

American Guild of Variety Artists, AFL-CIO  
(Harrah's Club, et al.) and Charles Peterson. Case  
20-CC-782

June 11, 1969

### DECISION AND ORDER

BY MEMBERS FANNING, BROWN, AND ZAGORIA

On February 11, 1969, Trial Examiner James R. Webster issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices within the meaning of the National Labor Relations Act, as amended, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. The Trial Examiner also found that the Respondent had not engaged in certain other alleged unfair labor practices and recommended dismissal of those allegations of the complaint. Thereafter, the General Counsel, the Respondent, and the Intervenor, Harrah's Club, filed exceptions to the Trial Examiner's Decision and supporting briefs.

Pursuant to the provisions of Section 3(b) of the Act, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

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 and briefs, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner only to the extent consistent herewith.

Harrah's Club and Sparks Nugget operate gambling casinos in the Reno-Lake Tahoe area, and provide other services including entertainment for their customers. In their main showrooms, the clubs employ on a year-round basis what are known as house bands, the primary function of which is to accompany top-name entertainers appearing in the showrooms. From March 1 through April 30, 1968, these house bands, represented by the American Federation of Musicians, went on strike against Harrah's, the Sparks Nugget and other clubs in the area. In sympathetic support of the AFM strike, Respondent AGVA sent telegrams to its members Gaylord and Holiday, Dinah Shore, and Tennessee Ernie Ford (scheduled to perform at Harrah's) and Sid Caesar (scheduled to perform at the Nugget) requesting that they honor the AFM picket lines or suffer union disciplinary action.

The Trial Examiner found that Respondent's telegrams to Gaylord and Holiday and to Sid Caesar coerced and restrained them not to work at the casinos in violation of Section 8(b)(4)(ii)(B) of

the Act. He dismissed similar allegations against Respondent with respect to the telegrams it sent to Dinah Shore and Tennessee Ernie Ford on the ground that these entertainers had, or would have, performed struck work for Harrah's Club and, therefore, were allies of that primary employer. We find that Respondent engaged solely in permissible primary activity with respect to the pressures it exerted on all of these entertainers.<sup>1</sup>

It was not the intent of Congress, nor has the Board construed the language of Section 8(b)(4), to proscribe primary action by striking employees who are engaged in a legitimate labor dispute with their employer.<sup>2</sup> For example, little would be left of the right to strike if striking employees were denied the concomitant right of peacefully picketing the immediate business of their employer. Yet, plainly, the object of picketing is frequently to influence third persons to withhold their business or services from the struck employer during the course of the dispute. In terms of effect, then, there may well be no distinction between lawful primary picketing and unlawful secondary picketing proscribed by Section 8(b)(4). One important test of the lawfulness of a union's picketing activities in the course of its dispute with an employer is the identification of such picketing with the actual functioning of the primary employer's business at the situs of the labor dispute.<sup>3</sup> Thus, as the Supreme Court has recently stated in affirming those Board Decisions which had adopted this general principle, direct appeals to "all those approaching the situs whose mission is selling, delivering or otherwise contributing to the operations which the strike is endeavoring to halt" to withhold their services constitutes traditional primary activity outside the scope of Section 8(b)(4).<sup>4</sup>

In applying these traditional principles to the present case, it is not and cannot be contended that Respondent's actions called for anything but the refusal of the entertainers to cross the picket lines of the striking musicians at the clubs in question. The picket lines were established in furtherance of a primary strike of the employees of the picketed casinos, and the telegrams advised the stars that AGVA supported the strike and instructed them to

<sup>1</sup>In view of our disposition of the issues raised by the allegations of the complaint, *infra*, we deem it unnecessary to decide whether any of the star entertainers involved herein, or all of them, performed or agreed to perform "struck work" within the meaning of *N.L.R.B. v. Business Machines and Office Appliance Machines Conference Board, etc. (Royal Typewriters)*, 228 F.2d 553, or whether they are employees within the meaning of Section 2(3) of the Act, as contended by Respondent.

<sup>2</sup>See *Local 761, IUE v. N.L.R.B. (General Electric Company)*, 366 U.S. 667, and cases cited therein.

<sup>3</sup>*International Brotherhood of Teamsters, Local 807 (Schultz Refrigerated Services, Inc.)*, 87 NLRB 502, 505.

<sup>4</sup>*United Steelworkers v. N.L.R.B. (Carrier Corporation)*, 376 U.S. 492, 499. See also *Oil Workers, Local 346 (The Pure Oil Company)*, 84 NLRB 315, 319; *International Brotherhood of Teamsters, Local 807 (Schultz Refrigerated Services, Inc.)*, 87 NLRB 502, 505; *Newspaper and Mail Deliverers Union (Interborough News Company)*, 90 NLRB 2135, 2149-2150; *Sailors Union of the Pacific (Moore Drydock)*, 92 NLRB 542, 551-552.

honor the picket line. The conduct of the Respondent in advising its members to honor the AFM picket lines was not substantially different from that of the AFM itself in conducting the picketing at the situs of the disputes, namely at the clubs themselves. Accordingly, we find that AGVA'S conduct does not fall into the category of illegal secondary activity by virtue of the fact that it assisted another union in that unions's labor dispute.

It is clear, moreover, that the work of the AGVA stars here involved not only contributed "to the operations which the strike . . . [was] endeavoring to halt" but in fact was directly related to the normal operations of these casinos. The record demonstrates that the shows in which the stars were engaged to perform are an important means of enticing the public to the clubs in the hope and reasonable expectation that once inside the club they can be induced to try their luck in the casinos. Moreover, the actual performances of the star-type entertainer are coordinated into the overall show offered by the club by club managers as to timing, pace, material, rehearsals, etc., all with a view to enhancing the financial success of the gambling enterprise. The presence of such entertainers, then, is a customary and necessary adjunct to the Nevada casino operations. Accordingly, inasmuch as the work of the star performers was in fact inextricably involved with and necessary to the normal operations of the casinos, and as Respondent's telegraphed instructions to all of the performers involved to honor the AFM picket line appealed for and induced action only at the situs of the dispute by persons "contributing to the operations which the strike was endeavoring to halt," we find that they constituted permissible primary activity.<sup>5</sup> We shall, therefore, dismiss the complaint in its entirety.

#### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

<sup>5</sup>*Milwaukee Plywood Company*, 126 NLRB 650. Nor does the General Counsel contend that the activity in question was unlawful because AGVA was not directly involved in a labor dispute with the casinos.

<sup>6</sup>We reject the apparent view of the Trial Examiner and theory of the General Counsel that, because the star entertainers are independent contractors, rather than employees, appeals to them to honor a picket line lose their character as permissible primary activity when accompanied by threats of internal disciplinary action by the union of which they are members. In our view, the decision in *Tennessee Glass Company, Inc.*, 164 NLRB No. 19, rests on the fact that the independent contractors involved therein were asked, not simply to observe a picket line but to stop doing business completely with the struck employer, under pain of union disciplinary action. Though we continue to adhere to the view that union disciplinary action directed against employer-members and independent contractor-members of the union may, in some circumstances, constitute, restraint, or coercion within the meaning of Section 8(b)(4)(ii), imposition of such sanctions does not convert appeals for permissible action into appeals for an unlawful object.

## TRIAL EXAMINER'S DECISION

### STATEMENT OF THE CASE

JAMES R. WEBSTER, Trial Examiner: This case with all parties represented was heard in Reno, Nevada, on November 18, 19, and 20, 1968, on complaint of the General Counsel and answer of American Guild of Variety Artists, AFL-CIO, herein called Respondent or AGVA. The complaint was issued on August 22, 1968, on a charge filed April 11, 1968. The complaint alleges that Respondent threatened, coerced, or restrained certain performing artists for the object of forcing or requiring them to cease doing business with Harrah's Club and Sparks Nugget, Inc., in support of a labor dispute that the American Federation of Musicians, AFL-CIO, herein called AFM, had with Harrah's Club and Sparks Nugget, and other similar establishments in the area, thereby engaging in violations of Section 8(b)(4)(ii)(B) of the National Labor Relations Act, herein called the Act.

The General Counsel, Respondent, and Harrah's Club have filed briefs herein in which they have been carefully considered.<sup>1</sup> Upon the entire record and my observation of the witnesses, I hereby make the following.

### FINDINGS OF FACT

#### I. THE BUSINESSES OF THE PRIMARY EMPLOYERS

Harrah's Club is a Nevada corporation with places of business in Reno and Lake Tahoe, Nevada, where it is engaged in the operation of restaurants and gambling casinos. During the past year in the course and conduct of its business operations, it received gross revenue in excess of \$500,000 and purchased and received goods valued in excess of \$50,000 directly from points outside the State of Nevada.

Sparks Nugget, Inc., is a Nevada corporation with a place of business in Sparks, Nevada, where it is engaged in the operation of a gambling casino, restaurants, and a hotel. During the past year, Sparks Nugget received in the course and conduct of its business operations gross revenue in excess of \$500,000. During the same period it purchased and received goods valued in excess of \$50,000 directly from points outside the State of Nevada.

I find that Harrah's Club and Sparks Nugget, Inc., are employers engaged in commerce and in an industry affecting commerce within the meaning of Section 2(6) and (7) and Section 8(b)(4) of the Act.

#### II. THE LABOR ORGANIZATIONS INVOLVED

American Guild of Variety Artists, AFL-CIO, Respondent herein, American Federation of Musicians, AFL-CIO, herein called AFM, and Reno Musicians Protective Association No. 368, AFL-CIO, herein called Local 368, AFM, are labor organizations within the meaning of Section 2(5) of the Act.

#### III. THE ALLEGED UNFAIR LABOR PRACTICES

##### A. Issues and Prefatory Statement

The issues are as follows: (1) Whether the artists

<sup>1</sup>On January 13, 1969, Attorney for Intervenor, Harrah's Club, filed motion to correct official transcript. No opposition thereto has been filed and the motion has been carefully considered. The motion is granted.

involved herein, Gaylord and Holiday, Sid Caesar, Dinah Shore, and Tennessee Ernie Ford, are employees or independent contractors in their relations with Harrah's Club and Sparks Nugget. (2) If all or any of them are independent contractors, are they allies of either of these clubs in connection with their performances at these clubs during the strike of the American Federation of Musicians? (3) And, if they are independent contractors, did Respondent threaten, coerce or restrain them not to work for Harrah's Club or Sparks Nugget by language contained in telegrams dispatched by Respondent to each of these entertainers?

The American Federation of Musicians and Reno Musicians Protective Association No. 368 had a labor dispute and a strike at Harrah's Club and Sparks Nugget and other hotels in Reno, Nevada, for the period of March 1 to April 30, 1968.

On April 3, 1968, Respondent sent each of the above-named entertainers telegrams regarding their appearances at Harrah's Club or Sparks Nugget during the period of the strike. Telegrams were sent by Penny Singleton, Second Vice President of Respondent, to Gaylord and Holiday, Sid Caesar and Tennessee Ernie Ford as follows:

This is official notice that the AGVA National Board has voted to approve the AFM strike and to honor the AFM picket lines in Reno and Tahoe. You are therefore advised that, according to AGVA Constitution, you are not to perform in any of the Reno-Tahoe establishments where AFM is on strike.

Telegramms were sent by Truman McDaniel, the San Francisco Branch Manager of Respondent, to Dinah Shore and Tennessee Ernie Ford as follows:

To Dinah Shore:

AGVA National advisors are not to perform at any Reno-Tahoe establish presently struck AFM or they are in violation of AGVA Constitution. [as received]

To Tennessee Ernie Ford:

AGVA National advises no acts are to perform at any Reno-Tahoe establishment presently struck by AFM or they are in violation of AGVA Constitution.

### B. *Gaylord and Holiday*

At the time of the telegram to Gaylord and Holiday, they were performing at the Main Lounge of Harrah's Club at Lake Tahoe, Nevada. They had just completed a 4-week engagement at the Main Lounge of Harrah's Club in Reno, Nevada, which engagement was from March 1 through March 28, 1968. The engagement at Lake Tahoe was scheduled for 4 weeks, from April 1 through April 28, 1968. Gaylord and Holiday completed this engagement.

The contract for the performance of Gaylord and Holiday at Harrah's Club was executed in August 1966 and covered their performances for a total of 30 weeks to be performed in 1967 and 1968. By the terms of the contract, Harrah's Club is designated "employer" and Gaylord and Holiday are designated as "employees." The contract is on a standard form of the American Federation of Musicians. All of their performances in 1967 and 1968 were scheduled for the Main Lounges of Harrah's Club at Reno, Nevada, and Lake Tahoe, Nevada. The contract specified the days and hours of work and the weekly compensation that they were to receive. They were to perform 6 days weekly, not to

exceed a maximum of 4 shows nightly to be played during a consecutive 6-hour period. They were scheduled to receive the sum of \$8,500 per week for performances at Reno and \$12,500 per week for performances at Lake Tahoe, with 10 percent of their gross weekly compensation to be deducted by Harrah's Club and forwarded to their agent in Los Angeles, California. To comply with Harrah's policy of no risqué material, Gaylord and Holiday agreed to review their material and to delete anything they felt might be objectionable and to submit any portion of their act that they thought might be questionable or borderline to the entertainment director of Harrah's for approval.

Gaylord and Holiday constitute a comedy team with singing. With them in their act are two musicians, one a drummer and the other an organist or pianist. These two persons are selected and hired by Gaylord and Holiday and paid by them. The pianist, who is also their conductor, has a contract with Gaylord and Holiday at an annual salary, paid weekly. The drummer is paid when the act is performing. Harrah's Club makes no deductions from the weekly compensation paid to Gaylord and Holiday except the 10 percent that goes to their agent. Gaylord and Holiday, however, make social security and other deductions from the wages paid the drummer and the pianist, and I find that they are employees of Gaylord and Holiday. The pianist and drummer did not accompany Gaylord and Holiday during the period of the AFM strike.

Harrah's Club determines when the act shall perform and how long it shall perform, but Gaylord and Holiday determine the contents of the act except that they must comply with Harrah's policy on risqué material.

The main lounges where Gaylord and Holiday appeared are not Harrah's principal show rooms at Reno or Tahoe but are smaller rooms for entertainment seating approximately 250 persons each. Gaylord and Holiday do a self-contained act and did not utilize a house band or chorus line in their performances at Harrah's. By their contract with Harrah's, they received 100 percent sole star billing in the Main Lounges, and if any other act appeared in these lounges with them, it was a relief act.

### C. *Sid Caesar*

By contract dated April 2, 1968, on an AGVA standard form contract, Sparks Nugget engaged Sid Caesar to entertain at its main show room, the Circus Room, in Sparks, Nevada, for the period of April 5 to 11, 1968, for the sum of \$20,000. This contract was hastily negotiated for the reason that the act that had been scheduled for this period would not or could not perform because of the AFM strike.

Sid Caesar and his supporting actor, Mickey Deems, drove to Sparks, Nevada, on April 3, 1968. After their arrival, Caesar received the AGVA telegram. He decided not to perform.

Caesar performs various kinds of acts. One of his acts consists of comedy monologues in association with Mickey Deems. Caesar determines the contents of his act, and a club, such as Sparks Nugget, however, can ask him to delete any portion it considers risqué.

Generally, a show in a room such as the Circus Room consists of a production number with chorus girls, one or two supporting acts, and a star. A singing star usually brings his own music, his conductor and a pianist. A band is furnished by the Club. A show normally runs about 75

minutes. It is standard practice for the chorus line to perform for approximately 5 minutes. It is Caesar's practice to fill the remaining 70 minutes with himself and his people.

Caesar selects and compensates his supporting actors. The Nugget makes no deductions from the compensation paid Caesar except for the AGVA trust funds as specified in the contract. The Nugget determines the time for the performances, the length of the performances and the rehearsal times.

#### D. Dinah Shore

On March 19, 1968, a contract on an AGVA standard form was negotiated between Harrah's Club and Dinah Shore, a singing star, for her performance for 3 consecutive weeks, 7 days weekly, commencing on April 4, 1968. Remuneration was in excess of \$50,000. She was to provide and pay for two supporting acts, and Harrah agreed to provide and pay for an orchestra consisting of 21 musicians with instrumentation as designated by Shore. It was anticipated by Shore and her agents that the musicians' strike would be over prior to the commencement of her performance. Through her agents she contracted with comedian Pat Henry to appear with her as a supporting act, and she contracted with the Little Steps, a dancing group of four persons, also to appear with her on this show. Harrah's Club was informed of their identity and the amounts of their contracts. Harrah's was interested in the caliber of the supporting acts, but did not take any part in the selection of these acts nor in the amount of compensation they were to receive. Shore is normally accompanied by her personal manager, a hairdresser, and two musicians — a pianist-conductor and a drummer. These are paid by her and she deducts necessary employee withholdings from their wages.

As the date for the engagement approached, a meeting was held by those representing Dinah Shore in an effort to work out a means by which she could appear without the musicians, who were on strike. The thought of using a choral group of 20 voices was considered, but on April 1 or 2, 1968, it was decided that she would not appear as no musicians could be furnished by Harrah's Club and as she was unable to work out any means by which she could perform without musicians. On April 3, 1968, she received the telegram from AGVA.

#### E. Tennessee Ernie Ford

On December 12, 1967, on an AGVA standard form contract, Harrah's Club negotiated for the services of Tennessee Ernie Ford for an engagement at the Headliner Room, Harrah's Club in Reno, Nevada, for a period of 2 weeks of 15 shows weekly, commencing on March 28, 1968, with remuneration in excess of \$50,000. Ford entertains by singing and telling stories. He agreed to provide and pay for one supporting act and Harrah agreed to provide and pay for a 17-piece band instrumented as advised by Ford. By agreement dated January 23, 1968, the engagement was changed from a 2-week engagement to a 3-week engagement, commencing on March 21, 1968. Ford commenced the performance on the scheduled opening date and performed for the first week and 5 days of the second week. He then discontinued his engagement upon receipt of the AGVA telegram.

Ford's contracts and many other business matters are handled for him by Bedford Corporation, a corporation

set up for this purpose. Prior to the Harrah's Club engagement, Bedford Corporation contracted with the Good Time Singers as a supporting act for this engagement, but they did not appear. Accompanying Ford on this engagement, as well as on other engagements, were his personal manager, his conductor, and a man who functions as road manager. These persons receive their wages from Ford or Bedford Corporation.

As with all other performers, Harrah's Club determines the time of the performance and the length of the performance. Ford determines the songs and monologues. The proposed schedule for the contents of the show provided for a production number lasting 4 minutes, songs and monologues by Ford for 24 minutes, Bobbi Martin for 10 minutes, Good Time Singers for 18 minutes, Ford with the Good Time Singers for 4 minutes, and Ford's songs and monologues for 25 minutes. The total show was scheduled for 85 minutes. Bobbi Martin was booked directly by Harrah's Club. The proposed performance was not used as the Good Time Singers did not appear; the Club was unable to furnish musicians, and Ford, therefore, did not sing and told stories only.

#### F. Conclusions

I find that each of the artists involved herein, Gaylord and Holiday, Sid Caesar, Dinah Shore, and Tennessee Ernie Ford are independent contractors and not employees in their relationships with Harrah's Club and Sparks Nugget. This is based principally on a lack of the right of the clubs to control the contents of their acts except as to risqué material, the specialized and individualistic nature of the performances of the artists, the fact that their relationships with the clubs are limited and not continuous, and the fact that the artists are responsible for all expenses incident to the assembling and presentation of their acts and they bear the risks of profit or loss in completing an engagement within the contract compensation. The fact that the AGVA form contract refers to the club operators as employers and the artists as employees is not controlling. Thus, I find that the artists involved herein are secondary employers or persons to the dispute between AFM and the clubs. I find that they are persons or employers engaged in commerce or in an industry affecting commerce within the meaning of Section 2(6) and (7) and 8(b)(4) of the Act.<sup>2</sup>

A union may make an appeal to secondary employers to cease engaging in business with a primary employer with whom the union has a dispute,<sup>3</sup> but a union is precluded by Section 8(b)(4)(ii)(B) from accompanying such appeals with threat, restraint or coercion.<sup>4</sup>

However, by the "ally doctrine" a secondary employer may be juxtaposed into a position with a primary employer, as to the matters involved in a labor dispute, so that his operations stand in place of those of the primary employer. Then, Section 8(b)(4)(ii)(B), applicable to secondary employers, would not be applicable to him; and a union may engage in the same conduct toward him as it may engage in against the primary employer.

<sup>2</sup>*The Light Company, Inc.*, 121 NLRB 221; *National Symphony Orchestra Assn.*, 157 NLRB 735

<sup>3</sup>*International Rice Milling Co. v. NLRB.*, 341 U.S. 665, with the exception created by the reserved gate doctrine which precludes a union from doing even this in certain situations *Loc 761. IUE (General Electric Co.) v. NLRB.*, 366 U.S. 667.

<sup>4</sup>*East Bay Counties Dry Cleaners Assn.*, 167 NLRB No. 6; *Tennessee Glass Company, Inc.*, 164 NLRB No. 19.

As to whether or not the artists involved herein are allies of Harrah's Club and Sparks Nugget, the primary employers, depends on whether or not the artists performed or supplanted struck work — the work of the striking musicians, or were called upon to perform or supplant such work.<sup>5</sup> If, in order to fill in the void created by the absence of the musicians, an artist entertains for a period longer than he would have done if the musicians were present, then he in effect would be doing struck work even though the artist's entertainment during this additional time is not or would not be identical to that of the musicians. Regardless of its nature, it would be entertainment replacing struck entertainment. On the other hand, if an artist did no more entertaining than he would have done in the absence of the strike, then he would not be an ally.

Gaylord and Holiday perform a self-contained act and the musicians of Harrah's were not scheduled to work with them. Gaylord and Holiday did not perform in Harrah's main show room. They supplanted no struck work and thus were not allies of Harrah's Club in its dispute with AFM.

Tennessee Ernie Ford was in the midst of his engagement when he received AGVA'S telegram. As there was no musical accompaniment for his songs, he abandoned his original schedule for the show and entertained with stories only. In filling in and completing the show in this manner, he was in part supplanting the work of the band. In so doing, he became an ally of Harrah's Club in its dispute with AFM.

Sid Caesar and Dinah Shore did not perform. Dinah Shore was unable to perform without the band and because of its absence she decided not to appear prior to the receipt of the AGVA telegram. Had she performed with choral accompaniment or had she substituted some other type of entertaining for her singing with the band, she would have been an ally of Harrah's Club.

Sid Caesar is primarily a comedian and not a singer and he could have completed his part of the show without musicians. He normally performs 70 minutes of a show without utilization of a band. However, on receipt of the AGVA telegram, he decided not to appear. As he normally performs 70 minutes of his show with himself and his people and without the house band, I find that he was not scheduled to perform struck work and was not an ally of Sparks Nugget.

Respondent's telegrams to the artists, however, did not differentiate between struck work and other work. Each was ordered "not to perform" in any of the Reno-Tahoe establishments being struck. McDaniel's telegrams warned that acts that performed would be in violation of AGVA constitution. Singleton's telegrams advised that "according to AGVA Constitution," the acts were not to perform.

Section I, article XVII, of Respondent's constitution provides as follows:

Any member who shall violate or fail to observe any of the requirements of this Constitution or any of the By-Laws, Rules, Regulations, Orders or Directives of the Association, or duly authorized committee or representative, or who shall fail to comply with a decision of any branch executive or other hearing committee or arbitration panel in connection with compliance with the provisions of any minimum basic agreement, engagement contract, or rule or agreement

respecting AGVA franchised agents, or any member who shall in any way be indebted to the Association may, after trial, be either fined, censured, suspended, expelled from membership or placed on the National Unfair list.

Respondent's rule 14 provides as follows:

No Member of AGVA shall cross an AGVA picket line, or any picket line supported or approved by AGVA. Any member found guilty of violating this Section shall be fined a minimum of \$250 and/or be suspended for a minimum of thirty (30) days or both.

Thus, the artists were threatened with fines, censure, suspension and expulsion if they violated the directive. This is clearly coercion within the meaning of Section 8(b)(4)(ii), and where done for an objective proscribed by subsections of Section 8(b)(4), it substitutes an unfair labor practice. It is not made otherwise by the proviso to Section 8(b)(1)(A) which places a limitation on conduct defined as an unfair labor practice by that Section.

Subsection (B) to Section 8(b)(4) proscribes coercion of any person where an object thereof is to force any person to cease doing business with any other person. I find that Respondent, by its telegrams to Gaylord and Holiday and to Sid Caesar, violated Subsection 8(b)(4)(ii)(B) of the Act.

As Ford was performing struck work, and as Shore would have performed struck work if she had performed, and therefore being allies of Harrah's Club, the coercion contained in Respondent's telegrams to them is not proscribed by a subsection to Section 8(b)(4) of the Act, and therefore did not violate the Act. Under the circumstances of the nature of the performances of these two stars, I find that the fact that the telegrams were broadly worded and not restricted to struck work is not significant.

Upon the foregoing findings of fact and conclusions and upon the entire record, I make the following:

#### CONCLUSIONS OF LAW

1. Harrah's Club and Sparks Nugget, Inc., are employers engaged in commerce and in operations affecting commerce within the meaning of Section 2(2), (6) and (7) and 8(b)(4) of the Act.

2. Dinah Shore, Tennessee Ernie Ford, Gaylord and Holiday, and Sid Caesar are persons and/or employers engaged in commerce and in operations affecting commerce within the meaning of Section 2(1), (2), (6) and (7) and 8(b)(4) of the Act.

3. By threatening, restraining and coercing Gaylord and Holiday and Sid Caesar with fines, censure, suspension or expulsion for an object of forcing or requiring them to cease doing business with Harrah's Club and Sparks Nugget respectively, Respondent has engaged in unfair labor practices in violation of Section 8(b)(4)(ii)(B) of the Act.

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

5. Respondent has not engaged in unfair labor practices by its telegrams to Tennessee Ernie Ford and Dinah Shore.

<sup>5</sup>N.L.R.B. v. Royal Typewriter Co., 228 F.2d 553 (C.A. 2); General Metals Corp., 120 NLRB 1227; Climax Machinery Co., 86 NLRB 1243.

## THE REMEDY

Having found that Respondent has engaged in unfair labor practices violative of Section 8(b)(4)(ii)(B) of the Act, I shall recommend that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act.

On the basis of the foregoing findings of fact and conclusions of law and the entire record herein, I recommend that, pursuant to Section 10(c) of the Act, the Board issue the following:

## ORDER

American Guild of Variety Artists, AFL-CIO, its officers, agents, representatives, successors, and assigns, shall:

1. Cease and desist from threatening, coercing, or restraining Gaylord and Holiday, Sid Caesar, or any other person engaged in commerce or in an industry affecting commerce, for an object of forcing or requiring said person to cease doing business with Harrah's Club or Sparks Nugget.

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

(a) Post at its headquarters and in each of its offices, including all places where notices to members are customarily posted, copies of the notice attached hereto marked "Appendix."<sup>6</sup> Copies of said notice, to be furnished by the Regional Director for Region 20 of the National Labor Relations Board, after being duly signed by an authorized representative of Respondent, shall be posted by it immediately upon receipt thereof and be maintained by it for 60 consecutive days thereafter.

<sup>6</sup>In the event that this Recommended Order is adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order is enforced by a decree of a United States Court of Appeals, the words "a Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "a Decision and Order."

<sup>7</sup>In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for Region 20, in writing, within 10 days from the date of this Order, what steps it has taken to comply herewith."

Reasonable steps shall be taken by Respondent therein to insure that said notices are not altered, defaced or covered by any other material.

(b) Sign and mail sufficient copies of said notice to the Regional Director, Region 20, for the information of Harrah's Club, Sparks Nugget, Sid Caesar and Gaylord and Holiday and for posting by said employers or persons, if willing, at locations on their premises where notices to employees are posted.

(c) Notify the Regional Director for Region 20, in writing, within 20 days from the date of receipt of a copy of this decision, what steps Respondent has taken to comply herewith.<sup>7</sup>

IT IS RECOMMENDED that the complaint be dismissed insofar as it alleges unfair labor practices by Respondent by telegrams to Dinah Shore and Tennessee Ernie Ford.

## APPENDIX

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 Gaylord and Holiday, Sid Caesar, or any other person engaged in interstate commerce, with fines, censure, suspension or expulsion for an object of forcing or requiring said person to cease doing business with Harrah's Club and/or Sparks Nugget.

AMERICAN GUILD OF  
VARIETY 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, 13050 Federal Building, 450 Golden Gate Avenue, Box 36047, San Francisco, California 94102, Telephone 556-0335.