

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

STEPHENS MEDIA, LLC, d/b/a  
HAWAII TRIBUNE-HERALD

and

HAWAII NEWSPAPER GUILD  
LOCAL 39117, COMMUNICATIONS  
WORKERS OF AMERICA, AFL-CIO

Cases 37-CA-7043  
37-CA-7045  
37-CA-7046  
37-CA-7047  
37-CA-7048  
37-CA-7084  
37-CA-7085  
37-CA-7086  
37-CA-7087  
37-CA-7112  
37-CA-7114  
37-CA-7115  
37-CA-7186

**NOTICE AND INVITATION TO FILE BRIEFS**

On February 14, 2011, the Board issued a Decision and Order finding, in part, that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to provide certain information to the Union.<sup>1</sup> However, the Board severed the question of whether the Respondent had a duty to provide the Union with a statement provided to it by employee Koryn Nako on October 19, 2005 or any other statements that it obtained in the course of its investigation of employee Hunter Bishop's alleged misconduct. The Board explained that

Board precedent establishes that the duty to furnish information "does not encompass the duty to furnish witness statements themselves." *Fleming Cos.*, 332 NLRB 1086, 1087 (2000), quoting *Anheuser-Busch, Inc.*, 237 NLRB 982, 985 (1978). Compare *Northern Indiana Public Service Co.*, 347 NLRB 210 (2006) (employer notes of investigatory interviews of employees held

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<sup>1</sup> 356 NLRB No. 63.

confidential). This case illustrates, however, that Board precedent does not clearly define the scope of the category of "witness statements." This case also illustrates that the Board's existing jurisprudence may require the parties as well as judges and the Board to perform two levels of analysis to determine whether there is a duty to provide a statement: first asking if the statement is a witness statement under *Fleming* and *Anheuser-Busch* and then, if the statement is not so classified, asking if it is nevertheless attorney work product. We have therefore decided to sever this allegation from the case and to solicit briefs on the issues it raises.

Accordingly, the parties and interested amici are invited to file briefs on the aforementioned issues.

Briefs not exceeding 25 pages in length shall be filed with the Board in Washington, D.C. on or before April 1, 2011. The parties may file responsive briefs on or before April 15, 2011, which shall not exceed 10 pages in length. No other responsive briefs will be accepted. The parties and amici shall file briefs electronically at <http://mynlrb.nlr.gov/efile>. If assistance is needed in filing through <http://mynlrb.nlr.gov/efile>, please contact the undersigned.

Dated, Washington, D.C., March 2, 2011.

By direction of the Board:

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/s/ Lester A. Heltzer  
Executive Secretary