

Appendix B

NOTICE TO ALL MEMBERS OF INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, CIO, LOCAL 1001 AND TO ALL EMPLOYEES OF P. R. MALLORY & Co., INC.

Pursuant to the recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify you that:

WE WILL NOT cause or attempt to cause P. R. Mallory & Co., Inc., its successors or assigns, to discriminate in regard to the hire or tenure of employment or the terms or conditions of employment of its employees in violation of Section 8 (a) (3) of the Act, except in the manner and to the extent authorized in Section 8 (a) (3) of the Act.

WE WILL NOT restrain or coerce employees of P. R. Mallory & Co., Inc., its successors or assigns, in the exercise of their rights guaranteed in Section 7 of the Act, except in the manner and to the extent that such rights may be affected by an agreement requiring membership in a labor organization, as a condition of employment, as authorized by Section 8 (a) (3) of the Act.

WE WILL, jointly and severally with P. R. Mallory & Co., Inc., its successors and assigns, make whole Mayme Dietz for any loss of pay suffered as a result of the discrimination against her.

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND
MACHINE WORKERS, CIO, LOCAL 1001,
Labor Organization.

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.

UTICA OBSERVER-DISPATCH, INC. and LOCAL 129, UTICA NEWSPAPER GUILD, AFFILIATED WITH AMERICAN NEWSPAPER GUILD, CIO.
Case No. 3-CA-721. January 5, 1955

Decision and Order

STATEMENT OF THE CASE

Upon charges duly filed by Local 129, Utica Newspaper Guild, affiliated with American Newspaper Guild, 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 Third Region issued his complaint on November 27, 1953, against Utica Observer-Dispatch, Inc., herein referred to as the Respondent, alleging that the Respondent had engaged in and was engaging in certain unfair labor practices affecting commerce, within the meaning of Section 8 (a) (5) and (1) 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.*, herein referred to as the Act. Copies of the complaint, the charge, and notice of hearing were duly served upon the Respondent and the Union.

With respect to the unfair labor practices, the complaint alleged in substance that the Respondent (1) since on or about August 4, 1953, has refused and continues to refuse to furnish certain requested detailed individual employee wage information to the Union in the course of collective-bargaining negotiations, and (2) on or about October 20, 1953, interrogated all employees in the bargaining unit represented by the Union as to whether it should furnish such wage information, in violation of Section 8 (a) (5) and (1).

In its answer, duly filed, the Respondent in substance denies the alleged unfair labor practices, and pleads lack of good faith on the Union's part.

Pursuant to notice, a hearing was held in Utica, New York, on February 10, 1954, before Loren H. Laughlin, the Trial Examiner duly designated by the Chief Trial Examiner. All parties were represented by counsel or official representative. All parties participated in the hearing, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence pertinent to the issues. At the hearing the Trial Examiner, upon the Respondent's motion and over the General Counsel's objections, dismissed the allegations of the complaint pertaining to the interrogation of employees on or about October 20, 1953. For the reasons hereinafter stated, this ruling is reversed. The Board has reviewed the other rulings of the Trial Examiner and finds that no prejudicial error was committed. Those rulings are hereby affirmed.

On May 25, 1954, the Trial Examiner issued his Intermediate Report, in which he found that the allegations of the complaint had not been sustained, and he therefore recommended dismissal of the complaint in its entirety. Thereafter, the General Counsel and the Union filed exceptions to the Intermediate Report, and supporting briefs; and the Respondent filed a brief in support of the Intermediate Report. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case. Because of the extent of its disagreement with the findings and discussion of the Trial Examiner, the Board makes its own findings, conclusions, and order, as follows:¹

FINDINGS OF FACT

I. THE RESPONDENT'S BUSINESS

The Respondent is a New York corporation, having its principal office and place of business in Utica, New York, where it is engaged in the business of printing, publishing, and distributing two daily newspapers. During the 12-month period ending September 30, 1953,

¹ The Respondent's request for oral argument is denied, because the record, exceptions, and briefs, in our opinion, adequately present the issues and the positions of the parties.

a representative period, the Respondent had a gross income in excess of \$2,000,000. The Respondent subscribes to and receives news, features, and photographs from the Associated Press and United Press News Service.

We find that the Respondent is engaged in commerce within the meaning of the Act, and that it will effectuate the policies of the Act to assert jurisdiction over the Respondent.²

II. THE LABOR ORGANIZATION INVOLVED

Local 129, Utica Newspaper Guild, affiliated with American Newspaper Guild, CIO, is a labor organization within the meaning of Section 2 (5) of the Act, admitting to membership employees of the Respondent.

III. THE APPROPRIATE UNIT

All editorial department employees of the Respondent employed at its Utica, New York, plant, excluding managing editors, assistant managing editors, news and city 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.

IV. THE UNION'S REPRESENTATIVE STATUS

At all times since 1938 the Union has been the representative for purposes of collective bargaining of a majority of the employees in the appropriate unit, and by virtue of Section 9 (a) of the Act has been and is now the exclusive representative of all employees in such unit for purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

V. THE UNFAIR LABOR PRACTICES

On December 17, 1952, the Union and the Respondent executed a collective-bargaining agreement, which was effective from November 6, 1952, to November 5, 1954, but which was subject to a reopening "as to wages only" on or prior to September 7, 1953.

On July 12, 1953, Warner, the Union's president, sent the following letter to Hogue, the Respondent's general manager :

In order to police the existing contract, bargain intelligently and evaluate properly our own and management's wage proposals, the Newspaper Guild of Utica herewith requests that you supply it as soon as possible and no later than July 31, 1953, with complete payroll information for the editorial department workers covered by the guild contract.

² *The Daily Press, Incorporated*, 110 NLRB 573

We ask that this information be supplied by contract wage classifications in the following form :

1. The name of each employee, listed by job title.
2. His salary and the dates and amounts of any regular commissions and bonuses paid him during the past year.
3. The years of experience credited to him.
4. His length of service with the company.
5. The dates and amounts of any merit increases paid him during the past year.
6. His date of hiring and anniversary date.
7. Details of the formulas used in the payment and computation of commissions, bonuses and merit increases.
8. The same information for the equivalent payroll period last year.

The guild requests this data because without it we cannot know the exact relationship of the actual wage structure to the present contract minimums and so cannot draft and negotiate intelligently our own wage proposals nor evaluate yours. Nor can we determine whether the present contract is being properly applied.

The guild's right to this information and your obligation to supply it have been established by numerous NLRB and court decisions.

On August 4, 1953, Warner, by telephone, again demanded the wage data from Hogue for the reasons stated in the July 12 letter, but Hogue said he would study the matter because he thought the data was confidential matter between the employees and the Respondent. Later on the same day Warner also wrote a letter to Hogue confirming the telephone conversation, and again insisting on the data, but extending the time for receipt of the data until August 15. On August 10, 1953, a conference was held between Hogue and Warner, in which Warner again stated that the wage data was needed to bargain intelligently on wages, and also that it was needed to police the contract in regard to dues. Hogue refused to give Warner the data requested on the ground it was confidential, and instead gave him "average" wage data for the employees, which Warner accepted without waiving his demand for the data originally requested. On September 4, 1953, Warner wrote a letter to Hogue formally notifying him of the Union's desire to reopen the contract to negotiate a new wage scale, and submitting proposals. Thereafter, there was an exchange of correspondence concerning the proposals.

On October 20, 1953, Hogue sent the following letter to each of the 58 employees in the unit :

We have been requested by the Newspaper Guild of Utica in a letter signed by Ray Warner, President, to furnish detailed in-

formation with respect to your salary. Specifically the Guild has asked us to supply the name of each employee, listed by job classification, and his salary as of July 31, 1953 and as of July 31, 1952. In addition to this information, the Guild has also requested data covering dates and amounts of any merit increases during the past year, credited years of experience, length of service with the Company, date of hiring and anniversary date, and equivalent information for the payroll period of one year ago.

It has always been the position of the Publisher that information with respect to your individual salary should not be divulged without your specific consent. On the other hand, the Publisher has always been willing to furnish any information to the Guild necessary to permit the Guild to bargain intelligently. For this reason the Publisher has already furnished to the Guild average rates by job classification which it considers to be completely adequate for that purpose, but has not furnished individual salaries for named employees.

The Guild has filed an unfair labor practice charge with the National Labor Relations Board because of the Publisher's refusal to supply this detailed individual information, and a representative of the Board has requested the Publisher to determine finally whether or not this data will be given to the Guild. If you are willing to have us supply the information requested with respect to you and your salary we propose to do so; if you are not willing to have us supply this information we will not voluntarily supply it.

An answer must be given to the National Labor Relations Board promptly. Unless we hear from you to the contrary on or before Friday, October 23, 1953, we will assume that you have no objection to our furnishing the information requested with respect to you to the Guild, and we will do so. If you do have objection please so advise us in writing on or before October 23, 1953.

From October 20 to 23, 1953, 4 employees in the unit advised the Respondent in writing of their unwillingness to have their wages divulged. On November 3, 1953, Hogue submitted to Warner the individual wage data requested as to the 54 employees who had not objected, but did not submit such data as to the 4 employees who had objected. On November 9, 1953, Warner wrote Hogue stating that the submission by Hogue of the data on only 54 employees did not meet the Union's request. The Respondent and the Union held 4 or 5 bargaining sessions on the wage reopening of the contract thereafter, but no agreement had yet been reached at the time of the hearing.

It is now well settled that an employer, upon appropriate request, must supply a union with relevant wage or other proper information

from the Employer's records as an incident to its duty to bargain.³ The relevance of the data requested by the Union here was clearly set forth in the Union's letter of July 12 requesting the data, *viz*, in order to properly administer the existing contract, and to bargain intelligently on impending wage negotiations.⁴ The fact that Warner, in his conference with Hogue on August 10, stated that the data was also wanted for dues collection did not detract from its relevance to police the contract and bargain intelligently on wages. Moreover, the fact that the parties may have negotiated only for minimum wages in the past did not detract from the relevance of individual wage data for the current wage negotiations. In the absence of a provision in the contract limiting negotiations for wages under the "wages only" reopening clause to "minimum wages only," the Union could, and may have desired to, negotiate on other wage provisions. In any event, such data was relevant to the negotiation of even minimum wages, because without such data the Union might negotiate minimum scales which would have no effect whatever on salaries above minimum actually received by the employees. Thus, the Respondent was under an obligation to furnish the Union with the wage data requested.⁵ However, the Respondent initially refused to supply any of the data requested; then waited almost 4 months before supplying the data as to only 54 of the 58 employees in the unit; and supplied the data which it did only after questioning the employees individually as to whether the data should be given to the Union, and supplying the data according to the individual wishes of the employees. The Respondent's initial refusal to supply any of the data requested was a clear violation of its obligation to furnish the Union with the data. Moreover, this obligation was not satisfied by supplying some of the data requested almost 4 months later. Such data, when requested, should be supplied within a reasonably prompt time, particularly where, as here, it is needed for pending wage negotiations. In addition, the Respondent was under a duty to supply the data on all of the employees, and not on just some of them as it did. Such duty was not excused here, in view of the fact that the Union could not ascertain the weekly rate of 3 of the 4 employees on whom no data was supplied, and therefore could not determine whether the Respondent was complying with the minimum wage provisions of the contract as to these 3 employees, or bargain intelligently without information as to the

³ *N L R B v Jacobs Manufacturing Company*, 196 F 2d 680, 684 (C A 2); *N L R B v Yawman & Erbe Manufacturing Co*, 187 F 2d 947, 948-949 (C A 2); *N L R B v Boston Herald-Traveler Corp*, 210 F 2d 134 (C A 1), *N L R B v Hekman Furniture Company*, 207 F 2d 561, 562 (C A 6), *N L R B v Leland-Gifford Company*, 200 F 2d 620, 624 (C A 1); *N L R B v Union Manufacturing Company*, 179 F 2d 511 (C A 5). *N L R B v J H Allison & Co*, 165 F 2d 766, 767, 770 (C A 6), cert denied 335 U S 814; *Aluminum Ore Co. v. N L R B*, 131 F 2d 485, 487 (C. A. 7), *Whitin Machine Works*, 108 NLRB 1537; *The Item Company*, 108 NLRB 1634

⁴ *F W Woolworth Co.*, 109 NLRB 196

⁵ *F W Woolworth Co*, *supra*

maximum rates paid these 3 employees; and in view of the further fact that no information was submitted as to any of the 4 employees on his date of employment, anniversary date, or merit increases, and therefore the Union could not bargain intelligently with respect to individual increases based upon length of service as to the 4 employees. In any event, the Respondent did not fulfill its obligation to furnish the data by supplying the data which it did only after questioning the employees individually as to whether the data should be given to the Union, and supplying the data according to the individual wishes of the employees. The right of a collective-bargaining representative to wage data cannot be made contingent upon the consent of the individual employees, any more than it can be made contingent upon the consent of anyone else. Otherwise, the right becomes an empty one which is controlled by other persons. The right must be, and is, certain to enable the union to perform properly its function as the collective-bargaining representative of the employees.

In view of the foregoing, we find that the Respondent did not fulfill its obligation to supply the wage and payroll data requested by the Union, and thereby violated Section 8 (a) (5) and (1) of the Act.

Although a request for wage data is not the direct negotiation of wages, it is an inherent part of the collective-bargaining function of a collective-bargaining representative and of the collective-bargaining process, and an employer has no more right to treat with individual employees and abide by individual desires in this respect than it has to decide what wage increases to give based upon individual desires.⁶ The Respondent's conduct in interrogating all of the employees individually as to whether the wage data should be supplied, and supplying the data according to the individual wishes of the employees was, therefore, in effect a form of dealing directly with individual employees on wages in derogation of the Union's exclusive bargaining status. Accordingly, we find that, by such conduct, the Respondent independently violated Section 8 (a) (5) and (1) of the Act.⁷

THE REMEDY

As we have found that the Respondent has engaged in certain unfair labor practices, we shall order that it cease and desist therefrom

⁶ See *The Stanley Works*, 108 NLRB 734.

⁷ See *N. L. R. B. v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 44. Cf. *F. W. Woolworth Co.*, *supra*, where the Board held that an employer did not violate the Act by questioning employees as to whether they wished the employer to comply with the union's request to furnish their wage rates to the union, but where the questioning was limited to 2 employees in a unit of 70, and the employer did not bind itself to abide by the preference of the questioned employees if that preference were contrary to the union's demand.

and take certain affirmative action designed to effectuate the policies of the Act.

It has been found that the Respondent has refused to bargain collectively with the Union by not fulfilling its obligation to supply to the Union the wage and payroll data requested by the Union. We shall, therefore, order that the Respondent cease and desist from engaging in such conduct, and, upon request, fulfill such obligation in a proper manner.

It has been found that the Respondent has refused to bargain collectively with the Union by interrogating its employees individually as to whether the wage and payroll data requested by the Union should be supplied to the Union, and supplying the data according to the individual wishes of the employees. We shall, therefore, order that the Respondent cease and desist from engaging in such conduct.

Upon the basis of the foregoing findings of fact, and upon the entire record, the Board makes the following:

CONCLUSIONS OF LAW

1. The Respondent, Utica Observer-Dispatch, Inc., is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

2. Local 129, Utica Newspaper Guild, affiliated with American Newspaper Guild, CIO, is a labor organization within the meaning of Section 2 (5) of the Act.

3. All editorial department employees of the Respondent at its Utica, New York, plant, excluding managing editors, assistant managing editors, news and city 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.

4. Local 129, Utica Newspaper Guild, affiliated with American Newspaper Guild, CIO, has been at all times since 1938 the exclusive representative of all the employees in the appropriate unit for the purpose of collective bargaining within the meaning of Section 9 (a) of the Act.

5. By refusing to bargain with Local 129, Utica Newspaper Guild, affiliated with American Newspaper Guild, CIO, as the exclusive representative of the employees in the appropriate unit, on and after August 10, 1953, the 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.

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 Respondent, Utica Observer-Dispatch, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Local 129, Utica Newspaper Guild, affiliated with American Newspaper Guild, CIO, as the exclusive representative of the employees in the appropriate unit by not fulfilling its obligation to furnish to said labor organization the wage and payroll data requested by said labor organization on July 12, 1953.

(b) Refusing to bargain collectively with said labor organization, as the exclusive representative of the employees in the appropriate unit, by interrogating its employees individually as to whether the said wage and payroll data requested should be furnished, and furnishing the said wage and payroll data according to the individual wishes of the employees.

(c) In any like or related manner refusing to bargain collectively with said labor organization as the exclusive representative of the employees in the appropriate unit.

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

(a) Upon request, furnish to Local 129, Utica Newspaper Guild, affiliated with American Newspaper Guild, CIO, the wage and payroll data requested by said labor organization on July 12, 1953, within a reasonably prompt time, as to all employees in the appropriate unit, and without conditioning such action upon the consent of the individual employees.

(b) Post at its plant in Utica, New York, copies of the notice attached hereto marked "Appendix."⁸ Copies of said notice, to be furnished by the Regional Director for the Third Region, shall, after being duly signed by the 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.

⁸ 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."

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

CHAIRMAN FARMER took no part in the consideration of the above Decision and 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, as amended, we hereby notify our employees that:

WE WILL NOT refuse to bargain collectively with Local 129, Utica Newspaper Guild, affiliated with American Newspaper Guild, CIO, as the exclusive representative of the employees in the bargaining unit described below by not fulfilling our obligation to furnish to said labor organization the wage and payroll data requested by it on July 12, 1953.

WE WILL NOT refuse to bargain collectively with said labor organization, as the exclusive representative of the employees in the bargaining unit described below, by interrogating our employees individually as to whether the said wage and payroll data requested should be furnished, and furnishing the said wage and payroll data according to the individual wishes of our employees.

WE WILL NOT in any like or related manner refuse to bargain collectively with said labor organization as the exclusive representative of the employees in the bargaining unit described below.

WE WILL, upon request, furnish to said labor organization the wage and payroll data requested by it on July 12, 1953, within a reasonably prompt time, as to all employees in the bargaining unit described below, and without conditioning such action upon the consent of the individual employees.

The bargaining unit is:

All editorial department employees at our Utica, New York, plant, excluding managing editors, assistant managing editors, news and city editors, guards, and supervisors as defined in the Act.

UTICA OBSERVER-DISPATCH, INC.,
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.