

Fisher Broadcasting, Inc. d/b/a Radio Station KOMO-AM and American Federation of Television and Radio Artists, Seattle Local, AFL-CIO. Case 19-CA-24199

August 13, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

The issue presented in this case¹ is whether the judge correctly found that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to recognize and bargain with the Union because of the alleged integration of the collective-bargaining unit employees with the employees of two other radio stations recently purchased by the Respondent.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs² and has decided to affirm the judge's rulings, findings,³ and conclusions⁴ and to adopt the recommended Order as modified.⁵

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent Fisher Broadcasting, Inc. d/b/a Radio Station KOMO-AM, Seattle, Washington, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

Substitute the following for paragraph 2(b).

“(b) Within 14 days after service by the Region, post at its facility in Seattle, Washington, copies of the attached notice marked “Appendix.”²⁰ Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's au-

¹ On March 27, 1997, Administrative Law Judge Burton Litvack issued the attached decision. The Respondent filed exceptions and a supporting brief. The Charging Party filed an answering brief.

² We deny the Charging Party's motion, contained in its answering brief, to strike the Respondent's exceptions.

³ The Respondent argues that the judge erroneously relied on the lack of interchange between KOMO Radio's on-air unit employees and those of stations KVI-AM and KPLZ-FM when concluding that the separate KOMO unit remained appropriate. The Respondent contends that this lack of interchange resulted from its desire to avoid Union unfair labor practice charges, and should not be used as a factor against it. In rejecting this argument, Chairman Gould and Member Higgins note that the Respondent was not without lawful recourse. In their view, the Respondent could have made such assignments after bargaining to agreement or to a good-faith impasse in negotiations for a successor agreement. Having not pursued this course, the Respondent cannot now validly argue that the lack of interchange is irrelevant because it had no choice.

⁴ No exceptions were filed as to the judge's dismissal of the complaint allegation concerning the discharge of employee David Young.

⁵ We shall modify the recommended Order to correct the date in the contingent notice mailing provision.

thorized representative, shall be posted by the Respondent and maintained by it 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 26, 1995.”

Daniel R. Sanders, Esq., for the General Counsel.

George T. Hunter, Esq. (Graham & Dunn), of Seattle, Washington, for the Respondent.

Harold H. Green, Esq. (MacDonald, Hoague & Bayless), of Seattle, Washington, for the Charging Party.

DECISION

STATEMENT OF THE CASE

BURTON LITVACK, Administrative Law Judge. Based upon the above-captioned unfair labor practice charge, filed by American Federation of Television and Radio Artists, Seattle Local, AFL-CIO (AFTRA), on October 26, 1995, the Regional Director for Region 19 of the National Labor Relations Board (the Board), on May 6, 1996, issued a complaint, alleging that Fisher Broadcasting, Inc. d/b/a Radio Station KOMO-AM (the Respondent), engaged in acts and conduct violative of Section 8(a)(1), (3), and (5) of the National Labor Relations Act (the Act). Respondent timely filed an answer, denying the commission of the alleged unfair labor practices. Pursuant to a notice of hearing, which accompanied the above complaint, the above-captioned matter came to trial before me on October 3 and 4 and December 2 and 3, 1996, in Seattle, Washington. At the hearing, all parties were afforded the opportunity to offer into the record all relevant evidence, examine and cross-examine all witnesses, argue their legal positions orally, and to file posthearing briefs. The latter documents were filed by counsel for Respondent and by counsel for AFTRA and have been carefully considered. Accordingly, based on the entire record, including the oral arguments and the posthearing briefs and my observation of the testimonial demeanor of the several witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is a State of Washington corporation, with an office and place of business located in Seattle, Washington, where it is engaged in the operation of a radio broadcasting station. During the 12-month period preceding the issuance of the instant complaint, which period is representative, in the normal course and conduct of its business operations, Respondent had gross sales of goods and services, valued in excess of \$100,000, and purchased and received goods and materials, valued in excess of \$50,000, directly from suppliers

outside the State of Washington or from suppliers located within the State of Washington which, in turn, received said goods and materials directly from sources located outside the State. Respondent admits that it has been, at all material times, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

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

III. THE ISSUES

The complaint alleges that Respondent engaged in conduct, violative of Section 8(a)(1) and (3) of the Act, by terminating its employee, David Young, on April 30, 1995, because Young supported AFTRA and engaged in protected concerted activities. The complaint further alleges that Respondent engaged in conduct, violative of Section 8(a)(1) and (5) of the Act, by, since on or about August 23, 1995, failing and refusing to recognize and bargain with AFTRA as the exclusive collective-bargaining representative of certain of its employees. Respondent denies the commission of the alleged unfair labor practices, asserting that Young was terminated for business reasons and that, while conceding that it has, in fact, failed and refused to engage in collective bargaining with AFTRA, the latter no longer represents an appropriate unit of its employees.

IV. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

1. The alleged unlawful refusal to bargain

The record establishes that Fisher Broadcasting, Inc. (Fisher Broadcasting), a State of Washington corporation, owns and operates radio and television stations in the states of Oregon, Washington, and Montana; that Fisher Broadcasting has owned and operated Respondent, a radio station located in Seattle, Washington, since 1926; that, since 1946, Respondent has recognized AFTRA as the exclusive representative for purposes of collective bargaining of a bargaining unit consisting of the former's staff and freelance actors, singers, and announcers, including combination announcers, with such recognition embodied in successive collective-bargaining agreements, the most recent of which having expired, by its terms, on December 1, 1994; and that, until approximately mid-July 1995, Respondent and KOMO-TV, a Seattle television station also owned and operated by Fisher Broadcasting, shared space in a building, located at Fourth and Denny Sts. in Seattle. The record further establishes that, for several months prior to May 1994, Fisher Broadcasting had been negotiating with Golden West Broadcasting for the purchase of the latter's Seattle radio stations, KVI-AM and KPLZ-FM, neither of whose on-air personnel were represented by AFTRA;¹ that, during this time period, Respondent was a

"full service" radio station with music, news, and other information,² KVI-AM had, and continues to have, a conservative "hot talk" format, and KPLZ-FM had, and continues to have, an adult contemporary music of the 1980's and 1990's format; that KVI-AM and KPLZ-FM shared a broadcast facility quartered in half of the second floor of the Tower Building, a "multi-use" office building located at Seventh and Olive Sts. in Seattle;³ that KOMO-AM had, and continues to have, approximately 10 to 15 on-air employees and KVI-AM and KPLZ-FM had, and continue to have, 20 to 25 on-air employees working for them; and that, in May 1994, after the Federal Communications Commission (FCC) approved the transfer of the respective broadcast licenses of KVI-AM and KPLZ-FM and after the transfer of the assets of the two radio stations, Fisher Broadcasting's acquisition of the two radio stations was complete. In connection with its acquisitions, while, from the outset, Fisher Broadcasting signified its intent to combine the operations of the three radio stations, a maneuver which "would create significant economies for the operation of three stations," in its applications for the license transfers to the FCC, Fisher Broadcasting viewed the acquisitions "as an opportunity to maintain three distinct voices, each reaching a distinct demographic group, and not as a consolidation which will force each station into a single editorial mold."

In a letter dated September 27, 1994, John Loihl, Respondent's labor relations consultant, wrote to Anthony Hazapis, who was the executive director of the Seattle local of AFTRA, informing the latter that Respondent desired to terminate the parties' existing collective-bargaining agreement and to commence bargaining on a successor agreement, "which addresses all of our mutual concerns." The record reveals that the contract termination letter was received by AFTRA in the midst of a labor dispute between the parties concerning Respondent's use of bargaining unit personnel to produce broadcast material for use on KVI-AM and AFTRA's contention that the foregoing "cross-utilization of staff" constituted a violation of the existing collective-bargaining agreement. A week later, in a letter dated October 3, Hazapis informed Loihl that, in order for negotiations, between the parties, to succeed, Respondent must cease and desist from cross-utilizing bargaining unit personnel between itself and the two newly acquired radio stations and provide information to AFTRA regarding future operating plans for the three radio stations. Three weeks later, on October 24, Loihl wrote to Hazapis that Respondent's goal was "to consolidate the operations of [KVI and KPLZ] with KOMO-AM in a manner that allows Fisher to produce the highest quality programming as efficiently as possible" and that, consequently, Fisher Broadcasting "has consolidated, or is . . . consolidating, personnel, labor relations, sales and sales management, traffic, production, and other operations" for the

Apparently, at one time, AFTRA was recognized as the bargaining representative for the on-air employees of both KVI-AM and KPLZ-FM; however, the record is silent as to the dates of this recognition.

² There is no dispute that, during 1995, Respondent began evolving toward a more news/talk format.

³ Scott testified that the two radio stations were run by Golden West Broadcasting "as a consolidated operation" with both stations sharing the facility, including the broadcast studios and production areas, and having combined sales, traffic, and support functions. One general manager oversaw the operations of both stations.

¹ According to Patrick M. Scott, the president and chief executive officer of Fisher Broadcasting, the purchase was necessary as Respondent, "as a stand-alone AM station" was "hemorrhaging" money and as it was difficult to compete against companies with combined AM and FM resources.

three radio stations. Loihl then addressed AFTRA's other concern, stating that, in order to maintain the parties working relationship, Fisher Broadcasting would "temporarily discontinue the cross-utilization of on-air personnel between KOMO and the other stations. Respondent's labor relations consultant concluded his letter, reiterating that Fisher Broadcasting "anticipates these stations will become a fully integrated operation such that many employees will routinely appear on several or all three stations." Clearly, AFTRA perceived that Fisher Broadcasting intended to consolidate the on-air staffs of the three radio stations as, on November 4, Hazapis replied to Loihl, stressing that AFTRA did not "believe the company has any legal right to unilaterally combine two non-union staffs with a union staff." Two weeks later, Loihl wrote to Hazapis, denying that Respondent had any "game plan" for the integration of the three radio stations but reiterating that such was what "Fisher anticipates"

With the parties' nascent labor dispute unilaterally resolved by Respondent and with no date set for the commencement of bargaining for a successor collective-bargaining agreement, Hazapis became ill. John Sandifer then assumed the duties of executive director of the Seattle local of AFTRA, and, by early January 1995, he and John Loihl had exchanged correspondence regarding the parties' mutual desire to engage in bargaining for a successor collective-bargaining agreement. According to Sandifer, he had a subsequent telephone conversation with Loihl, during which the latter, while refusing to extend the terms and conditions of the expired agreement, averred that "we have nothing in mind that would raise your blood pressure." Thereafter, in mid-March 1995, AFTRA mailed its initial successor contract proposals to Respondent, and, on May 1, the parties held their initial bargaining session at Respondent's facility. Sandifer and Loihl acted as the chief spokespersons for the parties, and, during the meeting, Sandifer reiterated AFTRA's initial proposals and explained them. Respondent had no counterproposals, and no agreements were reached. The parties next bargaining session was held on June 26 at Respondent's facility. At the outset of the session, Loihl presented a written, point-by-point response to AFTRA's initial proposals, agreeing to some of AFTRA's proposals and rejecting others, to Sandifer. Then, Loihl gave the AFTRA representatives a single sheet, containing three proposed contract changes, one of which would have permitted Respondent to assign bargaining unit employees to work on other Fisher Broadcasting radio stations without restriction. According to Sandifer, a discussion ensued but no agreements were reached. It should be noted that none of Respondent's proposals involved the scope of the bargaining unit, and Patrick Scott conceded that, had the parties reached agreement on all proposals, Respondent was prepared to execute a successor collective-bargaining agreement covering the KOMO-AM bargaining unit employees. The parties next bargaining session was held on August 17; AFTRA presented new contract proposals and a discussion ensued as to how the proposals would work. No agreements were reached, and the meeting ended. Another bargaining session was scheduled for August 25.

In accord with its announced intent to consolidate the operations of KOMO-AM, KVI-AM, and KPLZ-FM, Fisher Broadcasting entered into a lease agreement for the remain-

der of the second floor of the Tower Building, and constructed broadcast studios, production facilities, lounge areas, and administrative offices for use by the three radio stations, and, in mid-July 1995, commenced moving the operations and bargaining unit and other personnel of KOMO-AM to its second floor Tower Building facility. By the end of August, all of Respondent's personnel and operations had been moved to the Tower Building and, on August 23, Fisher Broadcasting filed an RM election petition, in Case 19-RM-2158, with Region 19, seeking a representation election in a voting unit encompassing the on-air employees of KOMO-AM, KVI-AM, and KPLZ-FM. In an accompanying letter, Fisher Broadcasting's attorney contended that a bargaining unit limited to Respondent's on-air personnel was no longer appropriate. On this point, asked, at the hearing, why the election petition had been filed, Patrick Scott replied, "Our . . . operations had become combined. All three stations were now operating [on] the second floor of the Tower Building and had been combined into a cohesive unit. . . . we had all of the functions in the stations . . . working together."

Notwithstanding the filing of the RM petition, as previously agreed, the parties met for a negotiating session on August 25. At the outset of the meeting, John Loihl informed AFTRA's representatives of the filing of the election petition but stated that Respondent remained "willing to negotiate." On behalf of AFTRA, John Sandifer responded that, in view of the filing of the petition, there was nothing to talk about, and the meeting ended. On September 8, Loihl and Sandifer met for lunch, during which Loihl informed Sandifer that Fisher Broadcasting intended to pursue the RM petition and that Respondent would not bargain until there was a disposition. Thereafter, on October 4, the Regional Director for Region 19 dismissed Fisher Broadcasting's RM petition on grounds that no question concerning representation existed, and, 2 days later, Sandifer wrote to Loihl, proposing the resumption of successor contract negotiations between Respondent and AFTRA. On October 18, Loihl wrote to Sandifer that Fisher Broadcasting would file a request for review of the Regional Director's decision with the Board and that, given its belief that the contract bargaining unit was no longer appropriate, "effective immediately, [Respondent] must refuse to bargain with AFTRA unless and until it is demonstrated that AFTRA represents a majority of the employees in a bargaining unit which includes all of the on-air employees of the three merged stations." On that same date and on January 24, 1996, in letters to Loihl, Sandifer continued to request that Respondent meet with AFTRA representatives and bargain on a successor agreement. Apparently, Respondent did not reply to either letter. On December 4, the Board denied Fisher Broadcasting's request for review of the Regional Director's decision, dismissing the former's RM petition.

Respondent's defense for its alleged unlawful withdrawal of recognition and refusal to continue to bargain on a successor contract with AFTRA is as stated in Loihl's October 18 letter—that a bargaining unit limited only to Respondent's on-air employees no longer constitutes an appropriate unit. In this regard, there is no dispute that, after its purchase of KVI-AM and KPLZ-FM and prior to the transfer of Respondent's operations and bargaining unit and other personnel to the Tower Building in mid-July 1995, while KVI-AM

and KPLZ-FM were physically integrated with some personnel utilized on both stations, Fisher Broadcasting continued to operate Respondent as a separate entity at its original location. The record establishes that, subsequent to the consolidation of the three radio stations on the second floor of the Tower Building, Fisher Broadcasting has continued to operate each as a separate radio station, and each has retained its distinctive voice with separate programming and has independent marketing and ratings goals.⁴ Thus, with its adult contemporary music and minimal news format, KPLZ-FM is meant, primarily, to appeal to women aged 18 through 34 and, secondarily, to adults, aged 25 through 54. According to Robert Dunlop, the operations manager for Fisher Broadcasting's Seattle radio division, the KPLZ-FM music play list is not used by either Respondent or KVI-AM. With regard to the latter two radio stations, while the broadcast schedule of each is meant to appeal to adults, aged 25 through 54, and, according to Dunlop, "both . . . would be considered a news/talk station in the industry," no music is played on any of KVI-AM's programs and its on-air commentators and talk show hosts are politically conservative. In contrast, Respondent has a large staff of news anchors and reporters, devotes more time each hour to news than does either of the other two stations, continues to play a minimal amount of music, and broadcasts University of Washington football and basketball games.

There is no dispute that the consolidation of the three radio stations' operations on the second floor of the Tower Building resulted in centralization of administrative functions with a common general manager (Shannon Sweatte), a common operations manager, a common business manager, a common national sales manager, a common chief engineer, and a common human relations director. Moreover, the personnel files for the three radio stations are maintained in a common personnel office; the staffs of the three radio stations utilize the same lunchroom, news production facility, and production studios; each radio station uses the same forms for promotions, transfers, terminations, vacation requests, and expense reimbursements; Fisher Broadcasting provides one engineering staff for the three radio stations and the promotion department initiates promotional events for each of the radio stations; and employees of each radio station are paid on identical checks. Also, Robert Dunlop is responsible for labor relations for the three radio stations, including salary reviews and performance evaluations, with the various department managers (traffic, engineering, advertising, and programming) responsible for reporting to him on all such issues pertaining to their staffs. However, while there is one sales department for the three radio stations, each has its own sales staff, and, while there are common rooms utilized by the on-air staffs of the three radio stations, according to Dunlop, "each station has its own master control room. KVI and KOMO have an adjacent studio, which is used for the talk programs. They can be used interchangeably, but we don't typically." Each of Fisher Broadcasting's three Seattle radio stations has its own program director, who, according to Dunlop, to whom the program directors report, directly supervises his staff and works on program content, budgets, and personnel matters but has no authority

⁴Of course, each radio station continues to be separately licensed for broadcasting by the FCC.

to supervise the on-air employees of the other two radio stations.

With regard to the on-air employees of the three radio stations, the record discloses that, while these individuals share identical holidays, the same vacation and sick leave accrual policies, the same health, dental, and life insurance plans, the same pension and 401(k) plans, and the same bereavement leave and overtime policies, certain terms, and conditions of employment, which are specified in the most recent collective-bargaining agreement between Respondent and AFTRA, such as the grievance procedure, pertain only to Respondent's bargaining unit employees. The record further discloses that, while various job descriptions apparently apply to jobs at each of the radio stations (announcer and talk show host), several appear to be specific to one of the radio stations—news anchor/reporter (KOMO), news reporter/anchor/sports director (KOMO), KPLZ news/traffic reporter; that, on the telephone list for the Tower Building facility, every on-air employee is identified by name and by his or her radio station affiliation; and that Fisher Broadcasting makes available, to the on-air personnel of each radio station, jackets with the respective call letters and station slogan on the back. Furthermore, given Respondent's voluntary commitment not to utilize its bargaining unit personnel on either KVI-AM or KPLZ-FM and noting Dunlop's concession that a conservative political commentator on KVI-AM would not be qualified to announce on KPLZ-FM with its adult contemporary music format, there is no interchange of on-air personnel between the three radio stations. Finally, while employees of the three radio stations have brief daily contacts in the lunchroom, the hallways, and the newsroom, according to Respondent's bargaining unit employees, Cynthia Land, Lance Archer, and Gina Tuttle, their work time is spent in the KOMO-AM work areas, working with bargaining unit or other employees of Respondent and not with employees of the other two radio stations.⁵

2. The alleged unlawful discharge of David Young

David Young, who had prior experience as an announcer, testified that he was hired by Respondent in July 1994 as a "full-time on-air host" on a mid-day program⁶ and that, in mid-January 1995, he was replaced on air by another host and moved to a producer position, in which job he became responsible for the production of promotional announcements for Respondent and for commercials. According to Young, he learned of the change in his job duties "in a memo" and during a subsequent conversation with Robert Dunlop, who was his supervisor. Dunlop "told me that the station was moving in a different direction and . . . their primary focus had shifted, and they wanted to bring in a new person that they felt could handle that particular shift more in the way [they wanted]." Dunlop added "that the station was moving away from a music-based format to more of a talk format"

⁵Tuttle and Archer each testified that their work routines and terms and conditions of employment did not change with Respondent's move to the Tower Building location.

⁶During cross-examination, Young testified that he was hired by Robert Dunlop, who, at the time, was Respondent's program director. In hiring Young, Dunlop explained to him that "[W]e need to handle this on a temporary basis for at least a while and we'll evaluate the situation at a later date."

and “that he was unsure about long-range plans for me . . .” but that they would meet again in February with regard to Young’s future.

Counsel for the General Counsel and counsel for AFTRA allege that two AFTRA-related events in January precipitated the change in Young’s job duties and his subsequent termination by Respondent. At some point that month, Young complained to John Sandifer, the Seattle office of AFTRA’s executive director, that he had not been receiving any employee benefits, including vacation, sick leave, and severance payments, as “I had been told that I was working under a temporary status which did not entitle me [to the normal full-time employee fringe benefits payments].” Sandifer corroborated Young in this regard and, inasmuch as he believed that the expired collective-bargaining agreement did not sanction Young’s treatment, in a letter, dated January 3, 1995, wrote to Respondent, in part, that:

AFTRA’s agreement with the company does not provide for the hiring of temporary talent. We regard Young as a part-time employee, subject to the terms of the collective-bargaining agreement, particularly since during the term of his employment he has worked an average of 40 hours or more each working week. The collective-bargaining agreement stipulates, in part, that “part time announcers shall accrue length of service credit for vacation and sick leave purposes in accordance with the ratio of their actual time worked to a full-time schedule.” Only those part-time employees who work fewer than 30 hours per week are allowed to receive higher compensation in lieu of prorated vacation, holidays, and sick leave. Please confirm that Young is receiving vacation, holidays, and sick leave benefits as per our agreement, and will be credited with same for the period of his employment since July 1994.

There is no dispute that, as a result of Sandifer’s letter, written on Young’s behalf, Respondent paid Young the fringe benefits, to which he was entitled. Also, at approximately the same time as Sandifer became executive director due to Tony Hazapis’ illness, Young became “acting president” of the Seattle office of AFTRA and assumed the position on a full-time basis in April.

As he promised, in late February, Dunlop again spoke to Young regarding the latter’s position with Respondent and said that “he was very happy with my work. He said that he did consider me a part of the team . . . and that . . . what I had been doing up to that point was . . . what I would continue to do for the foreseeable future.” According to Young, in performing his production duties, he worked closely with Laurie Holt, Respondent’s executive producer, and “took direction from her.” Young continued in his production work until the last day in April, a Sunday. On that day, he received a telephone call from Holt, who, Young believed, had become his immediate supervisor after January.⁷

⁷During cross-examination, Young said he believed Holt became his immediate supervisor in late February—“I do know that I was told by Ms. Holt that she was my supervisor.” As to her duties as executive producer, according to Young, Holt was responsible for managing the on-air talent, other than the news employees. There is no dispute that Holt was a supervisor within the meaning of Sec. 2(11) of the Act; however, there is a dispute as to which employees she supervised and, specifically, whether she ever became Young’s

She asked Young to meet her at a restaurant later that evening. Young met Holt, and the latter “told me that she had been directed to notify me of my termination from KOMO Radio.” The alleged discriminatee asked why, and “she told me that she was not given a good . . . reason why . . . and that she couldn’t understand it herself.” Holt added that she had asked Dunlop to keep Young as an employee as he was invaluable to her.” Young testified that he had received no notice of any intent to terminate him prior to his conversation with Holt. Subsequently, in June or July 1995, Young received another telephone call from Holt, who said she was experiencing “some difficulties” with Respondent and believed she, too, would be terminated. Holt said she had some knowledge as to the “reasons” for his termination and said “that it was her firm belief that I had been terminated because of my union activities. . . . She said she had been involved in a meeting” at which Dunlop said “that my position with the union made it difficult for KOMO to keep me on the payroll.” According to Young, Holt was aware of his position as an officer in AFTRA but did not believe any other management officials knew. Laurie Holt did not testify at the trial, and, thus, failed to corroborate the testimony of Young in the above regard.⁸

Robert Dunlop testified that, in late May or early June 1994, one of Respondent’s announcers quit, which act created an opening in the late afternoon time period. To fill the void, Dunlop moved Respondent’s “mid-day personality” to that time slot and, thus, created a vacancy in the 10 a.m. to 3 p.m. time period. Thereafter, according to Dunlop, “some time in mid-July . . . met [Young] . . . about filling this time period for us.” Young was unemployed and looking for work at the time, and “I had indicated to him that . . . the station was evolving its programming format . . . and . . . that it was only temporary but that he was certainly qualified for it.” Dunlop also stated he made Young aware that, while, at the time, Respondent was a music, news, weather, traffic, and sports full service radio station, it was moving away

immediate supervisor. In this regard, Gina Tuttle, the co-host of Respondent’s morning show, testified that Holt “was executive producer. . . . her role was as sort of assistant program director and there were some people who answered to her more directly than I did,” including some on-air people in the news department. She “assumes” Young reported to Holt. Lance Archer, Respondent’s news anchor and reporter, was more emphatic, testifying that Holt was his immediate supervisor for a short period after the move to the Tower Building; that she also supervised the production assistants and “all of the on-air personalities. . . . and . . . I believe she had a role in some of the music selection. She had supervisory authority over the announcers” and Dave Young. Cynthia Land, an afternoon news reporter for Respondent, also testified that she and Archer were supervised by Holt for a short time after the move to the Tower Building. She added that Young also was supervised by Holt during this period of time.

In contrast to the foregoing, while Robert Dunlop testified that Holt was the immediate supervisor of Respondent’s programming assistants and producers and that she “worked with [Young] and thought highly of his work . . . and felt he would be a great part of the radio station,” he specifically denied that Holt had ever been Young’s immediate supervisor. He added that Young reported to him even while doing production work because “[his duties] included performing behind the microphone, which is . . . for us, an announcing role.”

⁸According to counsel for the General Counsel, Holt claimed she was ill and under a doctor’s order not to testify.

from “more or less . . . music in favor of talk and information programming,” that this would be a “gradual” transition, and “that as our format developed [the need for an announcer] would probably diminish.” Dunlop further testified that, well aware the announcer position would not be permanent, Young accepted Dunlop’s offer to fill the opening in Respondent’s midday announcer position and, in addition, to perform production work, voice commercials, and do some writing. Dunlop also testified that, from July until late September 1994, Young’s job status was “on an on-call basis” and that, after speaking to Sharon Greenfield, Fisher Broadcasting’s director of human resources, in late September, “we determined . . . that it made sense to make [Young] a temporary . . . full-time employee . . . and we thought that he would probably be with us for several months at least.” Greenfield corroborated Dunlop on this point, stating that, in October 1994, the latter spoke to her about hiring Young as a temporary full-time employee,⁹ “and we discussed it, and I said it would be fine, but he would have to make a decision within that six month period as to whether he was going to retain Mr. Young or not.”¹⁰

There is no dispute that, in mid-January 1995, Dave Young’s midday program was replaced by a talk show with a new, regular full-time talk show host and, as a result, his air time was reduced to 3 hours and that, by the end of February, he was completely off the air, having been replaced by one of Respondent’s full-time announcers. Dunlop, who admitted he was aware of John Sandifer’s letter to Respondent, regarding the latter’s failure to pay fringe contractual fringe benefits to Young, attributed the change to a talk show during the midday time period to Respondent’s evolving changes in its programming format. Asked whether Young could have performed the duties of midday talk show host, Dunlop conceded, “I suppose he could have” but “we made the decision to hire somebody who . . . we felt was more qualified to host a news talk show than Dave’s experience allowed.”¹¹ Thereafter, Young worked only in a production capacity for Respondent but made it known to Dunlop that he desired to remain with Respondent “in any capacity.”

Dunlop next testified that, during the last part of 1994 and the first few months of 1995, Greenfield continually questioned him as to “where this relationship with [Young] was heading. . . . and at that time . . . I didn’t know exactly myself as we were continuing to go through these format adjustments.” Then, “because I hadn’t heard as to what was going to happen to Mr. Young . . .,” Greenfield, who recalled receiving Sandifer’s January letter regarding Young’s

fringe benefits payments, scheduled a meeting for April 4, specifically regarding Young’s status. Present for the meeting were Greenfield, Dunlop, Shannon Sweatte, the general manager of Fisher Broadcasting’s Seattle radio stations, Jacqueline Raymond, who had been appointed to replace Greenfield as Fisher Broadcasting’s human resources manager, and John Loihl. As to why Sweatte and Raymond were invited, Greenfield explained that each was new to the position and “it was kind of a learning experience for [them].” As to why Loihl was present, Greenfield, who conceded the former had never been asked to attend such meetings in the past, explained, “I asked [him] to be present for Mr. Sweatte and Mr. Dunlop to get used to working with him and also the new human resources manager.” Contradicting Greenfield, Dunlop testified that Loihl was present “to help us understand and answer questions about what might be state law versus local law versus company policy . . . versus union contract.” As to what occurred, Respondent’s witnesses were fairly consistent. Thus, Greenfield testified that “I explained . . . why I had called the meeting and it was time that a decision be made by Mr. Young’s manager as to whether he was going to retain [Young] or not. . . . Rob discussed . . . the changing formats and plans of the station and that in the future . . . he didn’t have a spot for [Young] and that it was his recommendation that [Young] be let go.” She added that Dunlop made the decision to terminate Young at this meeting and that “[Dunlop] said he would get to [Young] as soon as he could.”¹² Greenfield specifically denied that Young’s union affiliation was ever mentioned during this meeting and denied knowledge, at the time of the meeting, of Young’s position in AFTRA. Dunlop testified that Greenfield made clear her intent to determine what Young’s role at the radio station would be and demanded that Dunlop make a decision as to the former’s status. “So, forced or required to make a decision in that meeting, I determined that it was best to let Dave go on his way as I wasn’t sure we could continue to have a need for him once we consolidated.”¹³ As did Greenfield, Dunlop denied that Young’s union activities constituted a basis for his decision to discharge the alleged discriminatee.¹⁴ Finally, contradicting Young’s testimony, Dunlop testified that “within a few days” of the management meeting, in his office, he spoke to Young “and I said basically that his six month time period as a temporary employee was up and that I didn’t . . . see a need for his tal-

⁹ Greenfield defined such an employee as one whom the company hires on a temporary basis; after an evaluation period, normally 6 months, the employee is either hired as a regular full-time employee or “let go.” The witness conceded that such a position is not mentioned in the expired collective-bargaining agreement and, while also conceding that she could not name any other employee hired on such a basis, averred “I’m sure we did.”

Greenfield conceded that AFTRA was never made aware of Respondent’s policy of hiring employees on a temporary basis for 6 months, and it must be noted that such an employment condition was included in Respondent’s contract counter-proposals, which were submitted to AFTRA on June 26, 1995.

¹⁰ Respondent’s employment records establish October 1, 1994, as the hire date for Young.

¹¹ Respondent offered no explanation as to why Young was entirely relieved of his announcer duties by the end of February.

¹² Greenfield testified that Young was hired to fill an open on-air shift and that, when this position was filled, he performed other duties. Asked why there was a necessity to terminate Young from the second job, she averred, “As far as I know, in looking towards the future, possibly for two more weeks he could have been utilized. But beyond that, we do our very best not to lay off employees that are regular employees. And in fairness to the person, it was time to say I think we don’t need you any more.”

¹³ John Loihl recalled, as the sense of the meeting, that “they were going to follow the temporary policy and either terminate [Young] or make him a regular employee, and the programming needs seemed to be headed towards ending his relationship with the station.” Loihl testified that he did not become aware of Young’s status with AFTRA until May when he noticed the latter’s name in the masthead of AFTRA’s stationery.

¹⁴ Greenfield and Dunlop testified that each did not become aware of Young’s status in AFTRA until approximately May at which point Loihl informed each that the alleged discriminatee was listed on AFTRA’s stationery as its Seattle president.

ents and that . . . I wouldn't have enough work for him . . . and so I told him that . . . we needed to let him go." On this point, while conceding that he probably informed Holt of his decision to terminate Young, Dunlop denied instructing Holt to inform Young of his termination. Young was not recalled as a witness to address Dunlop's version of his termination interview.

B. Legal Analysis

I initially consider the complaint allegation that Respondent acted in violation of Section 8(a)(1) and (5) of the Act by breaking off bargaining on a successor contract with AFTRA and, thereafter, failing and refusing to engage in further bargaining.¹⁵ In this regard, I note that Respondent concedes that, on October 18, 1995, it informed AFTRA it would discontinue bargaining on a successor collective-bargaining agreement and that, thereafter, it refused to resume bargaining with AFTRA. In defense of its alleged unlawful acts and conduct, at the trial and in its counsel's posthearing brief, Respondent argues that, upon the transfer of its employee complement and operations to the renovated and enlarged Tower Building facility, the completed consolidation and merger of KVI-AM, KPLZ-FM, and KOMO-AM and the

¹⁵I have carefully considered counsel for AFTRA's contention that Respondent must be estopped from asserting, as a defense, that Respondent's on-air employees no longer constitute an appropriate unit for purposes of collective bargaining, and, while said assertion has surface appeal, I must reject it. As set forth by the Board in *R.P.C. Inc.*, 311 NLRB 233, 234 (1993), the essential elements for the application of the doctrine of equitable estoppel are knowledge, intent, mistaken belief, and detrimental reliance. In support of his contention, counsel for AFTRA asserts that, since, at least, September 1994, Respondent had indicated its willingness to bargain with AFTRA over a successor collective-bargaining agreement covering the former's on-air employees, that actual bargaining commenced on May 1 and continued through August 17, 1995, with Respondent never once raising as an issue whether the contractual bargaining unit continued to constitute an appropriate unit, that Respondent first raised the issue on August 25 following its filing of an RM petition, and that AFTRA, acting on Respondent's apparent willingness to engage in bargaining on a successor agreement, relied to its detriment on Respondent's acts and conduct. Contrary to counsel, I initially note that the cases, which are relied on by counsel all involve unlawful refusals to bargain based on changes in the identity of the involved labor organization either through allegedly improper merger or improper affiliation. As the Board apparently has not applied the doctrine of equitable estoppel to other fact situations, I am loathe to do so in the present fact situation. More significantly, however, the factors, on which Fisher Broadcasting based its RM petition and Respondent based its subsequent refusal to bargain, did not exist until the latter's operations, including its bargaining unit personnel, were moved to the Tower Building in mid-July. Accordingly, there is no record evidence that Respondent had knowledge of the facts, which gave rise to the RM petition and its subsequent refusal to bargain, at any time prior to the commencement of bargaining or during the initial bargaining sessions. Thus, it can not be said that Respondent truly assumed inconsistent positions during bargaining on the issue of the continued appropriate status of the recognized bargaining unit or obtained a tangible benefit from its conduct. Moreover, the record evidence establishes that Fisher Broadcasting was never secretive as to its intent eventually to consolidate the on-air staffs of its three Seattle radio stations and that AFTRA was aware of such. In such circumstances, it would be improper to apply the doctrine of equitable estoppel to the instant situation. Therefore, AFTRA's contention, in that regard, must be rejected.

integration of their respective operations destroyed the separate identity of the existing bargaining unit of Respondent's on-air employees and that, accordingly, a unit, limited to the employees, no longer remained appropriate for purposes of collective bargaining. In support of that contention, counsel for Respondent argues, and the record establishes, that the three radio stations are housed in one facility—the entire second floor of the Tower Building; that the employees of the three radio share some common areas, such as a newsroom and lunch area, have contacts with each other in said areas, and, except for terms and conditions of employment specific to the most recent collective-bargaining agreement between Respondent and AFTRA, are subject to the same labor relations policies; that there is one general manager, one operations manager, one chief engineer, one human resources manager, and one general sales manager for the three radio stations; and that the three radio stations have centralized administrative functions.

Notwithstanding the foregoing, and contrary to counsel, I do not believe that Respondent's on-air employees bargaining unit lost its separate identity as a unit appropriate for bargaining as a result of the above-described consolidation of operations. Thus, the record also establishes that KOMO-AM, KVI-AM, and KPLZ-FM each retains a separate FCC broadcast license and voice in the Seattle area, a separate advertising sales staff, and separate ratings goals and objectives; that each radio station has a program director, who is responsible for directly supervising the employees of his radio station and not those of the other two radio stations; that, while some job descriptions are common for the three radio stations, several are unique to each; that the common telephone directory identifies individuals as employed by a particular radio station; and that the employees of each radio station broadcast out of separate broadcast studios, which are not utilized by the on-air employees of the other two radio stations. Moreover, while there are minimal contacts in the lunchroom and newsroom between Respondent's bargaining unit employees and the on-air staffs of the other two radio stations, there is no interchange of on-air employees between Respondent and the other two radio stations, and Respondent's on-air employees spend their worktime working with other on-air employees of Respondent and not those of the other two radio stations. While these "traditional" criteria are, of course, significant, in my view, the most compelling factor, warranting a finding that Respondent's on-air employees remained a separate appropriate unit after the move of the bargaining unit employees to the Tower Building, is the long history of collective bargaining for the unit. Thus, while the on-air employees of KVI-AM and KPLZ-FM were unrepresented at the time of their purchase by Fisher Broadcasting, Respondent has employed its own staff of on-air employees for approximately 70 years and has bargained continuously with AFTRA, as the exclusive representative of said employees, for, in excess of, 50 years. "Both the Board and the courts have long recognized not only that the traditional factors which tend to support the finding of a larger . . . unit as being appropriate are of 'lesser cogency where a history of meaningful bargaining has developed' but also that 'this fact alone suggests the appropriateness of a separate bargaining unit' and that 'compelling circumstances' are required to overcome the significance of bargaining history." *Armco, Inc. v. NLRB*, 832 F.2d 357, 363 (6th Cir. 1987); *Children's*

Hospital, 312 NLRB 921, 929 (1993), enfd. *California Pacific Medical Center v. NLRB*, 87 F.3d 304 (9th Cir. 1995); *Gibbs & Cox, Inc.*, 280 NLRB 953, 954 (1986); *Marion Power Shovel Co.*, 230 NLRB 576, 579 (1977). In my view, Fisher Broadcasting's consolidation of the operations of its three Seattle radio stations does not present such a compelling circumstance. On this point, in *Children's Hospital*, supra, notwithstanding that, after a merger of two hospitals, all management functions became centralized, all personnel and labor relations functions became the responsibility of one human resources department, all employees became covered by uniform policies, working guidelines, wages, and benefits, some employees worked at both facilities, and meetings were attended by employees of both facilities, the Board concluded that a "long term relationship was reasonably relied upon by the judge in finding that—where the proffered unit choices are a unit consisting of the facility in which the bargaining relationship had existed and a unit encompassing that facility and another which lacked a similar bargaining history—the single facility is an appropriate unit."

In urging a contrary finding, counsel for Respondent first argues that *Children's Hospital* is not controlling as the merger of the three radio stations here "resulted in a single facility with all on-air staff from all three radio stations working side-by-side on a daily basis." However, the fact that Respondent's bargaining unit employee complement is working in the same facility as, and in close proximity to, unrepresented employees does not itself negate the former's existence as a separate appropriate unit. Thus, in *Serramonte Oldsmobile*, 318 NLRB 80 (1995), employer, which owned and operated several automotive dealerships, moved the service department employees of one dealership, who were represented by a labor organization for purposes of collective bargaining, into a larger facility, in which were housed the service departments of several other dealerships and none of the employees of which were represented by labor organizations, and argued that, after the relocation, the represented employee complement lost its separate identity as an appropriate unit. In concluding that the represented employees had not lost their identity as a separate appropriate unit and in affirming myself, the Board noted that, while the represented employees used the same tool room as did unrepresented employees and shared common facilities, and all employees had the same ultimate supervision, the represented employees, by virtue of a collective-bargaining agreement, had significantly different terms and conditions of employment than those of the nonbargaining unit employees. Likewise, given the factors set forth above, notwithstanding having been transferred to a common facility, Respondent's bargaining unit employees possess a significant community of interests so as to continue to retain its separate identity as an appropriate unit. Respondent's counsel next argues that the Board's decision in *Renaissance Center Partnership*, 239 NLRB 180 (1979), is controlling here. However, the cited decision is readily distinguishable inasmuch as, unlike the merged groups of employees in the cited case, Respondent's bargaining unit employees are supervised by Respondent's program manager, who exercises supervisory authority only over Respondent's employees, and work in broadcasting studios used only by Respondent's employees, as there is no interchange of on-air employees between Respondent and the two other radio stations, and, most significantly, unlike in the cited decision,

there exists herein a long collective-bargaining history in a separate appropriate unit. Based on the foregoing, and the record as a whole, I believe, and find, that Respondent's bargaining unit employee complement retained its identity as a separate appropriate unit after Fisher Broadcasting's consolidation of operations in the Tower Building in July 1995 and that, therefore, Respondent's conceded refusal to bargain with AFTRA after October 18, 1995, was violative of Section 8(a)(1) and (5) of the Act.

Turning to consideration of whether Respondent's discharge of employee David Young was violative of Section 8(a)(1) and (3) of the Act, I note, at the outset, that my determination of the legality of Respondent's conduct is governed by the traditional precepts of Board law in alleged union animus discharge cases, as modified by the Board's decision in *Wright Line*, 251 NLRB 1083 (1990), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 453 U.S. 989 (1982), approved in *Transportation Management Corp.*, 462 U.S. 393 (1983). Thus, in order to prove a prima facie violation of Section 8(a)(1) and (3) of the Act, the General Counsel has the burden of establishing that the alleged discriminatees engaged in union activities; that Respondent had knowledge of such conduct; that Respondent's actions were motivated by union animus; and that the discharges and layoffs had the effect of encouraging or discouraging membership in the Union. *WMRU-TV*, 253 NLRB 697, 703 (1980). Further, the General Counsel has the burden of proving the foregoing matters by a preponderance of the evidence. *Gonic Mfg. Co.*, 141 NLRB 201, 209 (1963). However, while the above analysis is easily applied in cases in which a respondent's motivation is straightforward, conceptual problems arise in cases in which the record evidence discloses the presence of both a lawful and an unlawful cause for the allegedly unlawful conduct. In order to resolve this ambiguity, in *Wright Line*, supra, the Board established a causation test in all Section 8(a)(1) and (3) cases involving employer motivation. "First, we shall require that the General Counsel make a prima facie showing sufficient to support the inference that protected conduct was a 'motivating factor' in the employer's decision. Once this is established, the burden will shift to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct." *Id.* at 1089. Two points are relevant to the foregoing analytical approach. First, in concluding that the General Counsel has established a prima facie showing of unlawful animus, the Board will not "quantitatively analyze the effect of the unlawful motive. The existence of such is sufficient to make a discharge a violation of the Act." *Id.* at 1089 fn. 4. Second, once the burden has shifted to the employer, the crucial inquiry is not whether Respondent could have engaged in the discharges and layoffs herein, but, rather, whether Respondent would have done so in the absence of the alleged discriminatees' union activities and support. *Structural Composites Industries*, 304 NLRB 729 (1991); *Filene's Basement Store*, 299 NLRB 183 (1990).

Analysis of the record, as a whole, has convinced me that the General Counsel has failed to establish a prima facie showing that Respondent was unlawfully motivated in discharging Young. In this regard, almost the entirety of the General Counsel's case rests upon what Respondent's executive producer, Laurie Holt, allegedly told Young during a telephone conversation in June or July 1995. Thus, crediting

Young's testimony,¹⁶ and making findings of fact based on his recollection of this conversation, establishes not only that Respondent was aware of his status as president of AFTRA's Seattle affiliate but also that such, in fact, was a motivating factor underlying his discharge. However, the difficulty for the General Counsel is, of course, that there is no other record evidence probative of these points, and, inasmuch as Holt failed to appear as a witness and to testify on behalf of the General Counsel, Young's testimony raises serious corroborative and hearsay concerns.¹⁷ While I am permitted to consider hearsay evidence and while Young's testimonial demeanor was that of an honest witness, the vital testimony, as corroboration for Young's assertions and as well as for its own demonstrative value, was that of Holt, and I had no opportunity either to access her demeanor as a witness or to consider the substance of her account of events. In these circumstances, I am unable to rely on Young's testimony as to the substance of any conversations with Holt. Besides the foregoing, Counsel for the General Counsel and counsel for AFTRA raise the matter of John Sandifer's January 1995 letter to Respondent on Young's behalf, regarding the former's failure to pay Young certain employee benefits, as establishing animus, and counsel for AFTRA points out that, shortly after receipt of the letter, Young was replaced by a talk show host and his on-air time was substantially reduced and contends that such establishes animus on Respondent's part. While the timing of adverse employer conduct may, indeed, raise a suspicion of animus, I note that, at the time, Respondent's format was evolving toward a talk show format, and, in the absence of any other record evidence suggestive of such, the timing of the reduction of Young's broadcast time is not itself sufficient to establish the existence of unlawful animus. In the circumstances, I reiterate my belief that counsel for the General Counsel has failed to establish a prima facie showing that Respondent was unlawfully motivated in terminating Young. Accordingly, I shall recommend dismissal of the allegation of the instant complaint.¹⁸

¹⁶I recognize that the record contains contradictory testimony, particularly as to whether Holt ever supervised Young and as to who informed Young of his discharge. While I generally found Young to have been more credible than other witnesses and believe that the bargaining unit employees, who testified, were candid, given my view as to counsel for the General Counsel's failure in established Respondent's unlawful motivation, specific credibility resolutions are unnecessary.

¹⁷This is, of course, a situation of double hearsay. Significantly, the alleged speaker, Robert Dunlop, was present during the hearing and did testify as to Young's termination; however, while he did have the opportunity to question Dunlop during cross-examination on the points raised by Young's testimony, counsel for the General Counsel chose not to do so.

¹⁸I realize that unlawful motivation may be inferred when a respondent's defense is deemed pretextual or wholly fabricated. Contrary to counsel for AFTRA, I do not believe such to be the case. In this regard, none of Respondent's witnesses were inherently incredible, and Greenfield, Dunlop, and Loihl were basically corroborative as to Respondent's discharge rationale. Finally, a business judgment apparently was made as to David Young's ability to perform in a talk show format, and neither the state of the record nor counsel for AFTRA has given me any reason to question Dunlop's testimony in that regard.

CONCLUSIONS OF LAW

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

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

3. At all times material, since, at least, 1946, AFTRA has been, and continues to be, the exclusive representative of Respondent's employees in the following unit found appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All staff and freelance actors, singers, and announcers, including combination announcers employed by Respondent; excluding all other employees, guards, and supervisors as defined in the Act.

4. Since October 18, 1995, by failing and refusing to recognize and bargain with AFTRA, as the exclusive representative for purposes of collective bargaining of the employees in the above-described appropriate unit, Respondent has engaged in conduct violative of Section 8(a)(1) and (5) of the Act.

5. The aforementioned acts and conduct are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

6. Unless specified above, Respondent engaged in no other unfair labor practices.

REMEDY

Having found that Respondent engaged in serious unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the purposes and policies of the Act. Having found that Respondent unlawfully withdrew recognition from and refused to bargain with AFTRA, I shall recommend that it be ordered to recognize and, on request, resume bargaining with AFTRA, as the exclusive representative for purposes of collective bargaining of its on-air employees. I shall also recommend that Respondent be ordered to post a notice, setting forth its obligations in accord with my decision.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁹

ORDER

The Respondent, Fisher Broadcasting, Inc. d/b/a Radio Station KOMO-AM, Seattle, Washington, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with AFTRA, as the exclusive representative for purposes of collective bargaining of the employees in the following appropriate unit:

¹⁹If 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.

All staff and freelance actors, singers, and announcers, including combination announcers employed by Respondent; excluding all other employees, guards, and supervisors as defined in the Act.

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

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

(a) Recognize and, on request, bargain with AFTRA, as the exclusive representative for purposes of collective bargaining of its employees in the above-described appropriate unit.

(b) Within 14 days after service by the Region, post at its facility in Seattle, Washington, copies of the attached notice marked "Appendix."²⁰ Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained by 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 18, 1995.

²⁰If 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."

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official, on a form provided by the Region, attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint, insofar as it alleges that Respondent violated Section 8(a)(1) and (3) of the Act is dismissed.

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 the provisions of this notice.

WE WILL NOT refuse to recognize and bargain with American Federation of Television and Radio Artists, Seattle Local, AFL-CIO (AFTRA) as the exclusive representative for purposes of collective bargaining of our employees in the following appropriate unit:

All staff and freelance actors, singers, and announcers, including combination announcers; excluding all other employees, guards, and supervisors as defined in the National Labor Relations Act.

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

WE WILL recognize and, on request, bargain with AFTRA as the exclusive representative of our employees in the above-described appropriate unit.

FISHER BROADCASTING, INC. D/B/A RADIO
STATION KOMO-AM