

**Norman Mesnikoff, Receiver in Bankruptcy for
Mid-State Broadcasting Co., d/b/a WHLW and
Joyce Renaud. Case 22-CA-9049**

April 17, 1980

DECISION AND ORDER

**BY CHAIRMAN FANNING AND MEMBERS
JENKINS AND TRUESDALE**

On November 7, 1979, Administrative Law Judge Max Rosenberg issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and Respondent filed a brief in support of the Decision.

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 only to the extent consistent herewith.

The Administrative Law Judge found that Respondent did not violate Section 8(a)(4) and (1) of the Act by discharging employee Renaud because she had filed charges and testified against Respondent in a prior Board proceeding. He dismissed the complaint. We disagree.

Renaud filed charges and testified against Respondent in a prior proceeding alleging her unlawful discharge in violation of Section 8(a)(3). On September 29, 1978, the Board found her discharge to be unlawful and ordered reinstatement with backpay. 238 NLRB No. 174

On November 27, 1978, Renaud met with Respondent's general manager, Seymour Abramson. They agreed that Renaud should return to work on November 29. Renaud testified that she told Abramson that she was taking her daughter on vacation February 9 thru 12, 1979; that her hotel deposit was not refundable; and that she was notifying him well in advance in order to prevent any scheduling problems. Abramson told her to see Downs, the program director.¹ Abramson testified that he was not told by Renaud, or anyone, about her vacation until February 2, 1979.²

According to undisputed testimony, Renaud told Downs, who thanked her for the early notification, noted it on his calendar, and asked her to remind

him at a later date. In December, Renaud asked Giase, who was the news director as well as her immediate supervisor, if Downs had told him of her vacation. He said, "no," but wrote the dates on the newsroom scheduling calendar and said he would schedule replacements.³

On February 7, 1979, Renaud was told by Giase that Abramson refused to let her go on vacation because he could not afford to pay her. Renaud offered to take the vacation without pay. Giase relayed this to Downs, who informed Abramson. Downs returned and told Renaud that it was not that Abramson did not want to pay her but that he did not want her to go. That afternoon Renaud attended a meeting called by Abramson.⁴ Also in attendance was Abramson's wife, Ruth—who was the station manager—Downs, and Giase. Abramson stated that not only was money a problem but also there were no adequate replacements and consequently the "quality of the air" would suffer. Renaud stated that her plans could not be changed without financial loss and she intended to go on vacation as scheduled. Abramson said that if she left she need not return. Renaud left and she did not return until July 3, 1979, when she was voluntarily reinstated by Respondent.

At the outset we note that it is not, nor could it be, contended that Renaud failed to follow station policy for scheduling vacations. Under any view of the facts, she notified her supervisor in sufficient time to select and schedule replacements and indeed, as testified to by all parties, replacements were scheduled. The procedure followed by Renaud in this instance is no different from that which she followed in December when she took 3 days off. In fact Respondent argues that because of her vacation in December Abramson reaffirmed his policy that he alone would have the final word regarding scheduling. However, this affirmation was only conveyed to Downs and Giase and there is no contention that Renaud was told Respondent was reconsidering approval of her vacation.

Respondent's argument is that business required denying Renaud her previously scheduled vacation and that it was not motivated by her part in the earlier case. This argument fails under close scrutiny.

Abramson testified that while the lack of money was a reason it was not primary, and yet he failed to explain why, if it was not at least the main reason, it was the first reason to be set forth. At the hearing there was a great deal of discussion regarding the quality, or lack thereof, of the individ-

¹ Downs was not employed by Respondent at the time of the hearing and did not testify.

² In light of this conflict we do not adopt the Administrative Law Judge's findings that there was "no essential dispute" regarding the conversation nor that "every witness . . . on both sides of the barricades . . . makes it abundantly clear that neither Abramson nor his wife" knew of the scheduled vacation until just before it was to begin.

³ Renaud is a newscaster who is on the air for 5 minutes every hour from 11 a.m. until 5:30 p.m.

⁴ Abramson claimed the meeting was held on February 5, but the date does not affect our decision.

uals scheduled as replacements. But individuals were available. Obviously, Respondent had to have someone to replace Renaud, if for no other reason than to cover for her scheduled day off or in the event of illness. By taking the course it did Respondent in no way corrected its "problem."

The Administrative Law Judge found that while Abramson might be devoid of "familial compassion" and had presented Renaud with a choice of "motherly concern or employment," the issue was not whether Abramson was insensitive but whether the Act had been violated. We do not disagree; "thus we are not necessarily concerned when a particular disciplinary action seems to us to be excessive, unfair, or unwise. However, when it is alleged that the reason assigned for the discipline is pretextual, our attention must necessarily turn to the reaction of the employer." *American Thread Co., Sevier Plant*, 242 NLRB No. 10 (1979). Here, upon learning that his best newscaster was leaving on a 5-day vacation, which admittedly was scheduled and approved well in advance, Abramson immediately refused to allow her to leave. Initially he refused because of lack of funds and later because he was unhappy with her replacements; replacements which were selected by Respondent's own news director. He attempted no accommodation or independent investigation of the availability of other individuals. We find this severe reaction and total intransigency to an alleged problem which at best was precipitated by Respondent's own management is clear evidence of pretext. Cf. *N.L.R.B. v. Dayton Tire & Rubber Company*, 503 F.2d 759 (10th Cir. 1974).

Respondent's defenses are inconsistent and shifting, leading to the inference, which we draw in this instance, that the real reason for denying Renaud her scheduled vacation was because she filed charges against Respondent and testified against it in a prior proceeding. *Shattuck Denn Mining Corporation (Iron King Branch) v. N.L.R.B.*, 362 F.2d 466 (9th Cir. 1966). Accordingly, we find, contrary to the Administrative Law Judge, that Respondent has failed to overcome the *prima facie* violation made out by the General Counsel herein, that a preponderance of the evidence sustains the General Counsel's contention that the reason given by Respondent for the discharge of Renaud was pretextual, and that she was discharged in violation of Section 8(a)(4) and (1) of the Act.

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Respondent violated Section 8(a)(4) and (1) of the Act by discharging Joyce Renaud because she filed charges against Respondent and had testified contrary to Respondent's interest at a Board-conducted hearing.
3. 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 within the meaning of Section 8(a)(4) and (1) of the Act we shall order that Respondent, although having previously reinstated Joyce Renaud, insure that her reinstatement is without prejudice to her seniority or any other rights or privileges previously enjoyed, and that it make her whole for any loss of wages she may have suffered as the result of Respondent's unlawful conduct, with interest, as set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977),⁵ and expunge from her personnel record all reference to the discharge and/or suspension.

ORDER

The Respondent, Norman Mesnikoff, Receiver in Bankruptcy for Mid-State Broadcasting Co., d/b/a WHLW, Lakewood, New Jersey, its officers, agents, successors and assigns, shall:

1. Cease and desist from:
 - (a) Discharging and/or suspending employees because they file charges against Respondent or testify contrary to Respondent's interest at a Board conducted hearing.
 - (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
2. Take the following affirmative action designed to effectuate the policies of the Act:
 - (a) Make Joyce Renaud whole for any loss she may have suffered as a result of the Respondent's unlawful action in accordance with the section above entitled "The Remedy."
 - (b) Expunge from the personnel record of Joyce Renaud any reference to her discharge and/or suspension on February 7, 1979.
 - (c) Preserve and, upon request, make available to the Board or its agents, for examination and copy-

⁵ See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

ing, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its radio station in Lakewood, New Jersey, copies of the attached notice marked "Appendix."⁶ Copies of said notice, on forms provided by the Regional Director for Region 22, after being duly signed by an authorized representative of Respondent shall be posted by it, 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.

(e) Notify the Regional Director for Region 22, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

⁶ 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."

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 sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice. We intend to abide by the following:

WE WILL NOT discharge and/or suspend employees because they file charges against us or testify contrary to our interests at a Board-conducted hearing.

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 insure that Joyce Renaud's reinstatement is without prejudice to her seniority or any other rights or privileges previously enjoyed and **WE WILL** make her whole for any loss of wages she may have suffered as a result of our unlawful conduct, with interest.

WE WILL expunge from Joyce Renaud's personnel record all reference to the discharge and/or suspension.

**NORMAN MESNIKOFF, RECEIVER IN
BANKRUPTCY FOR MID-STATE
BROADCASTING CO., D/B/A WHLW**

DECISION

STATEMENT OF THE CASE

MAX ROSENBERG, Administrative Law Judge: This proceeding was heard by me in Newark, New Jersey, on September 14, 1979, upon a complaint filed by the General Counsel of the National Labor Relations Board and an answer submitted thereto by Norman Mesnikoff, Receiver in Bankruptcy for Mid-State Broadcasting Co., d/b/a WHLW, herein called Respondent.¹ At issue is whether Respondent violated Section 8(a)(4) of the National Labor Relations Act, as amended, by discharging Joyce Renaud on February 7, 1979. Briefs have been received from the General Counsel and Respondent which have been duly considered.

Upon the entire record made in this proceeding, including my observation of the demeanor of the witnesses, I hereby make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

The parties stipulated that the facts upon which the Board asserted jurisdiction in a prior proceeding involving this Respondent are viable and applicable to this litigation.² Based thereon, I find that Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

The General Counsel contends that Respondent discharged Joyce Renaud on February 7, 1979, because she had filed charges against it under the Act and had given testimony antithetical to its interests in the prior proceeding, and that it thereby violated Section 8(a)(4) of the Act. Respondent denies that it committed any unfair labor practices in its dealings with Renaud on that date.

Respondent operates a radio broadcasting station in Lakewood, New Jersey. At the times material herein, Seymour Abramson occupied the post of general manager, his wife, Ruth, was the station manager, and Timothy or Tim Downs and John Giase were employed as the program director and news editor, respectively.

In the earlier proceeding, the National Labor Relations Board adopted an Administrative Law Judge's finding, *inter alia*, that Respondent had violated Section 8(a)(3) of the Act by discharging Renaud on August 28, 1976, because she had shown an interest in labor organizations and had otherwise engaged in protected, concerted ac-

¹ The complaint, which issued on April 30, 1979, is based upon a charge which was filed and served on March 2, 1979.

² *Norman Mesnikoff, Receiver in Bankruptcy for Mid-State Broadcasting Co., d/b/a WHLW*, 238 NLRB No. 174 (1978).

tivities. The facts in that case revealed that, in October 1975, Respondent went into bankruptcy and a receiver was appointed by a Federal bankruptcy court.³ Following this happenstance, rumors circulated that Respondent was to be purchased by a station WOBM. Beginning in May 1976, Respondent's employees, including Joyce Renaud, conducted meetings among themselves to consider this prospect and, in July 1976, a consensus was reached to investigate the possibility of collective representation by a labor union. Michael Rashkow, another employee whom the Board had found in the original proceeding to have been discriminatorily discharged along with Renaud, contacted two labor organizations which represented employees in the industry. For an amalgam of reasons, the employees were unable to enlist this collective support.

In late July or early August 1976, Rashkow was summoned to the office of then Station Manager Michael Cantoni where the latter informed Rashkow that he was aware of the employees' organizational attempts and that he was opposed to this activity. Cantoni added that he was sure that General Manager Seymour Abramson would also look with disfavor upon these endeavors if he became aware of them. On August 28, 1976, Cantoni telephoned Rashkow at home and notified him that he had been discharged on that day because he was involved with several other employees, including Renaud, in a conspiracy to undermine Cantoni's authority by injecting a union into the station.

Renaud began her career with Respondent in February 1976 as a part-time newscaster. Shortly thereafter, she was upgraded to perform this role on a full-time basis. Within a few months, she was assigned to the more responsible positions of disc jockey and public affairs programming because of management's high regard for her broadcasting talents.

While at work on July 4, 1976, Renaud was surprised to see Cantoni at the station on the holiday. When she remarked that they both deserved compensatory leave because of their holiday duty, Cantoni launched into a diatribe against labor organizations in general and mentioned that Respondent would not tolerate any such entities at its facility. On August 28, 1976, Renaud also received a telephone call at home from Cantoni who announced that she, too, had been terminated that day because she had attended the employees' sessions at which the topic of unionization was explored.

Following their discharges, Rashkow filed charges with the Board on behalf of himself and Renaud in September and October 1976. On July 28, 1977, Renaud gave testimony before the Administrative Law Judge in that earlier proceeding which ran counter to Respondent's interests. On May 22, 1978, the Administrative Law Judge issued his Decision in which he found, *inter alia*, that Respondent had unlawfully terminated Renaud and he ordered her reinstated with backpay. On September 29, 1978, the Board affirmed that ruling.

Sometime in November 1978, Renaud was notified by Respondent's receiver in bankruptcy that, in compliance

with the Board's reinstatement order, Respondent would put her back to work in her former position. Upon receipt of this intelligence, Renaud visited the station on November 27, 1978, and met with General Manager Abramson. During her stay, it was agreed that she would return to duty as a newscaster effective November 29. Renaud testified that, before the meeting ended, she apprised Abramson that she had made financial arrangements to take her daughter on a skiing vacation from February 9-12, 1979, to celebrate the latter's birthday, and that she was affording him advance notice to forestall any problems about the leave. Abramson instructed Renaud to clear the matter with Tim Downs, the program director. Later that day, she spoke to Downs about her intended vacation plans and he assured her that the absence would pose no difficulties in scheduling a substitute newscaster during that period. Downs thereupon made a note of the February 1979 dates on his desk calendar. However, the program director cautioned Renaud to remind him again about her request leave "because I might forget."

It is Renaud's testimony that, when she returned to work on November 29, 1978, she had occasion to speak with Downs regarding her job status, although Renaud failed to disclose exactly what had triggered this dialogue. According to Renaud, Downs told her that Abramson "had threatened to fire me," although she did not pinpoint, in point of time, when this threat was made.⁴ In this connection, Renaud also remembered that, sometime in December 1978, both Downs and News Editor John Giase had finished work and left the station and, having certain ideas in mind about programming, she decided to present them to General Manager Abramson. Before she could fully proffer her suggestions to him, Abramson cut her short with the comment that "he wasn't interested in anything that I had to say and, in fact, didn't want me there."

Renaud further testified that, just prior to Christmas of 1978, she entered into a discussion with Downs about the holiday scheduling for the newsroom and once again broached the subject of her February vacation. Downs remarked that it was a good thing that she had brought the matter to his attention because he had forgotten all about it, and he promised to remind Giase because the latter customarily arranged the monthly work schedules for the newsroom in which Renaud broadcasted. At the end of December 1978, Renaud approached Giase and inquired whether Downs had told him of her intended ski vacation. Giase replied that Downs had not and that it was fortunate that Renaud had mentioned the subject to him because he knew nothing about it. Giase asked for the dates of the requested leave and when she gave them to him, Giase wrote the information on his personal calendar.

⁴ In her testimony, Renaud claimed that she had spoken to both Downs and News Editor John Giase "on a couple of occasions" about her job status. However, Giase, who was called as a witness on behalf of the General Counsel, could not recall any instance in which either Seymour Abramson or his wife, Ruth, had mentioned that they did not wish Renaud to work at the station any more. In fact, Giase remembered that, a few weeks after Renaud's recall to work, Ruth Abramson merely asked how Renaud was getting along on the job and Giase replied that she was doing fine.

³ Respondent remained in bankruptcy status at all times material to this proceeding.

In connection with the procedures which Respondent's employees were required to follow in requesting leaves of absence, the record discloses and I find that newsroom personnel first transmitted their requests to their immediate supervisor, John Giase, who in turn submitted them to Tim Downs. Downs would then convey the information to General Manager Abramson for final approval or rejection. The reason for this line-of-command procedure was to facilitate the long-range scheduling of personnel as well as to provide information for payroll purposes. When the requests reached Abramson's office, his wife Ruth, who occupied the post of station manager at this time, was able to type out the monthly broadcast schedules for the newsroom.

As the 1978 Christmas season approached, Renaud spoke to Giase about taking 3 days off during the holiday period. Giase approved the request without clearing it with Abramson. During her absence, Giase assigned Kryn Westhoven to cover Renaud's air time. Westhoven normally was utilized by the station as a "bleeper," by which is meant that his broadcast duties were restricted to uttering one-line comments. Because Westhoven was incapable of adequately performing these newscasting chores during Renaud's absence, the Abramsons summoned Downs and Giase and expressed their displeasure at this substitution as well as the failure of the supervisors to clear Renaud's absence with them. The Abramsons reminded Downs and Giase that Respondent's established policy mandated giving the owners ample notification before leaves of absence were approved. The supervisors assured the Abramsons that they would comply with this directive in the future. It is undisputed and I find that, during this meeting, neither Downs nor Giase informed the Abramsons of Renaud's request for leave in February 1979.

During the first week in February 1979, Renaud discovered that she had misinformed Giase as to the span of her intended vacation. She thereupon contacted Giase and advised him that the starting date of her leave should be February 8 rather than 9. According to Renaud, Giase responded that the choice of a substitute to cover the air time was the only problem which he could foresee. On February 7, 1979, the day before her planned departure, Renaud reported for work at the station. She testified that when she arrived she spoke to Giase who reported that the Abramsons would not sanction her vacation plans and he advised Renaud to consult with her lawyer, a reference to counsel for the General Counsel. When Renaud inquired into the reason for the refusal, Giase stated that the Abramsons claimed that they had no money to pay for the absence. Renaud thereupon telephoned counsel for the General Counsel, who represented her in the original proceeding, and chronicled the incident to him. After informing counsel that she would volunteer to take the time off without pay, she hung up and relayed this proposal to Giase. The news editor then consulted with Downs who in turn presented the matter to the Abramsons. Upon his return, Downs remarked that he felt bad about the prospect of Renaud losing her vacation pay, and suggested that he might find a part-time employee to substitute for her so that she might receive the difference between their re-

spective salary scales. Downs again contacted the Abramsons and returned with the information that "It's not that they [the Abramsons] don't want to pay you; they don't want you to go." Renaud testified that she never inquired into the reason for the Abramsons' position in this regard.

Renaud further testified that, on the afternoon of February 7, 1979, she was summoned to a meeting in Abramson's office. In the presence of Downs and Giase, General Manager Abramson informed Renaud that Respondent had no money to pay for her vacation time. When Renaud volunteered to take leave without pay, Abramson accused her of being unprofessional. After denying the accusation, Renaud stated that she had already made reservations for her vacation and had given money deposits which could not be recouped. Renaud finally insisted that, because of these considerations, she would take her vacation as planned. Abramson replied, "[I]f you go, don't come back." Whereupon, Renaud left for her vacation on February 8, 1979, thereby relinquishing her employment.

While Renaud related on direct examination that the only reason advanced by Abramson for refusing to give her approval for the leave of absence was pegged to financial considerations, she then admitted on cross-examination that Abramson also commented that "the sound of the air would be heard if I went." Renaud explained that, in the jargon of the trade, this meant that "there was nobody good enough to replace me." According to Renaud, she pointed out that Respondent had a number of employees who were available to replace her, and she mentioned the names of Jeff Rafter and Bob Gitlin in this regard. However, in her testimony, Renaud confessed that she had no knowledge as to whether either Rafter or Gitlin, whose names were listed on a schedule for February to substitute for her, had ever handled a newscast shift such as hers. Renaud also acknowledged that, on no occasion from the time of her reinstatement on November 29, 1978, to her meeting with Abramson on February 7, 1979, had she ever asked Downs or Giase whether they had sought approval from the Abramsons for her leave in February 1979, or whether that approval had ever been granted.

Rounding out Renaud's testimony, she received letters on July 3, 1979, from the station as well as its receiver in bankruptcy offering her immediate reinstatement to the former position with an agreement to accommodate some leave which she wished to take, an offer which she accepted.⁵ Renaud further testified that, on September 13, 1979, the day prior to the hearing herein, she was on duty in the newsroom when General Manager Abramson entered and commenced peering at the walls in an apparent attempt to locate a scheduling calendar which the General Counsel had subpoenaed in this proceeding. Renaud became irritated by the smoke which Abramson generated from his cigarettes and remarked that, if he would apprise her of what he was searching for, she

⁵ General Manager Abramson testified that he was advised by Respondent's receiver in bankruptcy to summon Renaud back to work on advice of a Federal Bankruptcy judge in order to toll any backpay in the event that Renaud's termination was found to be violative of the Act in this proceeding.

might be able to help him out. Abramson retorted, "I don't want your help; I don't even want you here."

As chronicled above, the General Counsel asserts that Joyce Renaud was terminated by Respondent on February 7, 1979, in violation of Section 8(a)(4) of the Act. To sustain this legal stance, he must show by a preponderance of the evidence that the motivating reason for her separation was because she had filed charges with the Board against Respondent alleging violations of that statute and had given testimony against it in support of those charges. On the record before me, I am not convinced that the General Counsel has sustained that burden of proof.

There is no essential dispute, and I readily find, that when she was interviewed by General Manager Abramson on November 27, 1978, Renaud informed him that she had financially committed herself to a vacation program commencing on February 9, 1979, and that the purpose of this respite was to take a ski trip in celebration of her daughter's birthday. Abramson thereupon advised Renaud to take the matter up with his next-in-command, Program Director Downs. Renaud did so on the same day, and again reminded both Downs and her immediate supervisor, John Giase, at the end of December 1978 of her projected vacation. Despite these reminders, the testimony of every witness who testified on both sides of the barricades in this proceeding makes it abundantly clear that neither Abramson nor his wife, Ruth, ever learned of Renaud's vacation plans until shortly before her leave was to commence. As heretofore found, Respondent maintained a policy which required that requests for leaves of absence be timely channeled through supervisory personnel for Abramson's ultimate approval or rejection. The purpose for this policy was to insure that Respondent's programming of air time could be accomplished without sacrifice of quality or person power, as well as for payroll reasons.

When the Abramsons learned of Renaud's request for leave, either on February 2 or February 7, they opposed it on the dual grounds, as Renaud testimonially reported, that they could not financially afford the leave and that "there was nobody good enough to replace" her. With respect to Abramson's asserted plea of poverty, this ground for the denial of time off gains persuasive plausibility from the circumstance that Respondent's financial affairs had been placed in the hands of a receiver in bankruptcy who was discharging his duties under the watchful eye of a Federal bankruptcy judge ever since 1975. With regard to Abramson's concern that qualified personnel were not available to spell Renaud during her extended absence for 5 days, this, too, gains credible plausibility from the testimonial utterances of all the witnesses who were called to the stand herein. Thus, Station Manager Ruth Abramson testified that when she asked Program Director Downs for the identity of Renaud's replacement Downs mentioned a Bob Gitlin and a Jeff Rafter. The station manager testified, and News Editor Giase corroborated her testimony, that Gitlin was a full-time university student who was simply a trainee at the station and had never worked a regular newscast sched-

ule in the limited time that he had been employed by Respondent. Giase also related, in conformity with Mrs. Abramson's testimony, that Rafter, another college student who first started to work for the station only a few days before Renaud's anticipated vacation, had absolutely no experience in performing the full-time air duties which Renaud had attended to, and Giase candidly acknowledged that neither of these candidates had the experience at newscasting which Renaud possessed. Indeed, Renaud admitted that an experienced person in the news broadcasting field, such as herself, had the advantage of "poise and presentation" over her less experienced counterparts. Moreover, on the work schedule for January 1979, neither Gitlin nor Rafter was assigned to any air time for that month.

Nor am I persuaded that Renaud's recollection of statements assertedly made to her by General Manager Abramson in December 1978 and on September 13, 1979, lend probative weight to the General Counsel's legal claim that Respondent once again discharged her on February 7, 1979, to punish her for having brought it to bar in the original proceeding. With respect to the December incident, Renaud claimed that when she attempted to press upon Abramson her suggestions about programming the general manager informed her that he was not interested in her comments and "didn't want [Renaud] there." When this equivocal statement is viewed against the backdrop of Respondent's policy of channeling personnel relations through its supervisory hierarchy, Abramson's retort is plausibly susceptible of the interpretation that the repository for Renaud's suggestions lay in Downs' rather than Abramson's office. Similarly, when Renaud attempted to assist Abramson in his search for the subpoenaed scheduling calendar in the newsroom on September 13, Abramson rejected her proffer and his comment that "I don't even want you here" is equally susceptible of the interpretation that he desired that she leave the smoke-filled room rather than Respondent's employ.

To be sure, Abramson's refusal to allow Renaud to take a paid-for, long-planned, and highly motivated vacation atop the snow-capped Pocono Mountains to celebrate her daughter's birthday may portray a man totally devoid of familial compassion. Indeed, one may genuinely share in Renaud's frustration when Abramson presented her with a choice between motherly concern and continued employment. Unhappily, the question posed in this litigation is not whether Abramson offended the basic standards of human sensitivity, but, rather, whether he violated the National Labor Relations Act. On the evidence before me, I am not persuaded that the General Counsel has sustained his burden of proof that Respondent discharged Renaud on February 7, 1979, because she had filed charges and gave testimony under the Act and thereby violated Section 8(a)(4) of the Act. I shall therefore dismiss the complaint in this proceeding.

[Recommended Order for dismissal omitted from publication.]