

It is further recommended that the allegations of the complaint with respect to Howard Bevens be dismissed.

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT unlawfully interrogate our employees regarding their union activities and sympathies; unlawfully question our employees regarding the identity of the employee who had instigated the union movement in our plant; raise the wages of any employee without prior consultation or bargaining with the Union; change any employee work rule without prior consultation or bargaining with the Union; unilaterally eliminate or withdraw any employee benefit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Local Union No. 449, International Brotherhood of Electrical Workers, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act.

WE WILL bargain collectively with the above-named labor organization as the exclusive bargaining representative of all employees in the bargaining unit described below with respect to grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and, if an understanding is reached, embody it in a signed agreement. The bargaining unit is:

All our electricians, including apprentices, excluding guards and supervisors as defined in the Act.

All our employees are free to become or remain, or to refrain from becoming or remaining, members of any labor organization.

IDAHO ELECTRIC Co., INC.,
Employer.

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 327 Logan Building, 500 Union Street, Seattle, Washington, Telephone No. 583-7473.

American Guild of Musical Artists, AFL-CIO and Washington Branch, American Guild of Musical Artists, AFL-CIO and National Symphony Orchestra Association

American Guild of Musical Artists, AFL-CIO and Washington Branch, American Guild of Musical Artists, AFL-CIO and Washington School of Ballet. Cases Nos. 5-CC-289 and 5-CC-290. March 16, 1966

DECISION AND ORDER

On October 15, 1965, Trial Examiner Sydney S. Asher, Jr., issued his Decision in the above-entitled proceeding, finding that the
157 NLRB No. 73.

Respondents had engaged in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondents filed exceptions to the Trial Examiner's Decision and a supporting brief. The General Counsel filed cross-exceptions, and the Charging Party, the National Symphony Orchestra Association, filed an answering brief, cross-exceptions, and a supporting brief.

Pursuant to Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel [Members Fanning, Brown, and Jenkins].

The Board has reviewed the rulings of the Trial Examiner made at the hearing, and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions, the cross-exceptions, the briefs, and the entire record in this proceeding, and hereby adopts the findings, conclusions,¹ and recommendations² of the Trial Examiner, as modified herein.

[The Board adopted the Trial Examiner's Recommended Order with the following modifications:

[1. Amend paragraph 1 by inserting a comma and the words "or any other person," following the name "Claudia Cravey."

[2. Substitute the following for the indented paragraph in the notice:

WE WILL NOT threaten, coerce, or restrain Robert R. Davis and/or Claudia Cravey, or any other person, where an object thereof is forcing or requiring any or all of them, when dancing

¹ We agree with the Trial Examiner's conclusion that Respondents' conduct was violative of Section 8(b) (4) (ii) (B) and his subsidiary finding that Robert Davis and Claudia Cravey were independent contractors. As to the basis for this latter finding, however, we attach particular significance to the uncontroverted fact that the manager of the Symphony, the director of the Washington School of Ballet, and Davis (as choreographer) retained and exercised little, if any, control or supervision over the manner in which Davis and Cravey, as guest artists, danced their roles in rehearsals and in the actual performances. We also note that Davis and Cravey supplied their own costumes and makeup; that no deductions were made for such items as Federal income tax and social security from the fees paid them; and that neither performer was covered by the Symphony's workmen's compensation insurance.

² The General Counsel excepted to the failure of the Trial Examiner to provide in his Recommended Order that the Respondents cease and desist from threatening, coercing, and restraining "any other person" with the purpose of forcing them to cease doing business with the National Symphony Orchestra Association and the Washington School of Ballet, in addition to the performers named herein. We agree that the scope of the recommendations is not broad enough to remedy effectively the Respondents' unfair labor practices, and we shall amend the Order accordingly. *Sheet Metal Workers' International Association, Local Union No. 3, AFL-CIO (Siebler Heating & Air Conditioning, Inc.)*, 133 NLRB 650; *N.L.R.B. v. Dallas General Drivers, Local Union 745 (Macatee, Inc.)*, 281 F. 2d 593, modified on denial of rehearing 281 F. 2d 596, cert. denied 365 U.S. 826

as independent contractors, rather than as employees, to cease doing business with National Symphony Orchestra Association and/or Washington School of Ballet.]

TRIAL EXAMINER'S DECISION

On December 21, 1964, National Symphony Orchestra Association, Washington, D.C., herein called the Symphony, filed charges in Case No. 5-CC-289 against American Guild of Musical Artists, AFL-CIO, New York, New York, herein called the International, and Washington Branch, American Guild of Musical Artists, AFL-CIO, Washington, D.C. On December 23, 1964, the Symphony filed amended charges against the same Respondents. On the same day Washington School of Ballet, Washington, D.C., herein called the School, filed charges in Case No. 5-CC-290 against the same Respondents. On February 26, 1965, the Regional Director consolidated the two cases, and the General Counsel issued a consolidated complaint alleging that since on or about December 15, 1964, the Respondents have threatened, restrained, and coerced Robert Ross Davis and Claudia Cravey, "self-employed persons and/or independent contractors," with an object of forcing or requiring them "to cease using, selling, handling, transporting, or otherwise dealing in the products of or to cease doing business with" the Symphony and/or the School. Thereafter, the Respondents jointly filed an answer denying the material allegations of the complaint, and alleging as an affirmative defense that Davis and Cravey are, and at all material times have been, employees of the Symphony and of the School.

Upon due notice, a hearing was held before Trial Examiner Sydney S. Asher, Jr., at Washington, D.C. All parties were represented and participated fully in the hearing. After the close of the hearing, the General Counsel filed a brief, the Respondents filed a joint brief, and the Symphony filed a document concurring in the General Counsel's brief. The briefs have been fully considered.

Upon the entire record in this case,¹ and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

A. *The Board's jurisdiction*

The Symphony is, and at all material times has been, a nonprofit corporation organized under the laws of the District of Columbia. It presents concerts of symphonic music, operas, ballets, and related musical activities in the District of Columbia and the State of Maryland. During the fiscal year prior to February 26, 1965, the Symphony's gross revenues exceeded \$600,000.

The School is, and at all material times has been, a District of Columbia corporation with its principal office in the District of Columbia and branch schools in Rockville, Maryland, and Arlington, Virginia. At these locations it teaches ballet and other dance techniques, for profit, and is an accredited secondary school. It also presents public performances in the District of Columbia and the State of Maryland. Its annual gross revenues exceed \$100,000.

There is no dispute as to the Board's jurisdiction. All parties treat the School and the Symphony jointly as the primary employer herein. As the Board has plenary jurisdiction over those operations of the Symphony and the School which occur in the District of Columbia,² and as the Board assumes jurisdiction over secondary disputes when the primary employer meets its jurisdictional standards, I find that it will effectuate the policies of the Act for the Board to assume jurisdiction herein.³

B. *The Respondents*

The consolidated complaint alleges, the joint answer admits, and it is found that each of the Respondents is, and at all material times has been, a labor organization as defined in the Act.

¹ On September 23, 1965, the record was corrected in certain specified respects.

² *W. W. Chambers & Co., Inc. v. N.L.R.B.*, 279 F. 2d 817 (C.A.D.C.), cert. denied 364 U.S. 880; *M. S. Ginn & Company*, 114 NLRB 112, at 113; and Section 2(6) of the Act.

³ In *Ethel Fistere, an individual t/a Arthur Murray Dance Studios*, 100 NLRB 1303, the Board assumed jurisdiction over the operations of a dancing school for profit which operated within the District of Columbia. I perceive no substantial difference between assuming jurisdiction over that dance studio and assuming jurisdiction over the School herein.

C. Facts

For many years the School, in conjunction with the Symphony, has presented various ballets suitable for the Christmas season and, during the past 4 years, has presented the ballet "The Nutcracker" in the District of Columbia and in Baltimore, Maryland. Before the 1963 performance, the Symphony received a letter dated November 20, 1963, from Herman R. Faine, executive secretary of the International, requesting the Symphony to use the services of the National Ballet rather than the School because the National Ballet was under contract with the International. The Symphony replied on December 2, 1963, by stating that it preferred to continue its policy of doing business with various groups, including the School. The International made no attempt to pursue the matter and the 1963 performances were presented as scheduled.

With regard to the 1964 performances of "The Nutcracker," M. Robert Rogers, manager of the Symphony, and Mary Day, director of the School, orally contracted for four performances in Washington and one in Baltimore. This agreement provided that the School was to produce the ballet for a fixed fee to be paid to the School by the Symphony. The Symphony was to supply the hall, the music, the tickets, the promotion, and various aspects of management. It was further agreed that, if it became necessary to engage any outside soloists for principal roles, the Symphony would engage them. The School was to supply the costumes, the scenery, the choreography, the corps de ballet, and as many of the secondary principal roles as it could furnish from within its own ranks or on an exchange basis with other schools of ballet.⁴ The School then designated Robert R. Davis, one of its faculty members and a full-time salaried employee, to undertake the choreography for the production. Davis is, and at all material times has been, a member in good standing of the Respondents.

On September 14, 1964, Evelyn Freyman, the Washington representative of the International, conferred with Rogers. She expressed the Respondents' interest in having the Symphony discontinue using the services of the School. When Rogers pointed out that this could not be the Symphony's policy, Freyman suggested that the Symphony should at least favor members of the Respondents whenever possible. Rogers replied that it was not the intent of the Symphony to discriminate in any manner with regard to a performer's union affiliation. He reminded Freyman that the Symphony had engaged members of the Respondents for performances in which they sang or danced with nonmembers of the Respondents. Freyman later, at Rogers' request, supplied him with a list of members of the Respondents residing in the Washington area, and the Symphony thereafter engaged individuals on that list for various performances.⁵

On November 18, 1964, the Symphony and Davis entered into a written agreement as follows:

This will confirm our agreement that you will appear as a dancer in the principal male roles for the forthcoming National Symphony productions of the Nutcracker as follows:

December 26—3 p.m. and 7 p.m. in Constitution Hall, Washington

December 27—3 p.m. and 7 p.m. in Constitution Hall, Washington

December 28—2:30 p.m. in the Lyric Theater, Baltimore

For the foregoing the National Symphony agrees to pay you a fee of \$300. It is understood that the National Symphony shall have the option to engage you for additional Nutcracker performances in Constitution Hall, Washington, on January 2 at 3 p.m. and/or 7 p.m., provided that notice is given to you on or before December 21 that we will exercise such option.

Your engagement by the National Symphony as a dancer does not relate to your work as producer and choreographer, which work you are performing under your contract with the Washington School of the Ballet.

⁴The General Counsel, the School, and the Symphony take the position that the 1964 performances constituted a joint venture undertaken by the Symphony and the School. The Respondents look upon the Symphony and the School as constituting a single employer for the purposes of these cases. It is clear, and I find, that the 1964 performances were produced as a result of an agreement between the Symphony and the School. I deem it unnecessary to decide whether they constituted a single employer for this purpose or should be considered as joint venturers; the result in either case is the same.

⁵Although, as stated above, Davis was a member in good standing of the Respondents and was residing in the Washington area, his name does not appear on the list which Freyman sent to Rogers. The record contains no explanation for this omission.

Claudia Cravey is, and at all material times has been, prima ballerina of the Palm Beach Ballet and a member in good standing of the International. On December 4, 1964, on behalf of the Symphony and the School, Davis flew to Florida and auditioned her for the part of the Sugar Plum Fairy in "The Nutcracker." On December 5, Davis concluded an oral agreement with Ted Kneeland, Cravey's manager, which provided for Cravey to dance as the Sugar Plum Fairy in the Symphony presentations in Washington and Baltimore. A condition of the agreement was that Davis would dance in a Palm Beach production on December 29 and 30, 1964. Davis returned to Washington on December 6 and reported the results of the negotiations to Rogers. On December 12, 1964, Rogers, on behalf of the Symphony, and Kneeland, as agent for Cravey, entered into a written agreement as follows:

The National Symphony wishes to engage Claudia Cravey for its performances of the Nutcracker which are being produced for it by the Washington School of the Ballet. Miss Cravey will appear as the Sugar Plum Fairy in performances to take place in Constitution Hall Washington matinees and evenings of December 26 and 27, and in the Lyric Theater Baltimore for the matinee of December 28. Rehearsal with orchestra will take place in Constitution Hall on December 24 at 1:15 p.m.

The National Symphony agrees to pay a free [sic] equal to transportation from and return to Palm Beach for Miss Cravey and her mother and to provide for their living expenses during this engagement.

The details should be worked out with the Washington School of the Ballet, which represents the National Symphony in this matter. It is our understanding that you are entering into an equivalent arrangement with Robert Davis for performances with the Palm Beach Ballet on December 29, 30 and January 7, which arrangements are to be concluded directly with him.⁶

Shortly before December 10, 1964, Day received a telephone call from Donald B. Gaynor, a representative of the Respondents. Gaynor stated that members of the Respondents were not to appear in the performance of "The Nutcracker" scheduled in Washington for December 26 and 27 and in Baltimore for December 28, as the School was not under contract with the Respondents. On December 10, 1964, Gaynor, on the stationery of the International, wrote to Day as follows:

This is to confirm our earlier conversation re your forthcoming performances of the "Nutcracker Suite" at Constitution Hall with the National Symphony Orchestra.

Be advised that no member of AGMA shall participate in these productions.

On December 14, Day replied to Gaynor by letter as follows:

I am replying to your letter of December 10, 1964. I do not consider the Washington School of the Ballet to be bound by the contents of your letter.

In the present case, any professional dancers that may be hired for the forthcoming National Symphony presentation of the Nutcracker would be hired by the National Symphony and not by the Washington School of the Ballet. Therefore, your letter has no relevance to the subject matter it seeks to cover.

On December 15, 1964, DeLloyd Tibbs, assistant executive secretary of the International, sent the following telegram to Cravey, Davis, and Nels Jorgensen (not further identified in the record):

UNDERSTAND YOU MAY BE DANCING WITH WASHINGTON SCHOOL OF BALLET WHICH IS NOT SIGNATORY TO BASIC AGREEMENT WITH AGMA. AGMA MEMBERS THEREFORE FORBIDDEN TO APPEAR WITH THIS GROUP IN THEIR SCHEDULED APPEARANCE WITH NATIONAL SYMPHONY.⁷

⁶ Later it was agreed between Rogers and Kneeland that Cravey would appear in two additional performances of "The Nutcracker" on January 2, 1965, in Constitution Hall, for additional compensation.

⁷ Davis received an additional copy of the wire on December 17 in an envelope of the Respondents postmarked from New York City. Cravey received an additional copy of the telegram on December 20, after she arrived in Washington. This copy had been sent to her in care of the School by the Washington representative of the Respondent.

On December 16, 1964, Gaynor telephoned Davis and iterated the contents of the telegram. Referring to the possibility of Davis' performing in the production of "The Nutcracker," Gaynor commented: "If you should do it, the union would have to take action against you."

On December 21, 1964, Mrs. Cravey (mother of Claudia Cravey and her chaperone) received a telephone call at her Washington hotel. The caller identified herself as Evelyn Freyman, Washington representative of the Respondents, and warned that Claudia Cravey "must not dance or suffer disciplinary action and possibly serious reprisal" by the Respondents. On the morning of December 23, at 7:45 a.m., Freyman "again called Mrs. Cravey and again warned Claudia Cravey as above."

As noted above the charges in Case No. 5-CC-289 were filed with the Board on December 21, 1964. Thereafter, pursuant to Section 10(l) of the Act, the Regional Director filed a petition with the United States District Court for the District of Columbia seeking a temporary restraining order against the Respondents.⁸ On December 24, 1964, Hon. Joseph C. McGarraghy issued a temporary restraining order against the Respondents. Thereafter, on March 12, 1965, the General Counsel and the Respondents entered into a stipulation (later approved by the court) in which the Respondents agreed, pending the final disposition of these cases by the Board, not to threaten, coerce, or restrain Davis or Cravey, by disciplinary action or otherwise, where an object thereof is to force or require them "to cease using, selling, handling, transporting, or otherwise dealing in the products of or to cease doing business with Washington School of Ballet and the National Symphony Orchestra Association."

A full rehearsal of "The Nutcracker," with the soloists, corps de ballet, and orchestra, was held as scheduled on December 24, 1964. Davis and Cravey attended. Thereafter, all the performances were presented as scheduled. Davis and Cravey danced the principal roles. The remainder of the dancers (with the exception of Edward Caton, a professional dancer on the School's faculty, and Barbara Hancock of the Atlanta Civic Ballet) were nonprofessional students of the School, who received no payment for rehearsing or for appearing in the performances.

D. *The issue*

The only issue in these cases is whether, as the complaint alleges, Davis and Cravey are, and have at all material times been, *self-employed persons and/or independent contractors* within the meaning of the Act. If so, Section 8(b)(4)(ii)(B) of the Act has been violated by the Respondents' threats to them. If on the other hand, as the answer alleges, Davis and Cravey are, and have at all material times been, *employees* of the Symphony and of the School, there has been no violation of Section 8(b)(4)(ii)(B) of the Act.

E. *Discussion*

The principal determinative of this issue, known as the right-of-control test, is clear: Where the person for whom the services are performed retains the right to control the manner and means by which the result is to be accomplished, the relationship is one of employment; on the other hand, where control is reserved only as to the result sought, but not as to the details by which that result is accomplished, the relationship is that of an independent contractor.⁹ And it is the right of control, not the exercise of control, which is the determining element. The resolution of this question depends upon the facts of each case, and no single factor is alone determinative. Elements which may be considered include, but are not necessarily limited to: the right to hire and discharge persons doing the work, the method and determination of the amount of the payment to the workmen, whether the person doing the work is engaged in an independent business or enterprise, whether he stands to make a profit on the work of those working under him, which party furnishes the

⁸ *Penello v. American Guild of Musical Artists, AFL-CIO, et al.*, Civil No. 3150-64 (D.C.D.C.).

⁹ *N.L.R.B. v. Phoenix Mutual Life Insurance Company*, 167 F. 2d 983, 986 (C.A. 7); *N.L.R.B. v. Morris Steinberg and Julian Leslie Steinberg, d/b/a Steinberg and Company*, 182 F. 2d 850, 855 (C.A. 5); *National Van Lines, Inc v. N.L.R.B.*, 273 F. 2d 402, 404-405 (C.A. 7); *United Insurance Company of America v. N.L.R.B.*, 304 F. 2d 86, 89-90 (C.A. 7); and *Lindsay Newspapers, Inc.*, 130 NLRB 680, 681, *enfd.* as modified 315 F. 2d 709 (C.A. 5).

tools or materials with which the work is done, who has control of the premises where the work is done, whether the relationship is of a permanent character, the skill required in the particular occupation, and who designates the place where the work is to be performed.¹⁰

In the instant cases, certain aspects of Davis' and Cravey's relationship to the Symphony and the School tend to support the Respondents' contention that this relationship was that of employment. Among these are:

1. The Symphony supplied the halls (Constitution Hall and Lyric Theater) where the rehearsal and the performances were held.

2. The Symphony designated the dates and the hours when the rehearsal and the performances were to take place.

3. The Symphony supplied the music for the rehearsal and the performances.

However, other factors tend to bolster the position of the General Counsel that the relationship of Davis and Cravey, as dancers, to the Symphony and the School was that of independent contractors. The most important of these are:

1. The relationship was of brief duration.

2. The compensation of Davis and Cravey was paid in a lump sum.

3. The Symphony reserved no right to terminate the relationship before the services of the dancers had been completed.

4. Davis and Cravey contributed artistic skill and a high degree of "know-how," being intimately familiar with their respective roles in "The Nutcracker" before the contract was entered into.

5. Davis and Cravey were free to appear elsewhere in other performances. In fact, between the performances in Washington involved herein, they appeared together in Florida, under the auspices of the Palm Beach Ballet.

6. Cravey had an independently established reputation and professional contracts, including a contract with a well-known moving picture producer, and had appeared on television.

7. Davis and Cravey supplied their own costumes and makeup. The record shows that, although Cravey's agent billed the Symphony (among other things) for two pairs of ballet slippers, the Symphony refused to reimburse Cravey for this item.

8. From the fees paid by the Symphony to Davis and Cravey no deductions were made for such items as Federal income tax and social security. (So far as Davis is concerned, this refers only to the fee he received *from the Symphony as a dancer*, not to the salary he received from the School as choreographer.)

9. Neither Davis nor Cravey was covered by the Symphony's audit for workmen's compensation insurance; Davis carried his own accident insurance.

10. The testimony of Rogers, Davis, and Cravey all indicates, and it is found, that Rogers (as manager of the Symphony), Lloyd Geisler (as conductor of the Symphony during the rehearsal and the performances), Day (as director of the School), and Davis (as choreographer) retained and exercised little, if any, control or supervision over the manner in which Davis and Cravey danced their roles in rehearsal and in the performances. As artists, Davis and Cravey were allowed considerable latitude in interpreting their roles as they saw fit.¹¹

F. Conclusions

I have carefully weighed both sets of factors. It is my considered opinion that the amount or degree of control reserved by the School and the Symphony over the performances of Davis and Cravey as dancers in the principal roles was not sufficient to constitute them employees. It is accordingly found that Cravey is, and at all material times has been, an independent contractor rather than an employee of the

¹⁰ *N.L.R.B. v. Phoenix Mutual Life Insurance Company, supra*, 986

¹¹ In reaching this conclusion I have not considered evidence introduced by the Respondents regarding instances in the past when Davis danced in other ballets under other contracts. I deem such evidence immaterial to the issues herein.

I have considered the testimony of Ruthanna Boris, an expert on ballet in general and "The Nutcracker" in particular, who was a witness for the Respondents. She described the usual relationship between the producer and the dancers in the principal roles of "The Nutcracker." To the extent that her testimony tends to indicate that the producer generally controls and directs the details of the soloists' performances, I deem it to be overcome by direct evidence that, in *these* performances of "The Nutcracker," such was not the case.

School and the Symphony. With regard to Davis, all parties agree that he was an employee of the School *when carrying out his duties as choreographer* for "The Nutcracker." It is found that, *when dancing* in that production, he did so as an independent contractor. It is further found that the telegram sent to Cravey and Davis by Tibbs on December 15, 1964, contained an implied threat of reprisal,¹² and that Gaynor, in his telephone conversation with Davis on December 16, 1964, expressly threatened Davis with reprisal.¹³ By such conduct Tibbs and Gaynor threatened, coerced, and restrained Davis and Cravey. It is further found that in making these threats Tibbs and Gaynor each acted as agent for both Respondents acting in concert, within the scope of his authority, and that both Respondents are therefore accountable for such conduct. It is also found that, at all material times, Davis and Cravey—the individuals to whom the threats were addressed—were engaged in the entertainment industry. I take official notice that the entertainment industry is an industry "affecting commerce" within the meaning of Section 2(7) of the Act.¹⁴ Consequently I find that Davis and Cravey each is, and at all material times has been, a "person engaged . . . in an industry affecting commerce" within the meaning of Section 8(b)(4)(ii) of the Act.¹⁵ Finally it is found that an object of the threats was to force or require Davis and Cravey to cease doing business with the School and/or the Symphony. It follows, and I find, that by such conduct the Respondents violated Section 8(b)(4)(ii)(B) of the Act.

Upon the basis of the above findings of fact, and upon the entire record in these cases, I make the following:

CONCLUSIONS OF LAW

1. National Symphony Orchestra Association and Washington School of Ballet are, and at all material times have been, engaged in commerce within the meaning of Section 2(6) of the Act.

2. Each of the Respondents is, and at all material times has been, a labor organization within the meaning of Section 2(5) of the Act.

3. Claudia Cravey is, and at all material times has been, an independent contractor within the meaning of Section 2(3) of the Act. Robert R. Davis was, when dancing in (but not when acting as choreographer for) "The Nutcracker" in December 1964 and January 1965, an independent contractor within the meaning of Section 2(3) of the Act.

4. Davis and Cravey each is, and at all material times has been, a person engaged in an industry affecting commerce within the meaning of Section 8(b)(4)(ii) of the Act.

5. By threatening, coercing and restraining Davis and Cravey where an object was to force or require them to cease doing business with National Symphony Orchestra Association and/or Washington School of Ballet, the Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(b)(4)(ii)(B) of the Act.

6. The above-described unfair labor practices tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce, and constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

RECOMMENDED ORDER

Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in these cases, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, it is recommended that Respondents, American Guild of Musical Artists, AFL-CIO, New York, New York, and Washington Branch,

¹² *Painters Local Union No. 249, Brotherhood of Painters, Decorators and Paperhangers of America, AFL-CIO (John J. Reich)*, 136 NLRB 176, 189: "Any would-be violator was impliedly warned that the Respondent might exercise sanctions against him."

¹³ In finding that a threat was made to Cravey, I do not rely on telephone calls alleged to have been made by Freyman to Cravey's mother on December 21 and 23. There is no showing that Mrs. Cravey was Claudia Cravey's agent to receive messages or that the messages were ever in fact conveyed to Claudia Cravey.

¹⁴ In a letter dated June 14, 1965, addressed to me, the attorney for the Respondents stated "We do not dispute the fact that ballet and concert performances even though local in nature are part of an industry affecting commerce."

¹⁵ *Painters Local Union No. 249, etc, supra*, 190-191.

American Guild of Musical Artists, AFL-CIO, Washington, D.C., their officers, representatives, and agents, shall:

1. Cease and desist from threatening, coercing, or restraining Robert R. Davis and/or Claudia Cravey where an object thereof is forcing or requiring either or both of them, when dancing as independent contractors rather than as employees, to cease doing business with National Symphony Orchestra Association and/or Washington School of Ballet.

2. Take the following affirmative action, which it is found will effectuate the policies of the Act:

(a) Post at its offices and meeting places in New York, New York, and Washington, D.C., copies of the attached notice marked "Appendix."¹⁶ Copies of the said notice, to be furnished by the Regional Director for Region 5, shall, after being duly signed by an authorized representative of each of the Respondents, be posted by the Respondents promptly upon receipt thereof, in conspicuous places at all locations where notices to members are customarily posted, and be maintained by them for 60 consecutive days thereafter. Reasonable steps shall be taken by the Respondents to insure that the notices are not altered, defaced, or covered by any other material.

(b) Sign and transmit to the said Regional Director sufficient copies of the said notice for posting in the offices of National Symphony Orchestra Association and Washington School of Ballet, should those organizations be willing to do so.

(c) Mail to Robert R. Davis and Claudia Cravey, at their last-known addresses, signed copies of the said notice.

(d) Notify the said Regional Director, in writing, within 20 days from the receipt of this Decision, what steps they have taken to comply herewith.¹⁷

¹⁶ If this Recommended Order is adopted by the Board, the words "the Recommended Order of a Trial Examiner" shall be substituted for the words "a Decision and Order." If the Board's Order is enforced by a decree of a United States Court of Appeals, the words "a Decision and Order" shall be substituted for the words "a Decree of the United States Court of Appeals, Enforcing an Order."

¹⁷ In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps Respondent has taken to comply herewith."

APPENDIX

NOTICE TO ALL MEMBERS OF AMERICAN GUILD OF MUSICAL ARTISTS, AFL-CIO AND WASHINGTON BRANCH, AMERICAN GUILD OF MUSICAL ARTISTS, AFL-CIO

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT threaten, coerce, or restrain Robert R. Davis and/or Claudia Cravey where an object thereof is forcing or requiring either or both of them, when dancing as independent contractors rather than as employees, to cease doing business with National Symphony Orchestra Association and/or Washington School of Ballet.

AMERICAN GUILD OF MUSICAL ARTISTS, AFL-CIO,
Labor Organization.

Dated----- By-----
(Representative) (Title)

WASHINGTON BRANCH, AMERICAN GUILD OF MUSICAL ARTISTS,
AFL-CIO,
Labor Organization.

Dated----- By-----
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If members have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, Sixth Floor, 707 North Calvert Street, Baltimore, Maryland, Telephone No. 752-2159.