

Universal City Studios, Inc. and Make-up Artists and Hair Stylists Local No. 706, International Alliance of Theatrical Stage Employees & Moving Picture Machine Operators of the United States and Canada, AFL-CIO. Case 31-CA-9142

January 6, 1981

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS
PENELLO AND ZIMMERMAN

On September 17, 1980, Administrative Law Judge James S. Jenson issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

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

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Universal City Studios, Inc., Universal City, California, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

APPENDIX

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

After a hearing at which all parties had an opportunity to present evidence, the National Labor Relations Board has found that we violated the National Labor Relations Act, as amended, and we have been ordered to post this notice.

The Act gives employees the following rights:

- To engage in self-organization
- To form, join, or assist any union
- To bargain collectively through representatives of their own choosing

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

WE WILL NOT refuse to hire, rehire, recall, or in any other manner penalize our employees for engaging in protected concerted activities for their mutual aid and protection.

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

WE WILL offer to Gordon Freid immediate and full reinstatement to his former position or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other other rights and privileges previously enjoyed, and WE WILL make him whole for any loss of earnings suffered as a result of our discrimination against him, plus interest.

UNIVERSAL CITY STUDIOS, INC.

DECISION

STATEMENT OF THE CASE

JAMES S. JENSON, Administrative Law Judge: This case was heard by me in Los Angeles, California, on December 17 and 18, 1979,¹ based upon a complaint issued on August 14, pursuant to a charge filed on June 28, alleging that Respondent violated Section 8(a)(3) and (1) of the Act by refusing to rehire Gordon Freid as a makeup artist on the television production of "B.J. and the Bear," because Freid joined or assisted the Union or engaged in other protected concerted activities. Respondent's answer denies the commission of an unfair labor practice and pleads as an affirmative defense that since the Union failed to file a grievance under the collective-bargaining agreement and failed to demand that Respondent arbitrate the dispute giving rise to the charge, the Union is estopped from asserting it has violated the Act. All parties were afforded a full opportunity to appear, to introduce evidence, to examine and cross-examine witnesses, to argue orally and to file briefs. Briefs were filed by both the General Counsel and Respondent and have been carefully considered.

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

¹ All dates herein are in 1979 unless otherwise stated.

FINDINGS OF FACT

I. JURISDICTION

Respondent, a Delaware corporation with its principal office and place of business in Universal City, California, is engaged in the production of theatrical and television motion pictures. Respondent annually sells and ships goods or services valued in excess of \$50,000 directly to customers located outside the State of California. It is admitted and found that Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Make-up Artists and Hair Stylists Local No. 706, International Alliance of Theatrical Stage Employees & Moving Picture Machine Operators of the United States and Canada, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. ISSUE

Whether or not Respondent failed and refused to rehire Gordon Freid as a makeup artist for the second season of the production of "B.J. and the Bear," because he engaged in protected concerted activities.

IV. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Setting*

In early January, Respondent commenced first session production of a television series known as "B.J. and the Bear." Production was initially done on "distant location" at various sites in northern California; however, in late March the production company returned to the Los Angeles area where it completed production and laid off the entire production crew on April 25. Production for the second session of "B.J. and the Bear" commenced in June.

At all material times, Nick Marcellino has been the head of Respondent's makeup department, and Joe Boston has been one of Respondent's producers. Both are admitted to be Respondent's agents and supervisors within the meaning of the Act. Charles Sanford worked as both a first and second assistant director throughout the production. While his status as either a supervisor or employee was not litigated, it is clear that he was directly under the unit manager in the chain of command and possessed independent authority to change the "call time" of employees. The makeup crew for the first season included key makeup artist Gordon Freid, who did the makeup on Greg Evigan, the star of the show, key makeup artist Gene Bartlett, and hair stylist Jim Post. Bartlett, however, quit the show late in March when the crew returned to Los Angeles, and was replaced by Casey Bernay. While Bartlett and Post were reemployed for the pickup or second season's production commencing in July, Freid was not recalled in spite of the fact it is admitted he was a competent makeup artist and that both the star of the show and one of the producers requested that Marcellino rehire him. Key makeup artist Mario Gonzalez was hired in his stead.

The Union's business representative is Howard Smit. This case involves the reasons Respondent did not rehire Freid.²

B. *The Facts*

Freid was hired as a key makeup artist for the production of "B.J. and the Bear," by Marcellino in late December 1978, and commenced work in early January. As noted, Bartlett was the other key makeup artist and Post was the hair stylist. As the first few months were at a "distant location" the makeup department employees experienced shortages of certain supplies from time to time, such as brush cleaner, lip colors, and wigs. One such shortage, involving lip colors, bears directly upon Respondent's defense to this case. There is no dispute but that in late February or early March, the makeup artists ran short of a specific lip color that was being used on the show. Freid had been advised that it would take a couple of weeks to receive new supplies ordered through the makeup department in Los Angeles. He discussed the fact with Bartlett and expressed the opinion he could obtain a supply within 48 hours if he ordered it directly. Bartlett testified that he talked to the unit manager about it, and that the unit manager said to go ahead. Accordingly, Freid ordered the item which was charged to Respondent and delivered to the makeup department in Los Angeles and from there sent out to the location. Bartlett testified that it was not unusual while on location to order supplies and charge them to the employer and he recited an incident when Post had done so.³

Prior to their return to the Los Angeles area in late March, Freid asked both Bartlett and Post if they had any specific complaints about things that might be changed in order to make the work easier. Neither had anything specific, and besides the men had decided it would not do any good to talk to Marcellino about problems. Marcellino testified that after the production crew returned to Los Angeles, and before the first season "wrapped," Post told him that Freid had gone to the Union to file a grievance and had asked Post to submit a list of grievances to take to the Union. Upon his return to the Los Angeles area in March, Freid called Union Business Representative Smit to learn whether anything could be done under the contract to correct the inability

² For many years the Union and Respondent have been parties to a series of collective-bargaining agreements, the most recent agreement having expired on July 31, 1979. Par. 68 of the agreement provided, in absence, that Respondent give preference in employment to qualified, available employees on the Industry Experience Roster and that employees in group 1 status were to be given preference over those in group 2. It provided specifically that there was no contractual seniority among members of the same experience group. The record shows that when Marcellino needed an employee, he called the Union, made his selection from among the list of available employees, and either he or the Union informed the individual of the job. All of the makeup artists named in this proceeding were in group 1.

³ Marcellino testified initially he had already made up his mind not to rehire Freid before he learned of his role in ordering the lip colors. Through the use of leading questions, however, Respondent's counsel elicited from him testimony, which I do not credit, that he "definitely" had this incident in mind when he made the decision not to reemploy Freid.

to obtain supplies. He was advised that nothing could be done.⁴

Following lunch on March 28, the production crew was scheduled to move from Universal to General Service Studios. Freid, who had a toothache, made arrangements with the assistant director, Evigan, and Bernay⁵ to leave the studio after lunch in order to see a dentist. He drove to the dentist's office and learned the dentist was not able to see him. The dentist's assistant suggested he try using toothache wax, which he bought at a nearby pharmacy. He then drove home where he took some aspirin and rested. While there, he received a call from Marcellino who asked if he was coming back to the studio since it was wrong to have someone else punch out his timecard. After assuring Marcellino he intended to return, Freid called Bernay at General Service Studios and learned that the company was in the process of moving back to Universal Studios. She suggested that Freid go back there and punch out, which he did about a half hour before the rest of the company. The following day, without saying anything further to him about it, Marcellino changed Freid's timecard by allowing him pay for a minimum call of 9 hours, thereby docking him in excess of 3 hours pay. Bartlett, called as a witness of Respondent, testified that the "basic problem" for the makeup artists is making up a person in the morning, and touching them up after lunch. The rest of the time is just standing by. He testified that "it happens all the time. People get sick, people have dentist appointments," and all that is required is to tell the second assistant directors they are going to be gone, the exact procedure Freid followed.

The "call sheet" is the document scheduling the following day's production activities and specifies the time each individual is to report. The record indicates the call sheet is generally distributed around 6 or 6:30 p.m., after the makeup department has closed and Marcellino had gone home. If prepared during the daytime, the call sheet is typed; however, if it is prepared late in the afternoon or evening, it is handwritten. It is not disputed, and is clear from the evidence, that it is not unusual for call times to be changed in longhand and that Second Assistant Director Sanford had independent authority to change call times. The evidence shows that the call sheet⁶ for March 29 was made out in longhand, indicating it was prepared late in the day, and lists a call time of 7 p.m. for Freid, Bernay, and Post. Freid's testimony, corroborated in material part by Sanford, was to the effect that after the March 29 call sheet had been posted, Bernay called to his attention the fact four stunt doubles were to be used the following day and that the makeup crew did not have the necessary beard and wig materials to insure the stunt doubles could be properly made up.

⁴ Par. 63 of the collective-bargaining agreement provides:

63. *Make-up or Hair Styling Supplies*—Employees shall not be required as a condition of employment to furnish any make-up or hair styling supplies, provided, however, upon mutual agreement between Producer and the employee for such supplies to be furnished by the employee, the cost thereof shall be reimbursed to the employee separate and apart from his regular wages.

⁵ Bernay replaced Bartlett when the crew returned to Los Angeles.

⁶ Entitled "Shooting Call."

As the makeup department was already closed, Freid and Bernay approached Sanford with the problem, and he in turn authorized a change in the call time to 6:48 a.m. for Freid, Bernay, and Post. Thus, on the morning of March 29, all three arrived 12 minutes early, clocked in, and went to the makeup department to acquire the necessary supplies. The call time for body makeup artist Beverly Turner remained at 7 a.m.

The call sheet for March 30, which was posted the evening of March 29, again listed the makeup department employees with a call time of 7 a.m. While Freid did not remember the reason for the change, the unrefuted evidence shows that Sanford again authorized a change in call time to 6:48 a.m., this time for all four makeup department employees. After Freid punched his timecard the morning of March 30, he was called to Marcellino's office. According to Freid, whom I credit, Marcellino informed Freid that he, Marcellino, had changed Freid's timecard for March 29 to reflect a call time of 7 a.m., and that he was going to change the one for that day also because he was not entitled to the 12 minutes "prep time" in a bus-to situation.⁷ Freid explained that the call times had been changed by the assistant director, that the change for March 29 was necessitated by the fact they needed beards and wigs for the previously unscheduled stunt doubles, and further, that it was "illegal" for Marcellino to change his timecard. Marcellino stated he was changing them anyway. The timecards for Freid, Bernay, and Post, all in evidence, show Marcellino recorded their call times as 7 a.m. for March 30, but that he left them at 6:48 a.m. for March 29.⁸

Within a few days after Marcellino told Freid he had changed his timecard, Freid called Smit and reported what Marcellino had done. Smit in turn talked to Marcellino, both on the phone and in person. Each expressed his position, and Smit stated he thought there was a misunderstanding and would investigate the matter. He thereafter talked to Sanford, who confirmed the fact that the call times had been changed legitimately. Smit advised Marcellino of the fact the assistant director had given Freid the call change, and both men testified they considered the matter resolved.⁹

On April 25, production ended and everyone was laid off. Freid testified that, at the "wrap" party on April 26, an announcement was made to the effect that the show

⁷ Par. 64 of the collective-bargaining agreement, entitled "Preparation Time," provides that "Twelve minutes preparation time will be allowed for Make-Up Artists and Hair Stylists for each day worked." A "bus-to" situation is one where the crew is to be ready to board a bus at a specified time for transportation to another location. If makeup is to be applied prior to boarding the bus, the makeup crew receives earlier call times, and are also entitled to "prep time." If makeup is to be applied on location, they are not entitled to preparation time unless required, as here, to obtain otherwise unattainable supplies before leaving.

⁸ The call sheet for April 2, shows a call time of 6:48 p.m. for Freid and Bernay, which was changed at Sanford's direction to 5:48 a.m. because the directors had decided the actors and actresses should be made up before the bus left.

⁹ It should be noted, however, that even though the matter was considered resolved, Marcellino relies on it as a reason for not rehiring Freid.

had been renewed for another season.¹⁰ Freid testified, without contradiction, that at the party he talked to Boston, one of the show's producers, and asked if he could be assured of returning when production resumed. Boston responded that there was no way he could assure Freid of returning, but that he would call Marcellino and put in a word for Freid. Marcellino testified that he received a call from Boston requesting that Freid be rehired when "B.J. and the Bear" resumed production, and that he refused saying: "He has given me some problems and I would rather do without Gordon Freid." He testified that he made up his mind not to rehire Freid during his conversation with Boston.

On or about May 29, Freid called and informed Marcellino that he was available for work and wondered when production on "B.J. and the Bear" would start. Marcellino stated that Freid would not be in the show since he had decided to have a whole new crew.¹¹ Freid then reported the conversation to Smit, who stated that the company was not contractually obligated to hire him back and suggested he call Boston to find out what Marcellino had told him. According to Freid, the following day he called Boston who stated that he had talked to Marcellino on Freid's behalf and Marcellino told Boston that Freid was not going to be rehired because of a problem involving Freid, the makeup department and/or the Union. Boston was neither called as a witness by Respondent, nor did Marcellino deny having made this statement to him.

The following day, May 31, Freid talked to Marcellino in the latter's office, protested the failure to rehire him, and asked if something was wrong. Freid's undisputed testimony concerning the conversation was as follows:

I said, "Nick is there something wrong? Am I not doing something right? Am I doing something incorrectly? Is there something wrong?" He said, "Yes." I said, "Well, what is it?" He said, "Well, Gordon, I feel that you are not happy here," and I said, "Well, Nick if I weren't happy here, I would not be trying to come back to work here."

He said, "Well, Gordon, I heard that you filed grievances against the company." I had no reply to that; there was no reply. He says, "And there was that problem with the time cards that I thought we had settled, and the next thing I knew, we had the Union in here." He says, "I don't need those kinds of problems in my Department." He says, "Of course, that doesn't mean that you will never work here again." He said "The time may come when I will have to hire you." And I said, "Well, Nick, I have been working here for a couple of years off and on. I would hope that by now, you would hire me for some reason other than the fact that you felt you had to hire me." He said, "No." And I said, "Oh," and I left, because I was very angry.

Q. Did he give you any other reasons during this conversation?

¹⁰ Marcellino testified he did not learn that the show had been renewed until late May.

¹¹ Contrary to that representation, Marcellino rehired Bartlett and Post for the second season.

A. None.

Freid reported the conversation to Smit, who suggested Freid seek assistance from somebody else with influence on the show. As Freid had done the makeup on Evigan, the star of "B.J. and the Bear," he contacted Evigan's manager and was told that Evigan wanted him to return and had tried to have Freid's services included in his contract. At Freid's suggestion, Evigan wrote him a letter stating he would "speak to the producer and let them know I don't want anyone else except you—I think you're the best. . . ."

On June 1, Smit called Phil Dezen, assistant head of labor relations for Respondent and related the reasons Marcellino had given Freid for not rehiring him, stating that if they were true, he felt an unfair labor practice had been committed. Dezen stated he would look into the matter and set up a meeting between the two and Marcellino. Several days later Smit called Dezen again and was informed that Freid was not illegally fired and that the Company had a right not to rehire him for "B.J. and the Bear" but that he was still eligible for employment by Respondent. Dezen testified he told Smit to file a grievance over the matter but that Smit said he would handle it his own way. Smit testified he did not recall any discussion with Dezen about his filing a grievance.

Smit testified that a week or so later he had another conversation with Marcellino. Also present at Marcellino's request was Florence Avery, head hair stylist.¹² Smit testified without contradiction that Marcellino told him that one of the reasons Freid had not been rehired was that "he had heard that Gordon was going to file grievances, or had filed grievances against the company, and that he felt that if Gordon was going to do that, he wasn't happy there, and didn't want him on the show." He also mentioned the fact that Freid was talking to other employees and trying to get more grievances. They also discussed the "changing of the timecards," which Smit said he thought was a closed issue.¹³ According to Smit, Marcellino also mentioned the fact that Bartlett did not want to work with Freid and the fact that Freid had gone to the dentist without letting Marcellino know. Marcellino acknowledged, however, that work had not been held up in any way as a consequence of Freid's trip to the dentist. Marcellino also mentioned that Freid had ordered merchandise directly on one occasion, which Smit thought was also a closed issue.

On June 25, the second season production of "B.J. and the Bear" commenced with Bartlett, Mario Gonzalez, and Post comprising the makeup crew. A few days later Marcellino received a call from Evigan complaining about Bartlett's work and asking that Freid be rehired. Marcellino admits he told Evigan that he would not rehire Freid because Gonzalez had more seniority, and that if he did not like Bartlett, he could use Gonzalez.¹⁴

¹² Avery did not testify.

¹³ Both men had earlier agreed that the changing of the timecards was a closed issue.

¹⁴ The collective-bargaining agreement specifically provides that all men listed in group 1 on the Industry Experience Roster, have equal seniority.

The instant charge was filed on Thursday, June 28, and served on Respondent on June 29. On Monday, July 2, Marcellino selected Freid off the Industry Experience Roster, and he worked on "The Return of Maxwell Smart" on a daily basis through July 4, at which time he left because of a commitment with another studio. He later worked for Respondent on the production "Quincy" from September 27 through the first week of December.

Discussion¹⁵

Marcellino testified that the "main reasons" Freid was not rehired for the second season "were several instances occurred which led me to believe that Gordon Freid was not the caliber of person that I had been used to dealing with." He then recited the two main factors: (1) the incident on March 29 when the call times for the two makeup artists and hair stylist were changed from 7 to 6:48 a.m.;¹⁶ and (2) that "I had heard from other members of the 'B.J.' makeup artists or hair stylists that Gordon was unhappy on the series, and that he had gone to his Local to file a grievance, and he had approached Jim Post, the hair stylist, and asked Jim to submit a list of grievances, also, against the studio, or myself. And I guess primarily for those reasons, I did not feel that I should consider putting Gordon Freid on the 'B.J. and the Bear' assignment." Asked by the General Counsel if there were any other reasons, Marcellino responded "No. There may have been some other reasons" and went on to relate the time on March 28 when Freid left the set to go to the dentist without first telling Marcellino.¹⁷ Pressed for any other reasons he testified that Mario Gonzalez was finishing another assignment and was called back because he had more seniority than Freid.¹⁸ While he then testified there were no other reasons, he later testified that Bartlett's request that Freid not work with him on the show was a consideration. He admitted later, however, that the decision had already been made before he talked to Bartlett about coming back. As noted earlier, through leading questions by Respondent's counsel, he also claimed that Freid's ordering

¹⁵ Respondent asserts as an affirmative defense that since the Union failed to file a grievance under the collective-bargaining agreement, it is estopped from proceeding under the guise of unfair labor practice charges and proceedings under the Act. It has long been established that the Board's jurisdiction to remedy unfair labor practices is not preempted, or ousted, by the possible existence of contractual obligations arising from the same circumstances, for Sec. 10(a) of the Act expressly provides that the Board's power to prevent unfair labor practices shall not be affected by any other means of adjustment, or prevention established by agreement, law, or otherwise. *Flasco Manufacturing Co.*, 162 NLRB 611, fn. 13 (1967).

¹⁶ The change in the call times of the other members of the makeup crew does not appear to have aroused Marcellino's ire, as did the change in Freid's. Further, the evidence shows conclusively that the changes in call times were approved by the assistant director who had authority to make the changes.

¹⁷ No worktime was lost as a result of Freid's having gone to the dentist and it is clear from the testimony of Bartlett that "it happens all the time. People get sick, people have dentist appointments" and follow the same procedure as Freid--notify the assistant director.

¹⁸ Marcellino testified he made up his mind not to hire Freid during a conversation with Boston, which the evidence shows took place prior to March 26. He did not decide to hire Gonzalez until a week or two before June 22. Thus, it is clear that seniority played no part in hiring Gonzalez over Freid.

of the lip coloring directly from the supplier played a part in his decision, although he had already testified he had made up his mind not to hire Freid before he learned of the fact Freid had ordered the supplies directly.

Inasmuch as Marcellino testified a reason for not hiring Freid was his having filed a grievance which Respondent acknowledges is a technical violation of Section 8(a)(1), the question remains whether it was a substantial factor in not rehiring him. The statements Marcellino made at the hearing, also to Freid and to Boston, Smit and Bartlett, convince me that the other reasons offered by Marcellino are pretettual and that the actual reason was Marcellino's animus toward Freid for having talked to other employees about working conditions, and for having contacted the Union because Marcellino changed his timecard. Thus, as noted above, he admitted at the hearing that one of the "main reasons" was the fact Freid had gone to the Union to file a grievance, and had asked Post to submit a list of grievances against both the studio and Marcellino. It is not disputed that on March 31, he told Freid, when asked why Freid had not been rehired, that he felt Freid was not happy, and went on to explain that he had heard Freid had filed grievances with the Union, that there had been a problem with the timecards, which he thought was settled, and the next thing he knew was that Freid had gone to the Union about it. According to Freid, whose testimony was not rebutted by Respondent, Boston told him that Marcellino had told Boston that he would not hire Freid back because of a problem involving Freid, "the makeup department and/or the Union." Smit, whose testimony was also not rebutted, was told by Marcellino on two occasions that the problem with Freid was that he had filed grievances against the studio and had solicited other employees to do so and, after Smit had taken the matter up with Dezen, he again told Smit that one of the reasons he had not brought Freid back was because he was going to file a grievance against the Company. It is axiomatic that soliciting grievances, filing of a grievance, and contacting the Union about working conditions, are each protected concerted activities, and a refusal to fire or rehire an individual for engaging in such conduct violates Section 8(a)(1) of the Act. Thus, I find the evidence overwhelming that Respondent failed and refused to rehire Freid as a makeup artist on "B.J. and the Bear" because he engaged in protected concerted activities.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By failing and refusing to rehire Gordon Freid as a makeup artist on the production of "B.J. and the Bear" because he engaged in protected concerted activities, Respondent engaged in an unfair labor practice within the meaning of Section 8(a)(1) of the Act.¹⁹

¹⁹ It is unnecessary to decide whether Respondent's conduct also violated Sec. 8(a)(3) of the Act, inasmuch as the remedy necessary to effect

Continued

4. The aforesaid unfair labor practice affects commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in an unfair labor practice, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. I shall recommend that Respondent be required to offer Gordon Freid immediate and full reinstatement to his former job as key makeup artist on the production "B.J. and the Bear" or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority and other rights and privileges, and make him whole for any loss of earnings he may have suffered by reason of such discrimination, by payment of a sum of money equal to that which he normally would have earned as wages from the beginning of the second season on June 25, 1979, to the date of such offer of reinstatement, less his net earnings during such period, with backpay computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and with interest thereon as set forth in *Florida Steel Corporation*, 231 NLRB 651 (1977).²⁰

It is also recommended that Respondent make available to the Board, upon request, all payroll and other records to facilitate checking the amount of earnings due.²¹

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

ORDER²²

The Respondent, Universal City Studios, Inc., its officers, agents, successors, and assigns, shall:

tuates the policies of the Act would be identical in either case. *American Art Clay Company, Inc.*, 142 NLRB 624, fn. 1 (1963).

²⁰ See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

²¹ Whether Respondent's offers of employment to Freid on other shows on July 2 and September 27 suffice as valid reinstatement offers are issues that are best left as matters for compliance.

²² In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and

1. Cease and desist from:

(a) Interfering with, restraining, or coercing its employees in the exercise of their right to engage in concerted activities guaranteed in Section 7 of the Act, by refusal to hire, rehire, recall, or by any other disciplinary action.

(b) In any like or related manner, interfering with, restraining, or coercing employees in the exercise of rights under the Act.

2. Take the following affirmative action which will effectuate the purposes of the Act:

(a) Offer to Gordon Freid immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges enjoyed, and make him whole for any loss of pay suffered by reason of the failure and refusal to rehire him, in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due and the right of reinstatement under the terms of this Order.

(c) Post at its place of business in Universal City, California, copies of the attached notice marked "Appendix."²³ Copies of said notice, on forms provided by the Regional Director for Region 31, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 31, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

²³ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."