free choice at the election to any substantial or material extent.[10] Accordingly, it will not be recommended that the election be set aside.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with the operations of the Respondent, described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Since it has been found that the Respondent has engaged in unfair labor practices, the undersigned will recommend that the Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, the undersigned makes the following:

CONCLUSIONS OF LAW

1. International Brotherhood of Boilermakers, Iron Shipbuilders and Helpers of America, AFL, is a labor organization within the meaning of Section 2 (5) of the Act.
2. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.
3. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

[Recommendations omitted from publication.]

[10] Wilson and Company Inc., 95 NLRB 882.

THE ITEM COMPANY *and* NEW ORLEANS NEWSPAPER GUILD, LOCAL 170, AMERICAN NEWSPAPER GUILD, CIO.

Case No. 15-CA-556. June 30, 1954

DECISION AND ORDER

On September 25, 1953, Trial Examiner Richard N. Ivins, issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent and the Union each filed exceptions to the Intermediate Report and supporting briefs. On December 21, 1953, and February 3, 1954, the Respondent filed motions to supplement its brief, to which, in each instance, the Union filed statements in opposition. The Respondent's motions are granted and the supplemental briefs are accepted.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs,

and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner,[1] with the following corrections:

(1) The Trial Examiner's findings and recommended order include as relevant and necessary wage data which the Respondent is required to supply the Union, the dates of the merit increases granted in the past year. However, the General Counsel stated at the hearing that there was no issue in the case as to such dates, because the Respondent offered to furnish the Union this information in June 1953. Accordingly, we do not adopt this portion of the Intermediate Report and recommended order. (2) As alleged in the complaint, and litigated at the hearing, the wage data requested by the Union and refused by the Respondent included the exact wages of each employee in the unit. This information, however, was not referred to in the Trial Examiner's findings and recommended order. For the reasons stated in the Intermediate Report to support the finding that the Respondent unlawfully refused to supply other wage data to the Union, we find that the Respondent's refusal to furnish the Union with information regarding the exact wages of each employee in the unit was also unlawful. Accordingly, our Order shall require the Respondent to furnish this information.[2]

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that The Item Company, New Orleans, Louisiana, its officers, agents, successors, and assigns, shall:

1. Cease and desist from refusing to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit by refusing to furnish to the Union information as to the names identified with the respective dollar amounts of merit increases, if any, received by the employees in said unit during the preceding year, and the exact wages of each employee in the unit.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request furnish to the Union the names identified with the respective merit increases, if any, granted to the employees in said unit during the preceding year, and the exact wages of each employee in the unit.

[1] See Whitin Machine Works, 108 NLRB 1537

[2] As no exceptions were filed to the Trial Examiner's failure to make any finding adverse to the Respondent respecting the item of exact wages of each employee, Chairman Farmer and Member Beeson would not modify the Intermediate Report with respect to that item, either to broaden the unfair labor practice finding or the cease and desist order.

(b) Post at its office at New Orleans, Louisiana, copies of the notice hereto attached and marked "Appendix."[3] Copies of said notice to be furnished by the Regional Director for the Fifteenth Region, shall, after being signed by Respondent's representative, be posted by the Respondent immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for the Fifteenth Region, in writing, within ten (10) days from the date of this Order what steps the Respondent has taken to comply herewith.

[3] In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL, upon request, furnish to the New Orleans Newspaper Guild, Local 170, American Newspaper Guild, CIO, the names identified with the dollar amounts of the respective merit increases, if any, granted to all employees in the appropriate unit during the past year, and the exact wages of each employee in the unit. The bargaining unit is:

All employees in our news department and all branch managers and clerks in our circulation department, exclusive of the editor, managing editor, assistant managing editor, news editor, city editor, associate editors, guards, and supervisors as defined in Section 2 (11) of the Act.

THE ITEM COMPANY,
Employer.

Dated ..... By.....
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Intermediate Report

STATEMENT OF THE CASE

On the basis of a charge filed by New Orleans Newspaper Guild, Local 170, American Newspaper Guild, CIO, on November 19, 1952, the General Counsel on June 16, 1953, issued a complaint against The Item Company.[1]

With respect to unfair labor practices, the complaint alleges in substance that the Respondent, on and after September 22, 1952, refused to furnish to the Union certain wage data requested by the Union for its use and assistance in connection with collective-bargaining negotiations. In its answer, the Respondent admitted certain allegations of the complaint, but denied the commission of any unfair labor practices, asserting that it had furnished the Union with all information necessary to collective bargaining.

Pursuant to notice, a hearing was held in New Orleans, Louisiana, on September 1, 1953, before Richard N. Ivins, the undersigned Trial Examiner, in which all parties participated, the General Counsel and the Respondent being represented by counsel and the Union by a local and an International representative, and all were accorded full opportunity to be heard, to examine and cross-examine witnesses, to introduce relevant evidence bearing on the issues, to present oral argument, and to file briefs, proposed findings of fact, or conclusions of law, or both. The General Counsel and Respondent's counsel both made short oral arguments, and the Respondent has filed a brief which has been duly considered by the Trial Examiner.

Upon the entire record in the case and from my observation of the witnesses, I make the following:

FINDINGS OF FACT[2]

I. THE BUSINESS OF THE RESPONDENT

The Item Company is a Louisiana corporation maintaining its office and principal place of business at New Orleans, Louisiana, where it is engaged in the printing, publication, sale, and distribution of an afternoon daily newspaper, exclusive of Saturdays, known as The Item.

During the year 1952, which period is representative of all times material herein, the Respondent purchased newsprint, mats, ink, and other items and material necessary in the printing, publication, sale, and delivery of said newspaper in an amount valued in excess of $500,000 from points outside the State of Louisiana. During the same period, the Respondent sold advertising of a total value in excess of $600,000, of which approximately 10 percent was under national advertising programs of concerns outside the State of Louisiana. Respondent also receives and publishes news items of the United Press Wire Service, of which it is a regular subscriber.

I find, as the Respondent concedes, that it is engaged in commerce within the meaning of the Act.

II. .THE LABOR ORGANIZATION INVOLVED

I find, as the Respondent concedes, that New Orleans Newspaper Guild, Local 170, American Newspaper Guild, CIO, is a labor organization within the meaning of the Act.

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[1] New Orleans Newspaper Guild, Local 170, American Newspaper Guild, CIO, the charging union, will hereinafter be referred to as the Union. The General Counsel of the National Labor Relations Board and the staff attorney representing him at the hearing will be referred to as the General Counsel. The National Labor Relations Board is hereinafter called the Board.

[2] This finding of fact is based upon a consideration of the entire record and from my observation of witnesses. To avoid unnecessarily burdening this report, all evidence on disputed points is not set forth, but all has been considered, and necessarily resolved. In determining credibility, I have considered, inter alia, demeanor and conduct of witnesses; their means and opportunity for knowledge of the things about which they testified; their candor or lack thereof; apparent fairness, bias, or prejudice; their interest or lack thereof; and whether they have been contradicted or otherwise impeached.

III. THE UNFAIR LABOR PRACTICES

A. The appropriate unit

The complaint alleges, the answer admits, and I find that all employees in Respondent's news department and all branch managers and clerks in the circulation department, but excluding the editor, managing editor, assistant managing editor, news editor, city editor, associate editors, 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.

B. The basic issue

The basic issue is relatively narrow: whether the Respondent is required to provide the Union with certain wage data requested by the Union during bargaining negotiations; and whether, in any event the matter was finally concluded in the negotiations. There is no dispute as to the essential facts.

For some years the Union has been, and is now, concededly the designated collective-bargaining agent of the Respondent's employees in an appropriate bargaining unit, and, for the most part, relations between the parties have been and are apparently amicable.

The dispute here involved arose during the course of negotiations from August 27, 1952, to February 16, 1953, for renewal of an expiring bargaining agreement, negotiations being initiated by notice from the Union on August 19, 1952.

C. The refusal to bargain

The complaint alleges that the Respondent by its refusal to furnish information requested by the Union as to the names of employees in the appropriate unit, together with their respective merit increases, if any, and the amounts and dates of such increases, granted said employees during the preceding yearly period for the assistance of the Union in intelligently carrying on collective bargaining on the subject of merit increases and wages, thereby violated Section 8 (a) (5) and (1) of the Act.

The answer admits that the request for payroll data was made as alleged in the complaint but says that the Respondent furnished the Union with all information necessary to intelligent bargaining on the subject of merit increases.

The dispute had its inception in a union proposal (among other things) for a clause in the new contract by which the Respondent would provide the Union with the following wage data: the name, present salary, years of experience credited to each employee, his length of service with the Respondent, his anniversary date, and the date and amount of any merit increases within the past year. The then existing contract expired on October 18, 1952, and the Union proposed that the new contract should grant to the Union the right to bargain for individual merit increases, and should provide for the Respondent informing the Union of all merit increases granted. Under the then (and presently) existing practice, merit increases are a prerogative of management and within its unilateral discretion, and no notice thereof is given to the Union.

The Union set forth its request for the above wage information in a letter addressed and delivered to Irwin Order, the Respondent's general manager, at the first bargaining conference which was held on August 27, 1952. The Respondent declined to include merit increases as a bargaining item in the new contract, but did furnish the Union with typewritten lists providing all the information which it had requested, except that the dollar amounts of the merit increases were not identified with the particular employees receiving same and the respective dates upon which they were granted. The sole issue presented for decision by the Trial Examiner is whether the Respondent in refusing to furnish this particular information committed a violation of Section 8 (a) (5) and (1) of the Act.

The answer to this question turns on (1) whether or not the particular information which the Respondent has declined to provide the Union is necessary to permit the Union to bargain intelligently and police its contract with the Respondent, and if so, (2) whether the Union has waived or bargained away its right to demand this information by signing a new contract which omits any reference to the furnishing of this information.

Bargaining conferences were held between representatives of the Union and the Respondent on August 27 and 29, September 4, 5, 9, 11, 12, 17, 18, 22, 24, and 30, October 2, 15, 16, 22,

24, and 31, November 3, 7, 12, 14, 16, 17, 28, and December 2, 1952. During these conferences the Union proposed the insertion in the new contract of a provision requiring the Respondent to bargain with the Union on individual merit increases, and to notify the Union of any merit increases made. The Union also proposed to insert in the new contract a provision requiring the Respondent to provide the Union with the wage information which it had requested in its letter of August 27, 1952. The Union's position during all these conferences was that it was entitled to the information requested in order that it might intelligently bargain for its members, and also determine whether any discrimination was being practiced against employees who were active in the Union in the granting of merit increases.

On November 19, 1952, the Union filed a charge with the Regional Director of the Board's Fifteenth Region, against the Respondent, alleging that the Respondent had violated Section 8 (a) (5) and (1) of the Act, in refusing to furnish the information which the Union had requested. The Union still desires the information which the Respondent has refused to furnish for use in connection with a provision of the new contract which was eventually signed on February 16, 1953, which authorized a reopening of the contract on notice on and after October 10, 1953.

The Union maintained its position throughout the bargaining conferences that it was entitled to be furnished the wage data that it had requested from the Respondent, and that it intended to continue to prosecute the charge which had been filed with the Board. As indicated above the parties finally executed a new contract on February 16, 1953, which contains no provision requiring the Respondent to provide the Union with the information which had previously been requested in the Union's letter of August 27, 1952.

The Respondent's position here, in sum, is as follows: (1) That the information which it provided the Union constituted a complete fulfillment of its obligations under the Act to supply information to the Union, and (2) having submitted the matter to the collective-bargaining process, the Union waived whatever statutory rights it had to the information.

Conclusions

It is well established by decisions of the Board and the courts that an employer's duty to bargain includes the obligation to furnish the bargaining representative with sufficient information to enable it to bargain intelligently, to understand and discuss the issues raised by the employer in opposition to the employees' demands, and to administer or police the contract.[3] This obligation which devolves upon the employer has been described as an "affirmative statutory duty to supply relevant wage data" to the bargaining representative.[4] The claim that such information is confidential and therefore need not be supplied has been rejected by the Board and the courts.[5] Included in the type of information an employer is required to furnish are the following: Names of employees in the bargaining unit, rate of pay, rate history, job classification, and job duties. If an employer has granted merit increases to individual employees, he must upon demand furnish the bargaining representative with the names of the recipients of the merit increases and the amount and dates of such increases.[6]

Unless the information requested is "plainly irrelevant" (Yawman & Erbe, supra) it must be submitted. The information here requested has been held essential and relevant in the negotiation of wage questions, and also to protect the Union's "proper interest in the manner in which an employer administers an existing contract," and for "policing" it. N. L. R. B. v. Leland-Gifford Company, supra; California Portland Cement Company, 101 NLRB 1436, N. L. R. B. v. J. H. Allison & Co., supra.

The Union desires the information for administrative and policing purposes. The matter of merit increases affected the Union's position on general wages. It wanted to determine whether the Respondent's policy on merit increases disclosed any discrimination against union members. Without this information the Union was unable to properly represent its members in presenting grievances. Certainly the Union has a proper interest in these matters, and without this information it could neither satisfy the interest nor discharge its duty to its membership.

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[3] Sixteenth Annual Report (1951), p. 202; Seventeenth Annual Report (1952), p. 114.

[4] N. L. R. B. v. Yawman & Erbe Manufacturing Co., 187 F. 2d 947, 949 (C. A. 2); N. L. R. B. v. Leland-Gifford Company, 200 F. 2d 620 (C. A. 1); N. L. R. B. v. Union Manufacturing Co., 179 F. 2d 511 (C. A. 5); Aluminum Ore Co. v. N. L. R. B., 131 F. 2d 485 (C. A. 7); N. L. R. B. v. J. H. Allison & Co., 165 F. 2d 766 (C. A. 6), cert. denied 335 U. S. 814, reh. denied 335 U. S. 905.

[5] Aluminum Ore Co. v. N. L. R. B., supra at p. 487

[6] N. L. R. B. v. J. H. Allison & Co., supra.

I consequently find and conclude, on the basis of the cited decisions, that the Respondent was required under the statute to provide the Union with the information which it sought.

The only remaining question is whether, as contended by the Respondent, the Union through proposing during the course of the bargaining conferences that the new contract should include a provision requiring the Respondent to provide information of the type requested in the Union's letter of August 27, 1952, and eventually signing the contract on February 16, 1953, which contains no reference to this matter, waived its statutory right to the information.

Assuming arguendo that the right to the information may be waived or bargained away, the waiver or bargain must be clearly and unequivocably expressed. In California Portland Cement Company, supra, the Board said:

> . . . we are dealing here with a right that derives from statute and not from contract. Assuming, without deciding, that this statutory right may be waived by a union, the Board will not, in any event, give effect to any purported waiver of such right unless it is expressed in clear and unequivocal language.

Moreover, here, the Union made it perfectly clear to the Respondent in reiterating its contention during the bargaining conferences which led up to the signing of the new contract, that it was not waiving its statutory right to the information, and expected to prosecute the charge which it had filed with the Board based upon the Respondent's refusal to furnish the requested information.

I accordingly find and conclude that the Union did not waive its statutory right to the information which it had requested.

Upon a consideration of the entire record, I find and conclude that the Respondent by refusing on and after September 22, 1952, to furnish the information requested by the Union concerning the names identified with the dollar amounts of the respective merit increases which they had received during the preceding year, and the respective dates on which such merit increases were granted, as to all employees in the unit, had refused to bargain with the Union as the exclusive bargaining representative of its employees in an appropriate unit and has thereby engaged in unfair labor practices within the meaning of Section 8 (a) (5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with the operations of the Respondent described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that the Respondent cease and desist therefrom and take certain affirmative action which I find will effectuate the policies of the Act.

Because of the limited scope of the Respondent's refusal to bargain, and because of the amicable relations of the parties for many years, and also because of the absence of any indication that danger of other unfair labor practices is to be anticipated from the Respondent's conduct in the past, I shall not recommend that the Respondent cease and desist from the commission of other unfair labor practices.

On the basis of the above findings of fact and upon the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1. New Orleans Newspaper Guild, Local 170, American Newspaper Guild, CIO, is a labor organization within the meaning of Section 2 (5) of the Act.

2. All employees in Respondent's news department and all branch managers and clerks in the circulation department, but excluding the editor, managing editor, assistant managing editor, city editor, associate editors, 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.

3. Since prior to April 10, 1950, the Union has been, and now is, the exclusive representative of all the employees in the aforesaid unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By failing and refusing at all times since September 22, 1952, to furnish the Union with information as to the names identified with the dollar amounts of the respective merit increases, if any, received by said employees during the preceding year, and the respective dates on which such merit increases were granted to the employees in said unit, the Respondent failed and refused to bargain collectively with the Union as the exclusive representative of the employees in the aforesaid unit, and has thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) and (1) of the Act.

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

[Recommendations omitted from publication.]

HADLEY MANUFACTURING CORPORATION *and* AMALGAMATED CLOTHING WORKERS OF AMERICA, CIO. Case No. 11-CA-566. June 30, 1954

DECISION AND ORDER

STATEMENT OF THE CASE

Upon charges duly filed by Amalgamated Clothing Workers of America, CIO, herein called the Union, the General Counsel of the National Labor Relations Board, herein referred to as the General Counsel and the Board, respectively, by the Regional Director for the Eleventh Region (Winston-Salem, North Carolina), issued his complaint on May 25, 1953, against Hadley Manufacturing Corporation, Burlington, North Carolina, herein referred to as Respondent or Company, alleging that the Respondent had engaged in and was engaging in certain unfair labor practices affecting commerce, within the meaning of Section 8 (a) (1) and 8 (a) (3) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, 29 U. S. C., Supp. V, Secs. 141 et seq., hereinafter referred to as the Act. Copies of the complaint, the charge, and notice of hearing were served upon the Respondent and the Union.

With respect to the unfair labor practices, the complaint alleged in substance that the Respondent (1) interrogated certain of its employees with respect to their union activities and membership and had thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them in Section 7 of the Act in violation of Section 8 (a) (1) of the Act; (2) on February 4, 1953, and at all times thereafter until February 16, 1953, refused to employ Mary Evans upon proper application for employment, because of her membership in and activity on behalf of the Union; and (3)