

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

June 21, 1976

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND PENELLO

On March 16, 1976, Administrative Law Judge Richard L. Denison issued the attached Decision in this proceeding. Thereafter, the Respondent filed exceptions and a supporting brief, and the General Counsel filed cross-exceptions and a supporting brief.

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

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order¹ as modified.

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 as modified herein and hereby orders that the Respondent, F. M. Broadcasting Corporation d/b/a WHLI Radio, Hempstead, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Administrative Law Judge's recommended Order, as modified below.

1. Substitute "other" for "like or related" in paragraph 1(a).
2. Substitute the attached notice for that of the Administrative Law Judge.

¹ The General Counsel excepts to the Administrative Law Judge's failure to recommend a broad order against the Respondent. Since the unlawful discharges go to the heart of the Act, and as the Respondent has committed other unfair labor practices in the recent past, thereby manifesting a readiness to violate the Act, we find merit in the General Counsel's exception and shall modify the Order and notice accordingly.

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 the opportunity to present their evidence, it has been decided

that we violated the law and we have been ordered to post this notice. We intend to carry out the order of the Board and abide by the following:

WE WILL NOT discharge or otherwise punish employees because they engage in union activities or concerted activities for their mutual aid or protection.

WE WILL offer Joanne Magliochetti (Joanne Dougherty) and Helaine Feivelson immediate and full reinstatement with backpay.

WE WILL NOT coercively question employees about their union or concerted activities or about their sympathies toward union or concerted activities.

WE WILL NOT expressly or impliedly promise employees benefits in order to dissuade them from participation in union activities or concerted activities for their mutual aid or protection.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of their rights.

All our employees are free to engage in union activities on behalf of any labor organization or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection. Our employees are also free to refrain from any and all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act, as amended.

F. M. BROADCASTING CORPORATION d/b/a
WHLI RADIO

DECISION

STATEMENT OF THE CASE

RICHARD L. DENISON, Administrative Law Judge: This case was heard at Brooklyn, New York, on September 10 and October 22 and 23, 1975, based on an original charge filed January 20, 1975, and amended January 29, 1975.¹ The complaint, issued May 30, 1975, alleges that Respondent violated Section 8(a)(1) and (3) of the Act. Counsel

¹ On September 10, 1975, at the outset of the hearing, Respondent moved for dismissal of the complaint on the ground that further proceedings were barred by Sec. 10(b) of the Act. Evidence was taken concerning the issue of whether the charge was timely filed, and the hearing was adjourned pending the Administrative Law Judge's consideration of this question. After due consideration, on September 25, 1975, I issued an order denying Respondent's motion for the reasons set forth therein.

for General Counsel and the Respondent have filed briefs, which have been carefully considered²

Upon the entire record in the case, including my observation of the witnesses, I make the following

FINDINGS OF FACT

I JURISDICTION

Respondent, a New York corporation, is engaged in the operation of a commercial radio station in Hempstead, New York. During the past year, a representative period, Respondent in the course and conduct of its business operations, derived gross revenues therefrom in excess of \$100,000. During the same period Respondent purchased and caused to be transported in interstate commerce goods and materials valued in excess of \$50,000 directly from points outside the State of New York. Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II LABOR ORGANIZATION

American Federation of Television and Radio Artists, hereafter called AFTRA, is and has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act.

III THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Issues*

All the violations in this case allegedly occurred on or about July 29, 1974.³ The General Counsel contends that Respondent discharged Joanne Magliochetti⁴ and constructively discharged Helaine Feivelson because of their union and concerted activities. It is also alleged that Respondent's general manager, Paul Godofsky, interrogated employees concerning their union activities and their participation in concerted activities, warned and directed employees to refrain from becoming members of, assisting, or supporting AFTRA, and threatened employees that if they joined or assisted AFTRA they would no longer be able to discuss or present their problems to management.

The Respondent, denying the alleged violations of the Act, contends that the termination of Magliochetti was

motivated solely by economic considerations, and that Feivelson, after becoming upset over Magliochetti's release, voluntarily quit. It is further asserted that the duties of the job from which Magliochetti was discharged establish that her status was that of a supervisor within the meaning of Section 2(11) of the Act, thus removing her from the Act's protection.

B. *The Facts*

Respondent, which operates a commercial radio station in Hempstead, New York, has collective-bargaining agreements with the New York Chapter of the American Federation of Radio and Television Artists, for a unit of announcers and newsmen, and with the Radio, Television, Broadcast Engineers Union of the International Brotherhood of Electrical Workers, covering a unit of engineers. These contracts have been in effect for many years. Thus, as of July, only seven or eight office employees, including Continuity Director Joanne Magliochetti and Copywriter Helaine Feivelson, were unrepresented. Magliochetti's duties entailed coordinating commercial copy, taping commercials and preparing them for the air, editing, rewriting, and cutting copy, insuring that the commercial was properly aired, and keeping FCC and other records. Feivelson wrote live radio commercials and prepared announcements in connection with community bulletin boards. Magliochetti had been employed by WHLI since November 1966, and Feivelson since September 1970. Their immediate supervisor was Program Director Jerome Karpt, more familiarly known to them by his radio name, Jerry Carr, which appellation is hereafter used in this Decision.⁵ On or about July 24, Magliochetti, Feivelson, Sonia Costella, Daphne Tricoukes, Peggy Hunter, and Michelle Blanchette met in Respondent's lunchroom and discussed the propriety of presenting certain grievances to management. This assembly was prompted by an incident earlier that week in which Tricoukes was discharged for about an hour and then rehired. The meeting ended with Feivelson preparing a written list of grievances for presentation to Jerry Carr. On Thursday, July 25, Feivelson invited Carr to lunch with the group.⁶ At the luncheon, in the Canterbury Pub, Magliochetti raised the subject, saying that there were a lot of grievances they wanted to discuss and that they were very unhappy. Feivelson then read her list, and each grievance was discussed with Carr a point at a time. The first and second items listed requested a raise for the group. Carr commented that some of the complaints were foolish or silly, said he would not discuss some of them with Paul Godofsky, but promised to bring others to his attention, including the requested raise, although he noted that the Company was losing money. At the close of the luncheon Magliochetti told Carr, "Please do not single any of us out. We want to be approached as a group." Following lunch

² In addition to his brief counsel for General Counsel filed an opposition to a proposed order issued by me on November 5, 1975, in which the Administrative Law Judge notified the parties that his ruling excluding Resp. Exh. 5 for identification would be deemed reversed and the exhibit received in evidence, unless good and sufficient cause was shown prior to close of business November 20, 1975. After due consideration of the arguments advanced in General Counsel's opposition, I reverse his original ruling. Resp. Exh. 5 is received in evidence. *Duquesne Electric and Manufacturing Company*, 212 NLRB 142 (1974). General Counsel's further motion to reopen the hearing in the event Resp. Exh. 5 were to be received in evidence, is denied.

³ Hereafter all dates are in 1974 unless otherwise specified.

⁴ Whose married name is Joanne Dougherty.

⁵ It is undisputed and found as demonstrated by record evidence of their duties that Jerry Carr and Paul Godofsky, general manager and vice president in charge of programming, are supervisors within the meaning of Sec. 2(11) of the Act.

⁶ Only Costella did not attend.

Carr was provided with a photostatic copy of Feivelson's list.⁷ Late Friday afternoon, July 26, while Carr was doing a show in the control room, Peggy Hunter, a secretary, informed Magliochetti that Carr wanted to see them, whereupon the entire group, except for Hunter, went into the control room. Carr said that Paul Godofsky had nothing to say to them. Magliochetti asked, "Is that to be considered a complete refusal of our request?" Carr answered "Yes."⁸

After work that evening Feivelson and Magliochetti met with Sal Giangrasso, the AFTRA shop steward at WHLI, and Scott Robins, an announcer. Robins, who was the last to arrive, reported somewhat excitedly that Godofsky's son-in-law, Lenny Seeble, had said to him that Magliochetti was going to be fired. After some further discussion of the matter it was decided that Giangrasso would see what he could do to get the group "covered" by AFTRA. Thereafter, throughout the weekend, Magliochetti kept in telephonic communication with the other members of the group and with Giangrasso, but nothing definite was accomplished.⁹

On Monday morning, July 29, Magliochetti began work filling in for Traffic Manager Michelle Blanchette, who was on vacation, in addition to her other duties. During the morning Giangrasso approached Magliochetti and Feivelson stating that he had spoken to an AFTRA official and he thought they would probably be "covered" by 1 o'clock that afternoon.¹⁰ Later that day, about lunchtime, Daphne Tricoukes and Peggy Hunter, Jerry Carr's secretary, were individually called to Godofsky's office. Godofsky told Tricoukes, "I understand you have some problems, and you could come directly, Daphne, it is not like you to belong to a union like the announcers and the engineers. Look what they have to go through." Godofsky continued saying that the announcers and engineers could not come in there and discuss their problems, but needed a go-between. Tricoukes nodded her head and said, "Yes." Godofsky then said, "I am surprised at you. How could you let Helaine and Joanne fight for you? How could you let the other girls influence you in any which way?" Then Godofsky reviewed Tricoukes' salary and her workload. The meeting ended with him promising to review her salary. Tricoukes recalls that this conversation took place about 11:45 a.m. Later, about 2 p.m. by phone, Godofsky asked her to have Peggy Hunter come in to his office. Godofsky told Hunter that she did not need Magliochetti and Feivel-

son to fight her battles for her, and that after so many years she should come to him with her problems. He said that she would do better on a one-to-one basis than joining a group. He continued that at the time the AFTRA Union was working without a contract and pointed out the difficulties they were having. Godofsky emphasized that those people could not come directly to him but that Hunter could unless she joined a union. Hunter attempted to explain to Godofsky that the group he was talking about worked as a group and tried to help each other. Godofsky answered that she was not helping the girls out and that he did not understand her answers. Hunter then left Godofsky's office and returned to work.¹¹

About 4 in the afternoon Jerry Carr approached Magliochetti, and said he had something urgent to discuss with her after work. About 5:15 p.m. she went to Carr's office, where Carr informed her that the board of directors had met, that there had to be a cutback, and unfortunately, she was to be laid off. Magliochetti inquired what the difference was between being laid off and being fired, and Carr answered that if conditions got better she could be rehired. He said that she could stay for her 2 weeks' notice if she wished, but he would advise against it. Magliochetti's severance pay and vacation pay were prepared and waiting for her. He said that Magliochetti would receive her profit sharing through the mail after it had been computed. Then Magliochetti inquired concerning whether a piece of paper in Carr's hand, to which he kept referring, was from the board of directors. Carr answered that it was from Paul Godofsky, but refused Magliochetti's request to see it. The conversation concluded with Magliochetti asking what was going to happen since the office was very busy then. Carr answered that they would get a clerk to fill in.

Magliochetti returned to her office next door to Carr's to pack her belongings. She also repeated to Feivelson the substance of her conversation with Carr. Feivelson then went immediately to Carr's office where she asked, "What's supposed to happen now?" Carr answered, "Nothing." Feivelson asked, "Am I supposed to do Joanne's work as well as my own? You know it is piled high." Carr answered "Yes." Feivelson continued, "And I am still supposed to relieve the switchboard?" Carr said "Yes." Feivelson inquired, "What about the traffic position, Michelle is not here and Joanne is taking over traffic. What is supposed to happen?" Carr responded, "You will have to

⁷ In evidence as Resp Exh 4

⁸ The above findings of fact concerning the events of July 25 and 26 are based on the combined testimony of Magliochetti, Feivelson, Daphne Tricoukes, Peggy Hunter, and Jerry Carr. To the limited extent that Carr's testimony about these events is divergent from the mutually corroborative testimony of the General Counsel's witnesses, I credit the employees. I do not, however, credit Feivelson's testimony, unsupported by Magliochetti and denied by Carr, that during the latter part of this week Carr said they were ganging up on him and called Magliochetti a troublemaker.

⁹ In the meantime Giangrasso had suggested that Feivelson contact someone associated with the Office and Professional Employees International Union, which he viewed as a more appropriate union for the group.

¹⁰ As subsequent events rapidly unfolded on July 29, none of the affected group of employees was ever "covered" or given the opportunity to join either AFTRA or the OPEIU, although members of the group continued to make inquiries of Giangrasso between 1 p.m. and 4 p.m. on July 29.

¹¹ Godofsky denied discussing the subjects of the Union or of Magliochetti and Feivelson's activities on behalf of the dissatisfied group of employees during any conversation with Tricoukes and Hunter. He claimed that he occasionally talked to Hunter when she took dictation from him, but could not recall the particular incident to which Hunter attributed this conversation. Godofsky did remember a conversation with Tricoukes, after Tricoukes allegedly refused to do bookkeeping work while the bookkeeper was absent, in which he strongly criticized her conduct and discussed her job and her "need for cooperation." On cross-examination Godofsky conceded that this conversation could have occurred at an earlier time. Tricoukes, on cross-examination, testified that there was only one conversation with Godofsky on July 29, but clearly indicated that there was a "first" discussion earlier about the bookkeeper. I credit Tricoukes and Hunter whose memory and ability to relate details persuade me that they were truthful witnesses. In addition their testimony is consistent with the total course of events which occurred on July 29. Moreover, I take official notice of *F M Broadcasting Corp.*, 211 NLRB 560 (1974), in which Godofsky was found not to be a credible witness.

make do We'll get you a clerk" Feivelson rejoined, "What is a clerk going to do in a specialized department? I can't train a clerk to write copies, and do all the things—it is physically impossible to do all that" At this point Carr became angry and said, "If you don't like it, there's the door—leave" Feivelson answered, "If I leave, I'll consider myself fired" Carr said, "I did not say that I said if you do not like it there's the door, you can leave" Feivelson answered "Fine," and walked back to her office but returned two additional times to Carr's office during which portions of the previous conversation were repeated and Feivelson kept insisting, "How could you be doing this? How can you sleep at night?" Thereafter Feivelson packed her belongings and left¹²

Following the terminations of Magliochetti and Feivelson, at some time during the middle of the week of July 29, Jerry Carr phoned Bonnie Lee Harris concerning a problem about the procedure called "E T's," which involves the rotation of live tapes for the announcers During this conversation Carr explained that he hated to bother her but that everyone was gone, Michelle was on vacation, he had a new continuity director coming in that afternoon, and he had to figure out the E T's Then Carr went on to say that they had fired Magliochetti and had gotten rid of Feivelson, but the other girls were really stupid, were not going to get anything, and were all going to suffer¹³

C Respondent's Defense, Analysis, and Concluding Findings

Respondent contends that Magliochetti is a supervisor within the meaning of Section 2(11) of the Act, and therefore by reason of her status, is not protected by Section 8(a)(1) and (3) As continuity director, at a salary of \$160 a week, which meant Magliochetti was the highest paid office employee, she worked under the direct supervision of Vice President and Program Director Jerry Carr, who was in general charge of the staff and the operations of the radio station, including personnel Carr testified that Magliochetti was in charge of the continuity department which is responsible for turning out copy that is to go on the air, either in the form of live announcements or recordings The continuity department, composed of only Magliochetti and Feivelson, a copywriter, prepared and typed advertising copy Magliochetti also had a certain amount of responsibility for preparing the station log, a minute-by-minute record of the operation of the station

¹² The findings of fact concerning Magliochetti and Feivelson's exit interviews are based on their credited testimony Carr's testimony does not differ to any significant extent

¹³ The findings are based on Harris' credited testimony Carr admitted having a telephone conversation with Harris during the first week of August about "E T's" but could not relate in any detail what was said He emphatically denied saying anything to Harris about having gotten rid of Magliochetti and Feivelson, but admitted he could have discussed people having left When confronted with his affidavit given to the Board agent he agreed to having had another conversation with Harris when they met in a department store at about this same time in which he did refer to people leaving Under these circumstances I find Harris' precise testimony to be more reliable than Carr's I reject Respondent's argument that Harris' account was colored by great hostility to Respondent since there is uncontradicted testimony that she maintained a friendly relationship with Executive Vice President Joseph A. Lenn

According to Carr, Magliochetti "laid out" Feivelson's work for her During the time in which the station was seeking an employee to perform the copywriter's job ultimately filled by Feivelson, Magliochetti performed preliminary screening and testing of job applicants According to Carr, Magliochetti then reported the results to Carr and made a recommendation He testified that he hired Feivelson as a direct result of Magliochetti's recommendation¹⁴ When Feivelson wanted a raise she spoke to Magliochetti who in turn spoke to Carr about the matter However, Carr conceded that his own authority was limited in this respect in that he found it necessary to speak with Godofsky before granting a raise Sometimes Carr would grant the request and sometimes he would not With respect to the apportionment of work, Carr testified that he was not too concerned about this as long as the work got out, and that he left work apportionment up to Magliochetti's discretion Carr also testified on cross-examination that there is no intermediate supervision between himself and any of the other office clerical employees His office was located adjacent to that of Magliochetti and he agreed that he watched both Magliochetti and Feivelson closely On occasion he gave direct instructions to Feivelson Likewise, Magliochetti occasionally performed odd jobs as did the other clerical employees, for example filling in on the switchboard if the person performing that function was absent

Magliochetti testified that as continuity director she was responsible for the commercials and directed the work of Feivelson, whom she tested and Carr hired She agreed that she screened applicants for the position which finally fell to Feivelson This function consisted of giving the applicants an application, telling them what the position required, and giving them a copywriting test, the results of which were given to Carr who made the final decision Carr was also responsible for scheduling vacations based upon data collected by Magliochetti from the other employees Magliochetti testified that she had not attended a management meeting in 4 years On occasion Feivelson did request a raise Sometimes she would talk directly with Carr, on other occasions she mentioned her request to Magliochetti who then transmitted it to Carr According to Magliochetti she could not recall any specific occasion on which she actually made a recommendation that Feivelson be given a raise She testified that because the office was small and Carr knew what kind of work Feivelson did, anything said to Carr on this subject would simply be for the purpose of informing him that Feivelson wanted a raise Then Carr would make the decision The record does not reveal the details or the dates of any specific occasion in which the question of a raise for Feivelson arose The record does establish that Feivelson and Magliochetti worked closely together Both wrote copy on the typewriters at their desks They assisted one another and read each other's copy Any requests for time off were transmitted by Magliochetti to Carr who then made the decision When occasions arose in which Magliochetti and other employees were required to work past the normal working hours, Magliochetti received the same compensatory time off that the other employees

¹⁴ Carr's testimony that he relied on the results of Magliochetti's report was elicited by means of a leading question

received. According to Magliochetti, she did not actually assign work to Feivelson but rather work was distributed according to type. Magliochetti handled national accounts; copywriting and community affairs work were automatically handled by Helaine Feivelson. Finally, Magliochetti testified without contradiction that she was never told by any superior that she had any authority whatsoever over Feivelson. She was simply told that she was responsible for the department, and in actual practice if something went wrong with a commercial she would "hear about it." Likewise, Magliochetti was never given any authority to hire or reject job applicants, nor was she given any specific instructions concerning what her screening authority was, except that she was to conduct a preliminary interview and testing of each applicant.

Feivelson corroborated Magliochetti's testimony. She testified that at the time she was hired she took a test, administered by Magliochetti, which involved writing and typing both a 30-second and a 60-second commercial. When she finished the test she turned it in to Magliochetti whose only comment was for her to wait. After a short absence Magliochetti returned and said Carr wanted to see her. Carr conducted the remainder of the interview, discussed salary with her, and told her she was hired. Feivelson agreed that Magliochetti was "responsible" for the work of the department, but that each had their own work to do. Feivelson also agreed that the division of work was accomplished, without any direct instructions from Magliochetti, simply on the basis of her recognizing that any radio commercials and community bulletin board announcements were hers to write. After a week's initial training by Carla Price, Magliochetti's predecessor, Feivelson began to perform the work more or less on her own, with assistance at times from Magliochetti, salesmen, Jerry Carr, and Mr. Lenn. I find, based upon a combined consideration of the testimony of Carr, Magliochetti, and Feivelson, that although Magliochetti was, to an extent, responsible for the commercials produced by both her and Feivelson, who viewed Magliochetti as a superior, there is no evidence that Magliochetti was ever given the type or degree of authority necessary to bring her duties within the statutory definition of a supervisor in Section 2(11) of the Act. Instead Magliochetti clearly performed the function of a working lead person who, in addition to her own duties, acted as a conduit of information to and relayed instructions from the actual immediate supervisor, Jerry Carr.¹⁵

Respondent offered both documentary evidence and testimony by Godofsky and Carr to the effect that for some months prior to Magliochetti's and Feivelson's terminations, the Respondent had been steadily losing money. This presentation of Respondent's financial situation was acknowledged by Magliochetti in her testimony and re-

¹⁵ Even assuming that the evidence proved that Magliochetti's status was in fact that of a supervisor within the meaning of the Act, I would still find that her discharge violated Sec. 8(a)(1) of the Act, for the reasons set forth below, since the manner in which she was precipitously discharged coupled with statements made by Respondent's supervision to employees reveals that a part of Respondent's motive in terminating Magliochetti was to squelch any further participation in union or concerted activity by the other employees

mained uncontradicted by any of the evidence presented by the General Counsel. Without further elaboration, I credit the testimony of Godofsky and Carr in this respect and find that at the time Magliochetti and Feivelson were discharged Respondent was experiencing financial difficulty, and was actively seeking ways to economize in order to alleviate the situation. Against this background Respondent contends that Magliochetti was terminated as an economy measure. Thus, on July 10 Paul Godofsky sent an office memorandum to Jerry Carr, the subject of which was "Retrenchment in Program Department." This memorandum noted a drop of \$103,000 in gross sales compared with the year 1973 and further stated, in pertinent part, "In view of the depressing news in station advertising, we must proceed to trim our staff and eliminate any and all expenses where this can be accomplished without severely hurting our service." The memorandum then went on to instruct Carr, "You are to examine the number of announcers, newsmen, script writers, traffic, etc. with a view to retrenchment." Godofsky testified, however, that he never gave Carr any specific instructions concerning what persons were to be laid off. Godofsky agreed that his next discussion with Carr at which the subject of layoffs arose occurred on the day Carr came to him with Feivelson's list of grievances. When Carr reached the subject of raises, Godofsky replied "Absolutely not, no raise can be given at this time." It was at this point that Godofsky made a statement to the effect that the necessity for laying people off was getting more urgent. However, according to Godofsky, he issued no instructions concerning specific layoffs, and only learned that Magliochetti had been laid off on Monday, July 29, around 3 or 4 o'clock in the afternoon. Godofsky emphasized that the selection of personnel for layoff in this instance was entirely Carr's decision.

Carr agreed that he was solely responsible for Magliochetti's selection for layoff, within the broad instructions given him by Godofsky. He testified that following his receipt of the July 10 memorandum he and Godofsky had only a general discussion about the need to save money and that the staff was one of the things that had to be seriously considered. However, Carr admitted that he decided to cut the staff in the continuity department only toward the end of July, more specifically on the weekend of July 27 and 28, following the presentation of the list of grievances on July 25. Thus, the timing of Carr's decision to terminate Magliochetti together with the remarks made by Carr and Godofsky to Hunter, Tricoukes, and Harris strongly point to a discriminatory and unlawful purpose behind Respondent's selection of Magliochetti as the person to be laid off. There are other factors. As compared with Feivelson, the only other employee in the department, Magliochetti was the most experienced and senior employee. The record shows that she had performed the job of copywriter prior to progressing to her final position of continuity director. Nevertheless, the Respondent chose to terminate Magliochetti, whose salary was \$160 per week, and on July 30 employed a replacement, Marilyn Kraus, as continuity director at a salary of \$150 per week.¹⁶ Later

¹⁶ Feivelson's salary was \$131.50 per week

when Kraus left, Magliochetti was not recalled and Katherine Grundstein was hired. I find this course of action inconsistent when considered in the light of Respondent's insistence that it had no intention of eliminating Feivelson. I am persuaded and find that under all these circumstances the evidence clearly indicates that Carr seized upon Godofsky's July 10 instructions, which alluded to layoffs, as a pretext for ridding Respondent of Magliochetti because of her union and concerted activities, and in order to make an example of her to the other employees who had sought redress of their grievances. I further find, as confirmed by Carr's later conversation with Bonnie Lee Harris, that Respondent also constructively discharged Helaine Feivelson by giving her the ultimatum of having to perform two jobs or leave.¹⁷

I also find that Paul Godofsky's interviews with Daphne Tricoukes and Peggy Hunter on Monday, July 29, in which they were questioned about their feelings with respect to concerted action in the context of frequent references by Godofsky to the Union, constituted coercive interrogation in violation of Section 8(a)(1) of the Act. I further find that Godofsky's promise to review Tricoukes' salary constituted an unlawful implied promise of benefit to persuade her to abandon any union and concerted activity, also in violation of Section 8(a)(1). I do not find that Godofsky unlawfully warned or directed employees to refrain from joining AFTRA or from engaging in concerted activities since the evidence concerning these conversations shows that no warning or direction was given; nor do I find that Godofsky's remarks about no longer being able to personally present their problems to management rather than through a union, if the group chose to join a union, fall outside the protection of Section 8(c).

CONCLUSIONS OF LAW

1. By discharging Joanne Magliochetti and Helaine Feivelson on July 29 in order to discourage their union and concerted activities, the Respondent engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

2. By interrogating employees concerning their union and concerted activities and by making implied promises of benefit to them in order to discourage their further participation in such activities, Respondent violated Section 8(a)(1) of the Act.

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

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find it necessary to order that

Respondent cease and desist therefrom, and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily discharged Joanne Magliochetti (Joanne Dougherty) and Helaine Feivelson, I find it necessary to order the Respondent to offer them full reinstatement with backpay computed on a quarterly basis, plus interest at 6 percent per annum as prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962), from date of discharge to date of proper offer of reinstatement.

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

ORDER¹⁸

The Respondent, F. M. Broadcasting Corp., Hempstead, New York, its officers, agents, successors, and assigns, shall.

1. Cease and desist from:

(a) Discharging employees or otherwise discriminating against them with regard to the hire and tenure of their employment or any other term or condition of employment for engaging in union activity or concerted activity for their mutual aid or protection, or in any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Section 7 of the Act.

(b) Coercively interrogating employees concerning their sympathies or activities toward any labor organization or toward concerted activity for their mutual aid or protection.

(c) Expressly or impliedly promising employees benefits in order to dissuade them from engaging in union or concerted activities.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Offer Joanne Magliochetti (Joanne Dougherty) and Helaine Feivelson 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 make them whole for any loss of earnings, in the manner set forth in "The Remedy."

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

(c) Post at its principal office and place of business at 384 Clinton Street, Hempstead, New York, copies of the

¹⁷ This same Respondent has previously been found to have violated Sec 8(a)(1) of the Act by coercively interrogating employees with regard to their union sympathies, offering job security and wage increases to employees in order to induce them to abandon union representation by AFTRA and to join in a decertification movement. I find that this decision clearly establishes a background of union animus. See *F. M. Broadcasting Corp.*, 211 NLRB 560 (1974).

¹⁸ 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.

attached notice marked "Appendix" ¹⁹ Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60

¹⁹ In the event that the Board 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"

consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 29, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

3 The complaint is dismissed in all respects other than those specifically found.