent excepts to the proposed notice, attached as an Appendix to the Decision.

Dated: March 12, 2021

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I certify that a copy of Respondent's Exceptions to the Administrative Law Judge's Decision and Recommended Order was electronically filed with the Board via the Agency's E-Filing system on March 12, 2021 and pursuant to Sec 102.5(f) of the Board's Rules and Regulations a copy was served electronically via email to the following parties:

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Dated: March 12, 2021



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