



**NLRB GRANTS AN EXTRAORDINARY REMEDY THAT INCLUDES
EMPLOYER REIMBURSEMENT OF UNION NEGOTIATING EXPENSES**

A recent decision of the NLRB, Nexstar Broadcasting, Inc., 371 NLRB No. 118 (2022), granted an extraordinary remedy to the Union that included compensation for all bargaining expenses of the Union. Unions in such cases will need to keep careful records for such expenses.

Away from the bargaining table, the employer, Nexstar, issued memos denigrating and undermining the Union. An August 2019 memo to employees stated “[t]here is NO justification for the [Union’s] exorbitant initiation fees and dues. It is highway robbery and we just couldn’t sit back any longer, watching this travesty occur—while we worked to bargaining [sic] in your favor at the table...[and] when in fact our fight in this matter is to make your burden to your union more palatable.” The Board found these misstatements regarding the company’s role over the Union’s initiation fees and monthly dues constituted “implied promises” that removed them from the free speech protections of Section 8(c) of the Act.

The unfair labor practices of the employer were pervasive and warranted an injunction under Section 10(j) of the Act, and when the Board reviewed and affirmed the ALJ’s decision, it ordered the employer to bargain with the Union within fifteen days of the Union’s request to meet at reasonable times, and that bargaining sessions are to be held for a minimum of fifteen hours per week. The employer shall submit written bargaining progress reports every fifteen days to the NLRB’s Regional Compliance Officer.

In addition to this comprehensive bargaining order, the employer is required to cease and desist:

1. Changing the terms and conditions of employment of the bargaining unit employees without first notifying the Union;
2. Withdrawing recognition from the Union and failing to bargain with the Union;
3. Disparaging or denigrating the Union in its communications to the Employees;
4. Promising and granting wage increases to employees to discourage them from supporting the Unions;
5. Threatening to revoke wage increases in retaliation for engaging in activities protected by Section 7 of the Act;
6. Prohibiting the employees from discussing the Union or wages;
7. Prohibiting employees from distributing union bulletins.

Additional remedies allowed the Union to request employer to rescind the wage increase the was unilaterally provided to employees on March 25, 2020.

The employer is also required to compensate the Union for its bargaining expenses incurred from January 24, 2019, when negotiations “grinded to a halt” and the company took a take-it-or-leave-it attitude during bargaining, while refusing to provide the Union information or presenting counter proposals. In such cases, Unions’ bookkeeping of the expenses will play a prominent role and should be carefully maintained. Pursuant to the Board’s decision, such expenses would include lost wages the Union paid to committee members for bargaining during working hours.

Back wages are to be paid to the employee negotiators for wages lost while attending bargaining sessions for any earnings that were not reimbursed by the Union. The employer has also been required to compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards. This extraordinary remedy is an encouraging example of the current General Counsel of the NLRB’s efforts to give the National Labor Relations Act more teeth through broader remedies for violations of the Act.

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