**Norman Mesnikoff, Receiver in Bankruptcy for Mid-State Broadcasting Co. d/b/a WHLW *and* Michael Rashkow.** Case 22-CA-7185

September 29, 1978

## DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS JENKINS AND MURPHY

On May 22, 1978, Administrative Law Judge Bruce C. Nasdor issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and counsel for the General Counsel filed a brief in support of the Administrative Law Judge's 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,[1] and conclusions of the Administrative Law Judge and to adopt his recommmended Order.[2]

## 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, Norman Mesnikoff, Receiver in Bankruptcy for Mid-State Broadcasting Co. d/b/a WHLW, his 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.

[1] Respondent has 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 (C.A. 3, 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] Respondent's request for oral argument is hereby denied, as the record and the briefs adequately present the issues and positions of the parties.

## APPENDIX

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

After a hearing in which all parties had an opportunity to present their evidence, the National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post this notice and to carry out its provisions.

WE WILL NOT coercively interrogate our employees concerning their union membership or concerted activities.

WE WILL NOT discharge or otherwise discriminate against our employees because of their union or concerted activities.

WE WILL NOT threaten employees with discharge or other reprisals for engaging in union activities of for engaging in protected concerted activities.

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

WE WILL offer Michael Rashkow and Joyce Reynaud immediate and full reinstatement to their former positions or, if such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and compensate them for any loss of pay suffered by reason of their terminations, plus interest.

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

## DECISION

### STATEMENT OF THE CASE

BRUCE C. NASDOR, Administrative Law Judge: This case was heard at Newark, New Jersey, on July 28, 1977. The charge and first amended charge were filed on September 15 and October 15, 1976, respectively. The complaint and notice of hearing and the amended complaint and notice of hearing issued on March 8 and May 18, respectively. The amended complaint alleges that the Respondent Employer discriminatorily discharged two individuals because they engaged in union and/or other concerted activities in violation of Section 8(a)(1) and (3) of the National Labor Relations Act (herein called the Act). In addition, it is alleged that the Respondent engaged in a single independent violation of Section 8(a)(1) of the Act. The Respondent, in its answer, denies each and every allegation.

Upon the entire record, including my observation of the witnesses, and after due consideration of briefs, I make the following:

### FINDINGS OF FACT

#### I. JURISDICTION

Respondent (hereinafter sometimes referred to as WHLW), contends that it is not engaged in interstate com-

merce nor do its activities affect commerce. It submits that the record reflects *de minimis* activity and, therefore, it is not subject to the Board's jurisdiction.

Respondent is a New Jersey corporation with a principal office and place of business at Howell, New Jersey, where it is engaged in the business of operating a radio broadcasting station. It received during the calendar year 1975, a representative period, gross revenue from its radio broadcasting operations in excess of $100,000. Record testimony reveals that WHLW utilizes the Associated Press Wire Service providing local, national, and international stories. It is billed for this service from the New York office of the Associated Press and pays its bill directly to its New York office. The cost of the service is approximately $70 per week for a yearly total of $3640. It also utilizes a national and international news service provided by the Mutual Broadcasting Company of Washington, D.C., although there is no charge for this service. Respondent advertises national brands; among them are Ford and Lincoln Mercury from which it receives from $10,000 to $12,000 per year. It is also noted that Respondent is subject to the jurisdiction of the Federal Communications Commission.

Respondent stipulated that its gross revenue is in excess of $100,000. Therefore it comes within the Board's discretionary standard. Moreover, the above facts reflect more than *de minimis* transactions. Accordingly, I find that Respondent is in interstate commerce, thus, providing the Board with statutory jurisdiction. See *Marty Levitt*, 171 NLRB 739 (1968), and *Inglewood Park Cemetery Association*, 147 NLRB 803 (1964), enfd. 355 F.2d 448 (CA. 9, 1966).

Respondent is an Employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act.

## II. THE ALLEGED UNFAIR LABOR PRACTICES

Michael Rashkow, the Charging Party herein, began his employment with WHLW in August 1975, as a salesman, selling commercial air time.

In October 1975, Respondent went into receivership. Norman Mesnikoff was named receiver in bankruptcy, and there were rumors that the station was to be purchased by another radio station, WOBM.

In May 1976, a meeting was held at the Regent Diner in the evening, which was attended by several employees. Those present at the meeting were Rashkow, Joyce Reynaud, an alleged discriminatee, Wayne Griscom, Harry Kalish, Karen Bressi, and Bob Sorrentino. They discussed their interpersonal relationships, station programming, station management, and the possibility of the sale to WOBM. According to Rashkow's testimony, at some point, midway through the meeting, Rashkow broached the subject of securing union representation which was agreed to by Reynaud, although the other employees rejected the idea of a union.

Approximately 1 week later, a second meeting was held at the Regent Diner. In attendance were Rashkow, Reynaud, Bressi, Sorrentino, Kalish, and possibly Griscom. This meeting was instituted by Kalish and Bressi in an effort to continue the discussion of the week before. Apparently, the entire meeting was spent airing and discussing a dispute between Bressi and Kalish. The subject of the union was not mentioned at this meeting.

During the first or second week in July 1976, Rashkow, Griscom, and Kalish decided to meet at lunchtime, at the Cricket Restaurant. They discussed the advisability of forming a union and trying to bargain collectively with management. Rashkow testified that he had a change of heart, and he argued against the union, basically for two reasons. He was not dissatisfied with things at the station and he felt that the employees were not cohesive and would fail to give the needed support. In spite of this, Rashkow agreed at the conclusion of the meeting that he would investigate the feasability of union representation.

Either that same day or the day after, Rashkow contacted the American Federation of Television Artists (AFTRA), in New York, on behalf of himself and the other employees. Rashkow was advised by an individual at AFTRA, that the union had an agreement with the Respondent, not to organize the station for a period of time.[1] Rashkow was referred to another union, "IATSE" in Philadelphia. A day or 2 later, he contacted this union and told it the nature of his call, including the fact that he had been referred to them by AFTRA. Rashkow discussed the status of WHLW and was given specific information relative to securing union representation. Rashkow was informed that the dues were $400, of which 50 percent would have to be forthcoming before the union would agree to represent the employees. He informed Kalish and Griscom of this and they agreed not to pursue the matter any further.

One week or 10 days later, Rashkow was called to the office of Michael Cantoni, the station manager. According to Rashkow's testimony, Cantoni told him that he was aware of the meetings that the employees were having, and he, Cantoni, was not going to tolerate it. He told Rashkow that Rashkow had told him about the Union. Rashkow stated that he had told Cantoni about the meetings; that the union was "not enough of a part of the meetings" to make it worth discussing; that it was not important; and that it was something that was raised and discarded.[2] Cantoni stated further that they were not going to have any unions around there as long as he was there; he would not tolerate it. Furthermore, Cantoni stated that if the word, "union," were mentioned to Seymour Abramson,[3] it would be like waving a red flag in front of a bull. In addition, Cantoni stated that the wages the employees were getting at the station were far, far better than they would get from union representation, that the union would not do the employees any good, and that they were doing better without a union. Cantoni then proceeded to tell Rashkow a story about his

[1] The record is at variance with respect to the time frame, but it is of no consequence.

[2] Cantoni was hired at the station sometime during the last week in June 1976. He had previously been employed there from 1972 to 1974. On Cantoni's first or second day at the station, he had lunch with Rashkow. They discussed how the station was operating generally, and Rashkow advised him that things had been pretty much operating on their own, and that generally there was a lack of communication. Rashkow told Cantoni about the "staff" meetings that the employees were having, leaving out the areas of discussion dealing with union representation.

[3] Respondent's vice president and general manager.

father standing in the doorway of their home with a shotgun in his hands as the result of a union. He stated that the last guys that tried to form a union at the station, ended up on their "asses." Moreover, he stated that the union was the quickest way to get out of there if he, Rashkow, wanted to find a quick way out of there, that was the way. He stated that there would be no more meetings, no more discussions, without his knowledge. Rashkow asked Cantoni did he mean that the employees could not even discuss a union, to which Cantoni responded that is exactly what he meant, and that if Rashkow did not like it, he could pack up and get out of there right now. Rashkow stated that he understood; that concluded the discussion.

On August 24, 1976, Rashkow went to see Cantoni to express areas of dissatisfaction. He told Cantoni he was dissatisfied with his earnings and commissions and, in addition, he was dissatisfied with the fact that since Mr. Doran's[4] arrival at the station some accounts had been taken away from him. Cantoni advised Rashkow not to worry about it; that he, Cantoni, was very satisfied with Rashkow's job performance. He was doing a nice job. He also told Rashkow that he had been able to loosen up some money because of changes in the programming department and he would be able to give Rashkow a $25-a-week raise, probably the next week, or at the latest, sometime in September.

On August 28, 1976, Cantoni called Rashkow at his home and told him that his employment was being terminated because he was involved in a conspiracy with Louis Yager, George Benson, Harry Kalish, and Joyce Reynaud to undermine him, for the benefit of WOBM.

Two days later, Rashkow went to the station to clear out his desk where he was confronted by Cantoni. According to Rashkow, Cantoni was very angry and told him to get out of the building or he would call the police.

The next day, Rashkow returned to the station to discuss commissions owed to him with Seymour Abramson, vice president and general manager of the station. During this conversation, he advised Abramson that Cantoni's allegation of a conspiracy was not true and Abramson replied he did not know what Rashkow was talking about.

After this conversation, Rashkow left the station and on his way out, met Ray Doran. Doran told him that he was sorry that he was leaving, he had been satisfied with his work but that he, Rashkow, had brought it on himself by, "the WOBM and the Union thing."

Joyce Reynaud began her employment with the Respondent in February 1976, as a part-time news person. Immediately thereafter, she went into full-time news casting; sometime after that, she was asked by management if she would consider taking a disc jockey (DJ) show, and doing a telephone talk show. She subsequently decided that she would accept this position. Around the middle of August, Reynaud was advised that the station was going to do more public affairs programming, and because she handled the telephone call-in portion of her show so well, they would like her to fill in as a public affairs programming person. Reynaud told management she had plans to return to college in the fall, but after being advised that they like her work, she decided to change her plans and stay on at the station.

Reynaud worked at the station on July 4, 1976, and found to her surprise that Cantoni was also working. She jokingly told Cantoni that the Company owed both of them either a day off, or pay, for working a shift on the Fourth of July holiday. Sometime later that week, Cantoni told her that on-the-air persons in this industry are not given time off or pay if a holiday falls during their normal workweek, and that if she did not like it, she could leave. He also stated that he knew that people were talking about him behind his back. Cantoni related negative experiences involving his father and a union and stated that they, apparently referring to the WHLW employees, had tried this organization once before and there would be no union. Reynaud responded, that as far as she knew, there was no activity at that point for a union.

On August 28, 1976, Reynaud was called at her home by Cantoni. Cantoni told her she was fired. She asked the reason and Cantoni countered that he knew of her conspiracy with Harry Kalish, Mike Rashkow, and WOBM, and that he would have none of that at the station; that he would not tolerate secret meetings going on at the station; and that they were all fired. She questioned his firing Kalish and Rashkow, and she stated that he must be crazy for firing Rashkow because he is bringing in so much money. Cantoni allegedly responded, "Well, maybe I am, but I fired him."

George Benson testified that he was first employed by the radio station in 1974. He left the station sometime thereafter, and was again hired; his most recent employment period was from the spring of 1976 until August 29, 1976.

On August 27, 1976, the night before the discharge of Rashkow and Reynaud, Benson and Cantoni had dinner together at a restaurant. Some time prior to this occasion, Benson had talked with a local bank and had been told that his car loan had been rejected because the Respondent had informed the bank that his employment was to be short term. The purpose of this dinner meeting was so that Benson could discuss this situation with Cantoni. When Benson questioned Cantoni about the loan problem, Cantoni responded that he (Benson), Rashkow, Reynaud, Kalish, and Yager were having secret meetings to undermine the station and to form a union. Furthermore, they were going to go to WOBM if that station should purchase WHLW. Cantoni also stated that he was "releasing" these people, and, he repeated, because there were many meetings to undermine the station, they were meeting with unions, and generally undermining the station. Benson denied attending meetings and Cantoni told him that he was a marginal case; on the next day, Cantoni agreed to retain Benson if he would take a cut in pay. Benson was not able to take a cut in pay and he so advised Cantoni. His full-time employment was thereafter terminated on August 29, 1976. Since that period, Benson has worked for the Respondent on several occasions as a free-lance D.J. on a part-time basis.

Respondent, in its answer, denied that Seymour Abramson, Michael Cantoni, and Ray Doran are supervisors within the meaning of Section 2(11) of the Act.

Abramson, as vice president and general manager of Re-

[4] On July 15, 1976, Ray Doran was hired as an advertising salesman. Two weeks later, on or about August 1, he was promoted to the position of sales manager.

spondent, was delegated by Mesnikoff, the receiver in bankruptcy, with the authority to hire and fire employees and he has exercised same. He hired Cantoni and he approved, upon the recommendation of Cantoni, the discharge of Rashkow and Reynaud. I find that he is a supervisor within the meaning of the Act.

The evidence reflects that Cantoni, as station manager, had the authority to effectively recommend hiring and firing. Moreover, he had the authority to, and did, responsibly direct employees and salesmen in their work. He also, according to his own testimony, made format changes and economy cuts at the station. He chose the format for the type of music to be played by the disc jockeys, promulgated a dress code for salesmen, and instituted a program of meetings for salesmen. I find that Cantoni is a supervisor within the meaning of the Act.

Doran, as sales manager, responsibly directed the salesmen in their work. For example, he withdrew certain accounts from Rashkow and directed salesmen to concentrate on specific, geographic areas. Employees looked to Doran as their supervisor, and at meetings he would coordinate the work of the salesmen. Based on the evidence, I find that Doran is a supervisor within the meaning of the Act.

Cantoni was called upon and testified on behalf of the Respondent. He testified that Rashkow was a malcontent, and the reason for his discharge was that he did not want to conform to company policy. He elaborated and gave shifting reasons for Rashkow's termination. Among them, the fact that he would not adhere to a dress code, that he was giving confidential information to WOBM, that he was late and did not attend sales meetings; in addition, he apparently raised for the first time the fact that Rashkow had his own advertising agency. He further testified that there were a lot of reasons involved in Rashkow's discharge and that it was the accumulation of these various factors that led to his discharge.

Cantoni flatly denied ever using the word "union" with any employees at any time, other than when he discussed past problems that his father had with a union. Furthermore, he denied ever discussing a union with any management representative. In addition, Cantoni denied ever using the word, "conspiracy."

Cantoni testified that Reynaud was fired because of her poor technical ability as a disc jockey in that she had "dead air" on many occasions, started records at the wrong speed, and also played records that were not in conformance with the station's format. He testified further, that on one occasion, she missed a paid news cast. Cantoni gave as another basis for Reynaud's discharge the presence of her children in the broadcasting studio. In addition, according to Cantoni's testimony, he recommended the discharge of Reynaud because he was making a format change and economy cuts necessitated firing her. Cantoni testified that when he terminated Reynaud, he told her it was obvious that she and other people at the station were very unhappy with what was happening at the station.

Doran, in his testimony, unequivocally denied making a statement wherein he mentioned the union and WOBM to Rashkow, when Rashkow was leaving the station after his termination. Interestingly, during his direct testimony, he offered the gratuitous statement, "First of all, I can't see union for salesmen."

Doran acknowledged that he observed Rashkow as well as other salesmen wearing jeans or dungarees upon occasion. He also acknowledged that of the three salesmen employed by the Company, including Rashkow, Rashkow had the most substantial billing and was the best salesman.

Abramson testified that approximately 2 weeks after beginning his employment at the station, Cantoni recommended that Rashkow be fired as he was not properly dressed, had a bad attitude, and was not happy in his work. According to his testimony, Abramson declined to fire Rashkow because he was doing so well with his sales. Abramson decided to keep him and see if he could improve his dress. Abramson stated he made the final decision to terminate Rashkow about 2 days before the actual termination and he did so because of Rashkow's failure to file sales reports and his failure to shape up in regard to his dress. Abramson made no reference to either Rashkow's ad agency, or his being late for or not attending sales meetings.

## Analysis and Conclusion

In my view, the record establishes by a preponderance of the evidence that Respondent violated Section 8(a)(1) and (3) of the Act in discharging Rashkow and Reynaud. As to both of these discriminatees, the record is clear that the reasons advanced for their discharges were pretextual.

Cantoni constantly shifted Respondent's defense in regard to the reasons for the discharge of Rashkow and Reynaud. Although Respondent set forth in its answer that one of the reasons Reynaud was discharged was for failure and/or refusal to do production work, Cantoni testified that Reynaud not only did this work whenever requested, but also performed in a very competent fashion. Reynaud's testimony that she was never criticized for poor performance as a newscaster, or her ability to operate the control board, is unrebutted. Reynaud also testified that she never missed a paid newscast and had not brought her children into the control room of the station for approximately 2 months prior to her discharge. In addition, she testified that, on occasion, she invited criticism from Cantoni in an effort to improve her capabilities. Unrebutted is Reynaud's testimony that in August 1976 Cantoni praised her performance, asked her not to go back to college, and to stay at the station because he wanted her for a new format.

Reynaud's testimony that some of the station equipment was defective and caused "dead air" stands unrefuted in the record, as does her testimony that other disc jockeys had "dead air" upon occasion.

Rashkow testified, without denial by Respondent, that Contoni gave him permission to wear jeans where it was appropriate in handling certain specific accounts. Cantoni did not deny this, but testified that he did not remember ever doing so. Moreover, Cantoni admitted he had no evidence that Rashkow was giving confidential information to WOBM and I believe Rashkow's testimony that any discussions he engaged in with WOBM personnel revolved around his seeking employment with that station. Furthermore, Cantoni admitted that he never spoke to Rashkow about a conflict of interest in Rashkow's operation of an ad agency. Of no small import is the unrebutted testimony of

Rashkow that, only 4 days prior to his discharge, Cantoni praised his work and promised him a $25-a-week raise within the next 2 weeks or by September at the latest. Viewed in this context, Respondent saw fit to discharge its best salesman, with no apparent replacement, at a time when it was in desparate financial straits, indeed, in bankruptcy. Regarding Rashkow's failure to file sales reports, there is no evidence that Respondent ever threatened Rashkow with discipline.

The record is clear that both discriminatees engaged in union and protected concerted activity. Moreover, based upon the credited testimony, the Respondent was aware of the fact that they were in attendance at meetings where work related problems and the possibility of securing a union were discussed. The fact that their efforts never came to fruition, in no way diminishes their participation in protected union and concerted activity.

I resolve all credibility conflicts in favor of Rashkow and Reynaud, whose demeanor impressed me while they were testifying, and I believe that they made a sincere effort to be truthful and honestly related incidents that could have been potentially damaging to their cases. For example, Rashkow admitted that he argued against unionization at the Cricket Diner meeting. Although Reynaud invited criticism, she did admit that she had received criticism by Cantoni regarding her selection of records when she was performing as a disc jockey.

No less impressive was the veracity of Benson. There is no evidence that he considered Reynaud or Rashkow to be anything other than fellow employees and he, perhaps more than anyone, had something to lose by testifying in the manner he did. Benson is still, although part-time, on Respondent's payroll, working for Respondent as a free-lance disc jockey.

I specifically discredit the testimony of Cantoni, Doran, and Abramson. They were not disinterested witnesses, and their hostility was demonstrated by their evasive manner under cross-examination. I find that their demeanor was less than truthful when testifying and they constantly shifted their defenses regarding the reasons for the discharges of Rashkow and Reynaud.

I find and conclude further that Respondent, by its general manager, Michael Cantoni, engaged in an independent violation of Section 8(a)(1) of the Act by interrogating Rashkow, and threatening him with discharge if he engaged in union and/or concerted activity.

Although it was stipulated that Norman Mesinkoff never expressly or implicitly, directly or indirectly, authorized management to engage in any violations of the Act, I conclude that as a received in bankruptcy, he is liable under the Act, for his actions as said receiver. See *Bueter Bakery Corporation and Albert Kelley, Receiver in Bankruptcy*, 223 NLRB 888 (1976), and cases cited therein.

## CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. By coercive interrogation of employees and threats of reprisals for union and concerted activity, found above, Respondent has committed unfair labor practices in violation of Section 8(a)(1) of the Act.

3. By discriminating in regard to the tenure of employment of Michael Rashkow and Joyce Reynaud, because of their concerted and union activities, Respondent has violated Section 8(a)(1) and (3) of the Act.

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

## THE REMEDY

Having found that the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent illegally discriminated against Michael Rashkow and Joyce Reynaud, in violation of Section 8(a)(1) and (3) of the Act, I shall recommend that Respondent be ordered to offer them immediate and full reinstatement to their former positions or, if such positions no longer exist, to ones which are substantially equivalent thereto, without prejudice to any seniority or other rights and privileges, and that they be compensated for any loss of earnings they may have suffered by reason of the discrimination against them. Backpay and interest thereon to be computed in the manner prescribed in *F. W. Woolworth Company* 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).[5] I shall further recommend that Respondent be ordered to cease and desist from in any other manner infringing upon the rights guaranteed to its employees by Section 7 of the Act.

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

## ORDER[6]

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

1. Cease and desist from:

(a) Coercively interrogating employees concerning their union membership, activities and/or concerted activities.

(b) Threatening employees with discharge and other reprisals for engaging in union and/or concerted activities.

(c) Discouraging membership in a union by discharging employees, or otherwise discriminating in any manner with the respect to their tenure of employment or any term or condition of employment for engaging in protected concerted activity or union activity.

(d) In any other manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed in Section 7 of the Act.

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

[6] 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.

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

(a) Offer Michael Rashkow and Joyce Reynaud immediate and full reinstatement to their former positions or, if such positions no longer exist, to positions which are substantially equivalent thereto, without prejudice to any seniority or other rights and privileges, and make them whole for any loss of pay they may have suffered by reason of the discrimination against them as provided for in the section above entitled "the Remedy."

(b) Post at its premises at Howell, New Jersey, copies of the notice marked "Appendix."[7] Copies of said notice, on forms provided by the Regional Director for Region 22, shall, after being duly signed by an authorized representative of Respondent, be posted immediately upon receipt thereof, and maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Respondent shall take reasonable steps to insure that said notices are not altered, defaced, or covered by any other material.

(c) Preserve and, upon request, make available to the Board or its agents, for examining and copying, all payroll records and reports and all other records necessary to ascertain and compute the amount, if any, of backpay due under the terms of this Order.

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

[7] In the event that this Order is enforced by a judgment of the 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 as Order of the National Labor Relations Board."