

Rainbow News 12 and Rainbow Network Communications, Inc., subsidiaries of Rainbow Programming Holdings Corp.; Rainbow Programming Holdings Corp.; and Cablevision Systems Corp. and Radio and Television Broadcast Engineers Union Local 1212, International Brotherhood of Electrical Workers, AFL-CIO and Andy Herzman. Cases 29-CA-15978, 29-CA-16094, and 29-CA-15998

January 20, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

On February 11, 1994, Administrative Law Judge Steven Davis issued the attached decision. The Respondent, the General Counsel, and the Charging Party filed exceptions and supporting briefs,¹ and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,² and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Rainbow News 12 and Rainbow Network Communications, Inc., subsidiaries of Rainbow Programming Holdings Corp.; Rainbow Programming Holdings Corp.; and Cablevision Systems Corp., Woodbury, New York, their officers, agents, successors, and assigns, shall take the action set forth in the Order.

¹No exceptions were filed to the judge's finding that Rainbow News 12, Rainbow Network Communications, Inc., Rainbow Programming Holdings Corp., and Cablevision Systems Corp. constitute a single employer, and to the judge's dismissal of certain 8(a)(1) allegations.

²The Respondent, the General Counsel, and the Charging Party have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

Matthew T. Miklave and Sharon Chau, Esqs., for the General Counsel.

William H. Englander, P.C., of Mineola, New York, for the Respondents.

Richard H. Markowitz, Esq. (Markowitz & Richman, Esqs.), of Philadelphia, Pennsylvania, for Local 1212.

DECISION

STATEMENT OF THE CASE

STEVEN DAVIS, Administrative Law Judge. Pursuant to a charge and amended charges filed in September and October 1991 in Case 29-CA-15978 by Radio and Television Broadcast Engineers Union Local 1212, International Brotherhood of Electrical Workers, AFL-CIO (IBEW or the Union), and another charge filed on November 7, 1991, in Case 29-CA-16094 by the Union, and pursuant to a charge filed on September 25, 1991, by Andy Herzman, an individual, a consolidated complaint was issued by the National Labor Relations Board against Rainbow News 12, a subsidiary of Rainbow Programming Holdings Corp. (News 12), and Rainbow Network Communications, Inc., a subsidiary of Rainbow Programming Holdings Corp. (RNC), Rainbow Programming Holdings Corp. (Rainbow), and Cablevision Systems Corp. (Cablevision). The companies involved will sometimes be referred to collectively as Respondent, as I find, *infra*, that they are a single employer.

The complaint, issued on January 30, 1992, alleges essentially that following the commencement of a campaign by IBEW, and by two other unions, AFTRA and CWA,¹ to organize certain employees of Respondent, the Company engaged in a deliberate course of action to defeat the organization attempts of the unions.

Specific alleged activities undertaken by Respondent to achieve its goal of remaining nonunion fall into two main categories: the layoffs of 38 employees because of their union activities and statements to employees, in writing and orally. The alleged statements include threats of layoff if the employees selected the IBEW as their bargaining representative; promises of wage increases if the employees rejected the IBEW as their representative; interrogations of employees about their membership and activities in the IBEW, and about the union membership and activities of other employees; the solicitation of complaints and grievances of employees, and impliedly promising that it would resolve such complaints and grievances; the confiscation and destruction of union literature; threats to employees of unspecified reprisals because they testified for the IBEW in a prior Board proceeding; the disparate enforcement and application of a rule prohibiting the posting of literature on company bulletin boards; threats of plant closure, more onerous working conditions, layoff, and job loss if they selected the IBEW; informing employees that the IBEW was to blame for the lack of a pay raise; promise of benefits if the IBEW withdrew its representation petition or if the employees abandoned the IBEW; the solicitation of an employee petition to get rid of the IBEW, and the promise of a wage increase if they did so; the promise to terminate an unpopular supervisor if the employees abandoned the IBEW; and informing employees that it would be futile for them to select the IBEW as their bargaining representative.

The above alleged unfair labor practices, if proven, constitute violations of the National Labor Relations Act.

¹American Federation of Radio and Television Artists, AFL-CIO, and the Communications Workers of America, AFL-CIO. Respondents admit that those Unions, and the IBEW, are labor organizations within the meaning of Sec. 2(5) of the Act.

Respondent's answer to the complaint denied the commission of the alleged unfair labor practices, and specifically asserted that the layoffs of the employees were economically motivated.

A hearing was held before me in Brooklyn, New York, and in Manhattan on 17 days in November and December 1992.²

On the evidence in this proceeding, and my observation of the demeanor of the witnesses, and after consideration of the briefs, I make the following

FINDINGS OF FACT

I. JURISDICTION

All the entities named herein have their offices and places of business in Woodbury, New York. News 12 and RNC are both separate partnerships. News 12 operates a 24-hour-per-day regional cable television news station, and RNC provides studio technical and other technical support services for cable television operations, programs, and systems, including News 12. Rainbow, a corporation, manages and operates cable television operations, programs, and systems including News 12 and RNC. Cablevision, a corporation, owns and operates a cable television system.

Respondent admits that News 12 and RNC have derived annual gross revenues in excess of \$100,000, and that they annually purchased and received at the Woodbury facility products, goods, and materials valued in excess of \$50,000 directly from entities located outside New York State. Respondent further admits that News 12 and RNC are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The complaint alleges, and Respondent denies, that News 12, RNC, Rainbow, and Cablevision constitute a single-integrated business enterprise and a single employer. Respondent further asserts that Rainbow and Cablevision are not proper parties to this proceeding, and accordingly denies that they are engaged in interstate commerce. In this connection it should be noted that Cablevision has been found by the Board to be an employer engaged in commerce. 251 NLRB 1319, 1320 (1980). It should be further noted that the Decision and Direction of Election issued in this matter in Case 21-RC-18960 found that News 12 and RNC constituted a single-integrated enterprise and a "de facto" single employer of the employees. The Employer did not file a request for review as to that issue.

Prior to 1989, RNC and News 12 were wholly owned by Rainbow, through Rainbow Programming Enterprises. On about April 10, 1989, the National Broadcasting Company (NBC) acquired a 50-percent equity interest in RNC, News 12, and other Rainbow subsidiaries. Rainbow now operates as the managing partner of RNC and News 12. In addition, RNC and News 12 are "indirectly controlled" by Cablevision through Rainbow.

The hierarchical interdependence of the companies is clearly seen in their structure and reporting network. Sharon Patrick, the president and chief operating officer of Rainbow, is a member of the board of directors of Cablevision. Gregg

Burton, the vice president of operations and technical services of Rainbow, reports to Patrick. Doug Keck, the vice president and general manager of RNC, reports to Burton. Margaret Albergo was hired by Patrick as the director of administration and operations for News 12.

Patrick Dolan, the News Director of News 12, is a member of the board of directors of Cablevision.

NBC and Rainbow administer their financial arrangements through an NBC-Rainbow Board, which consists of officials of NBC, Rainbow, and Cablevision. RNC provides supervisory technical services to News 12 and other Cablevision companies at no charge for such services. However, RNC's supervisory work for other non-Cablevision companies is billed at commercial rates.

Regarding supervision, in some instances, Patrick signed Cablevision personnel action forms, approving salary increases for News 12 employees. The interrelationship of the various companies is clearly shown in the decision to downsize and lay off News 12 employees. Thus, Rainbow President Patrick made the decision to downsize; she sought recommendations from the managers of RNC and News 12 as to which employees to lay off. The recommendation to downsize and lay off was made to Cablevision which approved the decisions. In addition, Patrick's recommendation for a pay raise for News 12 employees was required to be approved by Cablevision's director of human resources. Employment actions such as hires, promotions, salary changes, and leaves of absence were recorded on Cablevision's personnel action forms.

Regarding benefits, the News 12 employees are eligible to participate in the Cablevision pension plan, which is offered to employees throughout the Cablevision "family of companies" and are also covered by Cablevision's personal leave day and vacation policies. When an employee moves from one Cablevision company to another, he does not lose his pension rights.

The Board applies four criteria in determining whether separate entities constitute a single employer: (1) interrelation of operations, (2) common management, (3) centralized control of labor relations, and (4) common ownership or financial control. *Hydrolines, Inc.*, 305 NLRB 416, 417 (1991). None of these criteria is controlling, nor do all need to be present to warrant a finding of single-employer status. "Single employer status depends on all the circumstances of the case and is characterized by absence of an arm's-length relationship found among unintegrated companies." *NLRB v. Al Bryant, Inc.*, 711 F.2d 543, 551 (3d Cir. 1983).

It appears clear that, based on the above evidence, there is an extensive interrelation of operations between the four companies. The nature of the operations of News 12, requiring the technical services of RNC, the management of Rainbow and the overall supervisory hierarchy exercised by Cablevision, are all necessary in order to operate a 24-hour-a-day television station.

Management at Cablevision, Rainbow, RNC, and News 12 all interact to affect the status of the News 12 employees. This is illustrated in the decisions to lay off and the decisions concerning benefits. The evidence thus establishes that News 12, RNC, Rainbow, and Cablevision are a single-integrated business enterprise and a single employer. *Hydrolines*, supra.

²The voluminous record in this case comprises 2588 pages of hearing testimony, 194 exhibits and briefs, filed by all parties, which contained a total of 333 pages.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. Respondent's Survey of Employee Dissatisfaction

Rainbow President Patrick testified that a few months after her January 1990 arrival at Rainbow, she became aware that employees were dissatisfied with working conditions at News 12, and authorized a study of the situation. During August 1990, a survey of 21 News 12 employees was conducted, during which employees' opinions were obtained concerning a wide variety of work-related issues, such as management's attitude toward employees; training and promotional opportunities; and effectiveness of the organization. Employees could also appraise their supervisors.

In a report on the results of the survey to Patrick, it was noted that employees complained about their low salaries. Among the improvements suggested was that the salary structure be reviewed, and that positions be graded similar to the RNC pay program. It was noted that action be taken quickly.

In October 1990, management proposed the formation of committees to discuss and recommend solutions to the problems revealed by the survey. A proposed time table suggested that by late January 1991,³ final action would have been taken on the committees' recommendations.

A general meeting was held in late November or early December, informing the newsroom of the results of the survey committees, which included employees, were then formed.

In February, two committees submitted their reports to Patrick. They were the (a) work environment committee, which was concerned with the condition of equipment and materials used by News 12 employees, and whose report addressed the issue of low pay; and the (b) communications committee which dealt with the areas of communication, including computerization, job performance and employee structure, and compensation. Suggestions for improvement were made by both committees. Patrick then asked Norman Fein, the news director of News 12 to analyze the reports and submit a plan.

Thereafter, on March 14, Fein submitted a report to Patrick, entitled "Rainbow human resources initiatives." The report categorized the areas of concern set forth in the 2 committee reports into 20 "projects," including compensation, computerization, and RNC/News 12 personnel. Each project consisted of management representatives of News 12, and most of the projects had representatives from Cablevision, Rainbow, and RNC, where appropriate.

The main thrust of the project concerning compensation was to obtain information from comparable news organizations for comparison with News 12 salary structure; staffing levels and experience; and industry downsizing, including layoffs. That project was not completed by April 19, as suggested in the report. A compensation survey form was prepared for 36 supervisory and nonsupervisory positions at News 12, but there was no evidence that the survey was ever completed by the suggested date of April 17.

It should be noted that although the IBEW began its campaign at this point in News 12's self-appraisal, nevertheless, Respondent's work on the initiatives and projects, set forth above, continued. They will be discussed, *infra*.

³ All dates hereafter are in 1991, unless otherwise stated.

The General Counsel argues that Respondent's actions thereafter, regarding initiatives and layoffs, were a response to the union campaigns, while Respondent asserts that its actions taken during the campaigns reflect programs set in motion prior to the advent of the IBEW, as set forth above.

B. The Unions' Campaigns and Respondent's Reaction

Sometime prior to April 15, Hardie Mintzer, an assignment manager of News 12, was informed by his supervisor, Fein, that the technical employees were attempting to form a union. Mintzer was asked to remain alert and "see what's happening." Fein suggested that Mintzer cancel the next "pizza meeting" then scheduled for April 15. Those meetings were "gripe sessions" at which different groups of employees from different departments, but with similar interests, discuss their common problems over pizza. The meeting was canceled.

By letter dated April 29, addressed to Fein at News 12, the IBEW's attorney advised that that Union had obtained signed authorization cards from a majority of employees employed by News 12 in a unit consisting of photographers, editors, ENG cameramen, truck operators, and graphic artists, and requested a meeting to negotiate a collective-bargaining agreement.

On May 2, the IBEW filed a petition for representation with the Board, seeking the same unit as above. A representation hearing was held in May and June at which the IBEW amended its petition to include additional classifications of News 12 employees, and certain categories of RNC employees. Respondent's position was that all employees involved in news gathering and news presentation, employed by News 12 and RNC, should be included within the unit. On March 20, 1992, a Decision and Direction of Election was issued.⁴

1. The communications between Respondent and its employees

Respondent's representatives communicated with employees by letter and orally. Numerous conversations occurred between them in the summer of 1991. The General Counsel has alleged that certain communications constitute unfair labor practices of various types. Specifically, the complaint alleges that letters written by Fein and News 12 Director of Administration Albergo violated the Act, and that additional violations of the Act were committed in the course of conversations with employees by officials Albergo, Gregg Burton, Milan Krainchich, Louis Giamanco, Glenn Fishkin, and Edmund Bortell. A statement allegedly made by Mark Ambrico was not alleged in the complaint, but it will be discussed also. Respondent finds nothing improper in their content or implication. Because of their number, they will be set forth by supervisor and discussed.

2. Credibility

With respect to credibility, the testimony of the employee witnesses and company officials as to specific statements and conversations was sometimes sharply contradictory of each

⁴ The decision found appropriate a unit essentially of all news department employees of News 12 engaged in the gathering, preparation, and presentation of news reports, and all studio technicians, video engineers, and master control room technicians employed by Rainbow, excluding on-air reporters.

other, and sometimes contained subtle differences. In determining credibility in such instances, I have made inferences based on what I believe occurred, taking into consideration undisputed material set forth in Respondent's letters to employees, and the reasonable likelihood that certain statements would have been made.

Generally speaking, as to all these allegations, it is a violation of Section 8(a)(1) of the Act for an employer to interfere with, restrain, or coerce employees in the exercise of their rights to organization. However, although employers need not remain silent in the face of a union campaign, they may not, pursuant to Section 8(c) of the Act, threaten reprisals or promise benefits.

On May 10, Fein sent a letter to all News 12 employees, which informed the workers that the IBEW had petitioned for an election, and noted that in the past, Cablevision employees had rejected representation by the IBEW. It further stated:

This is an especially bad time to be mistaken about unions. Advertising revenues are seriously below expectations, expenses are up, and as we have said to many of you, we are trying to maintain and improve News 12 against a tide of red ink. In a weakened economy, the television industry, including cable and news organizations in particular, have been hard hit. Channel 21 and other Local 1212 companies have laid off staff. News 12 has not yet laid off anyone.

That quoted paragraph has been alleged as an unlawful threat of layoff if the employees selected the IBEW as their representative. Respondent asserts that it constitutes a statement of "economic fact" and represents protected speech, arguing in its brief that, at most, it contains an "implied caution against what might possibly add to economic burdens during a stressful economic period." I reject that argument.

An employer may . . . make a prediction as to the precise effects he believes unionization will have on his company. In such case, however, the prediction must be carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond his control. [*NLRB v. Gissel Packing Co.*, 395 U.S. 575, 618 (1969).]

Fein clearly tied the Union's advent to the possibility that layoffs of employees may take place. Although he noted News 12's economic condition, he made a connection between the employees' desire to be represented by a union with the possibility of their layoff. The letter suggests that unionization, by itself, could lead to layoffs, without stating any objective fact which would support that belief. I accordingly find that the letter constitutes an unlawful threat to lay off employees.

On May 13, Margaret Albergo was appointed by Patrick as the News 12 director of administration. She had been an employee of Cablevision, in various capacities, since 1976. In the letter appointing her, Patrick announced that Albergo would be responsible for organizing and implementing "the many improvement projects now underway at News 12 and those expected in the near future."

The General Counsel argues that Albergo was appointed to undermine and defeat the IBEW effort to organize the employees.

On May 24, Albergo sent a letter to News 12 employees, in which she stated that she was aware of certain complaints of the employees, and that low morale may have led them to seek union representation. She asserted that the complaints or issues she has heard could be corrected "by working together." She further stated that employers are not required to grant the wage requests sought by a union in negotiations, adding that often, negotiations never end in a contract, but just "drag on and on" and "while they do, there are some big obstacles to giving benefits to union people that can easily be given to non-union people." The letter ended by asking "if the union isn't the answer, what is? I would like to discuss my ideas with you. I also look forward to discussing yours."

Thereafter, Albergo met with virtually all News 12 employees, either singly or in small groups. At times, there was a line of people outside her office waiting to see her.

In another letter dated June 3, Albergo recounted an instance where during the course of negotiations, employees affected by the situation "got tired of being frozen out of the progress others made, so they filed a petition with the Labor Board and threw the union out." She thanked employees for talking to her "about what needs to be changed at News 12. I wish that those who have not yet spoken to me will do so soon." Her letter concluded by saying that "we need to keep our lines of communication open. Let's continue to talk."

a. Margaret Albergo

Albergo testified that upon her start of work for News 12, she was briefed by company counsel, William Englander, on the conduct of the Respondent's campaign. She was made aware of the Company's obligation not to violate the Act by threatening employees or promising benefits. She further stated that she had "many, many" conversations with News 12 employees concerning their jobs, the problems they experienced, and the News 12 operation itself. She stated that her purpose in meeting with employees was to get to understand the operation and the employees, and to learn what some of the problems were, and also to learn the employees' complaints. She stated that she was instructed to tell the employees that she could not raise the subject of the Union, but if the employees did so, she would listen to what they had to say.

Albergo stated that the most frequently discussed topic as to which employees had the most questions concerned salaries and the "pay program." She further stated that "everyone" was aware that President Patrick was working on a comparability study, and that she told them that Respondent's finances probably would be able to support that program as a long-term goal, but that nothing could be done about it in the short term.

Generally, Albergo denied making any threats or promises, stating that she was aware that to do so would constitute unfair labor practices.

Employee Arthur Daley testified that he had dozens of conversations with Respondent's officials concerning the Union. The first, with Albergo, was in mid-May, when he asked her why she was appointed to News 12. She explained that she was there to learn why there was poor morale

among the employees, and to provide a sounding board for employees to speak about improving working conditions. She also told Daley that she was there to “get to the bottom of the union thing,” to learn why matters got so bad that employees turned to a union. Daley further stated that Albergo told him that Cablevision Chairman Charles Dolan would shut News 12 before he would “let a union in.” Daley testified that Albergo also asked him, in another conversation, to have other employees speak with her about their problems at News 12, and their reasons for seeking union representation. Daley agreed to do that.

A couple of weeks later, according to Daley, Albergo asked him what the “feeling” was among certain groups of employees, such as photographers, camera people, graphic artists and editors, concerning the Union, and whether those groups supported the Union. He reported that the feeling was “50-50”—which he explained by saying that the employees were willing to listen to the Union and to Respondent.

Daley stated that in June, Albergo told him that salaries and working conditions would improve once the “union problem” was resolved, adding that she should not be quoted since that would give the appearance that she was trying to bribe employees to vote against it.

Daley testified on cross-examination that during his conversations with Albergo concerning his low salary, she told him that News 12 could not afford a pay raise, but that a long-term goal would be for the Company to become profitable and make improvements. He conceded that Albergo told him that the pending union petition made it “difficult” to discuss the matter.

Albergo testified that she had a personal relationship with Daley and his wife, who worked as Albergo’s secretary at Cablevision, and for Albergo in a clothing business she operated. Albergo admitted that Arthur Daley confided in her about personal matters. Albergo denied telling Daley that Dolan said he would shut News 12 if a union was selected by the employees. She had no reason to believe that the Company would close. She also denied asking Daley to have employees see her, or for their feelings concerning the Union, since there was no dearth of employees who approached her following her written invitations of May 24 and June 3, who readily expressed their feelings concerning the Union and the News 12 operation. Nor did she tell Daley that things would get better once the union situation was resolved, since she knew that News 12 was not financially able to “just make things better.”

I credit Daley’s version of these conversations. He testified in a forthright manner about the personal relationship he had with his wife and Albergo. It is unlikely that he would testify falsely about someone who employed his wife in a private venture, and with whom he shared confidential concerns. These conversations occurred in mid- to late May, apparently prior to the time that Albergo sent her letters of May 24 and June 3, and prior to the time when she began receiving visits from employees who were allegedly eager to share their feelings concerning the Union with her.

Albergo’s conversations with Daley are alleged as unlawful interrogations and solicitation of employee grievances. In order to prove a violation of the Act, interrogation must be found to be “coercive” considering all the circumstances of the conversation. *Rossmore House*, 269 NLRB 1176 (1984); *Sunnyvale Medical Center*, 277 NLRB 1217 (1985). The

issue is whether the interrogation reasonably tends to restrain, coerce, or interfere with employees’ rights guaranteed by the Act, including the background, the nature of the information sought, the identity of the questioner, and the place and method of questioning. Another relevant factor is whether the employee was an open and active union supporter. *Kellwood Co.*, 299 NLRB 1026 (1990).

Albergo’s interrogation of Daley consists of her asking him how others felt about the Union, and whether they supported the Union. It is improper to inquire about the union sentiments of others. This interrogation of an individual who was not an open union supporter took place in the office of a high Respondent official. Although Daley may have been in Albergo’s office to discuss personal matters, in a friendly and low-keyed manner, nevertheless, Albergo’s use of her close relationship with Daley was designed to discover the extent of union organization among the employees and to impress on them the seriousness of the situation. *Crown Cork & Seal Co.*, 308 NLRB 445, 452 (1992). In this regard, I accordingly find that Albergo’s interrogation of Daley violates Section 8(a)(1) of the Act. I also find that her request of Daley to have other employees visit her to learn their reasons for seeking union representation similarly violates the Act. In this regard, I find that Albergo’s quotation of Dolan that he would shut News 12 before he would let a union in constitutes an unlawful threat to close the facility in the event of unionization. I do not find that Albergo solicited Daley’s grievances.

Employee Robert Johnson testified that in May or June, Albergo asked him to speak with her in her office. After discussing their backgrounds, Albergo asked her what he thought of “this union thing.” Johnson was uncomfortable with the question since he knew of the Company’s position opposing the Union, and he accordingly spoke of problems at News 12, including his dissatisfaction with management and his low salary.

Albergo discussed Cablevision’s history with unions, and noted that she was hired to have the operation run smoothly, and “hopefully avoid the union situation.” She told Johnson that Dolan was “infuriated” with the management of News 12, and with the fact that employees sought union representation.

Johnson further testified that about 1 week later, she called him into her office, and asked what he thought of Fein’s letter of May 10, set forth above. That question is alleged as an unlawful interrogation. Johnson replied that he and others believed that the letter was heavy handed and improper. Albergo answered that the Union would not be good for him, adding that she has been talking to “people” and formulating a plan to “make things right.” Albergo also showed him other letters and asked his opinion of them.

Albergo denied asking Johnson about the Union, or asking what he thought of Respondent’s letters to employees.

I credit Johnson’s version of these conversations. In her May 24 letter to employees, Albergo invited employees to discuss matters with her in her office. The letter suggested that low morale may have driven employees to seek union representation, and that there may be an alternative to a union shop. It is clear that Albergo’s invitation was not simply to engage in idle chat. She sought to learn why employees went to the Union. Accordingly, it is likely, and I find that Albergo asked Johnson what she thought of the “union

thing,” and his opinion of the Fein letter, which I have found is itself an unlawful threat. Such a question constitutes unlawful interrogation about Johnson’s union sentiments.

b. *The allegedly unlawful memoranda*

In addition to the letter of May 10, set forth above, which has been alleged as a violation, three other memoranda, issued at about this time by Albergo to all News 12 employees, are also so alleged.

Albergo’s letter of June 26 advised the employees that the representation hearing had closed, and criticized the IBEW for publicly distributing a hearing exhibit containing salary information. She stated: “What are they proving? Each individual knows what he/she’s earning and the Company knows that something has to be done about it.”

In her letter of July 10, Albergo noted that employees have asked the following questions while awaiting the Board’s Decision and Direction of Election. The letter stated, in relevant part:

Why won’t the company make us an offer to keep the union out? I asked legal counsel and I was told that it would be unlawful for the company to do that. . . . An employer’s promise or grant of benefits violates Section 8(a)(1) and constitutes interference if made for the purpose of inducing employees to vote against the union.

As an example, the company would violate the law if it announced a new improved wage and salary program at this time.

What if the union no longer had any support and decided it did not want to go through with the election? Suppose the union just went away . . . changes in benefits could be made. Also, if there is no election, the News 12 and Studio Operations staff could ask Local 1212 (or any other union) to return at any time and petition for an election.

What if the union wins the election? . . . No basic changes could be made unless both the company and Local 1212 were in agreement—no agreement, no changes. Local 1212 would become the exclusive bargaining representative so that there could be no individual negotiations, arrangements or rewards without union approval. Of course, employees not involved in the Labor Board election would be free of those restrictions.

At the end of a year, there are procedures for you to seek an election to get rid of the union but it’s quite a hassle

The information in this letter should help each of us to make an informed choice. As the decision whether to support Local 1212 impacts on all of us, we should not allow it to be made for us by anyone else.

Both the above letters are alleged as unlawful promises of a wage increase if the employees rejected the IBEW as their bargaining representative. The June 26 letter’s reference that the Employer knows something has to be done about its em-

ployees’ wages is a vague reference that Respondent was aware, as indeed it was, that employees had complained about their low wages. As such, the statement was not a promise of benefit tied to the Union’s defeat. The July 10 letter constituted a lawful explanation of an employer’s rights and responsibilities once a union petition is filed. *Fern Terrace Lodge*, 297 NLRB 8 (1989). It did not promise that wage increases would be given, and even if such could be implied, it did not connect such action to the defeat of the union. *Sunnyvale Medical Clinic*, 277 NLRB 1217, 1223 (1985).

On July 25, Albergo sent a letter, noting that “serious financial difficulties are being experienced at most television news operations. These troubles have been brought on by escalating costs and decreasing advertising revenues in the present economic environment.” The letter further states:

We have been impacted by the same problems. Up to now we had hoped it would not be necessary to take any of the cost-cutting actions other companies have taken. Regretfully, that no longer holds.

Downsizing, reorganizing, and consolidating operations with existing facilities, wherever located within the Cablevision family, are steps we can take.

The letter further noted that various other networks and television stations had announced plans to close certain city bureaus, reduce staff, eliminate jobs, and reduce salaries. Twenty one pages of news articles and press releases were attached to the letter.

That letter is alleged as an unlawful threat of job loss because employees sought union representation.

Albergo’s explanation of that letter was that it constituted notice to News 12 employees that layoffs would occur for financial reasons, and to reassure advertisers and the news media that News 12’s response to economic pressures was the same as other news organizations.

In *Sheraton Hotel Waterbury*, 312 NLRB 304, 339 (1993), the employer, prior to a Board election, distributed flyers with the heading “IS THIS UNION JOB SECURITY? . . . DON’T LET THIS HAPPEN HERE!” together with two newspaper articles detailing the closings of two area hotels for financial reasons. The Board found that nothing in the articles suggested that unionization played a part in the hotels’ closings. Similarly, Albergo’s letter and attachments do not suggest that Respondent would lay off employees if the IBEW represented the employees. “Respondent has the right to give employees information with respect to industry conditions, and was merely stating ‘economic reality’ by informing employees of these events.” *EDP Medical Computer Systems*, 284 NLRB 1232, 1264 (1987). I have found, infra, that 1 month prior to the issuance of this letter, Respondent lawfully decided to lay off employees. I accordingly find no violation in Albergo’s letter.

c. *Albergo’s further conversations with employees*

Employee Johnson further testified that at a meeting with Albergo, she showed him the July 25 letter containing the newspaper articles, told him that Cablevision assembled a “team of attorneys” and put an “unlimited” budget on making sure that the union was not successful; and that “heads would roll.” They also discussed various scenarios which

would cause employees to drop their interest in the IBEW, such as: terminate Fein, employees “drop” the petition and give Respondent time to make a salary offer, and if the offer was not acceptable, “re-petition” the Union, and continue the union campaign as before.

Johnson replied that the employees had no confidence in management, and that since nothing had been done since the time that Albergo was appointed, they did not believe that anything positive would occur thereafter. This apparently referred to Johnson’s awareness of the committees formed in 1990 to suggest improvements in News 12 operations, and the fact that he did not see all the improvements immediately. He said that he would tell the employees of the offer.

Johnson testified on cross-examination that he spoke with Albergo in the hope that she would remedy the complaints he had. She told him that she was not permitted to bring up the topic of unions, but that if he wanted to discuss it, that would be all right. He stated that, in an attempt to “pressure” her, he told her that if she wanted to avoid the Union she would have to make changes quickly, and that if changes were not made, he would vote for the Union. Albergo replied that she was there to do something about these problems.

This conversation has been alleged as an unlawful promise to get rid of an unpopular supervisor if the employees abandoned the IBEW’s organizing drive, and the solicitation of an employee petition to get rid of the IBEW, and a promise of a wage increase if they did so.

Albergo denied making the offer of terminating Fein, or a salary offer, as testified by Johnson. She testified that she knew that she could not offer the employees anything, and that such an offer would be ludicrous: the employees would be taking the entire risk simply on the employer’s promise. Similarly, Albergo denied saying that heads would roll.

I credit Johnson’s version of the conversation, but nevertheless find no violation. There was an active give and take in this conversation, with Albergo properly prefacing the conversation by telling Johnson that she could not discuss the Union. Johnson apparently then discussed his complaints, which included pay and his dissatisfaction with Fein, which had been the subject of his discussion with her in May or June, *supra*. *McDonald Land & Mining*, 301 NLRB 463 (1991). It is not clear who offered the scenario set forth above, but Johnson stated that he sought to “pressure” Albergo into quickly making the changes he sought. Based on these factors, I cannot find that the General Counsel has established that Albergo made any improper promises or solicitations.

Employee Frederick Helm testified that he spoke with Albergo in her office. Albergo told him that management was aware of, and wanted to address the problems at News 12, such as salary. Helm was unsure who brought up the topic of unions. Albergo told him that the Employer could not make any salary adjustments or other changes then because a petition was pending. Albergo also told him that if a union election was conducted, the Union would represent the employees for 1 year, with no guarantee that agreement would be reached on a contract. Albergo then explained that the employees could ask the Union to withdraw its petition, and that, after doing so, the Employer could deal with the employees, could correct the problems, and if the Employer did not make satisfactory changes, the employees could immediately “re-petition” the Union.

Helm further testified that Albergo asked about his career goals. He said that he would like to produce commercials. Albergo then gave him the name of someone to call at Cablevision’s creative services department. This has been alleged as an unlawful solicitation of grievances.

Albergo testified that Helm asked her how the collective-bargaining process worked. He also asked what would happen if employees did not want the union. She told him to communicate that to the Union. Albergo denied saying that if the employees asked the Union to withdraw its petition, management and the employees could work things out. He asked whether if the employees did so, could the Employer do something about salaries and other problems. Albergo explained that if the petition was removed, the Employer “had a different circumstance in which to deal,” but in any event News 12 was financially unable to improve salaries at this time—but hopefully it could do so in the future.

Albergo testified that Helm brought up the topic of a career move. Albergo told him to check the job postings, and also gave him the names of people in the areas that he was interested in.

I cannot find a violation in Albergo’s conversation with Helm. Even accepting Helm’s version of the conversation, Albergo properly set forth Respondent’s legal obligations once a petition was filed. Although Albergo mentioned that employees could ask the Union to withdraw its petition, it is unclear as to who raised that question. Nevertheless, this comment came in the context of Albergo’s explanation of representation procedures. I also cannot find that Albergo’s inquiry to Helm as to his career goals and the suggestion of people to call who might assist him, constituted an illegal solicitation of grievances. This was not a grievance that the employer remedied. This was not a grievance at all. It was a proper inquiry as to Helm’s future plans in the industry. There is no prohibition against an employer official asking an employee a question about his career interests. Albergo did nothing further than suggesting who he might call. She did not take any action to grant him any benefits.

David Stringer, a satellite truck operator, testified that in the summer of 1991, Albergo told him that she was appointed to work at News 12 to address some of the problems that had “built up” over time. Albergo then asked if Stringer had any particular problems. Stringer mentioned pay, and other matters. Albergo replied that the Employer was working on a package which would include a salary adjustment, but that she could not discuss it at that time because of the “ongoing situation.” In the past, Stringer had complained to management about his not being compensated for extra work he performed.

Albergo testified that Stringer initiated this conversation with her, in which he raised the topic of pay. She did not ask him what his problems were. Albergo denied telling him that the Employer has a pay package which she could not discuss at that time. She stated that she told him that she was listening to what he was saying, but that News 12 did not have the money, and she could not get into a “detailed conversation” with him. I find, as alleged, that this constitutes an unlawful promise of a wage increase. It constitutes a “teasing promise of an unspecified wage increase in violation of Section 8(a)(1) of the Act.” *Family Foods*, 300 NLRB 649, 662 (1990); *Fontaine Body & Hoist Co.*, 302 NLRB 863, 869 (1991).

Stringer was subpoenaed by the IBEW to appear at the representation hearing. He told Albergo that he had been subpoenaed, and had to go to the hearing. Albergo then told him that in an automobile accident case, a party will ask a witness who is most favorable to its side to attend the proceeding. Albergo denied making the car analogy. The complaint alleges that Albergo thus threatened Stringer with unspecified reprisals because he expected to testify for the IBEW. I disagree. No threat was made. At most, this testimony proves that News 12 knew that Stringer, who did not testify at the representation hearing, supported the IBEW's cause.

d. The removal of union literature

Stringer also testified that while at the Respondent's facility, he saw Albergo removing a union letter from a bulletin board. Albergo told Stringer then that the IBEW could not use company resources. Stringer noted that the letter was on union letterhead. Albergo then said that "you can't be doing this on company time," to which Stringer replied that "we have breaks."

The evidence establishes that notices of all kinds, including notices of parties, vehicles for sale, and company memos, have been posted on company bulletin boards.

This has been alleged as an unlawful, disparate enforcement, and application of a rule prohibiting the posting of union literature on company bulletin boards, while permitting the posting of nonunion literature.

Albergo denied removing any union literature from company bulletin boards, or speaking to him about that topic. However, she did state that she once saw Stringer leave the copy machine with a stack of papers bearing the union logo. She told him that he could not use the company copy machine to copy union literature. He said, "[O]kay." Nothing further happened regarding that incident.

I credit Albergo's denial that she removed a union notice from the bulletin board. Stringer's testimony that Albergo told him that the Union cannot use company resources, and that he could not do this on company time does not logically seem to relate to Albergo's removal of a union notice. No company resources were being used in the posting of the notice, and Stringer did not testify that Albergo saw him doing anything on company time. Rather, Albergo's testimony that she warned Stringer not to use company resources in copying union literature was more likely the reason for Albergo's comment. In addition, Stringer's admission that he was told that he should not be doing something on company time probably refers to his copying the union materials. Stringer's admitted reply, that "we have breaks," confirms that this is the proper interpretation to be given to this incident. Moreover, there has been substantial testimony that union notices remained on bulletin boards without being removed. I accordingly find no merit to this allegation.

It was also admitted that Respondent Attorney Charles Forma removed union letters from employee mailboxes and destroyed them. At that time, company memos and personal messages had been permitted to be placed in employee mailboxes. Forma was immediately reprimanded by higher management for this action.

This has been alleged as the disparate enforcement and application of a rule prohibiting the distribution of union literature, by confiscating and destroying prounion literature.

There had been no restriction on the use of the mailboxes prior to the union campaign, and Respondent's agent altered this policy by the confiscation of union literature from employee mailboxes. This conduct violated employees' rights to obtain union-related information. *Bon Marche*, 308 NLRB 184, 199 (1992); *Filene's Basement Store*, 299 NLRB 183, 209 (1990).

e. Albergo's further conversations with employees

Thomas Rizzuto testified that Albergo asked him to see her in her office in May 1991. She raised the subject of unions by telling him that the Union is not a "cure all" for all the problems at News 12. She added that management knows that it made mistakes and was willing to rectify them. Albergo then said that News 12 has a "package" for the employees, but that she could not elaborate on it because to do so would violate the labor law. She mentioned that prior to her arrival at News 12, the Employer had begun to work on pay comparisons with similar jobs in other markets, and a long range goal was to raise salaries. They then spoke about other matters, and Rizzuto volunteered that he was subpoenaed by the Union to attend the representation hearing. Albergo then told him that he did not have to appear if he did not want to.

Two weeks later, Rizzuto asked Albergo, why, if News 12 was willing to make changes in their behalf, why was it opposed to union representation or a contract. Albergo replied that management was opposed to "third party intervention."

Albergo testified that Rizzuto initiated conversations about the Union, and often complained to her about his low salary, and his belief that management would not remedy that problem unless it was forced to do so by a union. Albergo told him that News 12 could not afford to give him any salary increases at that time, but that a long range goal, when affordable, was to improve salaries and correct technical and space problems. She conceded that he asked that if the employer would make these changes eventually, why not have a union contract to memorialize those matters. Albergo replied that those matters had to be negotiated between the Union and management. Albergo specifically denied raising the subject of unions with Rizzuto. Albergo denied telling Rizzuto that he did not have to attend the hearing.

I credit Rizzuto's testimony. Based on Albergo's version of the conversation, it appears likely that she would have responded more positively, as testified by Rizzuto, to his challenge that Respondent would take no action unless forced to do so by the IBEW. Albergo clearly solicited Rizzuto's grievances and then impliedly promised to rectify them by telling him that the employer wanted to resolve its mistakes, and that it has a "package." This constituted an implied promise to rectify the grievances the employees had concerning their pay. *Escada (USA), Inc.*, 304 NLRB 845, 850 (1991). Albergo's statement concerning Rizzuto's compliance with the subpoena has been alleged as a threat of unspecified reprisals because he was testifying for the IBEW. This allegation has not been established. She was not urging that he disobey the subpoena, and no further discussion was had on the matter.

Employee Richard Shepard testified that in the summer of 1991, Albergo asked him if he wanted to talk to her. He agreed. Albergo asked him how things were going. He asked if she meant the union situation. She said, "[Y]es."

Shepard told her that big changes were needed, and if the Employer did not do it, then the employees would have to accomplish it. He then mentioned his complaints: salary, and the lack of well defined job descriptions. Albergo replied that a union could not guarantee that his concerns would be remedied, or that wages would rise. She added that management was trying to "make things better" and "try to smooth things out." She also said that as long as a union "situation" is pending, the employer could not make any offers to change the way things currently are. Shepard asked why he should believe that management is trying to make things better. Albergo responded that he should give her a chance.

Albergo testified that Shepard came to see her. She does not recall if she asked him how things were going. He raised the subjects of unions and pay. In response to his complaint about low pay, Albergo told him that News 12 could not afford to do anything about salaries at that time, but that salary improvement was a long range goal, and in any event, they could not get into a detailed conversation about it.

This conversation is alleged as, and I find, that it constitutes improper interrogation. Albergo invited Shepard into her office in order to provide a forum to discuss the Union. I do not credit her testimony that he asked to see her. She clearly sought out employees shortly after her hire in order to learn what problems they had, and to see what she could do about them. An unlawful interrogation may also take place, as here, where Shepard raised the issue of the Union. He simply anticipated the purpose of the meeting. Albergo's question of him as to how things were going merely provided Albergo's opening to discuss the union matter.

Employees James Bono and Nick Somma went to Albergo's office in early June 1991 to discuss their unhappiness with working conditions at News 12, and to attempt to remedy those problems. They specifically told Albergo that salaries were a problem. Albergo replied that Patrick was looking through the Company for \$1 million for raises for everyone across the board, and that she was a person who could get things done. Albergo then told the men that she was personally opposed to the Union, and told them that one way to get rid of the Union was to sign a petition. She also told them that because Cablevision was an "entrepreneurial" company, if a union came in, it would be very difficult for Dolan to begin new projects. Later that month, Albergo told Bono that he could get rid of the Union by signing a petition.

Albergo testified that Bono raised the issue of pay when she met with him and Somma. She told them that was a long range goal, but that News 12 could not afford it. She also refused to conduct a detailed conversation with him about it while the petition was pending. She denied saying that Patrick was looking for \$1 million, or suggesting that they sign a petition to get rid of the Union. However, she did concede that Bono told her that certain RNC employees were opposed to the Union, and asked her what they could do. She told them to communicate their views to the Union. Bono asked if those workers should sign a petition, and Albergo replied that if that is the way they think they should do it, then they should do it that way, but otherwise she did not know. She also denied making the remark about Dolan.

I credit Albergo's testimony. In this instance, Bono and Somma admittedly visited Albergo, raised the issue of pay with her, and sought "remedies" for their low pay. There

was nothing improper in Albergo telling them that she was opposed to the Union. I cannot find that Albergo told the men that Patrick was looking for \$1 million for raises for everyone across the board, as that figure were implausible given Respondent's financial condition. I similarly find improbable Albergo's alleged quote of Dolan that since Cablevision was an entrepreneurial company, he would find it difficult to begin new projects. It is likely that the men engaged in a vigorous discussion concerning the Union, seeking ways in which Albergo could "remedy" the problem of low salaries and working conditions, and I find that in this context the question of the elimination of the Union was discussed. I find that Albergo did not suggest or encourage that the men file a decertification petition. *Ernst Home Centers*, 308 NLRB 848 (1992). Providing employees, in response to their questions, with general information concerning the filing of petitions does not constitute a violation of the Act. *Lee Lumber & Building Material*, 306 NLRB 408, 410 (1992).

Employee Gerard Kaufold testified that in June 1991, he met with Albergo in order to seek her help in obtaining a position as an ENG microwave truck operator. She later arranged that he obtain training for that position. As he left the meeting, Albergo asked him how he felt about the Union and inquired as to the attitude of the studio employees. Kaufold told her that he had many things to consider and many questions needed answers. Albergo asked him what the questions were, and offered to answer them. Kaufold answered vaguely that the employees had not yet decided what to do. Albergo replied that unions are not as strong as they used to be, and compared them to a disease that spreads from department to department, adding that unions were the "last thing" Respondent's owner would "stand for." She concluded by saying that it was time to make some changes if the lines of communication between management and the studio technicians were opened.

Albergo denied asking him his attitude toward the Union or the attitudes of others. However, she conceded that he asked her what she personally thought about unions, and she replied that she did not believe that unionization was in the best interest of the Company or its employees.

I credit Kaufold. It is unlikely that given Kaufold's hesitance about responding to questions concerning the Union, that he would have inquired about Albergo's personal feelings about unions. Moreover, the Company's attitude in opposition to the union campaign was well known. He credibly testified that after he gave a vague answer to her first question, she pressed him further. I accordingly find that Albergo's questioning of Kaufold constituted unlawful interrogation concerning his and other's attitudes toward the Union. However, I find that her statement that unions were the last thing Respondent would stand for is too vague to constitute a violation.

3. The crew meetings

In the summer of 1991, separate meetings were held with the three RNC crews. Albergo, Gregg Burton, a vice president of Rainbow, and Douglas Keck, a vice president of RNC, attended in behalf of management.

Employee Bono asked Burton why it took so long for management to visit the crew, and inquired as to why it took the "union situation" for the Company to show such an interest in them. Employee Gerard Kaufold testified that Bur-

ton told the members of the B crew that he realized that the crew had been neglected, but now he sought to focus attention on them, and that he was listening now to any complaints they had.

Kaufold stated that Albergo said that Respondent was opposed to a union, and that the workers should trust management, and give it a chance. She added that the Company was reviewing other news organizations in comparable markets with a view towards learning how their pay programs were structured, adding that Respondent was looking into alternate pay programs for the crews.⁵ According to Bono, Albergo said that if the editors and other groups had not contacted the Union, the Employer would be able to give them raises, but because the Union was contacted, such raises could not be given since it was illegal to do so.

Kaufold further stated that employees then asked whether, if the workers believed that they were "too far" into the union process, they could halt the union organizing drive. Albergo replied that if they did not want the Union they could sign a petition to get rid of it, and after having reviewed what management had to offer, they could continue with the union effort.

At the C crew meeting, the same management representatives were present. Kaufold testified that Albergo was asked why Respondent was opposed to union representation of its employees. He also stated that Albergo noted that she was not permitted to mention specific items, but that Respondent was looking at sources to fund a new pay program, and that the employees should give management an opportunity to make an offer to them. Employee Stephen Rizza testified that Albergo said that Respondent understood that there were "problems" but it could not do anything then because a petition had been filed. Rizza asked why it took a "union threat" for the employer to realize that there was a problem. Albergo replied that the Union has been successful for him already because management was meeting with them that day.

Employee Michael Messina testified that at the meeting employees said that they deserved higher pay, and they also spoke about poor working conditions, such as the unavailability of overtime. Albergo said that "things" were not going to get better if the employees "continued to petition for the union." She added that if the employees reject the Union, it would be illegal for her to say that matters would improve. Burton added that the employees should not assume that things will get better if a union was involved. He mentioned that Respondent's employees at Floral Park were involved in a union organizing drive, and when the union lost the election, certain employees were promoted and received pay raises.

Employee Lisa Angelini testified that Burton initiated a remark that he would like to make an offer to the employees but that he could not do so until the "union thing" was over. Burton asked for a "chance to make things right," stating that he knew there were problems with salaries and equipment. Angelini stated that Albergo, without any questions being asked of her, mentioned that if a union represents the employees, their salaries could go up, down, or sideways,

⁵ Kaufold's initial testimony that Albergo did not say anything regarding pay at this meeting does not significantly affect his credibility.

there was no guarantee that their salaries would increase, and that if a union represented the workers and management was "forced" to pay more, there could be layoffs. She further said that the employees could ask the union to leave.

Employee Stephen Rizza testified that at the C crew meeting, official Keck said that Dolan liked News 12, but that Cablevision subscribers would not cancel their subscriptions if News 12 was taken off the air. It should be noted that Rizza's pretrial affidavit contained no mention of Dolan's liking News 12.

Employee Thomas Bowler testified that Burton told the employees that he knew that there were problems at News 12, and that he would like to address them and try to resolve them, but since a union election was pending, he could not address any of those problems at this time.

Certain employees were more vocal than others at the meeting. For example, employee Bono was described as being very active and inquisitive, Rizza was described by employees as very active, and "desperately" trying to learn why management was opposed to a union. He also stood and waved his arms at one point. In fact, Employer official, Giamanco, testified that after Albergo or Burton told the employees that News 12 had no money for raises, Rizza stated that the salaries are terrible, he did not believe that the Employer would ever give more money, and the Employer thus left the employees with "no choice."

Albergo testified that at the meetings she told the crewmembers that she was News 12's representative who stood ready to answer any questions about News 12. Essentially she denied raising the topic of union or pay, stating that employees raised those issues. She further testified that Kaufold asked her how to proceed if the employees believed that they were no longer interested in it. She answered that she did not know the procedure, but that they should communicate their feelings to the Union. She denied saying that employees could petition to get rid of the Union. In this connection it should be noted that Employer official, Keck, testified that Albergo said that since a petition brought in a union, a petition could remove it, but that was up to the employees, if they wanted to take such action. She told the employees that management recognized that some job classifications were below "market value," and that Patrick was doing a comparability study, but that News 12 did not have the financial ability to implement such a plan, which was a long-term goal. She also told them that since a petition was pending, she could not discuss it further. She further denied mentioning layoffs or the possibility thereof.

Burton testified that the purpose of the crew meetings was to answer their questions concerning pay. In response to a question about pay, he told the assembled crew employees that management was aware that there were problems with pay and equipment, and that those problems were being "worked on." He asked the workers to be patient, and urged them to trust him, and assured them that things would get better. Burton further told them that since a union petition had been filed, he could not give specific details about what the Company's plans were, if any, because he was not permitted to "influence" the employees either way. Nevertheless, he told them that, in a prior union effort at the RNC's location at Floral Park, prior to that petition having been filed, RNC had been planning to implement a new pay program, which was then frozen. He further told them that after

the Union lost the Floral Park election, the pay program was implemented, and since then the employees had been “very happy.” He added that what occurred in Floral Park is no “guarantee” of what could happen at News 12.

Keck testified that he told the employees at one crew meeting that RNC was working to resolve the problems in the News 12 operation, but that there were then no plans to implement a pay program. Keck denied making the comment attributed to him by Rizza concerning Dolan liking News 12.

Bortell testified that Keck mentioned that News 12 was in bad financial shape, that Albergo explained how the union election process worked, and that employees asked if they could receive a raise now. Albergo replied that due to the election petition, News 12 could not give raises that were “unusually higher” than previously given, and even if there was no pending petition, News 12 was financially unable to give any raises. At another crew meeting, Burton and Albergo told employees that Respondent was in poor financial condition. He denied that Albergo suggested that the employees might get rid of the Union by signing a petition. He added that Albergo repeated her statement regarding the granting of raises. Bortell denied that Albergo said at either meeting that if certain employees had not contacted the Union, the employer would be able to give raises.

Louis Giamanco, the operations coordinator for RNC, testified that at one crew meeting, an employee asked if the Union could obtain higher salaries for the workers. Albergo replied that the Employer and the Union would negotiate, and wages and benefits could go up, down or sideways. An employee then asked why the Company could not give raises now. Albergo or Burton replied that News 12 does not have money for raises, and that it would be against the law at that time to make any offers.

The complaint alleges that at the crew meetings, Respondent unlawfully solicited grievances and promised wage raises.

Absent a previous practice of doing so, the solicitation of grievances during an organizational campaign accompanied by a promise expressed or implied to remedy such grievances violates the Act. . . . It is the promise, expressed or implied, to remedy the grievances that constitutes the essence of the violation. Solicitation of grievances in the midst of a union campaign inherently constitutes an implied promise to remedy the grievances. . . . The fact that an employer’s representative does not make a commitment to specifically take corrective action does not abrogate the anticipation of improved conditions expectable for the employees involved. [*Columbus Mills*, 303 NLRB 223, 227 (1991).]

I find that, even based on the testimony of Respondent’s officials, violations of the Act have been established. First the meetings were organized allegedly in order to answer their employees’ questions concerning pay. Even if that were the sole purpose, the union campaign was raised and discussed, and the issue of pay was discussed in that context. Albergo’s admitted remarks to the employees that management knew that certain salaries were below “market,” and that Respondent’s president was doing a comparability study, but could not afford to implement it at that time, combined with her refusal to discuss it further because of the pending

petition, held out a tantalizing reward to employees. *Family Foods*, supra. Although Albergo did not specifically promise a pay raise, the promise was implicit in her comments to the employees. In addition, although not specifically tied to the Union’s defeat in the election, the connection was implicit in her mention of the study, and accordingly constituted a promise of benefits.

Promises of benefits by an employer during an organizational campaign have a coercive effect because employees are not likely to miss the inference that the source of benefits presently conferred is also the source from which future benefits must flow, that may dry up if not obliged. *NLRB v. Exchange Parts Co.*, 375 U.S. 405, 409 (1964). The promise of benefits need not be specific in nature or as to the time of its implementation, and need not be expressly conditioned on abandonment of union support. A promise that the employer would someday better itself and offer the employees more, was an unlawful promise of future benefits. *Permanent Label Corp.*, 248 NLRB 118, 131 (1980).

In *DTR Industries*, 311 NLRB 833 (1993), a case similar factually to this one, the employer did a comparative wage survey and determined that the salaries of its employees were not competitive. Employees then complained about their wages, and a new wage scale was announced and implemented. The union then filed a petition. The employer sent a letter to the employees, which, while reciting that it could not lawfully make changes or promises regarding benefits, stated that “we have started to address your concerns,” and that management wanted to grow with the employees, and pledged to continue listening to their concerns and responding as completely and as quickly as it could. The Board found that the letter implicitly promised benefits, including improved wages, if the union lost the election.

The respondent also answered unlawfully solicited employee wage complaints by telling employees that raises were arranged as a result of its wage survey, but could not be given because the Union’s campaign might make such increases appear to be bribes. It then granted substantial wage increases to [supervisory] group leaders. To the extent that the Respondent’s remarks during the campaign created the impression that employees might have received wage increases but for the Union’s presence on the scene, they constituted a violation of Section 8(a)(1) by placing blame on the Union for its withholding those increases. [*DTR*, supra at 837.]

Similarly, in the instant case, Albergo’s admitted announcement to employees at the meetings that Respondent was aware that certain salaries were below “market value,” and a comparability study was being done, but that the employer could not discuss such a program because of the pendency of the union’s petition, constituted an unlawful implicit promise of benefits.

Similarly, Burton’s admitted remarks that management was aware of problems with pay, which were “being worked on,” and his assurance to employees that things would “get better” also unlawfully impliedly promised improvements. The fact that Burton refused to give specifics about the Company’s plans because of the petition does not render his remarks lawful, since his recitation of what had happened at Floral Park could be viewed by the employees here of an ex-

ample of what could be expected if they rejected the Union. Thus, although he told them that what had happened at Floral Park was no "guarantee" of what could happen here, he noted that the Floral Park employees were "very happy" with their pay raises following the Union's election loss. Thus, the typical employee, although being assured that what had occurred at Floral Park was not a "guarantee" of what could happen here, could nevertheless assume that although not a guarantee, similar pay raises were likely to occur here.

I further find that the crew meetings were held for the purpose of soliciting grievances from the employees. Respondent argues that it had meetings with employees prior to the advent of the IBEW at which similar matters were discussed. For example, RNC official Keck testified that in January 1991 meetings were held to address rumors among employees that there would be a pay raise for the studio crews who had been transferred, in the summer or fall of 1990, from the Cablevision to the RNC payroll. At the meeting, the employees were told that News 12 could not afford to give a pay raise. Further crew meetings were held in March 1991, at which the employees expressed disappointment that the RNC employees were not included in the surveys or committee reports concerned with improving News 12. At the meetings, the employees inquired as to why they were not included, and they also discussed crew schedules.

Respondent thus contends that its meetings with employees held in the summer of 1991 are simply a continuation of the types of meetings held previously, and accordingly no violation may be found, even assuming grievances were solicited at those later meetings.

I disagree. Prior to the advent of the IBEW there had been no formal, organized sessions of the type, addressed by top management officials, as occurred prior thereto. The meetings held in January and March 1991 were conducted by immediate supervisors to answer their employees' questions about matters of immediate concern to them, including their transfer from one payroll to another and its effect on their salaries. Similarly, the March 1991 meeting was held to explain why employees were not included in the survey.

In contrast, I find that the purpose of the summer 1991 meetings was to learn why the workers wanted union representation, and to give them an opportunity to voice their complaints so that Respondent could assure them that they would be rectified. These meetings were held in a formal, organized manner with top officials of Respondent, some of whom had never met those workers. A broad range of questions was invited and answered.

The Board has held that in the absence of evidence of an established program of grievance meetings, the holding of meetings during a union campaign at which employees are encouraged to air grievances constitutes solicitation of grievances and an implied promise of corrective action if employees reject the union, thereby violating Section 8(a)(1). [*New Life Bakery*, 301 NLRB 421, 427 (1991).]

In this connection, with respect to the solicitation of grievances, Respondent further argues that individual employees' grievances had been solicited at least since August 1990, when the employee survey was distributed. It reasons that, assuming grievances were solicited after the advent of the

IBEW, such solicitation constituted a permissible continuation of its prior practice. I do not agree. The survey was sent to a small group of 21 employees in a formal way. After the survey, an organization was established whereby results of the survey were made known, committees formed, meetings held, top management would be involved, recommendations made, and remedies announced. In contrast, in the summer of 1991, all employees were encouraged to meet with Albergo and other officials of management, and in fact Albergo met with virtually all of them; the workers were questioned in individual meetings with top management officials about their problems and concerns in the context of discussions concerning the Union. This represents a vast difference in the way that grievances were solicited, and in the perception of the employees toward the way in which their complaints would be treated.

I accordingly find and conclude that at the crew meetings, Respondent unlawfully promised its employees wage increases and solicited their grievances in violation of Section 8(a)(1) of the Act.

a. *Gregg Burton*

Burton is the vice president of operations and technical services for Rainbow.

Employee Frederick Helm testified that he was asked to meet with Burton. At the meeting, Burton explained that he learned that no one knew who he was, and he decided to meet with all News 12 employees and learn about the problems of the Company. Burton added that the employer is "in a bad economy," advertising revenues are down and News 12 is losing money. Burton showed him the news articles which were attached to Albergo's July 25 letter which mentioned the poor economic situation in the television news industry and layoffs at certain companies. Burton said that he was aware that salaries were a problem, but due to the recession and other economic conditions, News 12 was losing money and could only give salary raises if employees were laid off. Burton asked his opinion of that approach, and Helm agreed with it.

During the conversation, the issue of the Union was raised. Burton asked where Helm "stood." Helm replied that he was opposed to the Union, and that the Company should be given an opportunity to resolve the problems, and also told Burton, however, that since he mentioned layoffs, perhaps the Union was needed. Burton then told Helm to "get off the fence," adding that there are many vocal pronoun employees who would be deciding "our" fate.

Employee Bowler also met with Burton pursuant to his direction. Burton showed him the newspaper articles, telling him that he wanted him to know what the current conditions were in the television industry. Burton then asked him if he attended the union meeting at a hotel that week. Bowler said he had. Burton then asked him what the "mood" was where he worked. Bowler replied that he did not know.

Burton admitted having individual meetings with employees in about late July 1991. He denied that employees were required to attend the meetings. He stated that Supervisor Milan Krainchich asked employees "if they were interested" in meeting him, or had any questions. Some declined the invitation.

Burton testified that he held such meetings to address questions raised regarding pay and the union election proc-

ess, and at the meetings he discussed those issues. He asked them, as an “icebreaker,” how is the morale; how is the mood; how are you feeling? Employees then told him that they were unhappy with their salary. When asked about the union petition, he told them that a petition got the union in, and a petition could remove it. When asked about salaries, he said that News 12 could not afford to pay more. Burton denied saying that layoffs would be needed if salaries were to be raised, but conceded mentioning layoffs, and referring to the July 25 letter containing the newspaper articles. He testified that he told employees to become well informed, and to attend union meetings if they wished.

Burton denied asking employees where they stood, or telling them specifically to get off the fence. Later, he admitted possibly telling them, in effect, to get off the fence because of the importance of the matter, and conceded telling them something to the effect that they should not let others determine their fate.

I credit the testimony of Helm and Bowler. It is likely, particularly considering Burton’s admitted testimony that he advised employees not to let others decide their fate, and in effect to get off the fence, that he would have asked Helm where he “stood” as a preliminary question. It is probable, that when hearing Helm’s contradictory positions concerning the Union, Burton would have urged him to decide the union issue for himself.

I accordingly find that Burton unlawfully interrogated Helm concerning his support of the Union. I also find that Burton’s questions to Bowler as to whether he attended the union meeting, and his inquiry about the “mood” were clear, impermissible interrogations concerning his union activities and the union sympathies of others. Burton’s question of Bowler as to how the “mood” was, after his inquiry about whether Bowler attended the union meeting, was a clear reference to other employees’ attitudes concerning the union situation. It would be unusual to ask “how is the mood” as an “icebreaker” comment to begin a conversation, as Burton testified.

b. *Milan Krainchich*

Krainchich is the director of studio operations for RNC. He supervises the studio staff as to repair and maintenance, and schedules the crew.

Employee Jamison testified that he was in Krainchich’s office discussing his upcoming wage review, when Krainchich showed him a copy of Fein’s May 10 letter, set forth above, which stated that the IBEW filed a petition, referred to News 12’s poor financial condition, and noted that “News 12 has not yet laid off anyone.” Krainchich asked Jamison how he felt about the letter. Jamison replied that he was in favor of the Union. Krainchich then told him that Charles Dolan hates Krainchich, and was “out to get me.”

Krainchich conceded asking employees if they received management letters, and if they read them, and agreed that Jamison was in his office discussing his work, but denied the rest of the alleged conversation.

Employee Kaufold also testified that Krainchich asked him to look at the May 10 letter, and also asked what Kaufold thought of the letter. Kaufold replied that he did not have information to make a decision. Krainchich denied asking for Kaufold’s feelings concerning the letter.

Lisa Angelini testified that during a salary review conducted by Krainchich, she asked him why she received only the standard 6-percent raise, since her evaluation was excellent. Krainchich replied that he could only give her that amount until the “union thing is over,” and that her raise was that amount because of the union situation.

Angelini testified that on separate occasions, Krainchich showed her copies of Albergo’s letters of May 24 and June 26, set forth above, and asked her what she thought about them. Angelini was noncommittal.

Krainchich admitted speaking to Angelini concerning her salary review, but denied any discussion of the Union at that time. He also denied asking her what she thought of the union letters.

Employee Michael Messina testified that the IBEW was contacted because the Respondent did not seem interested in its employees. He stated that, during a conversation with Krainchich, he was interested in hearing about what occurred at Floral Park because it was similar to the current situation at News 12. A conversation then began concerning Floral Park. Krainchich told him that he would not say whether he was for or against the Union in 1984 but that certain employees were promoted after the Union was defeated. He added that, in his opinion, things would improve if the Union was defeated now.

Krainchich testified that Messina asked him about the 1984 election, and he replied that he voted, but would not reveal how he voted. Krainchich conceded saying that the Employer believed that “it would be better without the union,” but denied saying that things would be better if the employees rejected the Union.

Thomas Bowler testified that Krainchich, who was present with Bortell and Keck, told him that at the time of the 1984 election they let people know where they stood on the union issue, and that people should let it be known where they stood. Krainchich added that he could see how “we have done” since then. Krainchich denied this conversation, saying that he would not have made that last comment since he resigned from the employer in 1984. However, he conceded on cross-examination that he remained at Floral Park for 6 months after the election, and received a substantial raise before leaving.

Employee Jonathan Smilowitz became employed on June 3. He testified that in early August, Krainchich asked him how he and others felt about the Union, and also asked him whether he had any problems that he wished to discuss. Smilowitz replied that he did not know how other employees felt about the Union and had no problems.

Krainchich denied asking Smilowitz how he or others felt about the Union. He conceded asking if he had any problems since Smilowitz was a new employee, and he was concerned about his training.

I credit the testimony of Jamison and Kaufold that Krainchich showed them Fein’s letter of May 10. I have already found that that letter unlawfully threatened layoffs. Krainchich’s inquiry of them as to what they thought of the letter constitutes improper interrogation.

I also credit Angelini’s testimony concerning her raise. “An employer’s legal duty during a pending representational campaign is to proceed with the granting of benefits in the normal course of business as if the union were not on the scene.” *DTR Industries*, supra, 311 NLRB at 836. Although

Angelini may have, in fact, received the proper amount of salary increase, by telling her that her raise would be limited to 6-percent until the union matter was resolved, and that she received that amount because of the Union, Krainchich improperly informed her that Respondent was withholding a larger increase because of the Union. *299 Lincoln Street, Inc.*, 292 NLRB 172, 174 (1988).

Regarding the conversation with Messina, even accepting Messina's testimony, no violation is established. I find, as testified by Krainchich, that Messina asked him about the Floral Park election. Messina's testimony that he was eager to hear about it supports a finding that Messina inquired about it. Krainchich's factual statement that employees were promoted after the election, and his opinion that "things" would improve if the Union was defeated now, are too vague to support a finding of an improper promise of benefits. I make the same conclusion concerning Bowler's testimony.

I credit Smilowitz' testimony that Krainchich asked him how he and others felt about the Union. I have already found that Krainchich asked others similar questions, and it is likely that he asked this of Smilowitz as well. His further inquiry made at the same time, as to whether Smilowitz had any problems constituted an unlawful solicitation of grievances. *Family Foods*, 300 NLRB 649, 663 (1990).

c. *Louis Giamanco*

Giamanco is the operations coordinator for RNC, who schedules the studio crews and assists in News 12 projects.

Employee James Bono testified that in late June 1991 he was present with other B crew employees in the crew lounge when Giamanco entered and they discussed salary and pay increases. Bono did not recall who brought up the subject of raises. Giamanco told the workers that once the union issue was settled, "it looks as though" everyone will be receiving raises. Employee Michael Messina, a member of the C crew, testified that on one occasion, Giamanco "peeked" into the lounge, said that if all this union talk stops and you say no, things are going to get better, and then left.

Employee Jamison testified that during a conversation concerning the Union between him and other employees in early July 1991 employee Steve Haldky mentioned that he was told by another employee that an employer representative asked that everyone sign a petition to reject the Union. Jamison stated that Giamanco walked by at that point and told him that they better "take that offer" because "it's not going to get any better than that."

Employee Andy Herzman testified that in the summer of 1991, without any preliminary statement, Giamanco told him that Krainchich told him that when the "union thing is over" they could expect raises. Giamanco told him to keep this information confidential. Herzman stated that Giamanco knew that he was a union supporter.

Giamanco denied making the statements attributed to him by Bono and Messina. He also denied telling Jamison and others to accept the offer of petitioning to reject the Union. He knew of no offers by the Employer. Giamanco also denied telling Herzman that he could expect a raise. He knew that Herzman was a union supporter and tried to avoid conversations with him concerning the Union. He denied that Krainchich told him that when the union matter is over, employees could expect raises.

I credit the testimony of Bono, Messina, and Herzman. Respondent argues that Bono and Messina should not be credited because their versions of the same incident are different. However, although both incidents occurred in late June, it appears that Giamanco spoke to them at separate times. Thus, Bono was present with other B crewmembers when Giamanco spoke to them at length, and Messina, a C crewmember, was present when Giamanco made a comment into the room and then left. Neither testified that the other was present when Giamanco made his comments. Giamanco's comments to them are promises of benefits. I similarly find that Herzman's testimony, which I credit, is an unlawful promise of benefits. Although Giamanco testified that he avoided conversations with Herzman because he was a union supporter, he nevertheless had similar conversations with Bono, Messina, and groups of employees with them.

I cannot credit Jamison's testimony concerning Giamanco's comment regarding an alleged "offer." First, this testimony quotes remarks by employee Haldky who did not testify, that an unnamed employer representative assertedly told an unnamed employee that everyone should sign a petition to reject the Union. Giamanco was not even part of that triple hearsay conversation, yet was quoted by Jamison as saying that employees should accept that offer. This testimony is simply too unreliable to credit, nor does Giamanco's response to Haldky's comment logically follow.

d. *Glenn Fishkin*

Glenn Fishkin was the senior executive producer of News 12.

Employee Richard Shepard testified that in the summer of 1991, Fishkin asked him how he felt about what was happening with the Union. Shepard replied that he was dissatisfied with his treatment, and that there was a need for change, although he was not certain that a union was the solution. Fishkin replied that a union could not guarantee a change, and that it would be easier if management and the employees work things out without a union or third party. This conversation is alleged as an unlawful interrogation. Fishkin denied asking Shepard how he felt about the Union, testifying that he was aware that such a question would be improper.

I credit Shepard. His response to the question of Fishkin, a top official of News 12, is evidence that the question was asked. Shepard gave a noncommittal answer, which might be expected of someone in his position being asked a question by a high employer official. The question itself was an improper interrogation about Shepard's feelings concerning the union situation.

e. *Edmund Bortell*

Bortell, the operations manager for RNC, was employed by RNC at its Floral Park location. Thereafter, in April 1991, he was sent to the RNC facility in Woodbury in order to improve its technical operation.

RNC employee Frederick Helm testified that he spoke often with Bortell about the Union. On one occasion, Bortell raised the subject of unions and told him that "the same thing" happened in Floral Park, and when the union lost the

election, all the employees received a “substantial” raise.⁶ This is alleged as an unlawful promise of a wage increase if the employees rejected the IBEW. In fact, Bortell had voted in that 1984 election, and testified that he received a “substantial” raise. On another occasion, Helm complained to Bortell that his 12-percent raise was not sufficient. Bortell replied that as he made more money, the percentage increase would serve to increase his salary at a greater rate. Bortell also told him that if a union was elected, the wage raises would be negotiated “as a group,” and would not be based on the individual merit of the employee.

Helm further testified that on another occasion, employee Lisa Angelini complained that Respondent required her to obtain replacement workers so that her job would be covered during her wedding and honeymoon. In a voice loud enough for Bortell to hear, Angelini added that if Respondent was a union company, this issue would have been handled better. Bortell then whispered to Helm that Charles Dolan would never let a union into News 12, and that Dolan would close it before letting a union in. This is alleged as an unlawful threat of plant closure.

Bortell denied initiating a conversation with anyone concerning the union election in Floral Park. He specifically denied telling anyone that Dolan would shut the operation if the Union was elected. He explained that he did not know Dolan, and did not know what he would do if a union was elected. He also denied telling anyone that wages would be negotiated in a group, rather than individually if the Union was elected. He stated that he did not know how a union negotiates a contract.

Employee Michael Jamison testified that Bortell approached him as he was working and asked him why he was “bucking the system?” Jamison asked for an explanation and Bortell replied that if a union was elected, such things as salaries would not change, and there would be no difference in the operation with or without a union, adding that perhaps Jamison would be better off without a union. Jamison then cursed at Bortell and told him to mind his own business. This is alleged as an unlawful statement that it would be futile for the employees to select the IBEW as their representative.

Bortell denied speaking about the Union with Jamison, but conceded that when he suggested a technical improvement, Jamison told him to mind his own business, and was abusive to Bortell.

I credit Jamison. It would be highly unusual for an employee to tell his supervisor not to bother him when the supervisor recommended a work-related change. I accordingly find that Bortell violated the Act as alleged.

Employee Lisa Angelini testified that she spoke with Bortell about the Union on about four occasions. Angelini was not specific, stating that Bortell mentioned negative features about the Union, and spoke positively about Respondent. Angelini told him that she was not interested in speaking about the Union. On another occasion, Bortell brought up the topic of the Union, saying that a similar event occurred in Floral Park, and when the employees voted against the Union, they all received large raises. She stated that in June,

Bortell told her that if the Union was selected, there would be many changes, but that would not occur since Dolan would shut the Company before the Union came in. Finally, Bortell told her in late July 1991, just prior to her leaving for a honeymoon, that if the Union came in many things would change, and her job would be “greatly affected.” He then told her to think about it, and to let her coworkers know that the Union is not good.

These statements are alleged as unlawful statements that it would be futile for employees to select the IBEW as their representative; unlawful threats of plant closure; and the imposition of more onerous working conditions.

Bortell testified that Angelini asked him what had happened in the Floral Park union election, and that he told her that after the union vote, he received a raise 6 months later, adding that the current situation is a different place, company and operation with different financial problems, and that the two union incidents could not be compared. He denied telling Angelini that unions were not good, or asking her to tell other employees that. He denied the statements attributed to him prior to her leaving for her honeymoon. He explained that she would be away for 2 weeks, and he therefore had no reason to believe that there would be a vote, and that the Union would win and make changes in that period of time.

It should be noted that Bortell’s pretrial affidavit stated that he never spoke to Angelini about any aspect of the union campaign. In contrast, he testified that Angelini raised the question of what had happened in the 1984 election.

Employee Thomas Bowler testified that in early July 1991 Bortell told him that he had to let people know where he stood because things “are going to start happening around here.”

Employee Jonathan Smilowitz testified that Bortell initiated two conversations in July and August 1991 during which Bortell asked him how other employees felt about the Union. Smilowitz replied that he had no information about that. It should be noted that Smilowitz had three other conversations with Bortell which Smilowitz initiated, in which he asked Bortell how the Employer handled the union campaign in Floral Park, and how much time the election process consumed. Smilowitz also asked him how the union campaign was progressing at News 12.

Bortell testified that at the time of the 1984 election, he let his views be known to the other voters. He stated that he was fearful that if the Union won that election, the Floral Park facility would be closed. Bortell’s pretrial affidavit stated that he did not believe that he had any specific conversation with any employees in 1991 about the possibility of News 12 closing if the Union was selected, but that it was possible that he told employees, in response to a question about News 12 closing, that that was a fear he had at the time of the 1984 election. It should be noted that he testified that since signing the affidavit, he now believed that he definitely did not tell employees in 1991 that he harbored that fear in 1984.

Bortell denied telling employees that Dolan would shut News 12 if the Union was selected, and also denied asking employees how they felt about the Union or how others felt about the Union.

Respondent asserts that Helm and Angelini should not be credited because they gave contradictory accounts of Bortell’s alleged remarks concerning Dolan’s alleged plan to

⁶Respondent attacks Helm’s credibility on the ground that this incident was not contained in his pretrial affidavit. I reject this argument. Helm testified in a wholly credible manner.

close News 12. Respondent argues that neither testimony is reliable because Angelini testified that no one was present when Helm told her about Dolan's intentions, but Helm testified that Angelini was present.

I credit the testimony of Helm and Angelini that Bortell told them that when the Union lost the 1984 election, all the employees received large raises. Their testimony is mutually corroborative, and Bortell admittedly spoke to them about that election.

However, I cannot credit their testimony concerning Bortell's alleged statement concerning Dolan's intention to close News 12. Angelini's testimony is troubling especially since she testified that she was reluctant to speak about the Union around supervisors because she was afraid for her job, yet Helm testified that she announced, with Bortell nearby, that if Respondent were unionized, replacements would be arranged in a more organized manner. I also find it strange that Bortell would whisper the same threat to Helm concerning Dolan, which only Helm could hear although Angelini was present, that Bortell allegedly made openly to Angelini the month before. I therefore credit neither Angelini nor Helm concerning Bortell's alleged threat that Dolan would close News 12.

However, I find that Bortell attempted to persuade Angelini and Helm not to support the Union. I accordingly find that he told Helm and Angelini that after the Union's loss in 1984, large raises were granted, in order to induce them to vote against it in the upcoming election. These promises of benefits interfered with the employees' Section 7 rights. In this connection, I find that Bortell threatened Angelini that her job would be greatly affected if the Union was selected by the employees. He thus sought to dissuade her from supporting the Union.

I further find that Bortell's questions of Smilowitz as to how other employees felt about the Union were unlawful interrogations. Although Smilowitz had initiated other conversations about the Union, these questions were parts of conversations that Bortell initiated. As such, they sought information concerning the union sympathies of Smilowitz' co-workers, and constituted improper interrogations.

f. *Mark Ambrico*

Ambrico is the operations manager for RNC.

Employee Smilowitz testified that he initiated most of his four to five conversations with Ambrico, in which he attempted to learn how management was dealing with the union situation. Ambrico replied that he did not know the answers to those questions.

Smilowitz also testified that in late July or early August 1991, Ambrico initiated one or two conversations, in which he asked Smilowitz whether the employees believed that there were any problems. Smilowitz replied that he did not know of any. About 1 week later, Ambrico asked him how he felt about the Union. Smilowitz replied that he did not know much about it, and that he was not really for or against it.

Ambrico denied asking Smilowitz how he felt about the Union, adding that he knew that to do so would constitute an illegal interrogation. I credit Smilowitz' testimony that Ambrico asked him how he felt about the Union. Although Ambrico had no information to give Smilowitz about the Union, he sought to learn how Smilowitz felt about the

Union. Smilowitz' answer was noncommittal, which is consistent with his other testimony that Smilowitz sought to learn what management was doing about the union situation. I accordingly find that Ambrico's question of Smilowitz violated Section 8(a)(1) of the Act.

C. *The Alleged Unlawful Layoffs*

There were three groups of layoffs of employees. On August 9, 18 employees were laid off, including 8 RNC employees. On August 23, six employees, all of whom were RNC employees, and one manager were laid off. One employee each was laid off on September 13 and 20, and on November 13, 12 employees were laid off.

The complaint alleges that the employees were laid off because of their activities in behalf of, or support for the IBEW, AFTRA, and CWA, and to discourage employees from engaging in such activities.

Respondent denies that the layoffs were motivated by union considerations, and asserts that they were effected for economic reasons.

1. The General Counsel's prima facie case

Section 8(a)(3) of the Act prohibits an employer from discriminating against employees, by laying them off, in order to discourage membership in a labor organization.

The General Counsel has the initial burden to prove that union or other activity protected by the Act was a motivating factor in an Employer's decision to lay off employees. If the General Counsel meets this burden and thereby makes out a prima facie case, the Employer then has the burden to show that it would have taken the same action—layoffs of employees—even in the absence of their protected activity. *Wright Line*, 251 NLRB 1083 (1980).

The threshold issue is thus the motivation for the layoffs. If it is found that the Employer was motivated because of its opposition to the Union, the General Counsel will have established a prima facie case of discrimination.

Respondent argues that, as to certain of the laid-off employees, there has been no evidence that they actually engaged in activities in behalf of any union, and that accordingly, it cannot be found to have violated the Act with respect to those employees. The General Counsel responds that a finding of violation may be made even as to those who have not engaged in union activity, based upon a "mass lay-off" theory, pursuant to which all employees are discriminated against as punishment for the union activities of a few or to discourage further union activity.

The unlawful motivation required to find a violation may be shown not only against individual employees in retaliation for their union activities, "but also where the employer takes adverse action against a group of employees, regardless of their individual sentiments toward union representation, to punish the employees as a group 'to discourage union activity or in retaliation for the protected activity of some.'" *Mini-Togs, Inc.*, 304 NLRB 664, 648 (1991); *Davis Supermarkets*, 306 NLRB 426 (1992). The issue in these cases is the "employer's motive in ordering the [layoffs] rather than . . . the anti-union or pro-union status of particular employees." *Birch Run Welding & Fabricating v. NLRB*, 761 F.2d 1175, 1180 (6th Cir. 1985). "The General Counsel's burden was to establish that the mass discharge was ordered to dis-

courage union activity or in retaliation for the protected activity of some.” *ACTIV*, supra.

Here, the elements required for a prima facie finding of unlawful motivation in the layoffs are present. Respondent possessed knowledge, as of May 2, of the union organizational campaign of the IBEW. I also find that Respondent possessed animus toward that effort, as demonstrated by the violations of Section 8(a)(1) I have found above, which were committed by it during its determined effort to defeat the employees’ organizational efforts.

As direct evidence of the motivation for the layoffs, the General Counsel argues that the conversation between Respondent’s assignment manager, Hardie Mintzer, Albergo, and Counsel Englander confirm that a plan was made to lay off employees to thwart Respondent’s unionization.

Mintzer testified that following the close of the representation hearing in June 1991, at a conversation attended by himself, Albergo, and Attorney Englander, Englander asked whether anyone had any ideas as to what might be done to “send a message home” to those employees who are organizing, or attempting to organize the Union.⁷ Mintzer then suggested a “severe” message, such as the possibility of layoffs or closing News 12. Mintzer further told the others that Dolan would turn News 12 into a “parking lot” before it would be unionized. According to Mintzer, Englander agreed.

Albergo denied attending a meeting with Mintzer and Englander at which layoffs were discussed. Englander did not testify. I credit Mintzer. Respondent argues that Mintzer was biased because he was laid off by it. However, I do not believe that he would seek to damage his reputation in the industry by testifying falsely against a company official and its attorney. As noted, this conversation was uncontroverted by Englander.

As further evidence of the motive for the layoffs, the General Counsel relies on a memo from Burton to Patrick, outlining a move of the master control facility with its RNC employees from Woodbury to Floral Park, involving the layoff of certain RNC employees. Burton noted that supervisory and existing staff would perform the master control work on its transfer, with no charge for the supervisory services. However, the memo added that, in the long run, other employees from another company may be used, in which case “a fair charge may undermine economic justification” and “union may claim no jobs were eliminated.” Burton also added that by using supervisors, News 12 would be saving money, but such a procedure would be difficult to maintain, and a result might be “risk of union moving to RNC.”

The General Counsel further alleges that the layoffs which began in August were the fulfillment of the unlawful threats to lay off employees made to employees during the course of the union campaign begun in April.

Based on my findings of violations of Section 8(a)(1) of the Act including interrogations, promises of benefits, threats, and solicitation of grievances, I find that the General Counsel has established a prima facie case that the employees’ union organizing activity was a motivating factor in the Respondent’s decision to lay them off. *Wright Line*, supra.

⁷In the representation hearing, the parties stipulated that Mintzer was a statutory supervisor.

Under *Wright Line*, the burden then shifts to the Respondent to demonstrate that the same action would have taken place even in the absence of the employees’ protected conduct.

2. The economic justification

News 12 is funded by a partnership consisting of Rainbow and NBC, pursuant to which each contributes 50 percent and they share 50 percent of the profits and losses.

The partnership, which began in 1988, contemplated losses in its early years, but by 1992, a profit was projected, based on increasing gross revenues. Thus, in 1988, a 5-year plan showed that a nearly \$5 million loss was experienced from operations in 1988, with projections for a loss of nearly \$4 million in 1989; \$2 million in 1990; \$468,000 in 1991, with gross revenues of \$12,557,000 that year, and gross expenses of \$15 million; a profit of over \$1 million projected for 1992; and a profit of nearly \$4 million projected for 1993. NBC agreed to these projections and entered into the partnership based on these figures.

In 1990, the projected budget for 1991 shows a loss of \$737,000, based on revenues of nearly \$11 million. The expected revenue loss of \$1.5 million for 1991, from what was projected for that year in 1988 was due to an anticipated loss of advertising revenues. However, 1991 expenses were set forth as \$11.5 million, down from \$15 million, which was forecast for 1991 in the 1988 budget.

A later, revised 5-year plan, prepared in early 1991 projects a deficit for 1991 of \$738,000, compared to the earlier 5-year plan’s deficit of \$468,000. In addition, the new 5-year plan projected lower gross revenues for 1991 through 1993 than the earlier 5-year plan.

As a reaction to the declining revenues, Rainbow President Patrick sought ways to reduce expenses, and a document was prepared in mid-March, setting forth possible areas of non-personnel reductions of expenses, such as not covering certain news events, which would result in a projected savings of \$105,000. This was updated 1 week later with a forecast of savings of \$187,000.

On March 27, NBC agreed to fund the partnership, but retained its right to approve or disapprove the upcoming budget.

A budget review meeting between NBC and Rainbow was scheduled for April 19, and in preparation for that meeting, NBC’s financial analyst asked the following questions: “In light of continued ad sales softness, expected profit levels from prior plans are significantly downgraded. What is service doing to address revenue shortfalls? Key areas of expense (news production, administration) continue to grow substantially. This needs to be addressed—and in particular how WNBC and News 12 can be better integrated in terms of cost control and revenue opportunities.”

On April 26, a reforecast in the first quarter of 1991 shows a net operating loss for the year of \$1,342,000, and on April 30, a document showing potential savings of \$358,210 was prepared. These savings included nonpersonnel cuts as well as the release of one part-time employee, a proposal that a vacant executive producer’s position not be filled, and a reduction from 7 percent to 6 percent in the amount of annual increases to be given to “studio manpower.”

The General Counsel correctly argues that at this point, although numerous nonpersonnel reductions were "projected" which would result in "potential" savings if implemented, there was no evidence that the actual cuts were, in fact, made. Moreover, the executive producer's position appears to have been filled by Janet Alshouse who was transferred into News 12 from another Cablevision entity in March or April, as the acting executive producer, and promoted to executive producer in June 1991.

The General Counsel further argues that, although a \$2 million loss was projected for 1990, no action was taken to reduce expenditures at that time. However, the partners apparently anticipated that loss in establishing the partnership, as set forth in their 5-year budget, and as noted above, the losses were expected to diminish in following years, with anticipated increases in revenues.

As set forth above, on May 2, the IBEW filed its petition.

On May 9, a document setting forth reforecasted expenditures was prepared, which estimated that 1991 revenue would be \$830,000 less than forecasted 3 months earlier. Certain reductions in expenses were proposed, which included freezing the open executive producer position, which if implemented, would have failed to bring the expected loss to the amount budgeted, by nearly \$142,000.

In mid-June, a second quarter forecast showed that the annual revenue shortfall was expected to increase to \$1,105,000. It was also estimated that the 1991 operating deficit would be \$1 million, instead of the \$468,000 originally forecast in the 5-year budget prepared in 1988, and the updated \$737,000 forecast in late 1990.

At about that time, a meeting was held with NBC representatives, at which NBC inquired whether News 12 could reduce expenditures by \$500,000, and asked how News 12 could be returned to the break-even point as forecast in the 5-year budget, suggesting that NBC would consider withdrawing from the partnership if these things were not done. NBC also mentioned that it could not justify to its parent General Electric the deep cuts that were taken at NBC News, without similar reductions at News 12.

Rainbow President Patrick testified that, at that time, the advertising market was unexpectedly weak, and as a result, advertising revenues were severely reduced. She noted that even if \$500,000 was eliminated from News 12's expenses, it still would not have reached the \$468,000 operating loss forecast in 1988 for the 1991 year.

In financial forecasting done monthly in 1991, losses for the year were predicted at nearly \$1,400,000 through June, and were revised upward in July at \$1,619,000, and in September, at \$2,055,000 for the year. In fact, the actual operating loss for the year was \$1,889,000.

In June, when the predicted loss for the year was \$1,392,000, President Patrick decided to downsize News 12. She visited television stations in Denver, Miami, and San Diego in order to learn how they were operating. She found that the San Diego station, although not a 24-hour-per-day station as News 12, was a comparable facility, which produced twice the revenues with less employees than News 12.

Patrick returned from the trip with the conviction that inasmuch as all nonpersonnel cuts had been made, personnel reductions were required. As to this, the General Counsel argues that no actual nonpersonnel cuts had been made, only possible cuts which could be made. However, those projec-

tions of expense cuts were built into the figures which nevertheless indicated the extraordinary operating losses for the coming months.

In July and August, reports were made to Patrick by her subordinates which contained recommendations for across the board layoffs of staff members and management personnel. The first was in August, precipitated by the July forecast of a loss of \$1,619,000 for the year; the second layoff was in September, also precipitated by an August forecasted loss of \$1,619,000; and the third layoff was in November, precipitated by an October forecast of a loss of \$1,887,000. At the time of the layoffs, about 150 employees were employed by News 12. Thirty-eight employees were laid off in the three layoff actions.

The evidence, set forth above, would appear to establish that News 12 was justified in its decision to lay off employees in order to reduce its expenses, in view of the extraordinary operating losses projected, which in fact occurred.

3. The validity of Respondent's economic defense

The General Counsel argues that Respondent's defense is undermined in view of the following: NBC complained that News 12's administration expense was growing rapidly, but nevertheless Albergo and her secretary were hired at a total cost, including benefits, of about \$110,000; notwithstanding its claims of increased operating losses, and a decision to lay off employees in June, News 12 purchased furniture for a waiting room with a budget of about \$6000, and installed a paging system; and in October, installed two-way radios in News 12 vehicles.

I find that the above additional expenses do not detract from Respondent's defense. Albergo was hired because of Patrick's increasing lack of confidence in News Director Fein, and because of her commitment to pursue the initiatives begun before the filing of the Union's petition, and to pursue cost-savings measures; the furniture was in a bad state of repair and was located in a waiting room for guests who were to appear on News 12's programs; the radios resulted in lesser costs than were experienced when cellular phones were used to communicate. The costs for these items were relatively small.

The General Counsel further asserts that annual review wage raises, in amounts which sometimes surpassed previous increases, were given during the time that Respondent was experiencing its financial difficulties. Thus, on into March 1991, Aline Lefebvre was given a 10-percent increase, whereas she received 7 percent at the last review; in June 1991, Fred Helm received a 12-percent raise compared to a 6.14-percent raise the year before. This large increase was explained by noting that Helm, a superior employee, on being given this raise, was brought to the "low end" of the salaries of his coworkers; in June 1991, Vincent Scaffidi was given a raise of 8 percent compared with 7.5 percent the previous year; in July 1991, Kenneth Dickman was given an 8-percent raise compared with a 6.9-percent increase the prior year; and in July 1991, Patricia McCloughan was given an 8-percent raise compared with a 7.9-percent increase the prior year. As to these raises, I do not believe that they represent an extraordinary increase over the prior year's raises, and specifically with respect to Helm, his nearly 100-percent raise was adequately explained by Respondent.

In contrast, and in support of Respondent's theory, other employees, including Ellen Davis, Anthony Mazza, Bruce Fauser, Lincoln Wiese, Kevin Benjamin, Susan Vernon-Vitale, Paul Barr, Michelle Birnbaum, and Thomas Cassidy received smaller increases in the period March through August 1991, than they had the prior year.

There were some new hires in the period January through July 1991, but as to at least nine of those, they had either been temporary or part-time employees employed in the positions cited by the General Counsel as new hires.

In a memo dated July 24, Albergo outlined savings from the elimination of positions. She noted that there would be an annual savings of nearly \$148,000 not including benefits or overtime from the elimination of eight RNC employees, among whom were the most outspoken IBEW supporters: Bono, Herzman, Kaufold, Rizza, Messina, and Busby. However, she further noted that those savings would be reduced by the need to replace those employees with on call temporary workers, in the sum of \$50,000. Official Keck testified that such temporary workers were not in fact used because he developed a plan whereby positions would be consolidated so that fewer employees could perform additional tasks.

There was no evidence as to when that consolidation plan was devised. However, it should be noted that 2 weeks later, when the employees were notified of their terminations, both Bono and Rizza asked about the possibility of working part time, and Burton rejected their offers. Nevertheless, it appears that in certain cases, full-time employees were replaced by temporary workers. Thus, the savings in such layoffs was less than if no temporaries had been hired. For example, the shifts of laid-off reporter Burl Britt were not abolished, but were performed by temporary reporters. However, the replacement of the full-time employees by temporary workers nevertheless resulted in a savings to Respondent in full-time positions which did not need to be filled, and in benefits saved.

It should also be noted that, in addition to unit employees who were laid off, management personnel were also terminated. Thus, Executive Producer Fishkin was laid off, as was Assignment Manager Mintzer. In addition, employees not in the unit sought by the IBEW were laid off, including producers, production assistants, reporters, and writers.

On October 16, Patrick sent a memo to employees announcing a 5-percent annual review raise. She explained that the increase would be implemented notwithstanding the Company's operating losses in order to maintain competitive salaries, and as a reward for fine performance. Respondent had a practice of granting annual review raises in varying amounts. The General Counsel alleges that if Respondent was in such dire financial straits, it should not have made this wage increase. However, employees at News 12 had historically complained of low wages, and Respondent acted properly in consistently retaining its annual review raise. It should be noted that the 5-percent increase was smaller than had been given in prior years, and had Respondent not continued its policy of annual raises, its failure to do so may have been the subject of an unfair labor practice charge.

Conclusions as to the Reasons for the Layoffs

The question to be determined is whether Respondent has met its burden of proving that it would have taken the same

action, laying off the employees, even in the absence of their union activities. I believe that it has.

Respondent's finances were subject to ongoing and stringent review and limitations by its partner, NBC. Their relationship was driven by continuous financial analysis of News 12's operations. Prior to the filing of the petition, additional money was required by NBC in order to operate News 12. NBC questioned its ability to continue to fund an unprofitable operation. Subsequently, and still prior to the filing of the petition, with revenues continuing to fall, Patrick authorized the reduction of nonpersonnel expenses, and a reduction in the amount of annual salary review increases.

Following the filing of the petition, revenues continued to fall dramatically, and at the time that layoffs were first considered, in June, Respondent had received a May forecast of an annual loss of \$1,342,000, nearly double that which had been forecast in 1990. The layoff was not a massacre done immediately on the filing of the petition. Patrick carefully assessed the Company's financial situation in view of NBC's continued inquiries concerning News 12's expenses, and then undertook visits to several stations across the country in order to determine whether News 12 was overstaffed for its size. Based on her visits, she determined that News 12 had to downsize in order to maintain its financial viability. The facts that the decision to lay off employees took place 1-1/2 months after the petition was filed lends credence to a finding that they were not made precipitously in reaction to the union campaign. Rather, it appears that the triggering events were NBC's repeated concern with the increasing losses experienced by News 12, and the newly received forecasts of further massive losses.

In addition, the layoffs of Management Personnel Fishkin and Mintzer, and the layoffs of nonunit employees along with the layoffs of unit employees adds believability to Respondent's claims that it would have effected the layoffs of the 38 employees even in the absence of their union activities.

I accordingly find and conclude that Respondent has met its burden under *Wright Line*, and that the layoffs did not violate Section 8(a)(3) and (1) as alleged.

CONCLUSIONS OF LAW

1. The Respondent, Rainbow News 12, Rainbow Network Communications, Inc., subsidiaries of Rainbow Programming Holdings Corp., Rainbow Programming Holdings Corp, and Cablevision Systems Corp., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and is a single-integrated business enterprise and a single employer.

2. Radio and Television Broadcast Engineers Union Local 1212, International Brotherhood of Electrical Workers, AFL-CIO (IBEW), American Federation of Radio and Television Artists, AFL-CIO and the Communications Workers of America, AFL-CIO are labor organizations within the meaning of Section 2(5) of the Act.

3. By threatening to lay off its employees because of their activities in behalf of, or interest in the IBEW, Respondent violated Section 8(a)(1) of the Act.

4. By interrogating employees concerning their membership in the IBEW and their union activities and sympathies, and about the union membership, activities, and sympathies

of other employees, Respondent violated Section 8(a)(1) of the Act.

5. By promising its employees a wage increase and other benefits if the employees rejected the IBEW as their bargaining representative, Respondent violated Section 8(a)(1) of the Act.

6. By disparately enforcing and applying a rule prohibiting the placement of union literature in employee mailboxes, while permitting the placement of nonunion literature, Respondent violated Section 8(a)(1) of the Act.

7. By soliciting employee complaints and grievances and, by doing so, impliedly promising its employees that it would resolve their complaints and grievances to the employees' satisfaction, Respondent violated Section 8(a)(1) of the Act.

8. By telling employees that it was withholding a larger wage increase because of the IBEW, Respondent violated Section 8(a)(1) of the Act.

9. By informing employees that it would be futile for them to select the IBEW as their bargaining representative, Respondent violated Section 8(a)(1) of the Act.

10. By threatening employees with the imposition of more onerous working conditions if they selected the IBEW as their bargaining representative, Respondent violated Section 8(a)(1) of the Act.

11. By threatening to close the facility if the employees selected the IBEW as their representative, Respondent violated Section 8(a)(1) of the Act.

12. Respondent did not engage in unfair labor practices, as alleged in the complaint, by laying off employees, and by other alleged unfair labor practices, not found here.

13. The unfair labor practices found above constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in unlawful conduct under the Act, I will recommend that it cease and desist from engaging in such conduct in the future and affirmatively take such action as will dissipate the effects of its unfair labor practices.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁸

ORDER

The Respondent, Rainbow News 12 and Rainbow Network Communications, Inc., subsidiaries of Rainbow Programming Holdings Corp., Rainbow Programming Holdings Corp., and Cablevision Systems Corp., Woodbury, New York, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening to lay off its employees because of their activities in behalf of, or interest in, the IBEW.

(b) Interrogating employees concerning their membership in, and activities in behalf of, and sympathies for the IBEW, and about the union membership, activities, and sympathies of other employees.

⁸If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(c) Promising its employees a wage increase and other benefits if the employees rejected the IBEW as their bargaining representative.

(d) Disparately enforcing and applying a rule prohibiting the placement of union literature in employee mailboxes, while permitting the placement of nonunion literature.

(e) Soliciting employee complaints and grievances and, by doing so, impliedly promising its employees that it would resolve their complaints and grievances to the employees' satisfaction.

(f) Telling employees that it was withholding a larger wage increase because of the IBEW.

(g) Informing employees that it would be futile for them to select the IBEW as their bargaining representative.

(h) Threatening the imposition of more onerous working conditions if employees selected the IBEW as their bargaining representative.

(i) Threatening to close the facility if the employees selected the IBEW as their representative.

(j) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

(a) Post at its facilities in Woodbury, New York, copies of the attached notice marked "Appendix."⁹ 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 and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

⁹If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

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

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten to lay off our employees because of their activities in behalf of, or interest in, the IBEW.

WE WILL NOT interrogate our employees concerning their membership in, and activities in behalf of, and sympathies for the IBEW, or about the union membership, activities, and sympathies of other employees.

WE WILL NOT promise our employees a wage increase and other benefits if the employees reject the IBEW as their bargaining representative.

WE WILL NOT disparately enforce and apply a rule prohibiting the placement of union literature in employee mailboxes, while permitting the placement of nonunion literature.

WE WILL NOT solicit employee complaints and grievances and, by doing so, impliedly promise our employees that we would resolve their complaints and grievances to the employees' satisfaction.

WE WILL NOT tell our employees that we are withholding a larger wage increase because of the IBEW.

WE WILL NOT inform our employees that it would be futile for them to select the IBEW as their bargaining representative.

WE WILL NOT threaten our employees with the imposition of more onerous working conditions if they selected the IBEW as their bargaining representative.

WE WILL NOT threaten to close the facility if the employees selected the IBEW as their representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

RAINBOW NEWS 12 AND RAINBOW NETWORK
COMMUNICATIONS, INC., SUBSIDIARIES OF
RAINBOW PROGRAMMING HOLDINGS CORP.,
RAINBOW PROGRAMMING HOLDINGS CORP.,
AND CABLEVISION SYSTEMS CORP.