

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

NEXSTAR MEDIA GROUP, INC.
d/b/a WPIX

Case No. 02-CA-298558

and

NEWSGUILD OF NEW YORK, LOCAL 31003,
TNG/CWA, AFL-CIO

Nikhil Shimpi, Esq., for the General Counsel
Geoff Gilbert, Esq. (Constangy, Brooks, Smith & Prophete)
of St. Louis, Missouri for Respondent
Thomas J. Lamadrid, Esq. (Eisner Dictor & Lamadrid, PC)
of New York, New York for the Charging Party

DECISION

Statement of the Case

LAUREN ESPOSITO, Administrative Law Judge. Based upon a charge filed on June 29, 2022, by Newsguild of New York, Local 31003, TNG/CWA, AFL-CIO (Newsguild or the Union), the Regional Director, Region 2, issued a Complaint and Notice of Hearing on October 26, 2023. The Complaint alleges that Respondent Nexstar Media Group, Inc. d/b/a WPIX (WPIX or Respondent) violated Sections 8(a)(1) and (5) of the Act by failing and refusing to provide information requested by the Union which is necessary for and relevant to the Union's performance of its duties as exclusive collective bargaining representative, thereby failing and refusing to bargain collectively and in good faith. On or about November 9, 2023, WPIX filed an Answer denying the Complaint's material allegations.

This case was tried before me at 26 Federal Plaza, New York, New York, on February 6, 2024. On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by General Counsel and WPIX, I make the following

Findings of Fact

I. Jurisdiction

Nexstar Media Group, Inc. d/b/a WPIX, a Delaware corporation with a principal office and place of business in Irving, Texas, is engaged in the operation of television

stations at locations throughout the United States, including a facility located at 220 East 42nd Street, New York, New York. Nexstar Media Group, Inc. d/b/a WPIX admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

WPIX admits, and I find, that Newsguild is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. *Procedural History and Related Case*

As discussed above, the Complaint in this case alleged that WPIX violated Sections 8(a)(1) and (5) of the Act by failing and refusing to provide information requested by the Union on May 27, 2022, which was necessary for and relevant to the Union's performance of its duties as exclusive collective bargaining representative. G.C. Ex. 1(c). On November 29, 2023, WPIX filed an Answer denying the Complaint's material allegations. G.C. Ex. 1(e).

Earlier in the spring of 2022, WPIX and Newsguild had resolved another allegation that Respondent had failed to provide information requested by Newsguild. On April 18, 2022, the Regional Director, Region 2, approved an Informal Settlement Agreement in Case No. 2-CA-277250 executed by WPIX and Newsguild. G.C. Ex. 2; Tr. 10-11. As part of the Informal Settlement Agreement, WPIX agreed to provide Newsguild with information relevant and necessary to Newsguild's role as collective bargaining representative, and represented that it would not fail or refuse to "timely and completely" supply such information to Newsguild in the future. G.C. Ex. 2, p. 4. General Counsel does not contend that WPIX's allegedly unlawful conduct in the instant case violated the Informal Settlement Agreement in Case No. 2-CA-277250. Tr. 7-8.

General Counsel called Beverly Sloan, a local representative with Newsguild since November 1, 2018, to testify at the hearing. Tr. 17-18. WPIX called Charles W. Pautsch, Esq., Nexstar Media Group's Vice President of Labor Relations and Associate General Counselor, as a witness. Tr. 83-84.

B. *The Parties' Collective Bargaining History*

Newsguild has represented a bargaining unit of employees at WPIX since 1972. Tr. 20; G.C. Ex. 3, p. 3. The Newsguild bargaining unit consists of news editors, assignment editors, writers (news and sports), graphic artists, news assistants (assignment desk and production), associate producer/editor, weather producer/editor, traffic producer/editor and web producer in the News Department of WPIX-TV. Tr. 18, 20-21; G.C. Ex. 2; G.C. Ex. 3, p. 3. All other employees in WPIX-TV's News Department (including News Director, Executive Producer, Managing Editor, Producers, Metropolitan Editor, Graphics Director, Business Manager, and administrative

assistant), employees represented by other labor organizations, guards, watchmen, and supervisors as defined in the Act are excluded. G.C. Ex. 3, p. 3.

During the past five years, WPIX's ownership has undergone multiple changes. Newsguild representative Beverly Sloan testified without contradiction that WPIX was initially owned by Tribune Media, which sold the company to Nexstar Media Group in 2019. Tr. 19. Fairly soon after purchasing WPIX, Nexstar Media Group sold the station to Scripps Media. Tr. 19-20. Subsequently, Mission Broadcast Company purchased the assets of WPIX from Scripps Media, and Nexstar Media Group began operating WPIX pursuant to a time brokerage agreement with Mission Broadcast Company. Tr. 85; G.C. Ex. 4.

At the time that WPIX was sold by Tribune Media to Nexstar Media Group, the most recent collective bargaining agreement between Newsguild and WPIX was effective by its terms from January 1, 2016 until December 31, 2018. G.C. Ex. 3, p. 37; Tr. 21-22. This collective bargaining agreement provided that it would continue beyond its expiration date "unless either party notifies the other in writing of its intention to cancel on at least sixty (60) days prior notice." G.C. Ex. 3, p. 37. The contract further provided that its terms and conditions "shall remain in effect until the date that is one Hundred Eighty (180) days after either party gives the other written notice of termination of this Agreement, which notice may not be given prior to January 1, 2019." G.C. Ex. 3, p. 37. Sloan testified that the Union began negotiating with Tribune Media in early 2019, and then continued negotiations with Scripps Media after Tribune sold WPIX. Tr. 22. Negotiations were paused for a period of time due to the COVID-19 pandemic, and when they resumed, Nexstar Media Group indicated that it would be operating WPIX. Tr. 22. Sloan testified without contradiction that no party ever attempted to terminate the collective bargaining agreement in effect from January 1, 2016 until December 31, 2018, or contended that the agreement was no longer applicable. Tr. 22-23. Instead, Nexstar Media Group's Vice President of Labor Relations and Associate General Counselor Charles Pautsch testified that Nexstar Media Group assumed the collective bargaining obligation for the Newsguild unit. Tr. 85-86. Thereafter, on January 19, 2021, Newsguild and Nexstar Media Group entered into a Memorandum of Agreement providing that the parties would "adhere to the current terms and conditions of employment" contained in the collective bargaining agreement in effect from January 1, 2016 to December 31, 2018. G.C. Ex. 4; Tr. 23-24.

C. The Collective Bargaining Negotiations in 2021 and 2022

After the January 19, 2021 Memorandum of Agreement was executed, Newsguild and Nexstar began negotiations for a successor collective bargaining agreement. Sloan was chief negotiator for Newsguild, with Union attorney Thomas J. Lamadrid, Esq. and three bargaining unit employees who were elected Union officers also present. Tr. 28-29. Lamadrid took notes of the negotiating sessions for the Union. Tr. 51-53; G.C. Ex. 6. Nexstar was represented by Pautsch, Human Resources Manager Courtney Williams, WPIX News Director Nicole Tindiglia, Associate News Director Saul Adams, and Human Resources Director Yujing "Ruby" Wu. Tr. 29, 56.

Pursuant to Newsguild's general practice and preference, the parties began the negotiations in 2021 by addressing non-economic proposals. Tr. 76-77, 86. These non-economic proposals were the focus of negotiations for over a year, from February 5 2021 until March 2022. Tr. 86. On January 26, 2021, Newsguild requested information in connection with a grievance and regarding terms and conditions of employment relevant to the Supreme Court's decision in *Dobbs v. Jackson Women's Health Services*, 597 U.S. 215 (2022). Tr. 69-70. This information request was the subject of the unfair labor practice charge filed by Newsguild in Case No. 2-CA-277250, which 10 was resolved in the Informal Settlement Agreement approved by the Regional Director on April 18, 2022. G.C. Ex. 2; Tr. 10-11, 70-71. As discussed above, pursuant to this Informal Settlement Agreement, WPIX agreed to provide Newsguild with information relevant and necessary to Newsguild's role as collective bargaining representative, and represented that it would not fail or refuse to "timely and completely" supply such 15 information to Newsguild in the future. G.C. Ex. 2, p. 4.

The parties began to address economic terms in March 2022. Sloan testified that wages were of paramount importance to Newsguild, because there had been no general wage increase for the bargaining unit employees for over four years, and costs 20 of living were increasing due to inflation. Tr. 25, 27-28. The Union also made proposals involving parental leave and extended sick time. Tr. 25. Sloan testified that Newsguild made its initial proposal regarding a general wage increase in September 2021, while the parties continued to discuss non-economic proposals.¹ Sloan testified that Newsguild initially proposed a six or seven percent wage increase retroactive to 2018, 25 and a six percent wage increase for each subsequent contract year. Tr. 25-26.

Sloan testified that WPIX made an initial counterproposal with respect to the general wage increase in March 2022, consisting of a 1.25% wage increase for each contract year. Tr. 30. In response, Newsguild modified its own general wage increase 30 proposal slightly to reduce the yearly increases, but continued to propose retroactivity to 2018. Tr. 30-31. Sloan testified that as of late May 2022, WPIX's general wage increase proposal, while having increased, remained under 2% per contract year. Tr. 31. Newsguild was proposing a general wage increase of around 4% per year, but the Union had agreed to limit retroactivity to January 2021, when Nexstar resumed 35 operations of the station. Tr. 31.

Sloan testified that at a bargaining session over Zoom on March 29, 2022, the parties discussed the wage increase proposals and financial issues. Tr. 36. Sloan testified that during this session Pautsch referred to a decline in revenue in April 2020 40 due to the pandemic. Tr. 36-37. According to Sloan, Tindiglia stated that WPIX could not appeal to Nexstar to ameliorate the station's losses, and Pautsch reiterated that each station was responsible for its own budget and that Nexstar could not "bail out every station that was having trouble." Tr. 37. Wu also stated that WPIX had to "stand on its own" and "maintain its own budget." Tr. 37. Newsguild responded by asking

¹ Sloan testified that the proposed general wage increase applied to all grades and steps comprising the wage structure under the collective bargaining agreement. Tr. 27.

what WPIX was doing to try to increase its revenue, and the bargaining committee made specific suggestions involving retransmission fees and purchasing an entity which provides programming.² Tr. 37-38.

5 The parties discussed such financial concerns again at a negotiating session on May 25, 2022. Sloan testified that Pautsch “raised the issue of not being able to pass on costs to advertisers,” and Pautsch and Tindiglia stated that the station had lost money because of the pandemic. Tr. 40-41. Sloan testified that Pautsch stated that the station could not raise advertising rates based upon inflation, which he termed an
10 “inelasticity of advertising rates.” Tr. 41. Sloan testified that Newsguild wanted more information, but Pautsch was not familiar with the finances of WPIX, as opposed to Nexstar, so Sloan or Lamadrid asked that WPIX’s General Manager attend a meeting to discuss such issues.³ Tr. 41-42

15 The next negotiating session took place on May 26, 2022, and lasted for about two to three hours. Tr. 42-43. Chris McDonnell, WPIX’s General Manager, attended this meeting in addition to the Union and management representatives who typically conducted the bargaining. Tr. 43. While Sloan testified regarding this meeting,⁴
20 General Counsel also introduced into evidence Lamadrid’s notes of this negotiating session as General Counsel’s Exhibit 6. Tr. 51-55.

Pautsch began the May 26, 2022 meeting by presenting WPIX’s latest contract proposal, which contained general wage increases of 2% effective upon ratification, 1.75% for the second year of the contract, and 2% for the third contract year. G.C. Ex.
25 6, p. 1. After reviewing the terms of the proposal, Pautsch stated, “we are getting down to brass tacks. That’s where we are at. We are getting close to what the company can do in this area in terms of what the company can do in terms of wage increases.” Id. Pautsch stated that “we work within parameters and throughout the company, the future remains challenging.” Id. However, Pautsch stated that he was “speaking more at the
30 corporate level,” and asked McDonnell to discuss the specific issues facing the station itself. G.C. Ex. 6, p. 1-2.

McDonnell began his presentation with a brief overview of changes in WPIX’s ownership and management over the previous years, emphasizing the station’s recent
35 reorientation toward local programming as opposed to syndication. G.C. Ex. 6, p. 2. McDonnell described challenges faced by the broadcast television industry overall given competition engendered by the internet, streaming, and subscription services. Id; see

² Sloan was asked to review portions of General Counsel’s Exhibit 5 – Lamadrid and Pautsch’s e-mail exchange discussed below – prior to testifying regarding her recollection regarding the March 29, 2022 meeting, even though no effort was made to exhaust her recollection of the meeting prior to reviewing the documentary evidence. See Tr. 36-40. Sloan testified that she did in fact have an independent recollection of the negotiating sessions referred to in Lamadrid and Pautsch’s e-mail exchange. Tr. 39-40. However, because Sloan was asked to review General Counsel’s Exhibit 5 prior to testifying regarding the March 29, 2022 meeting, I do not view the document as corroborating her independent recollection of the meeting itself.

³ No notes of the May 25, 2022 negotiating session were offered for admission into evidence.

⁴ Pautsch did not specifically address this meeting during his testimony.

also Tr. 43. McDonnell stated that in its local market WPIX had been “in last place” in terms of “audience and ratings,” but that the “trend” in ratings was “going in the right direction.” Id. Furthermore, McDonnell stated that from 2019 to March 2020, WPIX “lost more than 40 percent of our revenue,” which would “take years to dig out.”⁵ Id.

5 McDonnell stated that “For each station in the country,” 40% of advertising originated with “auto industry, makers, auto dealer groups, individual auto dealers,” which had not returned in the 18 months since the pandemic. Id. McDonnell stated, “Wish I had a blank checkbook, but I don’t. Doing the best we can to manage financials and employee base to try to hold on to [people]. But it’s a challenge.”⁶ Id. In addition,
 10 McDonnell stated that in November 2021 the New York Yankees baseball franchise canceled its contract with WPIX in favor of Amazon, and with WPIX no longer broadcasting Yankees games, “12% of our revenue disappeared this year.” Id. McDonnell then responded to questions from the Newsguild committee members regarding the impact of “cord-cutting,” streaming services, political advertising, and the
 15 acquisition of a streaming app called CW. G.C. Ex. 6, p. 3-5; Tr. 44. In the context of this discussion, McDonnell reiterated that 2020 had been “brutal” for the market and the station, stating that the current year would “get some momentum” because 2020 had been the “wors[t] year on record for all of us.” G.C. Ex. 6, p. 5.

20 McDonnell also responded to specific questions and concerns raised by the Newsguild committee members regarding wage increases. In doing so, McDonnell stated that that the “Challenge is, there’s only so much I have on the expense side given what our revenue position has historically been, and is now even more challenged.” G.C. Ex. 6, p. 6-7. McDonnell also responded to a remark that WPIX’s
 25 proposed wage increases of 2% were inadequate to counter inflation by stating that he could not control inflation, but “What I can control, is be fair and equitable and give you as much as humanly possible. That’s where we are at this 2% number.” G.C. Ex. 6, p. 10. McDonnell then reiterated his remarks regarding the losses of revenue attributable to the pandemic and the cancellation of the contract to broadcast Yankees games. Id.

30 On May 27, 2022, Lamadrid sent Pautsch an e-mail titled “WPIX/Guld – Request for Information,” and stating as follows:

Dear Chuck:

35 During our bargaining sessions the last couple months, the Company has raised issues at the WPIX station such as losses in revenues and advertisers, budget limitations, and the price inelasticity of your advertising in response to the Guild’s demands for raises that compensate unit
 40 members for the great work they do and for the inflation and significant

⁵ While Sloan testified that either McDonnell or Tindiglia stated that WPIX had lost 40% of its revenue compared to the previous year, Lamadrid’s notes are clear that McDonnell stated that the 40% loss of revenue occurred from 2019 to March 2020. Tr. 43-44; G.C. Ex. 6, p. 2.

⁶ Sloan testified that McDonnell stated that, “he wished he had a blank check that he could write to give us the wage increases that we were looking for, but that he didn’t. [It] just wasn’t possible, and that they were doing the best they can to even hold onto the employees they had.” Tr. 44.

rise in costs of living that members are experiencing. For example, on March 29, 2022, you spoke of the Company's primary revenue falling off in April 2020, and you also stated that the Company cannot turn to advertisers and say inflation is 7%, we need to raise our rates. That day, Nicole [Tindiglia] spoke about the revenues lost due to the need to air press conferences. More recently, on May 25, 2022, you spoke of the price inelasticity of advertising rates, explaining that you could not pass on the rise in costs of living to advertisers and that if you increased your prices your advertisers would tell you to take a hike. That day, Ruby [Wu] explained that she has been working with Chris [McDonnell] on budgeting and that WPIX has its own budget and the Company cannot go much higher than its current wage offer. Nicole also explained that day that the costs of "pods" have been declining the last ten years. Yesterday, Chris spoke to us about losing advertisers, disappearing revenues, and budget limitations. He explained the station lost its contract airing Yankees games resulting in a 12% loss of revenue. Chris also spoke about wishing he had a blank checkbook, explained that he didn't, and said the station is doing the best that it can to manage financials and pay to hold on to employees.

For the purposes of bargaining and to consider and evaluate these statements by the Company, we require information. Accordingly, please provide the following:

1. WPIX's revenues for 2018, 2019, 2020, and 2021, with revenues broken down within the year on a monthly basis and on any other basis that the Company maintains.
2. WPIX's year to date revenues, broken down on a monthly basis and on any other basis that the Company maintains. Having the information on a monthly basis for 2022 and prior years will, among other things, allow us to more meaningfully compare this year to last year.
3. A complete list of WPIX's current advertisers, along with a point of contact and contact information for each advertiser, so that we can check with them to see, among other things, if they expect to, would be willing to, or already pay more for advertising.
4. A complete list of advertisers that the Company has lost since 2018, along with a point of contact and contact information for each advertiser, so that we can contact them to see, among other things, their reasons for leaving.
5. A list of WPIX prices for advertising, including the price of "pods," since 2018.

6. A copy of WPIX's budget for the current year, previous year, and next year, broken down on a monthly basis and on any other basis that the Company maintains.

5 G.C. Ex. 5, p. 4-5; Tr. 32-33. Lamadrid asked that WPIX provide the requested information before June 14, 2022, and contact him "well before" then regarding any requests which it considered "unclear or objectionable." G.C. Ex. 5, p. 5. That same day, Lamadrid wrote to Pautsch again, asking that WPIX "let us know" if they believed that "a non-disclosure agreement with the Guild is needed to provide us with any of" the
10 requested information. G.C. Ex. 5, p. 4. Lamadrid stated that the Newsguild was "willing to bargain over a reasonable non-disclosure agreement." *Id.*

On June 10, 2022, Pautsch wrote to Lamadrid to address Newsguild's request for information, objecting to the information request "on the grounds of relevance and
15 confidentiality." G.C. Ex. 5, p. 2. Pautsch stated that "At no time during the course of negotiations, including but not limited to the last session held on May 26, 2022, has the Company stated an 'inability to pay' the union's wage demands." Pautsch elaborated that "it is well-established that absent an inability-to-pay claim, and employer's financial information is not relevant to a union's duties as bargaining representative and an
20 employer is not obligated to provide it," citing *UNY, LLC d/a General Super Plating*, 367 NLRB No. 113 (2019), and *Arlington Metals Corp.*, 368 NLRB No. 7 (2019). With respect to the confidentiality issue, Pautsch stated that the requested information was "highly confidential and proprietary." Pautsch stated that "The operating results of a local station represents competitive data that the company endeavors for may [sic]
25 purposes to keep confidential, and customer lists, and the reasons that customers leave are, of course confidential." Pautsch noted that while Newsguild indicated that it was "willing to negotiate a confidentiality agreement" regarding its information request, "at the same time...you indicate that you intend to use confidential customer information to contact our customers," specifically in item 4 of the Union's information request.
30 Pautsch stated that "this threatened interference with our customer relationships, is wholly inappropriate and indicative of the impropriety of your entire request for the production of irrelevant and confidential business information, which again we respectfully decline." *Id.*

35 The parties met for another negotiating session on June 14, 2022. Tr. 48. Newsguild's information request was not discussed during that meeting, so the following day Lamadrid sent an e-mail to Pautsch to address it. G.C. Ex. 5, p. 1-2. In his e-mail, Lamadrid stated that Newsguild rejected WPIX's objections, and believed that it was entitled to the requested information. Lamadrid stated that WPIX had premised its
40 negotiating position "on specific assertions" regarding "financial issues," thereby rendering such information relevant, and engendering "the obligation to provide the requested data," quoting *Caldwell Mfg. Co.*, 346 NLRB 1159, 1160 (2006), and citing *Audio Visual Services Group, Inc.*, 367 NLRB No. 103 (2019), and *Tegna, Inc.*, 367 NLRB No. 71 (2019). G.C. Ex. 5, p. 1. Lamadrid stated that WPIX had "raised issues"
45 of "falling revenues and losses," the loss of advertisers and the "price inelasticity" of advertising, and Respondent's "limited budget" as a response to Newsguild's economic

proposals. Id. Lamadrid stated that Newsguild had therefore requested “specific information” to “evaluate the company’s assertions” and “develop our responses to your proposals.” Id.

5 Lamadrid went on to reiterate that Newsguild was willing to discuss the terms of a confidentiality or non-disclosure agreement “to protect confidential and proprietary information.” He further disputed Pautsch’s contention that contacting WPIX’s advertisers would “breach confidentiality,” and asked whether the station had information regarding why specific advertisers had left. G.C. Ex. 5, p. 1-2. Lamadrid
10 stated that Newsguild did not intend to interfere with customer relationships, and that the information would allow the Union and WPIX to explore methods to increase advertising rates and revenues, in order to fund a meaningful wage increase. G.C. Ex. 5, p. 2. Lamadrid stated that while Newsguild renewed its original requests, the Union would accept only revenue information related to advertising, at least initially. Id.
15 Lamadrid also expressed a willingness to discuss WPIX’s confidentiality concerns regarding advertisers further, and asked that WPIX describe any information it had regarding why advertisers had left. Lamadrid asked that WPIX provide the information Newsguild had requested before June 28, 2022. Id.

20 Sloan also testified that Newsguild continued to reiterate its request for information during subsequent negotiating sessions. Sloan testified that at a negotiating session on June 28, 2022, Lamadrid stated that Newsguild was entitled to the information it had requested based upon the presentations by WPIX management regarding the station’s finances, and Pautsch contended that WPIX had not claimed that
25 it was unable to pay the wage increases proposed by the Union. Tr. 48-49. Lamadrid explained why Newsguild wanted to contact WPIX’s advertisers, and again indicated that the Union was willing to enter into a confidentiality agreement applicable to that information. Tr. 50. Sloan testified that Pautsch “made it clear” that WPIX was not going to respond to the information request. Tr. 49.

30 On June 29, 2022, Lamadrid wrote to Pautsch, stating that Newsguild continued to assert that the information it requested was relevant, and that WPIX was required to provide it. G.C. Ex. 5, p. 1. Lamadrid stated that based upon Newsguild’s understanding “that the Company disagrees and does not intend to provide the
35 information,” the Union had filed an unfair labor practice charge, which Lamadrid attached. Id. Finally, on July 13, 2022, Lamadrid wrote to Pautsch, clarifying that the list of advertisers requested in Item 4 referred to advertisers on WPIX, and not Nexstar overall. Id. It is undisputed that Newsguild never received any of the information requested by Lamadrid on May 27, 2022. Tr. 46-47.

40 Negotiations continued despite WPIX’s refusal to provide the information requested by Newsguild. Sloan testified that as of August 2022 the parties were still bargaining regarding the wage increase, “but really pretty, pretty close on terms.” Tr. 61-62. During a sidebar between Sloan, Lamadrid, Pautsch, and Williams, Pautsch
45 stated that WPIX was nearing its last, best, and final offer. Tr. 62. Pautsch stated that WPIX would like Newsguild to withdraw the instant unfair labor practice charge, but

would not make withdrawal a condition of accepting the offer's terms. Tr. 62. During a negotiating session on August 18, 2022, Newsguild made a counteroffer to WPIX's last, best and final offer, which included higher general wage increases and withdrawal of the charge. Tr. 62, 93-94; R.S. Ex. 1. When WPIX rejected Newsguild's counteroffer,

5 Newsguild agreed to accept WPIX's last, best and final offer while continuing to pursue the unfair labor practice charge. Tr. 62. Pautsch, however, believed that he had conditioned acceptance of the last, best and final offer on withdrawal of the charge. Tr. 62-63, 92. Sloan testified that negotiations ended that day without reaching agreement, because Newsguild would not agree to withdraw the charge as part of its acceptance of

10 WPIX's offer. Tr. 63, 92. Pautsch testified that Sloan's testimony regarding this "back...and forth was by and large, right." Tr. 91.

Sloan testified that on September 6, 2022, she spoke with Pautsch in order to try to resolve the charge, but the parties were unable to do so. Tr. 63. In addition, on

15 September 13, 2022, Newsguild contacted the Federal Mediation and Conciliation Service to obtain a mediator. Tr. 63. However, at a negotiating session on September 16, 2022, WPIX dropped its demand that Newsguild withdraw the charge, stating that it was not making withdrawal of the charge a condition of reaching agreement. Tr. 64. Pautsch testified that he told Newsguild that WPIX would not condition agreement on

20 withdrawal of the charge, "but I hope it goes away," because "When you settle a collective bargaining agreement, you settle it...You don't leave things like that out there. And I said in good faith, I hope you do that." Tr. 93.

On October 5, 2022, WPIX and Newsguild executed a Memorandum of

25 Understanding for the new collective bargaining agreement. G.C. Ex. 7; Tr. 64-65, 90. The preamble to the Memorandum of Understanding states as follows:

The Parties, having negotiated to modify and renew their Collective Bargaining Agreement ("CBA"), pursuant to Article XX of the CBA, that

30 was effective from January 1, 2016, through December 31, 2018 (the "Old CBA"), and have conducted such negotiations in good faith, hereby agree to the following sole modifications to the Old CBA. All other terms and conditions of the Old CBA survive and remain in full force and effect. This MOA covers all outstanding issues between the Parties that have been

35 discussed and which may have been raised during negotiations.

G.C. Ex. 7, p. 1. Pautsch testified that this language originated with Newsguild. Tr. 95. Pautsch stated that based upon this language he believed that Newsguild was no longer pursuing the instant unfair labor practice charge. Tr. 95-96.

On March 22, 2023, WPIX and Newsguild executed a collective bargaining agreement, effective by its terms from January 1, 2022 through June 30, 2025. G.C. Ex. 8; Tr. 66-67. Sloan testified that the Memorandum of Understanding was unanimously ratified by the bargaining unit employees, but the collective bargaining

45 agreement's language was not finalized until March 22, 2023 due to administrative issues. Tr. 67-68.

Decision and Analysis

A. General Principles and Contentions Involving Witness Credibility

Credibility determinations involve consideration of the witness' testimony in context, including factors such as witness demeanor, "the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences drawn from the record as a whole." *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001), enf'd. 56 Fed.Appx. 516 (D.C.Cir. 2003); see also *Hill & Dales General Hospital*, 360 NLRB 611, 615 (2014). Corroboration and the relative reliability of conflicting testimony are also significant. See, e.g., *Pain Relief Centers, P.A.*, 371 NLRB No. 70 at p. 2, fn. 4, 14 (2022) , enf'd. 2023 WL 5380232 (4th Cir. 2023) ("detailed account" of meeting provided by employee witnesses credited where Respondent witnesses "skipped almost all of the moment-by-moment details" except for legally significant statements); *Precoat Metals*, 341 NLRB 1137, 1150 (2004) (lack of specific recollection, general denials, and comparative vagueness insufficient to rebut more detailed positive testimony). It is not uncommon in making credibility resolutions to find that some but not all of a particular witness' testimony is reliable. See, e.g., *Farm Fresh Co., Target One, LLC*, 361 NLRB 848, 860 (2014).

The instant case does not generally involve issues of contested witness testimony or credibility. Pautsch did not dispute Sloan's account of the parties' negotiations or Lamadrid's notes of the May 26, 2022 negotiating session during his testimony, nor does WPIX do so in its Post-Hearing Brief. To the extent that any considerations of credibility are applicable here, I have considered the demeanor of the witnesses, the context of their testimony, corroboration via other testimony or documentary evidence or lack thereof, the internal consistency of their accounts, and the witnesses' apparent interests, if any. Any credibility resolutions I have made are addressed and incorporated into my analysis herein.

B. The Disputed Information Request and WPIX's Response

1. General Principles

An employer's obligation to bargain collectively and in good faith includes the obligation to provide the union with information which is relevant and necessary for the union to perform its duties as collective bargaining representative, including information pertinent in the context of collective bargaining negotiations. *Wyman Gordon Pennsylvania, LLC*, 368 NLRB No. 150 at p. 6 (2019), enf'd. 863 Fed.Appx.1 (D.C. Cir., 2020), citing *NLRB v. Truitt Mfg. Co.*, 351 NLRB 149, 152-154 (1956). Information regarding the terms and conditions of employment for the bargaining unit employees represented by the union is "presumptively relevant." *Wyman Gordon Pennsylvania, LLC*, 368 NLRB No. 150 at p. 6; *Tegna, Inc. d/b/a KGW-TV*, 367 NLRB No. 71 at p. 2 (2019). Where the requested information does not directly involve the bargaining unit employees, however, the union must establish its relevance. *Tegna, Inc. d/b/a KGW-*

TV, 367 NLRB No. 71 at p. 2. It is well-settled that the union’s burden in this respect is “not exceptionally heavy,” and that the Board applies “a broad, discovery-type standard” to determine the relevance of the information requested. *Tegna, Inc. d/b/a KGW-TV*, 367 NLRB No. 71 at p. 2; *National Extrusion & Mfg. Co.*, 357 NLRB 127, 128 (2011),
 5 enf’d. 700 F.3d 551 (D.C. Cir. 2012), quoting *Caldwell Mfg. Co.*, 346 NLRB 1159, 1160 (2006).

It is also well-established that an employer’s duty to bargain encompasses “a
 10 duty to provide information that would enable the bargaining representative to assess the validity of claims the employer has made in contract negotiations.” *National Extrusion & Mfg. Co.*, 357 NLRB at 128; see also *Wyman Gordon Pennsylvania, LLC*, 368 NLRB No. 150 at p. 7; *Caldwell Mfg. Co.*, 346 NLRB at 1159. Where an employer “has predicated its bargaining stance on assertions about its inability to pay” proposed wages and benefits “during the term of the bargaining agreement under negotiations,”
 15 the employer is obligated to “open its books” and provide detailed financial information in response to the union’s request. *Nielsen Lithographing Co.*, 305 NLRB 697, 700 (1991), enf’d. 977 F.2d 1168 (7th Cir. 1992); see also *Wayron LLC*, 364 NLRB 737, 739-740 (2016). Where, by contrast, the employer contends that the union’s proposals would place it at a competitive disadvantage based upon overall conditions in its
 20 industry, no such obligation attaches. *Nielsen Lithographing Co.*, 305 NLRB at 700-701. In the latter case, however, the employer is still required to provide the union with “specific information to evaluate the accuracy” of its claims “and respond appropriately with counterproposals.” *Caldwell Mfg. Co.*, 346 NLRB at 1160; see also *Arlington Metals Corp.*, 368 NLRB No. 74 at p. 3 (2019). In order to determine whether the
 25 employer has claimed an inability to pay, the Board “does not require that the employer cite any ‘magic words,’ but only that its statements and actions be specific enough to convey an inability to pay,” given the “particular circumstances” of the case. *Stella D’oro Biscuit Co.*, 355 NLRB 769, 770 (2010), enf. denied 711 F.2d 281 (2nd Cir. 2013), quoting *Lakeland Bus Lines*, 335 NLRB 322, 324 (2001).

30 2. Newsguild’s May 27, 2022 Information Request

The evidence here establishes that WPIX claimed that it was unable to pay the union’s proposed general wage increase during the parties’ negotiations in May 2022.
 35 Specifically, the evidence demonstrates that during his presentation regarding WPIX’s financial status on May 26, 2022, McDonnell explicitly stated that WPIX could not pay the general wage increase that Newsguild had proposed. Lamadrid’s uncontested notes of the May 26, 2022 session state that after a general discussion of the economic factors affecting the broadcast television industry and WPIX in its geographic market,
 40 McDonnell told the negotiators, “Wish I had a blank checkbook, but I don’t. Doing the best we can to manage financials and employee base to try to hold on to [people]. But it’s a challenge.” G.C. Ex. 6, p. 2.⁷ Lamadrid’s notes further indicate that when the Newsguild committee raised specific questions regarding the Union’s proposed general wage increase, McDonnell responded by describing the “challenge” at issue as, “there’s

⁷ Lamadrid’s notes were generally echoed by Sloan’s testimony, and were not contradicted in any way by Pautsch’s testimony, or by any other evidence adduced by WPIX.

only so much I have on the expense side given what our revenue position has historically been, and is now even more challenged.” G.C. Ex. 6, p. 6-7. Lamadrid’s notes also state that when the Newsguild committee argued that the 2% wage increases proposed by WPIX were not adequate in light of inflation, McDonnell

5 responded that while he could not control inflation, “What I can control, is be fair and equitable and give you as much as humanly possible. That’s where we are at this 2% number.” G.C. Ex. 6, p. 10. McDonnell’s statements – particularly his contention that WPIX’s proposed wage increase of 2% was “as much as humanly possible” – constituted an assertion that WPIX was unable to pay Newsguild’s proposed general

10 wage increases. It is true, as WPIX argues, that McDonnell addressed the overall impact on the industry and on the station of alternative sources of media such as the internet, streaming, and subscription services, as well as the effects of the pandemic. See, e.g., *Arlington Metals Corp.*, 368 NLRB No. 74 at p. 3 (no claim of inability to pay where employer “focused primarily on external conditions and competitive pressures” and “never stated that it did not have sufficient assets to meet the Union’s demands” either at the time of bargaining or “during the life of the contract”); *Tegna, Inc. d/b/a KGW-TV*, 367 NLRB No. 71 at p. 1, 2-3 (broadcast television station effectively asserted “inability to compete,” as opposed to inability to pay, by justifying proposals based upon competition with “alternative media sources” for millennial viewership). However,

15 McDonnell’s statements explicitly addressing Newsguild’s general wage increase proposal in the context of the station’s financial status – and asserting that WPIX’s lower wage proposal was “as much as humanly possible” – constituted a claim that WPIX was unable to pay the economic proposals being advanced by the Union.⁸

20

25 The evidence further establishes that Newsguild formulated its information request to evaluate the veracity of specific assertions advanced by WPIX during McDonnell’s presentation, and to develop bargaining proposals. Thus, Newsguild requested information regarding the station’s revenues – broken down by month or in any other manner maintained by WPIX – for the years 2018 through 2021 and until late

30 May 2022. G.C. Ex. 5, p. 4. This encompassed the period where McDonnell contended that WPIX had “lost more than 40 percent of our revenue” in connection with the pandemic, as well as the ensuing 18 months during which, according to McDonnell, revenues had not returned to their pre-pandemic levels. G.C. Ex. 6, p. 2. It also encompassed the period before and after WPIX ceased broadcasting New York

35 Yankees games in November 2021; McDonnell had contended during his presentation that “12% of our revenue disappeared this year” as a result. G.C. Ex. 6, p. 2. Newsguild’s request for WPIX’s budget for 2021, 2022, and 2023, broken down monthly or on any other basis WPIX maintained, was similarly tailored to assess McDonnell’s assertions in response to the Union’s proposed wage increases that “there’s only so

⁸ In addition, Lamadrid’s May 27, 2022 e-mail to Pautsch stated that during the May 25, 2022 negotiating session, Human Resources Director Ruby Wu had asserted that WPIX had its own budget and “cannot go much higher than its current wage offer.” G.C. Ex. 5, p. 4. Sloan did not recount this remark during her testimony regarding the May 25, 2022 negotiating session, and any notes Lamadrid may have taken of this session were not offered for admission into evidence. However, WPIX did not counter this particular assertion of Lamadrid’s during its own case. This evidence therefore further supports the conclusion that WPIX premised its bargaining position with respect to Newsguild’s proposed general wage increase on an inability to pay.

much I have on the expense side given what our revenue position has historically been, and is now even more challenged.” G.C. Ex. 5, p. 5; G.C. Ex. 6, p. 6-7. Thus, Newsguild’s requests for WPIX’s financial information were explicitly formulated to evaluate specific contentions regarding the station’s revenues, and did not seek broad financial information unrelated to claims made by WPIX during negotiations. See *Arlington Metals Corp.*, 368 NLRB No. 74 at p. 2-3 (employer not required to provide requested “audited financial reports” with “complete balance sheets, income statements, and statements of cash flow together with footnotes and detailed supporting schedules,” “detailed income statement,” “Detailed Balance Sheet,” “Statement of Cash flows,” and federal and state tax returns absent showing of claimed inability to pay).

Newsguild’s requests for information regarding advertisers were similarly tailored to address specific claims McDonnell articulated during his presentation. In this regard, Newsguild requested a complete list of current advertisers, advertisers that WPIX had lost since 2018, and WPIX’s pricing for advertising in effect since 2018. G.C. Ex. 5, p. 4. These requests were designed to elicit information pertinent to McDonnell’s assertions that from 2019 to March 2020 WPIX had “lost more than 40 percent of our revenue,” a situation which would “take years to dig out.” G.C. Ex. 6, p. 2. McDonnell had also stated during his presentation that 40 percent of the station’s advertising had originated with “the auto industry,” including auto “makers, auto dealer groups, individual auto dealers” which had not resumed advertising with WPIX since the pandemic ended. *Id.* As discussed above, McDonnell also contended that WPIX’s loss of New York Yankees games as of November 2021 had resulted in a 12 percent reduction in the station’s revenue.⁹ *Id.* Newsguild was consequently entitled to information to evaluate WPIX’s specific contentions regarding the station’s loss of advertising revenue, which McDonnell directly connected with the infeasibility of Newsguild’s general wage increase proposal.

In this respect the instant case is materially distinct from the scenario addressed by the Board in *Tegna, Inc. d/b/a KGW-TV*, cited above. In that case, the Board found that the employer, a local broadcast television station, had claimed during negotiations that it could not remain competitive if it acceded to the union’s bargaining demands, although it had not contended an “inability to pay.” 367 NLRB No. 71 at p. 2. The Board determined that information requested by the union regarding the employer’s market share, ratings, and viewership, analyses regarding “changes in advertising placement and revenue for television statements,” and “content providers” the employer considered its “primary competitors” was relevant, given the employer’s contention that competition with alternative media sources had engendered its bargaining position. *Tegna, Inc. d/b/a KGW-TV*, 367 NLRB No. 71 at p. 2-3, fn. 6. However, the Board found that the employer was not required to provide information regarding “the specific details of the [employer’s] advertising pricing structure and clients,” because the employer “never stated that it had experienced any particular increase or decrease in its

⁹ Lamadrid also stated in his May 27, 2022 e-mail to Pautsch that Tindiglia represented during this session that the cost of advertising “pods,” or groups of advertisers whose advertisements could be accommodated within the advertising time allocated during each hour of broadcasting, had been declining during the past ten years. G.C. Ex. 5, p. 4; Tr. 41.

advertising revenue in recent years.” *Tegna, Inc. d/b/a KGW-TV*, 367 NLRB No. 71 at p. 3. Here, by contrast, the evidence establishes that WPIX’s position regarding Newsguild’s general wage increase proposal was premised upon an inability to pay, as discussed previously. In addition, however, McDonnell made explicit assertions

5 regarding WPIX’s loss of advertisers and the resulting percentage decrease in revenue in connection with the pandemic and during the succeeding years. The Union was therefore entitled to information in order to assess these claims, to evaluate the viability of its economic proposals, and to potentially revise them.

10 It should also be noted that during Lamadrid and Pautsch’s e-mail exchange regarding the information request in 2022, Pautsch asserted that the information sought by the Union was confidential, and that any contact between the Union and WPIX’s advertisers would undermine its business relationships. G.C. Ex. 5, p. 2. However, the record establishes that the station never even attempted to discuss some sort of

15 confidentiality arrangement covering the information or any contacts with advertisers after the Union offered to do so in Lamadrid’s May 27 and June 15, 2022 e-mails. See G.C. Ex. 5, p. 1-2, 4. The evidence further demonstrates that in his June 15, 2022 e-mail, Lamadrid offered to initially limit the production of information pertaining to advertising to advertising revenue, as opposed to the identities and contact information

20 for advertisers the Union had sought earlier. G.C. Ex. 5, p. 2. However, WPIX still refused to provide any of the requested information, or even engage with Newsguild regarding these aspects of its request. Such a course of conduct indicates that WPIX’s asserted confidentiality concerns were disingenuous.

25 Finally, WPIX contends that the instant unfair labor practice charge was resolved via language contained in the Memorandum of Understanding entered into by the parties on October 5, 2022. Post-Hearing Brief at 6-7, 9-10. However, the evidence establishes that during the culmination of their negotiations in August 2022, the parties explicitly excluded the resolution of the charge from their settlement of the collective

30 bargaining agreement. In particular, the evidence demonstrates that as negotiations were concluding, Newsguild made an offer which modified what WPIX had described as its “last, best, and final offer” to include higher general wage increases and withdrawal of the instant charge as part of a resolution of the collective bargaining agreement. Tr. 62, 93-94; R.S. Ex. 1. After WPIX rejected this offer, Newsguild agreed to WPIX’s last,

35 best, and final offer, while voicing its intent to continue with the processing of the charge. Tr. 62. When Pautsch indicated that WPIX had intended to include withdrawal of the charge as part of its last, best, and final offer, negotiations between the parties broke off, and subsequent discussions regarding the charge did not resolve the issue. Tr. 62-63, 92. Then, at a negotiating session in September 2022, WPIX dropped its

40 demand that Newsguild withdraw the charge, and the parties proceeded to finalize the collective bargaining agreement. Tr. 64-68; G.C. Ex. 7, 8. This history illustrates that the instant unfair labor practice charge was not resolved by the parties’ entering into October 5, 2022 Memorandum of Understanding or the collective bargaining agreement effective by its terms from January 1, 2022 through June 30, 2025.

For all of the foregoing reasons, the evidence establishes that by refusing to provide Newsguild with the information requested in Lamadrid's May 27, 2022 e-mail, WPIX failed to provide information relevant and necessary for Newsguild's performance of its duties as collective bargaining representative, thereby refusing to bargain collectively and in good faith in violation of Sections 8(a)(1) and (5) of the Act.

Conclusions of Law

1. Respondent Nexstar Media Group, Inc. d/b/a WPIX is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Since on or about May 27, 2022, Nexstar Media Group d/b/a WPIX has failed and refused to provide information requested by Newsguild of New York, Local 31003, TNG/CWA, AFL-CIO, which was necessary and relevant to Newsguild's performance of its duties as collective bargaining representative, thereby failing and refusing to bargain collectively and in good faith, in violation of Sections 8(a)(1) and (5) of the Act.

3. The unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

The Remedy

Having found that WPIX engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. However, although I have found that WPIX violated the Act by failing and refusing to provide the information requested by Newsguild on May 27, 2022, I must separately consider whether it is appropriate to order WPIX to provide the requested information to the Union at this time. See *Boeing Co.*, 364 NLRB 158, 161 (2016); *Borgess Medical Center*, 342 NLRB 1105, 1106-1107 (2004). WPIX contended at the hearing and argues in its Post-Hearing Brief that because the parties entered into a collective bargaining agreement on March 22, 2023, which is effective by its terms from January 1, 2022 through June 30, 2025, Newsguild's May 25, 2022 information request is now moot. Tr. 82-83; Post-Hearing Brief at 7-10.

In *Borgess Medical Center*, the Board held that it would not order an employer to produce unlawfully withheld information where the union had no present or continuing need for the information at the time of the Board's decision, so that intervening events had rendered the union's information request moot. 342 NLRB at 1106-1107. In *Borgess Medical Center*, the employer unlawfully refused to provide incident reports requested by the union in connection with a grievance regarding the discharge of a bargaining unit employee. 342 NLRB at 1105, 1106. Subsequently the grievance was arbitrated, and neither party appealed the arbitrator's decision. *Borgess Medical Center*, 342 NLRB at 1106. The Board found that as of the time of its decision, the union "has not asserted that it needs the information to pursue [the] grievance in another forum and has not indicated that it needs the incident reports for any other matter." Id. As a result, the Board declined to order the employer to produce the

information that it had unlawfully refused to provide. *Borgess Medical Center*, 342 NLRB at 1107.

In his Post-Hearing Brief, General Counsel argues that the principle articulated in *Borgess Medical Center* to the effect that an employer need not produce requested information which was unlawfully withheld when intervening events have rendered the request moot should be overturned. Post-Hearing Brief at 33-36. As an Administrative Law Judge, I am not empowered to do so, as I am required to “apply established Board precedent which the Supreme Court has not reversed.”¹⁰ *Pathmark Stores, Inc.*, 342 NLRB 378, fn. 1 (2004); see also *Gas Spring Co.*, 296 NLRB 84, 97-98 (1989), e’f’d. 908 F.2d 966 (4th Cir. 1990).

In *Boeing Co.*, the Board articulated the standards of proof and procedural process for litigating a contention that an employer need not produce unlawfully withheld information because the information was no longer necessary for the union to fulfill its obligations as collective bargaining representative, thereby rendering the request moot. 364 NLRB at 161. Pursuant to *Boeing Co.*, an argument that the employer should not be ordered to produce the requested information because the union has no further need for it may be raised “before or during the merits hearing before the administrative law judge” or, if the relevant evidence becomes available only after the hearing on the merits had closed, during the compliance phase of the case. 364 NLRB at 161. The Board held that the employer “bears the burden of proof of establishing that the union has no need for the requested information” as of the time that it raises such a contention. *Id.* If the employer demonstrates that “the original, stated need for the information is no longer present,” General Counsel or the union “must articulate a present need for the information” to be produced. *Id.*

Neither party here explicitly addresses the procedural framework and evidentiary burdens articulated in *Boeing Co.* for determining whether an order requiring that WPIX produce the information requested by Newsguild on May 27, 2022 is warranted. G.C. Post-Hearing Brief at 32-37; R.S. Post-Hearing Brief at 7-10. WPIX argues that Newsguild’s May 27, 2022, information request is moot because the parties engaged in good faith bargaining and ultimately executed a Memorandum of Understanding and a finalized collective bargaining agreement. The caselaw, however, does not support WPIX’s contention that a union’s request for information in the context of collective bargaining negotiations is inherently mooted by the subsequent execution of an agreement.¹¹ Indeed, in *Boeing Co.*, the Board specifically noted that the “execution of a collective-bargaining agreement does not necessarily eliminate the need for relevant

¹⁰ In addition, General Counsel requests as an enhanced remedy that WPIX be ordered to bargain regarding wages at Newsguild’s request following the production of the requested information. Post-Hearing Brief at 36-37. As General Counsel acknowledges, there is no existing precedent for such a remedy, and I therefore decline to order it for the same reasons.

¹¹ WPIX relies in this respect on a Memorandum issued by the agency’s Division of Advice in *A. T. Massey Coal Co.*, 9-CA-22165 (November 25, 1986). However, it is well-settled that such Advice Memoranda “have no precedential value or dispositive effect before the Board.” *Longshoremen ILWU Local 12 (Southport Lumber Co.)*, 367 NLRB No. 16, p. 1, n. 1 (2018); see also *Airgas USA, LLC*, 373 NLRB No. 102, p. 1-2, 30, n. 39 (2024).

information that was requested by the union during bargaining,” where the union “has an ongoing need for the requested information.” 364 NLRB at 161, fn. 10, citing *Dodger Theatricals Holdings, Inc.*, 347 NLRB 953, 972, fn. 44 (2006) (information request issue not moot despite execution of a collective bargaining agreement, “since by the time this case is finally decided...it could very well be time to negotiate a new agreement”), and *LBT, Inc.*, 339 NLRB 504, 504-506 (2003). WPIX further contends that language in the Memorandum of Understanding – which asserts that WPIX and Newsguild “conducted such negotiations in good faith” and that the Memorandum itself “covers all outstanding issues between the parties that have been discussed and which may have been raised” in negotiations – establishes that the information request has been resolved. G.C. Ex. 7, p. 1; Post-Hearing Brief at 9-10. This argument is not persuasive given Sloan’s uncontroverted testimony that Newsguild explicitly refused to withdraw the instant unfair labor practice when it ultimately accepted WPIX’s last, best and final offer.

Additional evidence further militates against a finding that Newsguild had no continuing need for the information requested on May 27, 2022 at the time of the hearing. Sloan testified that without the requested information Newsguild felt that “we were operating in a vacuum” during bargaining in the summer of 2022. Tr. 68. Sloan testified that Newsguild nevertheless proceeded to negotiate and resolve the collective bargaining agreement “because the [bargaining] unit had gone so long without a wage increase” that “we needed to move forward and hopefully get the information at a later time.” Tr. 68. And while the evidence establishes that the information requested was explicitly tailored to past events – specifically the financial impact of the COVID-19 pandemic in 2020 and the loss of the contract to broadcast New York Yankees baseball games in November 2021 – this factor is not determinative. McDonnell conveyed during his presentation at negotiations that these circumstances continued to affect WPIX’s finances, stating that it would “take years to dig out” from their impact, because 2020 had been the “wors[t] year on record for all of us.” G.C. Ex. 6, p. 2, 5; see also G.C. Ex. 6, p. 10 (“each day we are trying to dig out”). As a result, the requested information would likely remain necessary for Newsguild to analyze bargaining positions and formulate economic proposals in negotiations for a successor collective bargaining agreement to the contract effective by its terms from January 1, 2022 through June 30, 2025.

For all of the foregoing reasons, I find that WPIX has not satisfied its burden to establish that Newsguild has no ongoing need for the information pursuant to the *Boeing Co.* analysis described above. I will therefore order that WPIX produce the information requested by Newsguild on May 27, 2022.

WPIX shall be ordered to post an appropriate information notice, as described in the attached Appendix. This notice shall be posted in the Respondent’s facility at 220 East 42nd Street, New York, New York wherever notices to employees are regularly posted, for 60 days, without anything covering the notice or defacing its contents. In addition to the physical posting of paper notices, notices shall be distributed electronically, posted on an intranet or an internet site, and/or other using electronic means, to the extent Respondent customarily communicates with its employees in such

a manner. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed its facility at 220 East 42nd Street, New York, New York, Respondent shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by Respondent at any time since May 1, 2022.

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended:¹²

Order

Nexstar Media Group, Inc. d/b/a WPIX, its officers, agents, successors and assigns shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Newsguild of New York, Local 31003, TNG/CWA, AFL-CIO, by failing to provide Newsguild with requested information which is relevant and necessary to Newsguild's performance of its duties as the exclusive collective bargaining representative of the employees in the following appropriate unit:

News editors, assignment editors, writers (news and sports), graphic artists, news assistants (assignment desk and production), associate producer/editor, weather producer/editor, traffic producer/editor and web producer in the News Department of WPIX-TV.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide to Newsguild in a timely manner the information requested by the Union in the May 27, 2022, e-mail from Union attorney Thomas J. LaMadrid, Esq. to Vice President of Labor Relations and Associate General Counselor Charles W. Pautsch, Esq.

(b) Within 14 days after service by the Region, post at its facilities at 220 East 42nd Street, New York, New York, copies of the attached notice marked "Appendix."¹³

¹² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

¹³ If the facilities involved in these proceedings are open and staffed by a substantial complement of employees, the notice must be posted within 14 days after service by the Region. If the facilities involved

Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If Respondent has gone out of business or closed its facility at 220 East 42nd Street, New York, New York, Respondent shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by Respondent at any time since May 1, 2022.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 2 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent have taken to comply.

Dated, Washington, D.C. April 11, 2025



Lauren Esposito
Administrative Law Judge

in these proceedings are closed or not staffed by a substantial complement of employees due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notice must be posted within 14 days after the facilities reopen and a substantial complement of employees have returned to work. If, while closed or not staffed by a substantial complement of employees due to the pandemic, Respondent are communicating with its employees by electronic means, the notice must also be posted by such electronic means within 14 days after service by the Region. If the notice to be physically posted was posted electronically more than 60 days before physical posting of the notice, the notice shall state at the bottom that "This notice is the same notice previously [sent or posted] electronically on [date]." If this Order is enforced by a judgment of the United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with Newsguild of New York, Local 31003, TNG/CWA, AFL-CIO, by refusing to provide the Union with requested information which is relevant and necessary to Newsguild's performance of its duties as the exclusive collective bargaining representative of the employees in the following unit:

News editors, assignment editors, writers (news and sports), graphic artists, news assistants (assignment desk and production), associate producer/editor, weather producer/editor, traffic producer/editor and web producer in the News Department of WPIX-TV.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed to you by Section 7 of the Act.

WE WILL provide to Newsguild in a timely manner the information requested by the Union in the May 27, 2022 e-mail from Union attorney Thomas J. LaMadrid, Esq. to Vice President of Labor Relations and Associate General Counselor Charles W. Pautsch, Esq.

NEXSTAR MEDIA GROUP, INC. D/B/A WPIX

Dated: _____ By: _____
Representative Title

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

26 Federal Plaza, 41st Floor, New York, New York 10278
(212)264-0300, Hours: 8:30 a.m. to 5:00 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/02-CA-298558 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (212)264-0300.