Brown Newspaper Publishing Co., Inc. *and* San Francisco-Oakland Newspaper Guild, Local 52, The Newspaper Guild, AFL-CIO. Case 32-CA-113 (formerly 20-CA-12013)

September 29, 1978

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS JENKINS AND TRUESDALE

On June 17, 1977, Administrative Law Judge Jerrold H. Shapiro issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed cross-exceptions and a supporting brief. Subsequently, by letter filed on September 22, 1977, Respondent requested that the complaint herein be dismissed for the reasons set forth in the Administrative Law Judge's Decision in *Amphlett Printing Company*, 237 NLRB 955 (1978).[1]

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.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Brown Newspaper Publishing Co., Inc., Richmond, California, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 2(a):

"(a) Furnish, upon request, to San Francisco-Oakland Newspaper Guild, Local 52, The Newspaper Guild, AFL-CIO, information (in dollar amount) as to that portion of Respondent's editorial budget expended in aggregate for editorial material written by Kathy White and George Tashman published in the Independent and Berkeley Daily Gazette from May through July 1976."

2. Substitute "Region 32" for the references to "Region 20" which appear in paragraphs 2(b) and (c).

3. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL, upon request, furnish San Francisco-Oakland Newspaper Guild, Local 52, The Newspaper Guild, AFL-CIO, with information (in dollar amount) as to that portion of our editorial budget expended in aggregate for editorial written by Kathy White and George Tashman published in the Independent and Berkeley Daily Gazette from May through July 1976.

WE WILL NOT refuse to bargain collectively with the aforesaid Union by refusing, upon request, to supply relevant information needed by said Union to represent the editorial employees it represents employed by us at the Independent and Berkeley Daily Gazette.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed in Section 7 of the Act.

BROWN NEWSPAPER PUBLISHING CO., INC.

DECISION

STATEMENT OF THE CASE

JERROLD H. SHAPIRO, Administrative Law Judge: The hearing in this case held on April 18, 1977, is based upon charges filed by San Francisco-Oakland Newspaper Guild, Local 52, The Newspaper Guild, AFL-CIO, herein the Union, and a complaint issued December 29, 1976, as amended April 5, 1977, on behalf of the General Counsel of the National Labor Relations Board, herein called the Board, by the Regional Director of the Board for Region 20, alleging that Brown Newspaper Publishing Co., Inc., herein called Respondent, has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the National Labor Relations Act, herein called the Act. The Respondent filed an answer denying the commission of the alleged unfair labor practices.

Upon the entire record, from my observation of the demeanor of the witnesses, and having considered the posthearing briefs, I make the following:

[1] Since we have reversed the Administrative Law Judge's Decision in *Amphlett*, this request is denied. See also *Times-Herald, Inc.*, 237 NLRB 922 (1978).

Consistent with the decision in *Times-Herald*, the Board will not require that the information specify the amount paid to designated individuals. As in *Amphlett*, the Board orders that the Union, upon request, be furnished with information (in dollar amount) as to that portion of Respondent's editorial budget expended in aggregate for nonunit correspondents or columnists.

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent, Brown Newspaper Publishing Co., Inc., is a California corporation which publishes newspapers in the State of California. During the past year Respondent, which received gross revenues in excess of $200,000 from the sale of its newspapers and advertising, subscribed to interstate news services and published nationally syndicated features in its newspapers. Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Union, San Francisco-Oakland Newspaper Guild, Local 52, The Newspaper Guild, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE QUESTION PRESENTED

The issue in question is whether Section 8(a)(5) and (1) of the Act obligates Respondent to supply to the Union, upon request, information about the amount of money Respondent pays persons to perform work similar to the work performed by employees represented by the Union, even though such persons are not represented by the Union.

IV. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

The Union is, and has been for many years, the collective-bargaining representative of a unit of all editorial employees[1] employed by the two daily newspapers, The Independent and The Berkeley Daily Gazette, which Respondent publishes. The parties' most recent collective-bargaining contract was effective from January 1, 1974, to December 31, 1976. It covered approximately 40 editorial employees employed by the 2 newspapers in a single bargaining unit.

During the negotiations leading up to the signing of the 1972-74 collective-bargaining contract, the one which preceded the most recent contract, the Union proposed the following work jurisdiction clause:

> The jurisdiction of the Guild is 1. the kind of work which is customarily or presently performed by the Publisher's employees within the unit covered by this agreement; 2. any kind of work that is a substitute for or evolution of the work customarily or presently performed in said unit; and 3. any other kind of work assigned to be performed within said unit.
>
> Performance of such work, whether by presently or customarily used processes or equipment or by new or modified processes or equipment, shall be assigned to employees of the Publisher covered by this agreement.

Respondent objected to this provision; instead it agreed to a clause which in effect appears to provide for the maintenance of the status quo. The clause, article III(d), which was also included in the parties' most recent agreement, deals with the contract's coverage, and reads:

> It is agreed that the work functions now or normally performed by such employees in such employment [referring to unit employees] shall continue to be performed by employees in the Editorial Department of The Independent and the Berkeley Daily Gazette, as will all additional work functions requiring similar skills and serving a similar purpose for which employees normally are employed in the Editorial Department . . . .

In an effort to discourage Respondent from assigning bargaining unit work to nonunit workers, the Union, during negotiations for the most recent contract, proposed that Respondent pay the persons who performed such work the top contractual minimum wage rate and contribute to the contractual health and retirement funds on their behalf. Respondent rejected this proposal, stating it would make the continued employment of nonunit personnel too expensive.

The parties' most recent collective-bargaining contract was scheduled to terminate December 31, 1976. The negotiations for a new contract began early in December 1976, at which time the Union made its initial contract proposals which, among other things, included the above-described "minimum wage proposal" which reads:

> For each published story, photo or art item concerning subject matter in Northern California and acquired from a non-employee, the Employer shall pay the non-employee not less than one week's Schedule "A" top minimum, and shall pay to the Retirement Fund and the Health & Welfare Fund the same contributions that would be paid that week for a full-time employee. Employer shall report weekly to the Guild giving the name and address of each non-employee whose product is published, the byline or credit line used, if any, and any compensation paid.

Respondent proposed the following deletions in the portion of the contract, article III(d), which deals with the contract's coverage.

> It is agreed that the work *functions* now *or normally* performed by such employees *in such employment* [referring to unit employees] shall continue to be performed by employees in the Editorial Department of the Independent and the Berkeley Gazette, *as will all additional work functions requiring similar skills and serving a similar purpose for which employees normally are employed in the Editorial Department of the Independent and Berkeley Gazette.* [Emphasis indicates deletions.]

Respondent further proposed that the Union agree that when Respondent assigns editorial work to such persons as "stringers," "independent contractors," or "free lancers" that they will not be covered by the parties' collective-bargaining contract.

On August 5, 1976, the Union wrote Respondent it was preparing for the negotiations for the new collective-bar-

[1] The phrase "editorial work" or "editorial material" refers to everything, other than advertisements, published in the newspapers. The phrase "editorial employee" refers to the employees who produce editorial work.

gaining agreement and needed certain data to assist it in the negotiations. The Union requested Respondent furnish to it, by August 30, 1976, the following information pertaining to nonbargaining unit individuals:

> A list of all persons, whether employees or not, outside the bargaining unit whose editorial products were published in your newspaper during the three months May through July, 1976, excluding only persons whose copy was supplied to you by wire services or syndicated services.
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> With this list of non-bargaining unit persons, the following data:
>
> a. If a pen name was published, give both the published name and the real name.
>
> * * * * *
>
> c. Identification of each item from such person published during the three-month period, giving enough detail to enable one to locate it in the newspaper.
>
> d. Amount(s) paid to the person for, or in connection with her/his production of, each item.
>
> This non-bargaining unit data is needed so that the Guild may evaluate present contract provisions designed to protect bargaining unit work and be in a position to negotiate as to further provisions to protect bargaining unit work and negotiate as to minimum terms for non-employee work.

Respondent did not supply this information; so the Union on September 13, 1976, wrote Respondent renewing its request. When Respondent still failed to respond, the Union on October 7, 1976, filed the unfair labor practice charges in the instant case.

On December 17, 1976, the Union wrote Respondent stating that "[i]n addition to the material requested in our August 5, 1976, letter, we request the following with respect to non-bargaining unit persons":

> 1. A list of all incidents or occasions within the six-month period May through October, 1976, when raw news data or news information was supplied to the newspaper by a non-bargaining unit person (excluding syndicated or wire service), the name of the person who supplied it, and what the person was paid for each incident or occasion or other basis of pay.
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> 2. A list of any individuals who fit into the category of "stringers" or "correspondents" or other persons (excluding syndicated or wire service) who are paid a "retainer" or other regular weekly or monthly or other periodic sum, to provide editorial matter, including raw news facts; and an indication of the fields or interests or geographic areas covered by each such individual; and for each individual, an indication whether he or she supplied specific news items, articles or raw data; and the amounts paid to each individual, either for specific periods or for specific items.

On February 24, 1977, Respondent's executive editor, Sellards, and its labor relations consultant, Anderson, met with the Union's assistant executive secretary, Cuthbertson, and its attorney, Leff, to discuss the Union's requests for information. Respondent's representatives explained in substance that the only nonbargaining unit employees regularly employed and receiving financial compensation during the time period for which the Union was interested were George Tashman, the newspapers' TV editor, and Kathy White, the newspapers' food editor. They outlined the nature of the work performed by White and Tashman and indicated it was "by-lined" hence readily indentifiable and available for the Union to inspect but, as Sellards informed the union representatives, the information as to the amount of money paid by Respondent for their work was not available for the Union for the reason that Tashman and White had been writing for the Respondent's newspapers for 20 years and were so close to the publisher as to be viewed as "family members."[2] The meeting concluded with the union representatives stating that they would withdraw the instant unfair labor practice charges if Respondent reduced into writing the information that had been supplied at this meeting and if Respondent supplied the Union with the amount of money paid to White and Tashman for performing editorial work.

On April 7, 1977, Respondent reduced into writing the information it had supplied to the Union at the February 24, 1977, meeting, as follows:

> From the period May 1976 through October 1976, the following is representative of the news content which appeared in [the Independent and Berkeley Daily Gazette] submitted by non-unit persons (with the exception of syndicated copy and wire service) for which the newspapers made any financial remuneration:
>
> 1. The newspaper utilized reviewers and art critics. They are reimbursed in an amount which approximates their personal out-of-pocket expenses. They are, of course, entitled to retain in their possession records, books and tickets to art events which come to their possession during the course of their reviewing operations.
>
> 2. During the aforementioned period, representatives of the newspapers recollected only one news story from a non-unit person which was paid for. The contributor was paid $35.
>
> 3. Photographs occasionally appear in the newspaper from non-unit persons. Such persons are paid between $10-$25 per picture depending on news value.
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> 4. In the Vistas Magazine which appears weekly, a radio columnist is not remunerated; however, he receives a free ad for a book which he wrote.
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> 5. The company also utilizes George G. Tashman, the TV Editor, and Kathy White, the Food Editor and Secretary to the Publisher. These two persons have been contributing to the newspaper on a regular basis for the last 20 years. Their columns are by-lined and easily identifiable, and available for the Guild to inspect. However, the price paid for their work is not relative to any collective bargaining purposes.

[2] The description of the reason advanced by Sellards on February 24, 1977, for refusing to supply the amounts paid White and Tashman is based upon a composite of the testimony given by Leff and Cuthbertson, who impressed me as trustworthy witnesses. Sellards did not specifically deny the words attributed to him. Anderson did not testify.

Regarding White and Tashman, the record reveals that during the time material herein, although not represented by the Union, they performed editorial work. White, employed as Respondent's food editor, produced a weekly food section which contained stories about foods and recipes.[3] Tashman, Respondent's television editor, wrote a daily column about television. They have been doing this identical work, with the Union's knowledge, for 20 years.[4] This has occurred despite the fact that the type of work they perform is editorial work of the kind covered by the Union's successive collective-bargaining agreements with Respondent. Other editorial workers, represented by the Union and covered by the parties' successive collective-bargaining contracts, write special interest columns similar in nature to the columns produced by White and Tashman.[5] In these circumstances, I am of the opinion that the Union has acquiesced in Respondent's assignment of the editorial work, involving the television column and the food column, to nonunit workers, Tashman and White.[6]

B. *Discussion and Ultimate Findings*

It is well settled that an employer has a statutory duty to provide relevant information needed by a union for the proper performance of its duties and that the employer's failure to meet this duty constitutes a refusal to bargain, in violation of Section 8(a)(5) and (1) of the Act. *N.L.R.B.* v. *Acme Industrial Co.*, 385 U.S. 432, 435-436 (1967). The sole criterion for determining whether information must be produced is it relevance or reasonable necessity for the union's proper performance of its representative role. This is true whatever the nature of the material sought, though the manner in which relevance is to be ascertained varies. Information directly related to wages, hours, or other terms and conditions of unit employees is presumptively relevant to the union's representative duties, while information concerning employees outside the unit must be shown to be "relevant to bargainable issues." *N.L.R.B.* v. *Rockwell-Standard Corporation Transmission and Axle Division, Forge Division,* 410 F.2d 953, 957 (C.A. 6, 1969). In other words, "[w]hen a union requests information which is not ordinarily relevant to its performance as bargaining representative, but which is alleged to have become so because of peculiar circumstances, the Courts have quite properly required a special showing of pertinence before obliging the employer to disclose." *Prudential Insurance Company of America* v. *N.L.R.B.*, 412 F.2d 77, 84 (C.A. 2, 1969), and cases cited therein. The burden of proof is thus different but "the ultimate standard of relevancy is the same in all cases." *Prudential Insurance Company* v. *N.L.R.B., id.* at 84. See *Curtiss-Wright Corporation, Wright Aeronautical Division* v. *N.L.R.B.*, 347 F.2d 61, 69 (C.A. 3, 1965). It is only necessary for the union to demonstrate the "probability that the desired information [is] relevant, and that it [will] be of use to the Union in carrying out its statutory duties and responsibilities." *N.L.R.B.* v. *Rockwell-Standard,* 410 F.2d. at 957, quoting from *N.L.R.B.* v. *Acme Industrial Co.*, 385 U.S. at 437. This is, as the Supreme Court expressly recognized, a discover-type standard, not a trial-type standard, and thus allows the union access to a broad scope of potentially useful information for the purpose of bargaining intelligently. *N.L.R.B.* v. *Acme Industrial Co.*, 385 U.S. at 437 and fn. 6; *N.L.R.B.* v. *Rockwell-Standard Corp.*, 410 F.2d at 957; *The Torrington Company* v. *N.L.R.B.*, 545 F.2d 840, 842 (C.A. 2, 1976).

Respondent, as described in detail *supra,* refuses to supply to the Union the price it pays for the work performed by White and Tashman, the newspapers' only nonunit workers who regularly perform bargaining unit work for pay. It is for the refusal to furnish this information that the General Counsel and the Union charge Respondent, in this proceeding, with violating the Act. The ultimate question for decision is whether the Respondent's statutory duty to bargain with the Union obligates it to furnish the Union with information about the money it pays to White and Tashman for performing work covered by the terms of the parties' collective-bargaining contract, even though White and Tashman are not represented by the Union. First, it is necessary, however, to decide whether the Union's request for information about the money Respondent pays White and Tashman is supported by a showing of "probable" or "potential" relevance.[7]

Cuthbertson, the union representative who made the initial and subsequent written requests for the disputed information, testified that the Union sought information about the compensation White and Tashman received for performing bargaining unit work, for two separate reasons: (1) the information is relevant to the Union's contract proposal seeking the minimum contract rate of pay for unit work performed by nonunit persons, and (2) the information is also relevant to the Union's wage proposal covering the unit employees. I shall determine whether, in connection with either one or both of the purposes for which the information was sought, a proper showing of relevance has been made for the Union's use of the disputed information.

Insofar as the Union's request for information pertains to

[3] White is also the publisher's confidential secretary.

[4] Their columns are "by-lined," thus it is clear the Union had knowledge of their employment.

[5] Unit employees represented by the Union write special interest columns on the subjects: music; skiing; society news; and public service.

[6] That the Union has in effect ceded to Respondent the contractual right to assign to White the newspapers' food column is illustrated by the Union's April 1976 contractual grievance against Respondent, later withdrawn, which alleged that the work of "gathering news and reporting on a nutrition conference held recently in Carmel" was covered by the collective-bargaining contract and, as such, the Union charged, was improperly assigned to White as an unwarranted extension of the unit work *the Union had historically allowed White to perform.* (G.C. Exh. 11.)

[7] Respondent's contention, that the request for wage information as to White is not appropriate because White is also paid for her work as the publisher's confidential secretary, is without merit. The Union's requests for information, as addressed to Respondent, were limited specifically to the wages White received for performing bargaining unit work. Respondent never told the Union it was impossible to segregate White's wages for unit work from her work as confidential secretary, and the record contains no evidence which reveals this to be the case.

Likewise, I reject Respondent's contention that the request for wage information about Tashman is inappropriate because the Union was not seeking information concerning syndicated work and it is not clear whether Tashman is a syndicated columnist. There is no testimony that Tashman's work for Respondent was syndicated during any time material to this case. Respondent's and General Counsel's witnesses testified that so far as they knew Tashman worked solely for the two newspapers involved in this case. In addition, I presume that if Tashman's work was syndicated Respondent, when it refused to supply the Union the information pertaining to his wages, would have relied upon this factor as the basis for its refusal.

its contract proposal that Respondent pay the contractual minimum rate of pay and contribute to the contractual health and welfare funds on behalf of White and Tashman, although they are not represented by the Union, the threshold question is whether the proposal is a mandatory subject of bargaining. The statutory obligation to bargain, though normally concerned primarily with the working conditions of the employees in a particular bargaining unit, also encompasses matters involving individuals outside the unit which affect employees within the unit. *Local 24, International Brotherhood of Teamsters—Chauffeurs, Warehousemen, and Helpers of America, AFL-CIO, et al. (A.C. & Transportation)* v. *Oliver, et al.* 358 U.S. 283 (1959). *Oliver's* holding that the terms of employment of those outside the unit can be mandatory subjects of bargaining has been limited to situations in which those terms "vitally affect" the unit employees. *Allied Chemical & Alkali Workers of America, Local No. 1* v. *Pittsburgh Plate Glass Co., Chemical Division, et al.*, 404 U.S. 157, 178-179 (1971). The Union cannot require Respondent to bargain over the wages that Respondent will negotiate with White and Tashman absent evidence that their wages "vitally affect" the terms of employment of the workers that the Union represents. See *Sperry Systems Management Division, Sperry Rand Corp.* v. *N.L.R.B.* 492 F.2d 63, 69-70 (C.A. 2, 1974). There is no evidence that the employment of White or Tashman vitally affect the unit employees. Quite the contrary, there has been no erosion of the bargaining unit, rather the number of unit employees employed since 1973 has increased by one.[8] Moreover, White and Tashman do not perform work which actually or even potentially affects the hours, wages, job security, and working conditions of the bargaining unit employee.[9] Each writes a newspaper column devoted to a specific special interest topic. In White's case, food, and in Tashman's, television. Thus, they are not in competition with the unit employees for unit jobs in the sense that unit employees are in danger of being replaced by them. Since the columns they write have been treated as nonunit work for 20 years, this is simply not a case where a union job is being displaced by a nonunit job. Finally, as White and Tashman do not compete with unit employees, this is not a situation where, if White and Tashman are not paid the contractual wage scale, they will undermine the Union's wage standards by putting pressure on unit workers to lower their own wage demands. See *American Federation of Musicians of the United States and Canada, et al.* v. *Carroll, et al.*, 391 U.S. 99 (1968). Under these circumstances, I conclude that the Union's minimum contract wage rate proposal, as it relates to White and Tashman, is not a mandatory subject of bargaining; hence, insofar as the Union's request for wage information about white's and Tashman's earnings was based upon the Union's need to intelligently consider the minimum contract wage rate proposal, the Respondent was not obligated to supply the information.

The conclusion that the Union is not entitled to the disputed information for the purpose of intelligently considering its minimum contract wage rate proposal for nonunit persons does not warrant a dismissal of the complaint. I am persuaded that the Union is entitled to the disputed information so as to assist it in framing its wage proposal covering unit employees.

The test in determining whether Respondent is obligated under the statute to supply the disputed information is whether the record demonstrates a "probability that the desired information [is] relevant, and that it [will] be of use to the union in carrying out its statutory duties and responsibilities." *N.L.R.B.* v. *Rockwell-Standard*, 410 F.2d at 957, quoting from *N.L.R.B.* v. *Acme Industrial Co.*, 385 U.S. at 437. Here the record, as described in detail *supra*, establishes that White and Tashman perform bargaining-unit work which is similar to the work performed by unit employees. Thus, there is an obvious connection between the information sought—the wages paid to White and Tashman—and the Union's wage proposal covering unit employees who perform the same type of work as White and Tashman. As Union Representative Cuthbertson testified: "We want to show what the company is paying other people for the same kind of work so we can judge our proposals on unit members salaries." Under the circumstances I find that it is highly probable that the amount of money paid to White and Tashman for regularly performing the same kind of bargaining unit work performed by unit employees represented by the Union is relevant and will be of use to the Union in carrying out its statutory duty and responsibility of intelligently considering a wage proposal for those employees it represents.[10] In *Northwest Publications, Inc.*, 211 NLRB 464, 466 (1974), the Board addressed this subject in these terms:

> The Union's immediate and continuing need for information about [nonunit workers'] earnings and method of payment, when examined in the light of the [nonunit workers'] work and the Union's duties, is apparent. As stipulated by the parties, [nonunit workers] perform a substantial amount of bargaining unit work, as in the case of Executive Sports Editor Duino who covers newsworthy events and writes stories about them. [Nonunit workers] perform like work. . . . The Union, in forthcoming negotiations, is bound to discuss wage and other proposals covering all unit employees. The pay received by [nonunit workers] like Duino for performing bargaining unit work and the method of pay . . . have a direct bearing on the pay of employees . . . represented by the Union.

[8] During the past several years only one unit employee was laid off and that was only a temporary layoff.

[9] There is no evidence that the unit employees have suffered a loss of earnings or working time or that their terms and conditions of employment have otherwise been adversely affected by Respondent's employment of nonunit personnel.

[10] In so concluding I considered that the Union did not specifically tell Respondent this was one of the reasons it needed the disputed information, nor has the Union previously asked for this type of information. Nonetheless, in view of the clear connection between the information sought and the Union's wage proposal covering unit employees, I am satisfied this is not a situation in which a union has concocted a reason to justify access to data to which it ordinarily would not be entitled. Also, because the Union's request for the disputed information is still outstanding and the Union at the hearing clearly communicated to Respondent that it was seeking the information to aid it in framing its wage proposal covering unit employees, Respondent's continuing failure to accede to the request cannot be attributed to a breakdown in communication. *Ohio Power Company*, 216 NLRB 987, 990 fn. 9 (1975).

See also *Goodyear Aerospace Corp.*, 157 NLRB 496, 503 (1967) ("Data as to salaries and fringe benefits in comparable jobs would be relevant to the Union in framing contract proposals covering employees within the unit.").

Upon the basis of the foregoing findings of fact and the entire record, I make the following:

CONCLUSIONS OF LAW

1. Brown Newspaper Publishing Co., Inc., the Respondent, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. San Francisco-Oakland Newspaper Guild, Local 52, The Newspaper Guild, AFL-CIO, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

3. All editorial department employees employed by Respondent at the Independent and the Berkeley Daily Gazette, excluding all other employees, the editorial director, the managing editor, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. The Union is the exclusive representative of all the employees in the aforesaid unit for the purposes of collective bargaining within the meaning Section 9(a) of the Act.

5. By failing and refusing to furnish the Union with the amounts paid for all editorial work written by Kathy White and George Tashman which was published in the Independent and the Berkeley Daily Gazette from May through July 1976, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in and is engaging in certain unfair labor practices affecting commerce, I shall recommend that it cease and desist therefrom and take certain affirmative action in order to effectuate the purposes of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[11]

The Respondent, Brown Newspaper Publishing Co., Inc., Richmond, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with San Francisco-Oakland Newspaper Guild, Local 52, The Newspaper Guild, AFL-CIO, by refusing upon request to supply relevant information needed by said Union to represent the employees in the unit described hereinabove.

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

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Furnish, upon request, to San Francisco-Oakland Newspaper Guild, Local 52, The Newspaper Guild, AFL-CIO, the amounts paid for editorial work written by Kathy White and George Tashman which was published in the Independent and Berkeley Daily Gazette from May through July 1976.

(b) Post at its office and place of business where notices to employees represented by the aforesaid Union in the bargaining unit hereinabove are customarily posted by Respondent, copies of the attached notice marked "Appendix."[12] Copies of said notice, on forms provided by the Regional Director for Region 20, after being duly signed by the Respondent's representative, shall be posted by Respondent immediately upon receipt thereof and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including, as described above, all places where notices to employees employed in the appropriate bargaining unit are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 20, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

[11] In the event no exceptions are filed as provided in Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions and Order, and all objections thereto shall be deemed waived for all purposes.

[12] In the event that this Order is enforced by a judgment of a 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."