

Amphlett Printing Company and San Francisco-Oakland Newspaper Guild, Local 52, the Newspaper Guild, AFL-CIO. Case 20-CA-12016

September 21, 1981

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On August 25, 1978, the Board issued its Decision and Order in the above-entitled proceeding,¹ together with its Decision in *Times-Herald, Inc.*,² another of four related cases,³ wherein the Board concluded that the Respondents had violated Section 8(a)(5) and (1) of the Act by refusing to provide the Charging Party San Francisco-Oakland Newspaper Guild, Local 52 (hereinafter the Guild or the Union), with information pertaining to the aggregate compensation paid for production of editorial material supplied by nonunit individuals not represented by the Guild.

On October 8, 1980, the United States Court of Appeals for the Ninth Circuit issued its decision in the four consolidated cases,⁴ in which it affirmed the Board's determinations, but remanded for further explication of the remedy granted on grounds it considered the Board's explanation confusing.

Thereafter, the Board notified the parties that it had decided to accept the court's remand, and invited the parties to submit statements of position, subsequently extending the time for filing such submissions to February 13, 1981.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Although the court has specifically referred to the Board's decisions in these cases in terms of "aggregate" amounts paid to independent correspondents for editorial product, it has apparently interpreted our prior decision in this *Amphlett* case, and our Supplemental Decision and Order in *Times-Herald, supra*, as premising the form of the disclosure order solely on the ground of "Employer" interest in confidentiality, claims of which it views as lacking record support. Such was not our purpose however. In articulating the view that amounts paid individual nonunit writers should remain con-

fidential between the employers and those writers, we intended to convey as well our recognition of, and concern for, the obvious right to privacy of nonunit writers, which could be compromised by an order to provide information concerning individual personal financial arrangements to a stranger entity—an entity which does not represent them and which does not claim to do so.⁵

Further, while data as to wages and terms and conditions of employment of unit employees is presumptively relevant, there is no such presumption where the requested information concerns nonunit individuals. In considering the latter situation, the initial question is whether the information sought "is related to the Union's function as bargaining representative and reasonably necessary to performance of that function." *Curtiss-Wright Corporation, Wright Aeronautical Division v. N.L.R.B.*, 347 F.2d 61, 68 (3d Cir. 1965). In the instant case, as the Union's representative testified, and as the Administrative Law Judge and the Board found, the amounts paid to nonunit individuals for material submitted was not directly translatable to the hourly based compensation paid to unit employees. Moreover, though the Union's claim for the information was that it was necessary in terms of formulating wage demands for unit employees, we note again testimony that the Union's contractual wage demands were premised on ultimately achieving parity for unit employees with similar employees of San Francisco publishers, that the Union had achieved such parity in the past at San Mateo without being furnished information as to the specific compensation of individual nonunit correspondents, and that the Union did not require such information in order to achieve parity for unit employees. Thus, subsumed as part and parcel of the Board's consideration of the Union's request for information as to nonunit individuals was the determination that *specific* amounts paid to identifiable nonunit writers was not necessary in terms of the Union's expressed concern over how large a "slice of the pie" of the Employer's editorial budget was expended for the approximately 16 nonunit correspondents reporting to the San Mateo Times. We do, indeed, think it appropriate to protect the individual nonunit writer from disclosure of his compensation, particularly in the absence of any demonstrated need by the Union to have such information on an individual basis.

¹ 237 NLRB 955.

² 237 NLRB 922; Supplemental Decision and Order, *Times-Herald, Inc.*, 240 NLRB 439 (1979).

³ See also *Brown Newspaper Publishing Co., Inc.*, 238 NLRB 1334 (1978); and *Press Democrat Publishing Co.*, 237 NLRB 1335 (1978), as amended by corrective order issued January 30, 1979 (not published in volumes of Board Decisions); *Press Democrat Publishing Co., supra*, 237 NLRB 1335, fn. 2.

⁴ *Press Democrat Publishing Co. v. N.L.R.B.*, 629 F.2d 1320.

⁵ Similarly, the Union's request for the real and "pen" names, and addresses, of nonunit individuals was also denied. This case in our view is clearly distinguishable from the situation in which disclosure of wage information may be ordered, albeit over an individual's objection, where the individual is an employee, and is in fact included in the unit and represented by the union.

Accordingly, for the reasons expressed above, as well as in our original Decision herein and our Supplemental Decision in *Times-Herald, Inc., supra*, we reaffirm our earlier Order that Respondent furnish to the San Francisco-Oakland Newspaper Guild, Local 52, upon request, information as to the aggregate dollar amount of Respondent's editorial budget expended by the San Mateo Times for correspondents supplying editorial product pub-

lished in that newspaper during the period from May through July 1976.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby affirms its original Order herein (237 NLRB 955) and orders that the Respondent, Amphlett Printing Company, San Mateo, California, its officers, agents, successors, and assigns, shall take the action set forth in said Order.