CONCLUSIONS OF LAW

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

1. Respondent is, and at all material times has been, an employer engaged in commerce within the meaning of the Act.

2 The record does not establish that Respondent has engaged in the unfair labor practices, or any of them, alleged in the complaint.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law and the entire record, it is recommended that the Board issue an order dismissing the complaint.[17]

[17] In light of my Recommended Order, I find it unnecessary to consider Shankle's or the Union's invocations of the grievance procedure. There has been no arbitration

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White Furniture Company *and* United Furniture Workers of America, AFL-CIO. *Case 11-CA-2633. October 25, 1966*

DECISION AND ORDER

On February 24, 1966, Trial Examiner Lowell Goerlich issued his Decision in the above-named 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 attached Trial Examiner's Decision. The Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief.[1]

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 Trial Examiner's Decision, the exceptions, the brief, and the entire record in this case, and hereby adopts only such portions of the Trial Examiner's Decision as are consistent with the following.

The facts are basically as stipulated by the parties.[2] As described more fully in the Trial Examiner's Decision, the Respondent had given its employees a Christmas bonus annually between 1957 and 1963. The decision on whether to give a bonus, and the amount and distribution, was made each year by the Respondent's board of directors. During the period in question, the amounts of all bonuses were based on a percentage of the Company's profits, and they were distributed to employees according to seniority. The Union was certified as collective-bargaining representative of the Respondent's

[1] The Respondent has requested oral argument. This request is hereby denied because the record, the exceptions, and Respondent's brief adequately present the issues and the positions of the parties.

[2] The General Counsel and the Respondent entered into a written stipulation, and amplified the stipulation orally at the hearing The Union, though not a signatory to the stipulation, was aware of its contents and offered no conflicting evidence

employees on October 28, 1964. In contract negotiations beginning November 1964, the Union, among other things, proposed an increase in Christmas bonuses. The record does not show the Respondent's response to this proposal. On November 19, the Union asked the Respondent to supply information as to "percentage of profits before taxes used to determine the percentage of annual earnings paid to each seniority group." On January 19 and 27, 1965, the Union repeated its request for the percentage of profits used to determine bonuses, asking for this percentage over the previous 5 years, and also asked for the percentage of earnings paid employees in 1964, broken down by seniority groups, and the amount of bonus paid each bargaining unit employee in 1964.

The Union filed an unfair labor practice charge on January 26, 1965, alleging that the Respondent's failure to give bonus information violated Section 8(a)(5) of the Act. On March 17, the Respondent informed the Union that it had used 25 percent of "adjusted profit" before taxes to determine the amount of Christmas bonuses in each of the last 5 years.[3] The Respondent also gave the seniority-group breakdowns, the percentages of annual earnings paid as bonuses to members of each seniority grouping, and the amounts of individual bonus payments to bargaining unit employees for 1964, as requested. The Union asked on April 15 and 29 for the Respondent's "gross profits" before and after taxes for the last 5 years, as well as its business deductions and "adjustments," e.g., officers' salaries and bonuses, depreciation, and a detailed specification of the amount and purpose of such business deductions and adjustments.[4] The Respondent did not supply this information.

The record does not disclose whether, after the Union's original proposal for an increase, there was any other bargaining about the Christmas bonus, such as a response by the Respondent or another proposal by the Union following receipt of new information on March 17. The General Counsel and the Union conceded that the Respondent had not claimed during the negotiations that it was financially unable to pay an increased bonus, or to meet any other union demand.

The Trial Examiner found that the Respondent had violated Section 8(a)(5) of the Act by refusing to furnish the financial data requested by the Union on April 15 and 29 pertaining to computation of the Christmas bonus. The bonus was a mandatory subject of bargaining, he noted, under Board precedent.[5] Since the Respondent

[3] Christmas bonuses were paid to employees outside the bargaining unit, as well as to those within it

[4] The Union also asked for the amount of payments to individual bargaining unit employees for the last 5 years, but the parties stipulated that the Respondent's failure to meet this request was not at issue in this proceeding.

[5] *Niles-Bement-Pond Company*, 97 NLRB 165.

had used "adjusted profit" in computing bonuses, the Trial Examiner said the Union needed profit information to do an intelligent job of bargaining. Thus, according to the Trial Examiner, the requested data would enable the Union to know what employees might expect as gross wages, including bonuses, under the system then in effect, and on that basis to decide whether bonuses based on "adjusted profit" were worth keeping in preference to alternative benefits.

In excepting to the Trial Examiner's findings, the Respondent argues that it is not obligated to disclose its financial situation because it had not claimed financial inability to meet the Union's demands. The Respondent claims that it fulfilled its obligations by telling the Union how much bonus each bargaining unit employee has received and the seniority group breakdown—that is, information on the amount and distribution of bonuses—and that it had even gone beyond legal requirements by disclosing its formula for determining bonus amounts based on 25 percent of "adjusted profit." We find merit in these exceptions, although, as appears below, we do not reach the question of the Employer's ultimate responsibility to disclose profits under circumstances different from those the record here presents.

The Board has held that unions have a presumptive right to certain information about unit employees, such as wage rates and the cost of fringe benefits.[6] The rule is different for data about the employer's profits, or other aspects of its financial condition; the union must show a specific need in each particular case for the type of information.[7] An employer may provide the justification for requiring profit data by his own actions if he claims financial inability to meet the union's demands, for then the union must know the facts behind the employer's claim in order to bargain intelligently.[8] Profit data will not be required merely because it would be "helpful" to the union, however.[9] The Board has also declined to require an employer to give a union such sensitive information as executive salaries and detailed breakdowns of operating expenses.[10]

As noted, the Respondent here made no suggestion that it was unable to pay the increased bonuses asked by the Union. We also note

[6] *Whitin Machine Works*, 108 NLRB 1537, enfd. 217 F.2d 593, 594 (C.A. 4), cert. denied 349 U.S. 905; *Sylvania Electric Products, Inc.*, 154 NLRB 1756, enfd. 358 F.2d 591 (C.A. 1).

[7] *Metlox Manufacturing Company*, 153 NLRB 1388, 1394.

[8] *Truitt Mfg. Co.*, 351 U.S. 149.

[9] *Pine Industrial Relations Committee*, 118 NLRB 1055, 1061, affd. in relevant part *sub nom. Intl. Woodworkers of America* [*Pine Industrial Relations Committee, Inc.*] v. *N.L.R.B.*, 263 F.2d 483 (C.A.D.C.).

[10] *Metlox Manufacturing Company, supra*, footnote 7, 1394–96. The Board there approved a check of the employer's books by a union accountant, limited to the purposes of verifying profit and loss figures offered by the employer and determining whether there were any factors that would make the employer's figures misleading.

that there was no allegation that the Respondent has refused to bargain in good faith other than by refusing to give profit information. The sole issue confronting us in this proceeding is whether the Respondent should be required to divulge details about its financial condition; or, stated differently, whether the Union was prevented from bargaining intelligently and effectively because it lacked the requested data. The Union had opened negotiations by asking for an increased bonus. As there is no record of a response by the Respondent, we do not know what position the Respondent would take on bonuses. Without this knowledge, we could do no more than speculate on the specific need for the profit data requested by the Union. Furthermore, the Union asked for, and received, a substantial amount of information about bonuses from the Respondent: the dollar amounts of bonuses paid to bargaining unit employees in 1964, the seniority groups into which employees were separated for bonus purposes, and the percentages of annual earnings paid as bonuses to members of each seniority group. Such information clearly would give the Union important evidence as to what future yields it could expect under the bonus system then in effect. So far as appears from the record, no further bargaining took place after the Union received this information, so that we lack a record of the bargaining results that might have been attained with the available information. It is also significant that some of the data requested—officers' salaries and bonuses, depreciation, and the like—is the kind of sensitive data which, in the absence of a showing of special need, the Board refuses to require an employer to make available to unions, as unions do not have "the affinity with a company" of a stockholder, despite the fact that poor management might adversely affect the interests of union members.[11]

We find on this record that the Union has not established a specific need to know the requested profit data at this time. In making this determination, we do not reach the question of the ultimate obligation of an employer to provide profit data where Christmas bonuses bear some relation to profits. Here, so far as the record shows, the negotiations had not matured to the point where the bonus issue would be clearly defined, and where we could judge whether bargaining about bonuses would have been obstructed because of a refusal to supply essential data. Accordingly, in disagreement with the Trial Examiner, we find that the Respondent has not refused to bargain in good faith by failing to provide the full information requested by the Union.

[The Board dismissed the complaint.]

[11] *Id.* at 1395.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

On a charge and amended charges filed by the United Furniture Workers of America, AFL–CIO, the General Counsel of the National Labor Relations Board on behalf of the Board by the Regional Director for Region 11 on October 21, 1965, issued a complaint and notice of hearing against the White Furniture Company, the Respondent herein. The complaint alleged that the Respondent had engaged and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) of the National Labor Relations Act, herein called the Act. The Respondent filed timely answer to the complaint denying that it had engaged or was engaging in the unfair labor practices alleged.

On the issues framed by the complaint and answer and pursuant to notice, this case was heard by Trial Examiner Lowell Goerlich in Graham, North Carolina, on January 11, 1966. At the hearing each party appeared and was afforded full opportunity to present evidence relevant to the issues, call, examine and cross-examine witnesses, to present oral argument, and to file proposed findings and conclusions, and to file briefs. All briefs have been duly considered by me.

The case was submitted to me upon a stipulation of facts executed by the counsel for the General Counsel and the attorney for the Respondent. The Charging Party did not join in the stipulation, but offered no evidence in conflict with the facts set forth in the stipulation.

The sole question before me is whether upon the request of the Union the Respondent Employer was required to furnish United Furniture Workers of America, AFL–CIO, information and financial records pertaining to the computation of Christmas bonuses paid in the years 1960, 1961, 1962, 1963, and 1964, which bonuses were based upon 25 percent of adjusted profit before taxes.[1]

On the record as a whole, I make the following:

FINDINGS OF FACT [2]

I. THE BUSINESS OF THE RESPONDENT COMPANY

The Respondent, White Furniture Company, is now and has been at all times material herein, a North Carolina corporation with a place of business at Mebane, North Carolina, where it is engaged in the business of manufacturing bedroom and dining room furniture. During the 12 months immediately preceding the filing of the complaint herein, the Respondent purchased and received at its Mebane, North Carolina, plant raw materials valued in excess of $50,000 directly from points outside the State of North Carolina. During the same period Respondent manufactured, sold, and shipped from its Mebane, North Carolina, plant, directly to points outside the State of North Carolina, finished products valued in excess of $50,000. The Respondent admits and I find that the Respondent is and has been at all times material herein an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

United Furniture Workers of America, AFL–CIO, hereinafter called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. United Furniture Workers of America, AFL–CIO, was certified as the collective-bargaining agent for an appropriate unit of the Respondent's employees on October 28, 1964. Beginning November 19, 1964, bargaining sessions were held between the Respondent and the Union. The Union, as one of its contract proposals, demanded an increase in the Christmas bonus. Since 1957 Respondent's employees have received a Christmas bonus each year based upon a percentage

[1] Counsel for the Respondent phrases the question as follows: "Under the circumstances of this case, was Respondent guilty of a violation of Section 8(a)(5) of the Act by failing to provide the Union with figures relating to its costs and profits which were requested by the Union on April 15, 1965?"

[2] My findings of fact are drawn from the stipulation referred to above.

of the Respondent's profits and distributed according to seniority. At the request of the Union, the Respondent on March 17, 1965, furnished the Union with the following information:

1. Twenty-five percent of the Respondent's adjusted profit before taxes was used to determine the amount of Christmas bonus for 1960, 1961, 1962, 1963, and 1964. The method for determining adjusted profit was not varied in any respect during the above-mentioned years.

2. The percentage of annual earnings paid to each seniority group for 1964 was as follows:

	Percent
0–5 years	4.94
5–10 years	8.20
10 years and over	10.25

3. A list of employees showing the amount of Christmas bonus before tax deductions paid to each employee in the bargaining unit for Christmas 1964.

On April 15, 1965, orally and on April 29, 1965, in writing, the Union requested the following additional information:

1. The amount of gross profits before taxes for each of the years 1960, 1961, 1962, 1963, 1964.

2. The amount of gross profits after taxes for the years of 1960, 1961, 1962, 1963, 1964.

3. The amount of gross profits after taxes for the years of 1960, 1961, 1962, 1963, 1964.

4. The amount of gross profits after taxes and business deductions and adjustments for 1960, 1961, 1962, 1963, 1964.

5. Specification of the allocation of the business deductions and adjustments and amount thereof for 1960, 1961, 1962, 1963, 1964. Such business deductions and adjustments to show the amount allocated for officers salaries and bonuses, plant and equipment, inventory depreciation, and all other business deductions and adjustments.

6. Total amounts paid as Christmas bonus to each employee in the bargaining unit for each of the years 1960, 1961, 1962, 1963, and 1964.

The Respondent after an exchange of letters refused to furnish the requested information.

B. It is well settled that Section 8(a)(5) of the Act imposes an obligation upon an employer to furnish, upon request, all information relevant to the bargaining representative's intelligent performance of its function." *Fafner Bearing Company,* 146 NLRB 1582, 1585. In *Whitin Machine Works,* 108 NLRB 1537, affd. *N.L.R.B.* v. *Whitin Machine Works,* 217 F.2d 593 (C.A. 4), the Board held that a union is entitled to such information as is necessary in the exercise of its duties as collective-bargaining representative, and that the withholding of such information is a violation of Section 8(a)(5) of the Act, in that it makes "impossible the full development of collective-bargaining negotiations which the Act is intended to achieve." The court, in reviewing the Board's decision, said at page 594, "but we agree with the Board that the union, as bargaining agent of the employees was entitled to information which would enable it to properly and understandingly perform its duties as such in the general course of bargaining and that such information should not necessarily be limited to that which would be pertinent to a particular existing controversy."

Christmas bonus [3] information sought preparatory to entering into contract negotiations requested by the Union must be supplied in that such information enables the Union "in bargaining negotiations with the Respondent, to properly and intelligently perform its duties as bargaining agent of Respondent's employees . . ." *Winter Garden Citrus Products Cooperative,* 116 NLRB 738, 739–740.

In *Peyton Packing Company, Inc.,* 129 NLRB 1358, 1363, 1369, an employer was required to furnish the following data: "(1) Amount of bonus paid employees in the bargaining unit for the year of 1957; (2) amount paid each individual; (3) system used in computing amounts paid; and (4) same information on amounts paid first half 1958." The Board's Order read in part: "Cease and desist from: . . . Withholding information on bonus payments and *their method of computation* . . . ." [Emphasis supplied.]

[3] The Board holds that an employer is required to negotiate on the subject matter of Christmas bonuses. *Niles-Bement-Pond Company,* 97 NLRB 165.

Although systems of methods of computing bonuses may differ, bonus payments are usually a part of an employer's wage or salary structure.[4] In the *Niles-Bement-Pond Company* case, *supra,* bonuses were expressed both in the form of 1 week's pay and as a percentage of each employee's yearly earnings. In *Peyton Packing Co., Inc., supra,* the bonuses was paid "exclusively out of profit." In the instant case the bonus took the form of 25 percent of the Respondent's "adjusted profit before taxes." The Respondent, by voluntarily and unilaterally choosing this method of fixing bonuses,[5] caused the kind and amount of deductible items used to reach "adjusted profit" to govern, in part, the gross wages received by its employees. The Respondent, of course, was free to have chosen another method of computing bonuses which would not have tied bonuses to profits and under such circumstances information and financial records as to its profit computations may not have been subject to the Union's demand. Where bonuses are tied to profits by reason of the employer's selection, the union is entitled to such information on profits as will intelligently aid it in the performance of its function as the bargaining representative. The situation would have been no different had the employer tied piecework earnings to adjusted profit or calculated wages to be earned in excess of an established base rate upon a percentage of adjusted profit. In either case the amount of gross wages would have become so dependent upon profits that to possess a rational concept of what an employee might expect as wages, financial information and records pertaining to profits would be necessary. To intelligently formulate its wage demand, the Union must have known the sundry and divers items which were considered in fixing the final bonus amounts payable to each employee so that, therefrom, the Union could have learned what an employee might reasonably expect by way of wages in the future. Of paramount consideration, of course, is whether the Union should accept the bonus based upon a percentage of adjusted profit or whether it should seek a bonus computed by some other method. If the amount which employees may expect in gross wages is directly related to and dependent upon the amount which employees will receive as bonuses and if the amount which employees will receive as bonuses is dependent upon the items which are deducted in the computation of adjusted profit, it follows, *a force,* that in order for a union to possess an intelligent understanding of what employees may expect as gross wages during any given period and to evaluate whether bonuses based upon adjusted profit are appreciable benefits for the employees it represents, the union would need access to information and financial records pertaining to the computation of the bonuses. Otherwise the union would be inhibited in the performance of the bargaining duties cast upon it by the Act.

Moreover, it may not be gainsaid that a bonus based upon 25 percent of the Respondent's adjusted profit would be more attractive if, for example, entertainment costs were not included as deductible items in figuring the adjusted profit or the amount of entertainment costs were minuscule. Thus the importance and value of the information sought by the Union and its need to the Union for effectual bargaining are patent.

Having laid open the subject of adjusted profit for consideration at the bargaining table by using adjusted profit as the basis for determining bonuses, the Respondent, by its refusal to give the Union the requested information on profits, evidenced a lack of willingness to bargain in good faith and thereby violated Section 8(a)(1) and (5) of the Act. As was said by the Supreme Court in *N.L.R.B.* v. *Truitt Manufacturing Company,* 351 U.S. 149, 152:

> We think that in determining whether the obligation of good-faith bargaining has been met the Board has a right to consider an employer's refusal to give information about its financial status.

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[4] The following language of the Board in the *Niles-Bement-Pond Company, supra,* 167, is pertinent.

> . . . Respondent's bonus constitutes "wages" . . . . The realities of the industrial world establish, however, that a year-end bonus which has become a part of the em- . . .ployees' wage expectancy, though it may be paid at Christmas and therefore carry with it a Christmas spirit of gift giving, amounts fundamentally to deferred compensation for services performed during the preceding year.

[5] Each year the board of directors has met and determined whether or not a Christmas bonus would be paid that year, and if so the amount of bonus and method of distribution among the employees.

I find that the Respondent in denying the Union financial records and information which pertain to the computation of the Christmas bonuses, under the circumstances described herein, violated Section 8(a)(1) and (5) of the Act.[6]

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with the operations of 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

It having been found that the Respondent refused to bargain with the Union in violation of Section 8(a)(5) and (1) of the Act by refusing to furnish financial records and information pertaining to the computation of Christmas bonuses upon the request of the Union, it is recommended that it cease and desist therefrom and that it supply such information to the Union.

CONCLUSIONS OF LAW

1. The Union is a labor organization within the meaning of the Act.
2. The Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and it will effecuate the policies of the Act for jurisdiction to be exercised in this case.
3. By refusing to bargain in good faith with the Union the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.
4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommended Order omitted from publication.]

[6] The statutory "obligation to bargain in good faith includes the duty of the employer to furnish to the Union relevant data to enable the representative effectually to bargain for the workers." *Sinclair Refining Company* v. *N.L.R.B.*, 306 F.2d 569, 571 (C.A. 5).

International Longshoremen's and Warehousemen's Union, Local 13, and International Longshoremen's and Warehousemen's Union *and* Princess Cruises Co., Inc. *and* Marine Cooks and Stewards Union, Seafarers International Union of North America, AFL-CIO and Pacific Maritime Association, and Jones Stevedoring Company, and Sierra Harbor Terminal Company. *Case 21-CD-218. October 25, 1966*

DECISION AND DETERMINATION OF DISPUTE

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following the filing of charges by Princess Cruises Co., Inc.[1] (hereinafter called the Employer), under Section 8(b)(4)(D). The charges allege that International Longshoremen's and Warehousemen's Union and its Local 13 (hereinafter collectively called the Respondent) threatened and coerced the

[1] It was stipulated that Princess Cruises Co., Inc., a Panamanian corporation, and Princess Cruises Company, a Washington corporation authorized to do business in California, would be treated as a single entity for the purposes of this proceeding.