WLCY-TV, Inc., a subsidiary of Rahall Communications Corp. and International Alliance of Theatrical Stage Employees & Moving Picture Machine Operators of the United States and Canada, AFL-CIO and Timothy C. Wilson

WLCY-TV, Inc. and International Alliance of Theatrical Stage Employees & Moving Picture Machine Operators of the United States and Canada, AFL-CIO, Petitioner. Cases 12-CA-7844, 12-CA-7863, and 12-RC-5359

March 21, 1979

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

By Members Penello, Murphy, and Truesdale

On October 19, 1978, Administrative Law Judge Abraham Frank issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed cross-exceptions and a supporting brief. Respondent subsequently filed a brief in response to the General Counsel's cross-exceptions.

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, WLCY-TV, Inc., a subsidiary of Rahall Communications Corporation, St. Petersburg, Florida, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

It is further ordered that the election held at St. Petersburg, Florida, on October 7, 1977, in Case 12-RC-5359 be, and it hereby is, set aside, and that Case 12-RC-5359 be, and it hereby is, severed from Case 12-CA-7844 and remanded to the Regional Director for Region 12 for the purpose of conducting a new election.

[Direction of Second Election and Excelsior footnote omitted from publication.]

to the ballot of Robert Hultstrand. In the absence of exceptions thereto, we adopt, pro forma, the Administrative Law Judge's recommendation with respect to the ballot of Hultstrand. Thus, inasmuch as the remaining challenged ballots are no longer determinative of the election results, we find it unnecessary to pass on Respondent's exceptions to the Administrative Law Judge's recommendations as to the ballots of Coleman and Hubbell. As the election herein is set aside because of Respondent's unlawful conduct during the critical period, we shall direct a second election.

DECISION

ABRAHAM FRANK, Administrative Law Judge: The charges in this consolidated case were filed on September 2 and 19, 1977. The complaint, alleging violations of Section 8(a)(1) and (3) of the Act, issued on September 27. The hearing was held on December 15 and 16 at Tampa, Florida. All briefs filed have been considered.

At issue in this case is whether Respondent threatened to, and did, discharge an employee because of his union and protected concerted activities and whether an employee was deprived of a raise in pay because the Charging Party-Petitioner, hereinafter referred to as the Union, filed a petition for an election to determine the representational desires of Respondent's employees.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Preliminary Findings and Conclusions

Respondent, a Florida corporation, is engaged in the business of television broadcasting with its principal office and place of business in St. Petersburg, Florida. Respondent admits, and I find, that it is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Union is a labor organization within the meaning of Section 2(5) of the Act.

¹ Both the General Counsel and Respondent have excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an Administrative Law Judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. Standard Dry Wall Products, Inc., 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

The General Counsel has alleged that Respondent violated Sec. 8(a)(3) of the Act by denying its employee Timothy Wilson a wage increase during an election campaign. In his exceptions, the General Counsel argues that the Administrative Law Judge, in dismissing this allegation of the complaint, failed to consider testimony by Wilson that his immediate supervisor, Chief Engineer Codding, told him that he, Wilson, would be getting a pay raise if it were not for the Union. We have noted, however, that Codding denied ever making this statement and that the Administrative Law Judge credited the testimony of Codding in other respects. Under these circumstances, we conclude that the Administrative Law Judge implicitly rejected Wilson's testimony regarding this alleged conversation by accepting and relying on the denial of Codding. Accordingly, we find no merit in the argument raised by the General Counsel and hereby adopt the Administrative Law Judge's dismissal of this allegation.

² The election herein was conducted on October 7, 1977, pursuant to a Stipulation for Certification Upon Consent Election. The tally was 16 for and 18 against the Petitioner; there were 3 challenged ballots and 1 void ballot. Thereafter, the Administrative Law Judge overruled challenges to the ballots of Aaron Coleman and Nancy Hubbell and sustained the challenge

¹ All dates are in 1977 unless otherwise indicated.

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B. Credibility

My findings of fact are based upon a composite of the testimony of all witnesses. In reaching my conclusions, I have relied upon the demeanor of the witnesses as they appeared before me, their ability to recall events, and their willingness to testify fully and without apparent evasion. I have also taken into account contradictions and inconsistencies in the evidence presented, and I have given weight to testimony which has the ring of truth. In so doing, I have been aware of a witness' self-interest in the outcome of this proceeding.

C. The Termination of Aaron Coleman

Sometime in early June, 10 to 15 employees in the production department met with then Program Manager Michael Schuster and Production Manager Mike Klausmeier. Schuster informed the employees that salary increases would be reviewed annually rather than every 6 months as in the past. The employees objected to this change in policy. Several were due for increases in July. Aaron Coleman, a producer-director, was a spokesman for the group and among the most vocal. About 10:30 the next morning, the whole production department came into Schuster's office, led by Coleman, and asked for further clarification of the previous day's discussion. During the course of the meeting there was considerable shouting and yelling. Schuster himself did some of the shouting. At one point Schuster told Coleman not to upset the morale of the crews or not to incite the employees. Schuster also said to Coleman something to the effect, "Let other people speak for their jobs. You speak for yours." Schuster told Coleman to worry about his own pay rather than everybody else's.

A third meeting with the production crew was held on June 20. Present for management at this meeting were Schuster, Klausmeier, Chief Engineer William Codding, News Director Rick Moore, and General Manager Todd Spoeri. Again, Coleman was a spokesman for the employees. After discussion, there was general agreement that the Respondent would investigate the wage structure of other TV stations and have another meeting with the employees on July 20. The employees met with management on the latter date and were shown a chart representing the results of the Respondent's investigation. Management took the position that the chart showed that Respondent paid salaries comparable to those of other stations. The employees did not accept this position. They believed they were being underpaid.

Prior to the meeting of July 20, Coleman and several other employees met on July 18 with representatives of the Union at the Ramada Inn on 54th Street. At that time Coleman signed a card authorizing the Union to represent him for the purposes of collective bargaining. The union representatives gave Coleman additional authorization cards to be distributed to Respondent's employees. On different occasions Coleman asked employees if they were interested in joining the Union and, if they were, asked them to meet him off the premises or at his apartment to sign a card. Most of the employees who signed cards did so at Coleman's apartment.

Three union meetings were held at Coleman's apartment, the first on the weekend following July 20. The second meeting was held a week or two later and was attended by the production and engineering employees. Coleman prepared a map locating his apartment. He and several other employees distributed this map to those employees who did not know how to reach his apartment. A third meeting was held in August. Coleman invited members of the Union to come to his apartment to answer the employees' questions.

On August 15 the Union filed its petition for an election. Respondent's officials had a list of employees they thought might be involved in the Union. Coleman's name was on the list. It had "crossed" Schuster's mind that Coleman was a union supporter. Schuster had seen the map showing the location of Coleman's apartment complex. There was a notation on the map that a union meeting would be held at that location. Schuster knew it was the place were Coleman lived.

About 9 or 9:30 a.m. on August 26, Coleman came into Schuster's office. He was very angry. He told Schuster that Coleman had found out that one of the employees under him, assistant director Robert Nickerson, was making as much money as Coleman. Coleman said something to the effect that he wanted a raise that day or Schuster would have Coleman's 2-week notice. Coleman testified that he said he would like to know something by the end of the day whether he could or could not get a raise and wanted to talk to Spoeri. Respondent's officials interpreted Coleman's remarks as an ultimatum that he would resign if he did not receive a raise immediately. Schuster spoke to Spoeri at about noon or 12:30 p.m., and the decision was made by these officials at that time that Respondent could not live with such an ultimatum, that Coleman, in effect, had resigned and Respondent would accept his resignation. Following his meeting with Spoeri, Schuster prepared a letter to the Staff announcing the resignation of Coleman. Schuster noted that Coleman was a valued member of the Staff and that the announcement was made with "a great deal of personal and professional regret." The letter stated that Coleman would receive 2 weeks' pay in lieu of his offer of 2 weeks' notice, and that August 26 was his last day of employment with Respondent. At the time the letter was prepared, Coleman was unaware of Respondent's conclusion that Coleman had, in fact, resigned.

Some time between 4:30 and 5 p.m., Schuster called Coleman to his office. Coleman suggested that the matter could wait until the following Monday, but Schuster insisted that Coleman come to Schuster's office immediately. When Coleman arrived he found Schuster and General Sales Manager Purcell present. Respondent believed it was necessary to have Purcell present as a witness because of the labor proceedings going on at the time. Schuster told Coleman that the station had decided to accept his offer of 2 weeks' notice and to accept his resignation, and that in lieu of his having to serve for the 2 weeks Respondent would give him 2 weeks' severance pay. Schuster handed Coleman his final check. Coleman said that he had not resigned. Schuster insisted that Coleman had resigned, that he had delivered an ultimatum to Respondent that he was quitting. Coleman continued to insist that he had not resigned, but took the check and left the office. A few minutes later Coleman returned to Schuster's office and tossed the check on his desk. Coleman said, "You said—you said you're not firing me, but I didn't quit. So I'll see you at work on Monday." As Coleman started to leave, Schuster stood up and said, "You did quit, and we're not firing you, and I would like to have you out of the office within half an hour. And if you come in the building on Monday, we'll have you forcibly removed." Coleman went back to his desk and packed his belongings. Before he left the premises he decided to take the check. He called Schuster and asked Schuster to slide the check under the door. After some bickering, Coleman agreed to go into Schuster's office for the check. Present in the office were Schuster, Purcell, and Spoeri. Coleman took his check but told Respondent's officials, "I didn't quit. You're firing me." They insisted that he had resigned. Coleman then left the premises.

On a number of previous occasions, Coleman had complained to Schuster about equipment and problems he was facing in his job, that he wasn't making enough money to put up with all these problems. Many times Coleman had stated that he was looking for other employment. On one particular occasion in early June, Coleman complained to Schuster about a disagreement Coleman had had with Codding and was "pretty downright hot about the situation." Coleman was very angry and told Schuster that Coleman wasn't paid enough "to take all this stuff" and that he quit. Schuster tried to talk Coleman out of quitting. Schuster said that it would ruin Coleman's career and that Coleman would leave a bad reference with the station. Coleman used a few curse words but eventually calmed down. Schuster said, "We'll look into you getting paid some more, and we'll try to alleviate the problem with Mr. Codding." Later they did talk about the problem with Codding, and the disagreement was resolved.

D. The Wage Increase for Timothy Wilson

Timothy Wilson, an operations engineer, began working for Respondent on July 2, 1975. In April Wilson approached Codding and Assistant Chief Engineer Jerry McCook. Wilson asked McCook if Wilson could have 6 weeks off to attend school to get his first-class FCC license. McCook said it was okay and Codding said it was a good idea.

About a week later, McCook said something to Wilson to the effect that "Well you're finally going to go get it." Wilson replied, "Yes." McCook said, "You'll be expecting a big raise when you get back I expect." Wilson said, "Damn straight."

Wilson attended school from April 28 to June 10 in Sarasota, Florida, in preparation for the first-class examination given by the FCC. He took the test on June 10, passed it, and received his temporary license the same day. He returned to work at the station on June 22. Upon his return he performed the same sort of work that he had previously performed. However, his license permitted him to work on microwave equipment and operate the station by himself.

The day after Wilson returned to work, he asked Codding when he would be getting his raise. Codding replied that he would have to see if Wilson had learned anything at school to justify a raise. Codding told Wilson that Codding would evaluate Wilson for about 90 days and would decide

at that time. About a week later, Wilson told Codding that Wilson had taken out a loan for over \$1,000 and was having difficulty paying it off. Wilson asked if he could get the raise a little quicker. Codding said he would try to complete the evaluation in 60 rather than 90 days. On or about August 8, Wilson again spoke to Codding about a raise. At that time Codding told Wilson that Codding had overspent his budget and that Wilson would have to wait another 30 days for an evaluation.

On or about September 8, Wilson again asked Codding about his raise. On this occasion Codding said that Respondent's lawyers had told Respondent that they couldn't give any increases at that time because it could be considered an unfair labor practice. After talking to Codding, Wilson went to Spoeri's office and was told basically the same thing, that to give Wilson a raise might be considered influencing his vote.

On the same day, Spoeri called Codding to Spoeri's office and asked Codding if he had promised Wilson a raise. Codding denied that he had done so. Spoeri asked if it was company policy to grant a raise automatically in such circumstances. Codding promised to check on this question and the next morning told Spoeri that Codding had not been able to find any evidence of a company policy of this nature.

On September 16 Wilson, Codding, and Spoeri met in Spoeri's office. Wilson told Spoeri that Codding had refused Wilson a raise because of the union situation and wanted to know if Spoeri could give Wilson a better answer. Spoeri said there was no way the company could give Wilson an increase because of the information from their lawyers. The raise could only be given if it had been promised in advance of the union petition, if it was a matter of contract, if it was automatic under company policy, if the Union was voted out, or if the Union was voted in and a raise was negotiated. At this point Wilson mentioned that Kent Gratteau and George Shideman, two employees in the engineering department, were granted increases upon receiving their licenses. Codding said that Gratteau had been promised a raise upon employment and Codding believed the same was true with respect to Shideman. At that point Spoeri noted that it was company policy to give advance pay in the nature of a loan that could be paid back by payroll deductions. Codding suggested that he might be able to provide Wilson with some additional overtime and Spoeri agreed, provided it was actual overtime and not make-work. Spoeri made a phone call, apparently to an attorney, and then stated that the loan could be made without being considered an unfair labor practice.

Respondent's Exhibits 3 and 4 show that Gratteau and Shideman were, in fact, promised an increase upon obtaining their licenses when they were employed.

Two employees, Wilson and Virginia Barnes, had obtained their licenses during Codding's term of employment without receiving an increase in pay. Barnes had not requested an increase. Codding was aware of one other employee, a Mr. Denham, who had obtained a license and received an increase prior to Codding's term of employment. However, this employee's file had not been located, and the circumstances relating to his increase were not known at the time of the hearing.

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Analysis and Final Conclusions of Law

I find that Respondent violated Section 8(a)(1) of the Act by Schuster's direction to Coleman during the second meeting in June not to incite the employees, to speak only for his own job, and to worry about his own pay and not the pay of other employees. The Act guarantees employees the right to engage in concerted activity on behalf of themselves and other employees with respect to wages, hours, and conditions of employment. To deny an employee the right to act as a spokesman for others with the implicit threat of discipline, including discharge, in the event he disregards his supervisor's order interferes with, restrains, and coerces employees in the exercise of their Section 7 rights.

I also find that Respondent discharged Coleman in violation of Section 8(a)(3) and (1) of the Act.

Respondent admits that Coleman was a valuable and competent employee in his job as director-producer. He is an excitable young man. Time and again his outbursts of temper and propensity to shout at authority had been condoned by Schuster. Many times he had complained loudly about poor equipment, interference in his work, and inadequate pay. More than once he had suggested, at least inferentially if not directly, that he was on the verge of quitting or that he quit. On these prior occasions Schuster would placate Coleman, calm him down, and persuade him to remain with the station. On one such occasion, Schuster promised to look into getting Coleman more pay.

Schuster's attitude toward Coleman changed dramatically following the meetings with employees in June and July and Coleman's activity as the chief organizer for the Union in July and August.

On August 26, when Coleman threatened to resign if his pay was not increased by the end of the day, Schuster, contrary to his prior conduct, did not attempt to placate the angry young man. Instead, Schuster immediately contacted Spoeri and the decision was quickly made to accept Coleman's "resignation." Without attempting to notify Coleman and give him an opportunity to reconsider, Schuster prepared a letter to the staff announcing Coleman's resignation. Despite Coleman's insistence that he had not resigned, Schuster ordered him to leave the premises at once and not to return. In fact, Coleman had not resigned.

Respondent was aware of, and hostile to, Coleman's conduct as a loud spokesman for himself and other employees. Schuster at least suspected that Coleman was a union supporter and knew that union meetings were being held at Coleman's apartment complex. I find that Respondent's explanation that it could not live with Coleman's "ultimatum" a pretext to rid itself of the Union's leading organizer at the station. No acceptable reason other than Coleman's union and concerted activity appears in the record to warrant the precipitous termination of so valuable an employee in a brusque and combative manner.

The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

After a careful study of the evidence in this case, I have concluded that Respondent did not violate the Act by failing to grant a raise in pay to Wilson following the filing of the Union's petition on August 15.

It is well settled that during a union's organizational campaign an employer must refrain from granting new benefits or wage increases to its employees designed to wean the employees away from the Union. In these circumstances the burden is on the employer to explain that such benefits and increases were lawful, having occurred in the normal course of business. As the General Counsel points out, the corollary is also true. An employer may violate the Act if it withholds an increase or benefit that the employees would normally have received but for the Union's petition. Obviously, an employer, desirous of avoiding an unfair labor practice charge, must proceed with care in this situation.

In the instant case, Codding informed Wilson on June 23 that Wilson would not automatically receive a raise until he had satisfied Codding that Wilson had learned enough at school to justify a raise. Codding indicated that he would be evaluating Wilson for about 90 days. However, that period was not written in stone. When Wilson pleaded that he needed the raise sooner, Codding said that he would try to reach a decision in 60 days. In August Codding's budget was too low to warrant a raise for Wilson. The possibility of a raise was put off for another 30 days, a timing fortuitously within the critical preelection period. Apparently, Codding and Spoeri were prepared at that time to give Wilson a raise if merited on the basis of Wilson's work performance. By that time Respondent had been counseled not to give discretionary, unscheduled raises during this period to avoid a possible unfair labor practice charge. Wilson was informed of Respondent's attorney's advice and, alternatively, was offered financial assistance in accordance with established company policy.

The General Counsel argues that, Codding having extended the evaluation period into September, Respondent in effect had scheduled a raise for Wilson at that time and illegally withheld the raise because the Union had filed its petition in the interim. I do not agree. This is not a heads-Iwin-tails-you-lose game. I am satisfied, at least as to this incident, that Respondent was acting in good faith. Codding's evaluation of Wilson was a prerequisite to a raise, but during the preelection period Respondent would still be faced with a hard choice. During this period a raise for Wilson would have been a discretionary one, based on Codding's opinion of Wilson's worth but never promised and never scheduled. Wilson was, in fact, evaluated on October 28. His work performance was found not satisfactory. In these circumstances I cannot infer, even assuming that Wilson was entitled to receive an evaluation of his work in September, that such an evaluation would have resulted in a raise. The fact that his evaluation occurred in October after he had filed a charge is not a substitute for evidence that he deserved and would have received a raise in September.

Objections to the Election and Challenges

The Union's objections allege that the Employer interfered with the election by (1) discharging employees; (2) holding a captive audience meeting during the 24-hour period immediately preceding the election; and (3) other unspecified acts and conduct. In view of my conclusion with respect to the discharge of Coleman, Objection 1 is sustained. Objections 2 and 3 are found without merit.

The parties stipulated the appropriate unit to be as follows:

Included: All film editors, TV camera operators, production personnel including those production personnel who edit video tape or set lights, producer-directors, assistant directors, art director and photography director, equipment operators in the Technical Department, studio maintenance technicians, and news department personnel.

Excluded: All other employees, office clerical employees, guards, and supervisors as defined in the Act.

At the election the ballots of Aaron Coleman, Nancy Hubbell, and Robert Hulstrand were challenged.

Aaron Coleman: The challenge to Coleman's ballot is overruled in view of my findings and conclusions set forth above.

Nancy Hubbell: Hubbell was employed by Radio Station WLCY-TV, Inc., a wholly owned subsidiary of Rahall Communication Corporation, as its News Director. From about April 17 to November 21, she was also employed by Respondent on a regular part-time basis to produce two morning news broadcasts at 7:25 and 8:25 a.m. In addition, Hubbell spent an average of 5 hours per week in the afternoons gathering and reporting for the Respondent news stories relating to the Federal court house, trials, indictments, grand jury indictments, environmental stories, city hall stories, and consumer reports. Toward the end of August, she was named Consumer Reporter for the Respondent. She was also provided by the Respondent with a card designating her as a reporter for Action News, WCLY-TV 10. She worked under the supervision of Moore and was subject to critical analysis or "critiques" with respect to her work performance. She was paid biweekly by the radio station at the rate of \$200 per week for a 40-hour week from 5 a.m. to 1 p.m. By agreement with Tom Watson, general manager of the radio station, she was permitted to do the morning cutins for Respondent. To compensate her for this additional responsibility, she was paid a "talent fee" of \$25 per week. She was paid an hourly overtime rate for all hours worked for Respondent over and above her regular 40-hour week. All of her pay, including that due her from Respondent, was paid by the radio station in a single check. Respondent reimbursed the radio station for the amounts paid to Hubbell on Respondent's behalf. Taxes, including social security and unemployment compensation, were withheld by the radio station for all payments due Hubbell from either station.

I find without merit Respondent's contention that Hubbell was an independent contractor and not an employee within the meaning of the Act. To prevail on this point, Respondent would have to establish that Hubbell, in effect, operated independently as a small business person, who was in a position to make a profit or loss on the basis of her own effort or lack of effort. On these facts no such conclusion is warranted. Respondent was able to secure Hubbell's services for the morning cut-ins only because the radio station extended that courtesy to a sister corporation. While she was paid a modest fee for such additional duties, her morning work for Respondent was performed on the radio station's time. It was not hers to contract away as an independent contractor. That the two stations treated her as an employee is further evidenced by the fact that all taxes were withheld from her pay and she was reimbursed for her afternoon work at an hourly overtime rate as an employee of both stations, a procedure applicable to employees but not to independent contractors. Although Hubbell's work was tailored to meet the requirements of the different media, she performed essentially the same news-gathering and reporting services for both stations.

I find that Hubbell was a regular part-time employee of the Respondent in its news department, a member of the unit at all pertinent times, and eligible to vote in the election. The challenge to her ballot is overruled.

Robert Hulstrand: Hulstrand is employed by Respondent as a pressman-courier in its promotion department. That department is concerned with advertising and public relations on the station's behalf and in the operation of the print shop and the mailroom. Hulstrand is in charge of the print shop. He prints business forms, letterheads, and other forms that are printed in-house. He is also responsible for the mailroom operation, including sorting incoming mail and stamping and delivering outgoing mail. He also does courier work to Tampa and St. Petersburg once a day to pick up and deliver items that do not require mailing or that require same-day delivery. Prior to September 19, Hulstrand was a full-time printer-pressman. At that time Promotion Manager Tom Spalding gave Hulstrand a raise of 25 cents an hour, cut back on his printing duties, and assigned him the mailroom duties. Thereafter Hulstrand spent about 2-1/2 hours in printing duties and the remainder of his time in mailroom-courier duties. Since Hulstrand is out of the building most of the day, his contact with other employees in the building is slight. Persons who are designated to pick up mail in the mailroom are normally office clerical employees or secretaries.

With respect to Hulstrand's work in the mailroom, I find that it is more closely related to excluded office clerical work than the type of work specifically included in the unit. With respect to his work in the print shop, the included categories do not mention printer or pressman. Nor is the promotion department specifically included. Nor does it appear that Hulstrand's work as a printer involves the production of Respondent's product, TV broadcasting. As a printer, he performs a support service for the production employees" and, as such, falls into the category of "other employees" specifically excluded from the unit.

Accordingly, I find that Hulstrand was not included in the stipulated unit and was not eligible to vote in the election. The challenge to his ballot is sustained.

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

ORDER²

The Respondent, WLCY-TV, Inc., a subsidiary of Rahall Communication Corporation, St. Petersburg, Florida, its officers, agents, successors, and assigns, shall:

² 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 become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

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- 1. Cease and desist from:
- (a) Denying employees the right to speak for other employees with respect to wages, thereby threatening to discipline or discharge employees for engaging in such conduct.
- (b) Discouraging membership in a labor organization by discharging employees because of their union and protected concerted activities.
- (c) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act:
- (a) Offer to Aaron Coleman immediate and full reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position, restoring him with the wage rate he enjoyed as of August 26, 1977, plus any increases, and without prejudice to his seniority and other rights and privileges, and make him whole for the loss of earnings suffered by reason of the discrimination against him, with interest, in accordance with the formulas set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977) (see, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).
- (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 under the terms of this Order.
- (c) Post at its place of business in St. Petersburg, Florida, copies of the attached notice marked "Appendix." Copies of said notice, on forms provided by the Regional Director for Region 12, after being duly signed by an authorized representative of the Respondent, shall be posted by the 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 notice is not altered, defaced, or covered by any other material.
- (d) Notify the Regional Director for Region 12, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

It is further ordered that the allegation of the consolidated complaint that Respondent violated the Act by withholding an increase in wages for Timothy C. Wilson be, and it hereby is, dismissed.

It is further ordered that Case 12-RC-5359 be, and it hereby is, severed from this consolidated complaint and remanded to the Regional Director and that the ballots of Aaron Coleman and Nancy Hubbell be opened and counted by the Regional Director in accordance with the Board's Rules and Regulations and a revised tally of ballots served on the parties. In the event the Petitioner has received a majority of the valid ballots cast, the Regional Director shall issue the appropriate certification of representatives. In the event the Petitioner has not received a majority of the valid ballots cast, it is hereby ordered that the election conducted on October 7, 1977, be, and it hereby is, set aside. The Regional Director shall conduct a new election when, in his discretion, a fair and free election can be held.

APPENDIX

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

WE WILL NOT deny employees the right to speak for other employees with respect to wages, thereby threatening employees with discipline or discharge for engaging in such conduct.

WE WILL NOT discourage membership in a labor organization by discharging employees because of their union and protected concerted activities.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act, as amended.

WE WILL offer Aaron Coleman immediate and full reinstatement to his former position as director-producer or, if that position 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 in pay he has suffered as a result of our discrimination against him, with interest.

WLCY-TV, Inc.

³ 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."