

**F. M. Broadcasting Corporation d/b/a WHLI Radio
and Helaine Feivelson. Case 29-CA-4196**

November 8, 1977

**SUPPLEMENTAL DECISION AND
ORDER**

BY CHAIRMAN FANNING AND MEMBERS
JENKINS AND PENELLO

On August 31, 1977, Administrative Law Judge Paul Bisgyer issued the attached Supplemental Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

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

The Board has considered the record and the attached Supplemental Decision in light of the exceptions and brief 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, F. M. Broadcasting Corporation, d/b/a WHLI Radio, Hempstead, Long Island, New York, its officers, agents, successors, and assigns, shall pay the amount set forth in the said recommended Order.

SUPPLEMENTAL DECISION

STATEMENT OF THE CASE

PAUL BISGYER, Administrative Law Judge: On June 21, 1976, the National Labor Relations Board issued a Decision and Order,¹ finding that the Respondent discriminatorily discharged Joanne Magliochetti² and Helaine Feivelson in violation of Section 8(a)(3) and (1) of the National Labor Relations Act, as amended. To remedy these unfair labor practices, the Board, *inter alia*, directed the Respondent to make these employees whole for any loss of pay they suffered by reason of its unlawful discrimination against them. On January 3, 1977, the United States Court of Appeals for the Second Circuit entered its judgment enforcing the Board's Order in full. Controversy having arisen over the amount of backpay due

¹ 224 NLRB 1540 (1976).

² For convenience, Joanne Magliochetti will be referred to by that name, although since her marriage after her discharge she has also been known as Joanne Dougherty.

³ The Respondent apparently abandoned other contentions asserted in

the named individuals under the terms of the Board's Order, the Regional Director for Region 29 issued on January 10, 1977, a backpay specification and notice of hearing. Thereafter, the Respondent filed an answer to the backpay specification disputing certain allegations in the latter document. On March 7, 1977, a hearing was held before me in Brooklyn, New York, at which the General Counsel moved to amend the backpay specification to include in the computation a \$5 weekly wage increase for the period from October 1, 1975, through April 9, 1976, which the General Counsel alleged Magliochetti and Feivelson would have received had they not been discriminatorily terminated. The motion was granted over the Respondent's objection, thereby adding \$135 to the backpay allegedly due each of the claimants. At the close of the hearing, the parties argued their positions orally and subsequently filed supporting briefs.

Upon the entire record, and from my observation of the demeanor of the witnesses, and with due consideration being given to the arguments advanced by the parties, I make the following:

FINDINGS OF FACT

I. THE QUESTIONS PRESENTED

In computing the backpay due the claimants Feivelson and Magliochetti, the backpay specification, on the basis of calendar quarters, details the gross backpay which each of the claimants would have earned from the Respondent absent unlawful discrimination; sets forth the interim earnings of each claimant; and concludes with the net backpay to which each is entitled. The Respondent does not challenge either the method of computation or the accuracy of the figures used except as they are affected by its contentions recited below. Also undisputed is the backpay period which begins July 29, 1974, the date of the discriminatory discharges, to April 9, 1976, the effective date of the Respondent's offer of reinstatement declined by the claimants. The Respondent, however, strenuously urges three grounds to defeat or reduce the discriminatees' claim to backpay; namely, (a) they failed to make a reasonable and diligent effort to secure suitable employment by limiting their search for employment to the Nassau County, Long Island, area, where they resided and worked for the Respondent, instead of expanding their search to the New York City labor market, a commuting distance of approximately 30-35 miles; (b) Magliochetti forfeited her right to backpay for at least the period subsequent to January 23, 1976, when she quit her job in Jacksonville, Florida, to return to Nassau County; and (c) the claimants' entitlement to the \$5 raise was not shown.³ The General Counsel, of course, disagrees with these contentions, which are considered below.

its answer to the backpay specification that the latter document omitted Feivelson's interim earnings as a waitress and that she incurred willful losses when she withdrew from the labor market by training as a shorthand reporter and thereafter by refusing available jobs for which she was thus qualified. The record is barren of any evidence to support these assertions.

II. ANALYSIS AND CONCLUDING FINDINGS

A. *With Respect to Claimants' Failure To Seek Employment in New York City*

Before discussing the critical question of the claimants' obligation to broaden the area of their search for interim employment to New York City, it may be well to first consider their efforts to locate employment in the Nassau County, Long Island, area. Feivelson has a bachelor of arts degree from college with a major in French. She was employed for 4 years at the Respondent's radio station, WHLI, in Hempstead, Nassau County, Long Island, at which time she resided in Levittown, also in Nassau County.⁴ She was a copywriter whose principal job was writing commercials which were read over the radio.⁵ She also handled community announcements, maintained radio logs, answered telephone calls and the switchboard "a little," and did other things of that nature. At the time of her termination, she was paid a weekly salary of \$131.50.

According to Feivelson's uncontradicted and credible testimony, during the backpay period she was always available for recall to her former position with the Respondent. In the meantime, she received unemployment insurance benefits from the New York State Unemployment Division in Hicksville, Nassau County, utilizing its job placement office and the assistance of an assigned job counselor who tried to secure employment for her as a copywriter in advertising or in any job involving writing or for which she might be qualified. She was accordingly referred to a number of jobs but was not hired. In addition, she enlisted the services of various named private professional employment agencies in Nassau County in an effort to obtain such jobs. She informed the employment agencies of her background, training, and experience; furnished them with resumes; indicated to them her willingness to take any job available in radio, television, newspaper, or advertising in the areas of her special competence and experience. She also expressed to the employment agencies a disposition to take any other job that came along. One of the agencies gave her a typing and stenography test in which she did not do well.

In addition to the foregoing, Feivelson personally or through the services of the counselor at the New York State job placement office made telephone inquiries at several radio stations located in Nassau County for a position as a copywriter, or continuity writer, or other positions which required creative writing ability, only to receive responses that there were no openings. Moreover, Feivelson regularly consulted "want ads" in the newspapers, which she answered by sending her resumes in application for those jobs to the indicated post office box numbers or directly to

⁴ In May 1976, after she rejected the Respondent's reinstatement offer, she moved to Bellmore, Long Island.

⁵ Feivelson testified that her specialized experience was limited to writing short radio commercials which is a very narrow field as it involves writing for oral delivery which is quite different from other forms of writing.

⁶ In evidence is NLRB Form CPL-916, which was filled out by Feivelson on July 13, 1976, and filed with the Regional Office on July 26, 1976. It contains, among other things, a statement of the claimant's efforts to secure employment during the backpay period, including registration with private employment agencies; checking newspaper "want ads"; and personally seeking employment from named employers, noting the results of

the employers where designated. Here, too, Feivelson met with no success. Furthermore, she made unproductive visits to various employer establishments to apply for vacant positions.⁶ Many times she was informed that she was overqualified for lower level job openings. Although Feivelson was at all times during the backpay period available for and sought work,⁷ she only managed to obtain two clerical positions.⁸

Feivelson's above-described search for employment was confined to the Nassau County area but did not include a personal application for work at a television studio or a cable television station located there. Concededly, she made no real effort to find radio or other work in New York City, even though she was aware that there were more radio stations in New York City than in Nassau County. The only attempt to secure employment there was in 1974 when she applied for a job as a copywriter, or a continuity or other creative writer, with a company which made commercials for radio, television, public service, and educational programs. She also called an advertising company, as an individual had suggested that she do. In neither case was a job opening available. Feivelson admitted that she really did not want to do radio work in New York City unless the pay would be high enough to make commuting from Nassau County worthwhile. However, she doubted that radio work in New York City paid well.

Concerning Magliochetti's efforts to secure employment, the following is based on her uncontroverted testimony which I credit. She worked for the Respondent for 7-1/2 years, starting as a copywriter. At the time of her discharge, she held the position of continuity director for which she was paid \$160 a week. Her duties at that time entailed coordinating commercial copy, taping commercials and preparing them for the air, editing, rewriting, and cutting copy, and keeping Federal Communication Commission and other records.

Magliochetti was available for work and actually sought employment during the backpay period except for a 1-week vacation she had taken, 2 weeks she had spent in connection with her marriage, and her employment of less than 3 months in Jacksonville, Florida.⁹ She registered for unemployment benefits with the New York State Unemployment Insurance Division and for employment with its job placement office, requesting referral to a copy, continuity, or other writing job she was qualified to perform. Although applicants were required to come to the placement office about once a month, she visited it more often, probably once every week or two. She, however, was never referred out to any job. In addition to the state placement service, Magliochetti also registered for writing jobs with at least six private employment agencies, one of

her efforts. Because Feivelson had not kept records of her search for employment, the list is incomplete and of necessity is based upon her recollection at the time when the form was filled out.

⁷ Except, however, for a short vacation which was taken into account in the backpay specification.

⁸ The interim earnings from those jobs are credited to the Respondent in the backpay specification.

⁹ Her withdrawal from the Nassau County area labor market during those periods and her earnings from her Jacksonville job are taken into account in the backpay specification.

which informed her that it would check the radio stations in the Nassau County area. Here, too, her efforts were unproductive. She also personally solicited jobs from several radio stations in the Nassau County area but without success. However, as will be subsequently discussed, she did obtain a position with a radio station in Jacksonville, Florida, which she held for less than 3 months. Magliochetti's attempts to obtain a writing position included continuously answering newspaper ads placed by advertising and other companies which publicized such job openings. Although she mailed resumes to these companies directed to the indicated post office box or address, she received no responses. Because she had some experience as an assistant editor in a newspaper, Magliochetti informed the New York State placement service and the private employment agencies of her availability for a writing job with any newspaper organization. She herself made job inquiries at two Long Island weeklies. No job was forthcoming from these sources either. She further unsuccessfully applied for work at several advertising agencies and other employers,¹⁰ but did not personally seek employment with either the television or cable television station located in the Nassau County area. After taking a course in floral designs, Magliochetti also sought work in flower shops. When Magliochetti returned to her home in Glen Cove, Long Island, from Jacksonville, Florida, she resumed her quest for employment in the same manner as she had sought work before her departure, utilizing employment agencies, answering ads, and personal solicitation.

Magliochetti admitted that she virtually confined her search for employment to the Nassau County area where she had always worked. The only exception was after her return from Jacksonville, Florida, when she made telephone inquiries of radio stations WNEW, ABC, and NBC in New York City regarding a position. At the hearing, Magliochetti expressed an aversion to travel to New York City to look for work, although she stated that she might be willing to accept a job there if it paid well enough to compensate her for the inconvenience. Magliochetti also estimated the distance between her home in Glen Cove, Long Island, and Manhattan, New York City, to be approximately 35 miles.

Jerome Karpf, the Respondent's vice president and program director with 35 years' experience in the radio

broadcasting business, testified, in substance, that there were greater job opportunities as a radio station copywriter or continuity director for individuals with Feivelson's and Magliochetti's experience in Manhattan, New York City, than in the Nassau County area. He further testified that there were four or five radio stations in Nassau County as compared to about 65 radio stations heard in New York City, although the Respondent concedes in its brief that 29 commercial radio stations are actually situated in New York City. He also testified that there are a few employment agencies in Manhattan, New York City, which specialize in the radio and television broadcasting business.¹¹ Undeniably, neither Feivelson nor Magliochetti consulted such New York City employment agencies for jobs. There is also no question that there are Nassau County residents who are employed in New York City and daily use the Long Island railroad to commute to work.

It is not, nor can it be, seriously contended that Feivelson and Magliochetti did not diligently seek employment in Nassau County where they resided and were last employed by the Respondent. As indicated above, the Respondent, however, does maintain that by not extending their efforts to New York City where greater opportunities exist for employment as a copywriter or continuity director, or in the field of other creative writing at a radio or television station, or with an advertising agency, newspaper, or magazine publishing company, Feivelson and Magliochetti willfully incurred losses in earnings, thereby forfeiting their right to backpay. The General Counsel, on the other hand, argues that the Respondent has failed to show that under the facts and circumstances of this case the claimants were obligated to seek employment in New York City. I find merit in the General Counsel's position.

The Respondent is correct that, although discriminatees, Feivelson and Magliochetti were, nevertheless, required to minimize their loss of earnings by making a reasonable and diligent search for interim employment which was suitable in light of their background, training, and experience. However, it is equally well settled that the burden of proving a willful neglect by the claimants to perform this obligation to mitigate losses rests upon the wrongdoer—

¹⁰ In evidence is Magliochetti's NLRB Form CPL-916 dated July 17, 1976, which she filed with the Board's Regional Office on July 20, 1976. This document, like Feivelson's, contains an incomplete account of Magliochetti's search for employment based on her recollection at the time the form was filled out. She, too, had kept no records of her efforts.

¹¹ Appended to the Respondent's brief is a list of 29 commercial and 6 noncommercial radio stations assertedly located in New York City. Of the six noncommercial stations, three are operated by universities, two by New York City, and one by the Board of Education of New York City. The appendix also lists six Nassau County commercial radio stations and the same number of noncommercial stations, of which four are operated by colleges and two by high schools. With respect to television stations, the appendix identifies as located in New York City seven commercial stations and a noncommercial station operated by the New York City Board of Education and one operated by New York City. One noncommercial television station is listed for Nassau County.

The appendix also names three New York City "Employment Agencies Specializing In Copywriters," two Manhattan "Cable T.V. Companies That Originate Programming," and one in Nassau County. Lastly, the appendix

sets forth more than 70 "Advertising Agencies Handling Major Radio and Television Accounts" and several Long Island railroad train schedules. By letter dated April 12, 1977, the Respondent submitted additional commuter information assertedly obtained from the Long Island railroad to be included in the appendix to its brief.

Thereafter, the Administrative Law Judge received a letter dated April 12, 1977, from the General Counsel objecting to the Respondent's action of submitting an appendix to its brief "which is in reality a compilation of supposed 'facts' not in evidence in this proceeding" and requesting that the appendix be disregarded and references to it be stricken from the Respondent's brief. By letter dated April 15, 1977, the Respondent opposed the General Counsel's request. Manifestly, using an appendix to a brief is not an appropriate way to furnish evidence to support a party's position and the General Counsel's request is accordingly granted. However, it is common knowledge that there are more radio and television stations located in New York City than in Nassau County and that there are people residing in Nassau County who commute to their jobs in New York City and to this extent only I take official notice of the information thus presented by the Respondent.

here, the Respondent—who had placed the claimants in this difficult situation by its discrimination against them.¹²

On the basis of the record before me, I find that the Respondent has not established that Feivelson and Magliochetti willfully incurred a loss of earnings by not making an adequate search for suitable employment in New York City. Clearly, the record contains no evidence that during the backpay period positions were available in New York City which were comparable to those held by the claimants at the time of their discriminatory discharge and which they were qualified to perform. No evidence was adduced that such job openings were being advertised during the backpay period or that employers were utilizing any employment agency to recruit such help or that the claimants had declined to accept any New York City job offered them. In contrast, there is undisputed evidence that there were job openings in Nassau County for which the claimants assiduously applied, albeit without success. Thus, the record does not indicate that a search for jobs in New York City would have been significantly more rewarding than in the Nassau County area. Even assuming the availability of jobs in New York City falling within the area of the claimants' competence, there is no showing what the prevailing salary scales were to demonstrate the feasibility of commuting to work in New York City from their homes in Nassau County. Moreover, apart from the foregoing, I have serious doubts that the Respondent has established that Feivelson and Magliochetti were duty-bound to seek employment in New York City in view of the distance, time, expense, and inconvenience involved in commuting from their homes in Nassau County.¹³ It appears that the distance between the claimants' homes and New York City is approximately 30 to 35 miles; that it would take them about an hour to reach the New York City terminal on the Long Island railroad;¹⁴ and that the commutation ticket fare cost somewhat less than \$67 a month during the backpay period. Of course, this excludes the additional time and expense normally incurred in traveling between the Long Island railroad station and the claimants' residences in Nassau County and between their places of employment in New York City (assuming they succeeded in obtaining employment there) and the railroad terminal in New York City. In this regard, the Board and the courts have recognized that a discriminatee "need not search for or accept employment which is . . . unreasonably distant from his home."¹⁵ The fact that the claimants would normally be entitled to reimbursement for additional travel expenses incurred in connection with interim employment, as the Respondent notes, manifestly does not serve to impose a duty on them to seek employment at unreasonably distant places from which they would otherwise be excused. Similarly, the claimants were not obliged to look for jobs in New York City simply because other Nassau County residents commute to work in New

York City for reasons and under circumstances not disclosed in the record. Finally, the Respondent has not shown at what stage in the claimants' search for employment in Nassau County they were required to abandon such efforts and look for a job in New York City.

All things being considered, I find, contrary to the Respondent's contention, that the Respondent did not sustain its burden of proving that Feivelson and Magliochetti had failed to make a diligent search for interim employment warranting a denial of backpay. Whatever doubt or uncertainty there might be in this respect regarding the sufficiency of the claimants' efforts to seek suitable interim employment it must be resolved against the Respondent wrongdoer.¹⁶ In sum, I find that the claimants, under the circumstances related above, did not forfeit the right to backpay because they did not diligently look for work in New York City.

B. *With Respect to Magliochetti's Quitting Her Jacksonville, Florida, Job*

Magliochetti married her husband on April 20, 1975, during the backpay period. The couple lived in the home of Magliochetti's parents in Glen Cove, Long Island, New York. When her husband received an offer of a job in Jacksonville, Florida, about the end of October 1975, the couple packed their belongings and drove to Jacksonville. At the time of this move, Magliochetti, as indicated above, was still unemployed, despite her efforts to secure a job in the Nassau County area. As soon as the couple arrived in Jacksonville in the beginning of November 1975, Magliochetti telephoned two radio stations for a job and following an interview the next day was hired by Rowland Broadcasting Company (radio station WQIK) at \$150 a week, which was \$10 less than she had earned at the time she was discharged by the Respondent. On November 4, Magliochetti started work, performing copywriting duties to which traffic functions were later added. These were duties she had previously performed while in the Respondent's employ.

In the meantime, Magliochetti's husband became disillusioned with his job, which was not the kind he had originally been offered and paid less than the promised salary, making it difficult for the couple to maintain themselves financially. As a result, the couple decided to return to Glen Cove, which they did when Magliochetti voluntarily quit her Jacksonville job on January 23, 1976. Upon their return to Glen Cove, the couple again set up home with Magliochetti's parents and Magliochetti, as related above, resumed her search for work. The backpay specification credits the Respondent with her interim earnings in Jacksonville for the period of her employment there from November 4, 1975, through January 23, 1976.

The Respondent contends that, by voluntarily quitting her interim employment in Jacksonville, Magliochetti

¹² *Florence Printing Co. v. N.L.R.B.*, 376 F.2d 216, 223 (C.A. 4, 1967), enfg. 158 NLRB 775, 777 (1966), cert. denied 389 U.S. 840 (1967); *Ohio Hoist Manufacturing Co.*, 202 NLRB 472, 473 (1973); *The Madison Courier, Inc.*, 202 NLRB 808, 809 (1973).

¹³ In the course of his testimony, Jerome Karpf, the Respondent's vice president, expressed his good fortune that he commuted from his home in Queens, New York City, to his place of employment in Hempstead, Nassau County, because he thus traveled against traffic.

¹⁴ Not surprisingly, the Respondent does not suggest commuting to New York City by automobile.

¹⁵ *N.L.R.B. v. The Madison Courier, Inc.*, 505 F.2d 391, 395; cf. *Nickey Chevrolet Sales, Inc.*, 160 NLRB 1279, 1280 (1966).

¹⁶ *N.L.R.B. v. Miami Coca-Cola Bottling Company*, 360 F.2d 569, 572-573 (C.A. 5, 1966); *Lloyd's Ornamental and Steel Fabricators, Inc.*, 211 NLRB 217, 218 (1974); *Southern Household Products Company, Inc.*, 203 NLRB 881 (1973); *The Madison Courier, Inc.*, 202 NLRB 808, 811 (1973).

willfully incurred a loss of earnings and therefore lost her right to backpay for the period subsequent to January 23, 1976. The General Counsel argues, however, that Magliochetti had good reason to quit her interim employment because the couple found it difficult to support themselves in Jacksonville when her husband's job offer did not materialize as expected and that, since she resumed her efforts to locate a job on her return to Glen Cove, her right to backpay was not impaired. I find merit in the General Counsel's position.

The Board has held that circumstances may arise which justify a claimant's voluntary termination of interim employment without forfeiting his right to backpay for a subsequent period where it becomes "economically unfeasible for . . . [the discriminatee] to continue this employment, and deprive himself of any real opportunity to find more suitable employment elsewhere."¹⁷ In that case, the Board found a valid reason for quitting an interim job where the job paid the discriminatee less than he had earned in the respondent's employ and entailed the expenditure of a considerable portion of the discriminatee's net earnings for daily travel to and from work. In another case,¹⁸ the Board similarly found justification for a voluntary termination of interim employment and hence no willful loss of earnings where the discriminatee left his job because the pay was insufficient to support his family. In a third case,¹⁹ the Board held that it was reasonable for two discriminatees to abandon interim employment "in an honest search for more rewarding or less onerous jobs" and that in so doing they did not remove themselves from the labor market.

I find that the rationale underlying the cited cases equally controlling here, where Magliochetti obtained interim employment in Jacksonville, beyond the vicinity of the applicable labor market,²⁰ at a lesser salary than that the Respondent had paid her, and left the Jacksonville job to return home in Glen Cove to look for another position because the money she and her husband earned in Jacksonville was insufficient to support them. In sum, I conclude that Magliochetti's termination of her Jacksonville employment, under the circumstances, was not so unreasonable as to constitute a willful loss of earnings and that therefore backpay to which she would otherwise be entitled for the period subsequent to January 23, 1976, should not be abated.

C. With Respect to the Wage Raise

During the backpay period, July 29, 1974, to April 9, 1976, the Respondent employed 12 office employees,²¹ in which group the claimants belonged, who were not represented by any labor organization. Six of these employees received a pay increase of \$5 in September 1975 or on a prior date within the backpay period.²² Two of

them also received an additional raise during this period.²³ Six employees were given no increase at all. However, three of them had worked for the Respondent for only about 2 months or less.²⁴

According to the Respondent's vice president, Karpf, the Respondent had never had a policy of automatic wage increases, only one based on merit after a performance review conducted "[s]ometimes infrequently, sometimes more often." He also testified that in 1974, 1975, and 1976 the Respondent experienced substantial financial business losses. However, the Respondent nevertheless granted salary raises on or about October 1, 1975, assertedly on a merit basis. Karpf also conceded on the witness stand that if Feivelson had received a pay increase before her discharge it would have been a merit one. It is undisputed that Feivelson, who had entered the Respondent's employ at \$95 a week, had been granted more than five wage increases, the last one being about 1-1/2 years before her termination. It further appears that Magliochetti, whose starting salary was \$80 or \$85 a week, also had received a number of increases, the final one being about 6 to 12 months before her discharge.

The Respondent contends that, in view of its consistent policy to give increases only on the basis of merit and in view of its financial losses, it would be plain conjecture to conclude that the claimants would have received increases had they been on its staff on October 1, 1975. Therefore, the Respondent argues that the amendment of the backpay specification and the General Counsel's claim to add to the backpay computation a \$5 wage raise as of the indicated date should not be allowed. The General Counsel urges, on the other hand, that since Feivelson and Magliochetti had regularly received wage increases throughout the period of their employment with the Respondent it is a reasonable and fair assumption that they would have received a \$5 increase at least by October 1, 1975, had they not been victims of discrimination.

I agree with the General Counsel that, on the above-related facts of the case, an inference is warranted that Feivelson and Magliochetti would have been granted a \$5 wage increase by October 1, 1975, if they had been treated fairly and without discrimination. Not only had they been regular recipients of merit increases in the past, but it is significant that the Respondent neither affirmatively contends nor offered any evidence to show that they lacked merit to qualify for an increase during the backpay period.²⁵ Even if there might be some uncertainty whether the claimants would have received the wage increase in question, such uncertainty must be resolved against the Respondent who created it by its discriminatory conduct. As the Fifth Circuit Court of Appeals had the occasion so aptly to observe in a comparable situation:²⁶

¹⁷ *Sam Tanksley Trucking, Inc.*, 210 NLRB 656, fn. 1 (1974).

¹⁸ *Champa Linen Service Company*, 222 NLRB 940, 941-942 (1976).

¹⁹ *Chef Nathan Sez Eat Here, Inc., et al.*, 201 NLRB 343, 345 (1973).

²⁰ *Champa Linen*, *supra* at 942.

²¹ The job titles of the employees in this group included continuity director, sales secretary, switchboard operator, music department clerk, program director's secretary, traffic clerk, and bookkeeper's clerk.

²² Kraus, September 1, 1975; Kazdoy, October 5, 1974; Solomon, September 6, 1975; Hill, May 31, 1975; Costello, September 1, 1975; and Rowley, September 6, 1975.

²³ Costello, September 1, 1974; and Rowley, October 17, 1975.

²⁴ Azzaloni, hired August 26, 1974, left employ September 20, 1974; Marcus hired October 21, 1974, left December 30, 1974; and Babyak, hired January 29, 1975, left April 2, 1975.

²⁵ *Lee Cylinder Division of Golay & Co., Inc.*, 184 NLRB 241, 242 (1970); *Southern Household Products Company, Inc.*, 203 NLRB 881, 884-885 (1973).

²⁶ *N.L.R.B. v. Miami Coca-Cola Bottling Company*, 360 F.2d 569, 572-573 (C.A. 5, 1966). See also other citations in fn. 16, *supra*.

. . . the Board has, as a matter of policy—one that seems reasonable—consistently taken the view that when an employer's unlawful discrimination makes it impossible to determine whether a discharged employee would have earned backpay in the absence of discrimination, the uncertainty should be resolved against the employer.

Accordingly, I find that the claimants are entitled to have a \$5 wage raise as of October 1, 1975, included in the computation of backpay due them under the Board's Order. This means that \$135 will be added to the amount determined in the backpay specification to be owing to them.

ORDER

Upon the foregoing findings and conclusions and the entire record in this case, it is ordered that the Respondent, F. M. Broadcasting Corporation, d/b/a WHLI Radio, Hempstead, Long Island, New York, its officers, agents, successors, and assigns, shall pay the claimants the amount set forth opposite their names:

Joanne Magliochetti	\$12,024
(Dougherty)	
Helaine Feivelson	\$10,175

Each of the foregoing sums shall accrue interest at the rate of 6 percent per annum to the date of payment. There shall be deducted from each of the above amounts social security taxes and income tax withholdings as required by Federal, state, and local laws.