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## **Moving Forward on Pay Equity in News Guild-Organized Employers**

Pay equity has been a serious issue in workplaces and politics alike. Employers have faced class action lawsuits on pay discrimination. In *Velez v. Novartis*, for instance, a jury decided in favor of the 6,200 plaintiffs in 2010 with \$250 million in punitive damages and back pay and compensatory damages to be awarded at a later date.<sup>1</sup> The tech and financial services industries have been hit with class action lawsuits, mostly on the basis of gender discrimination.

Public policy has recently begun to focus on pay equity. The Lilly Ledbetter Fair Pay Act of 2009 increased the exposure of companies to pay discrimination claims because it enabled employees to sue for discriminatory pay practices even if they occurred years earlier. At the state level, the California Equal Pay Act in 2015 amended existing California legislation to systematize factors that can lead to pay disparities by gender. The legislation required similar pay for “substantially similar work” in terms of skill, effort, and responsibility. In 2016, the governor signed legislation extending those protections to employees of color. The state of Massachusetts adopted the “substantially similar work” standard in 2018. New York’s Equal Pay Act of 2015 declares that pay differentials must be based on “any factor other than sex.” It also prevents employers from inquiring about prior wage and benefits during the hiring process.

The issue of pay equity for women and people of color has been raised at a number of News Guild-organized workplaces – The New York Times, The Wall Street Journal/Dow Jones, Washington Post, Philadelphia inquirer and Daily News, Minneapolis Star Tribune, Los Angeles Times, and now the San Francisco Chronicle.<sup>2</sup>

The findings at these news organizations are depressingly familiar: women’s salaries lag behind those of men and the salaries of employees of color lag behind those of white colleagues.<sup>3</sup> While similar or more serious inequities can be found in other sectors of the economy, its presence in the news strikes at the heart of the journalist mission.

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<sup>1</sup> “Lessons from the *Velez v. Novartis* Trial Team,” in Current Issues in Employment Discrimination Litigation, [https://www.americanbar.org/content/dam/aba/administrative/labor\\_law/meetings/2011/eeo/027.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/labor_law/meetings/2011/eeo/027.authcheckdam.pdf)

<sup>2</sup> This analysis will not examine the LA Times pay equity work since, as of July 2018, bargaining has not been completed.

<sup>3</sup> See Lars Willnat and David H. Weaver, “American Journalists in the Digital Age: Key Findings,” Indiana University, 2014: <http://archive.news.indiana.edu/releases/iu/2014/05/2013-american-journalist-key-findings.pdf> and Women’s Media Center, “The Status of Women of Color in the U.S. News Media 2018”: [http://www.womensmediacenter.com/assets/site/reports/the-status-of-women-of-color-in-the-u-s-media-2018-full-report/Status-Women\\_of\\_Color\\_Report\\_2018.pdf](http://www.womensmediacenter.com/assets/site/reports/the-status-of-women-of-color-in-the-u-s-media-2018-full-report/Status-Women_of_Color_Report_2018.pdf). News Guild-CWA, “Pay Gaps Persist for Women, Minorities in Nation’s Newsrooms,” August 17, 2018: <http://www.newsguild.org/mediaguild3/?p=6725>

This memo develops a set of “best practices” the union might take to fight for pay equity.

### ***What do we mean by Pay Equity?***

Pay equity is a loaded term. It implies, strictly speaking, equivalent pay for equivalent jobs. In collectively negotiated worksites, wage scales serve the function of ensuring equivalent pay, although even here management may have discretion to hire employees at different points on a wage scale. Any time a supervisor makes discretionary decisions, the more likely inequities creep into pay systems.

There are positive reasons for differences in pay, what we might call an “affirmative defense” for employers. In pay systems with merit, high quality (or quantity) of work can be rewarded with an increase in wages. An employer can use a variety of different concrete metrics to reward merit. For reporters, how widely were his/her articles read? Or did he/she receive recognition for articles or projects? For newsroom and the business end, educational degree could be a factor.

The presence of merit pay aggravates the inequities at least on the newsroom side of the companies. Typically, workers are paid on a wage scale with multiple steps and then “overscale” that is based on merit. The conscious or unconscious bias in the distribution of merit increases widens pay disparities.

In pay systems with merit components, the longer the tenure with an individual company, typically the higher the compensation because of accumulated effect of merit bumps. Most of the long-tenured employees at these papers are white males. Merit increases in the past perpetuate pay disparities in the present.

Seniority with an employer is an affirmative defense. Many companies reward length of service, either through bonuses or through adjustments to wage scales, for those employees at the top of wage scales. In the professional setting of a newsroom, age can partially but not completely substitute for seniority. Tenure in the profession is perhaps a better indicator.<sup>4</sup>

Aside from accomplishments and seniority, family situation can also affect pay albeit in an indirect way. Breaks in service – through raising families or time off caring for a relative – can affect seniority. Willingness to work long hours, for instance, may induce an employer to offer more merit pay. In the aggregate, men tend to work longer hours while women tend to assume greater family responsibilities.

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<sup>4</sup> In other economic sectors organized by CWA, employers reward long-time employees with more generous pensions. In a sector without defined benefit pension plans, however, that option is not really available.

Pay inequity may or may not be the result of conscious discrimination on the basis of gender or race/ethnicity. To assess relative pay equity and to take action, we need to understand the pay system at work in the company or individual department.

### ***Research and Analysis***

Mobilizing around pay equity begins with the research. The key here is collecting data from an employee census and presenting it in a way that allows comparisons. The union can then either present the findings quietly to management or run a publicity campaign.<sup>5</sup>

It is important to have access to an employee census to know gender, race/ethnicity, job title, years of service, merit metrics, etc.

Article 5 of TNG-CWA's Model Contract provides direction on the terms locals should propose to add to their contracts in order to have access to relevant demographic information. Among those terms:

1. The Employer shall supply the Guild on request with a list containing the following information for each employee:
  1. Name, address, sex, minority group, date of birth, and Social Security number.
  2. Date of hiring.
  3. Classification.
  4. Experience rating and experience anniversary date.
  5. Wage, including the precise formula for any commission or bonus arrangements, or other forms of compensation.
2. The Employer shall notify the Guild monthly in writing of:
  1. Merit increases granted by name of the employee, individual amount, resulting new wage, and effective date.
  2. Step-up increases paid by name of the employee, individual amount, resulting new wage, and effective date.
  3. Changes in classification, wage changes by reason thereof, and effective date.
  4. Resignations, retirements, deaths and other revisions in the data listed in Section 1, and effective dates.
3. Within one week after the hiring of a new employee, the Employer shall furnish the Guild in writing with the data specified in Section 1 for each new employee.
4. The Employer shall supply the Guild with full information as to hiring and promotional standards and procedures, and any changes.

Many locals have made significant progress in achieving these protections. For instance, Article 4.3 of the collective bargaining agreement CWA Local 37074 and the Denver Post provides:  
Written notice of the name, address, sex, minority group, telephone number, date of birth (as given by the employee), department, date of hire, classification, experience rating, union security status classification, merit pay or pay above minimum, and the last four digits of the Social Security number of all employees new to the bargaining unit

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<sup>5</sup> The Greater Philadelphia News Guild presented the findings quietly while IAPE pushed the issue on Twitter.

shall be transmitted, by mail, fax, or electronically to the Guild office at least monthly and upon request by the Guild, and of all employees covered by this contract annually not later than July 1.

If not already included, such language needs to be negotiated into contracts.

A next cut would be to use a spreadsheet to analyze the data by department to get the gender and ethnicity/race breakdown. If the dataset is large enough it can also be analyzed by job title. The departments and job titles can then be broken down by years of service. This analysis will permit the identification of “outliers” – wages well outside the mean or median earnings.

A more precise method, especially with larger workforces, would be to develop a statistical model to test for the effects of gender and race/ethnicity on compensation. As we saw above, however, various factors affect the relationship between these “causal variables” and compensation. The more easily measured factors – what we might call “control variables” – might be performance scores for the merit part of pay and years of service. Then we should run multiple regression analyses to understand the relationships among the variables.

### ***Education of Members***

Once the data is analyzed, members need to understand the nature of whatever pay disparities exist in the unit. Explanatory prose around the data highlights the causal factor of pay inequities within the pay system. It is also useful to specify the “outliers” perhaps by employer identification number to protect privacy.

Member education is a key element in wielding the pay information as an effective *union* tool. The conclusions can be the basis for bargaining goals. The mere existence of a payroll analysis is a powerful argument for organizing – internally to increase union density and externally to organize other potential bargaining units, say, in other news organizations. Education leads to engagement to strengthen the capacity of the bargaining unit.

The Independent Association of Publishers’ Employees (IAPE), TNG-CWA Local 1096, has tailored a program to bring the analysis to an even more concrete level. IAPE has done roughly 400 individualized wage assessments – employee comparisons to averages by department and job title. In a pay system with a merit component, employees can use this powerful information to bargain with management.

### ***Engagement with Management***

The union will eventually present the pay equity analysis to management. Management reaction is important to the next steps. The response by the Washington Post to downplay the findings of the pay equity study helped the Washington Baltimore News Guild increase membership by 100. In contrast, the Philadelphia newspapers and the New York Times recognized a problem and showed openness in addressing it.

IAPE used the embarrassment factor to “encourage” management at Dow Jones in general and the Wall Street Journal in particular to take the issue seriously. It used the Twitter hashtag #PressforProgress with the tag line “We will maintain a gender parity mindset” to put the issue out into public space.

The union can present a list of “outliers” – those employees of color (or other protected classes) well outside of averages – to management for immediate action for the most severe cases of under payment. At the Wall Street Journal, roughly 20 reporters received significant boosts in pay as a result of discussions with the union. Management at the New York Times also addressed low-paid employees upon the publication of the pay equity results.

The most effective safeguard against future pay disparity issues would be the transparency of the merit pay system. When negotiating pay, the union could include a set of the following standards:

1. Exclude prior earnings from disclosure in the hiring process;
2. Limit supervisory discretion in merit decisions;
3. Train supervisors on implicit or unconscious bias;
4. Negotiate standardized wage scales and merit systems with transparent criteria;
5. Address conscious or unconscious discrimination explicitly in contract language<sup>6</sup>
6. Encourage management to prioritize women and workers of color in the hiring process to balance the workforce. The Institute for Journalism in New Media, the philanthropic owner of the Philadelphia Inquirer, Daily News and Philly.com made a commitment to fund 8 fellowships for reporters of color. The Minneapolis News Guild received a commitment to increase diversity in new hires. In addition to the foundation fellowships in Philadelphia, the Inquirer and Daily News planned to hire 8-10 new reporters in the newsroom with an emphasis on diversity.

### ***Ongoing Monitoring and Oversight***

The local union needs to monitor the pay system to ensure compliance:

1. It can make annual information requests for employee compensation.
2. It then assesses the compensation and makes that analysis available to membership. IAPE has done three studies since 2016. The News Guild of New York, Local 31003, and the Washington Baltimore News Guild are looking to do a second study.
3. It can present the cases of outliers to management.
4. It can work with management to monitor pay equity. The Philadelphia newspapers have put in place an institutional mechanism to review pay equity, the Joint Labor-Management Diversity Committee. As a management-inspired entity, however, it has not received full buy-in from the local because it has been perceived as window-dressing and not an effective tool to address pay inequities. That committee has called for the aggressive recruitment of minority candidates.

### ***Conclusion***

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<sup>6</sup> Such language was recently inserted into the IAPE contract with Dow Jones.

Once merit is introduced into a pay system, the issue of pay disparity becomes more subjective – based on relationships between employee and supervisor – and less “objective” – based more on standards negotiated by the union and the employer. Negotiating objectivity limits the potential for continued disparities and grabs the high ground in bargaining.

The threat of legal action can impel management to take action. Numerous lawsuits have made employers sensitive to issues of bias and more amenable to working to eliminate it. Proposed legislation at the state and local level continue make pay equity a front-burner issue. The #MeToo movement has also increased the sensitivity of news employers to issues of discrimination.

News Guild locals have made major strides in addressing pay disparity, thereby strengthening their ranks. We would do well to build on their work and develop a common News Guild framework for pay equity in the news industry.