

American Federation of Musicians, AFL-CIO; and Reno Musicians Protective Association #368, AFL-CIO (Harrah's Club, et al.) and National Association of Orchestra Leaders. Cases 20-CC-771 and 20-CC-773

March 29, 1972

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND KENNEDY

On September 30, 1969, the National Labor Relations Board issued its Decision and Order dismissing the complaint in the above-entitled proceeding, upon concluding, *inter alia*, that Respondents had engaged in permissible primary activity when they sent telegrams to certain performers requesting that they honor AFM picket lines or suffer union disciplinary action.¹

On March 15, 1971, the United States Court of Appeals for the Ninth Circuit found that the Board erred in finding that Respondents had engaged in primary activity in sending the telegrams. The court further found there was "overwhelming evidence" that the entertainers to whom the telegrams were sent were independent contractors, that the telegrams threatened, coerced, and restrained the independent contractors who received them, and that the telegrams were sent for the unlawful object of forcing or requiring the recipients to cease doing business with Harrah's Club and the Ponderosa Hotel Co. The court concluded that by these actions Respondents violated Section 8(b)(4)(i) and (ii)(B) of the Act and remanded the case to the Board for the purpose of entering an order in accordance with its decision.² On October 26, 1971, the Supreme Court of the United States denied a petition for writ of certiorari.³

On November 22, 1971, the Board invited statements of position from the parties in light of the remand order. Such statements were received from the General Counsel, the Charging Party, the Respondents, and the Intervenor, Harrah's Club.

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

The court of appeals has disposed of all substantive issues in this case, leaving only the question of remedy for our consideration.⁴ Intervenor, Harrah's Club, urges that in addition to the usual cease-and-desist

posting requirements that both Respondents be required to publish the full notice in their respective publications which are distributed to members. The Charging Party supports this position. In view of the apparent wide dispersion of Respondents' membership we feel that this is an appropriate additional remedy and shall order Respondents to so publish the notices. The Charging Party also urges that Respondents be required to amend their bylaws so that employer-members would not be subject to the bylaws invoked by Respondents in threatening to discipline employer-members if they performed at the club involved. Although the court found that Respondents used such provisions in connection with their unlawful conduct, the court did not find that the provisions are themselves unlawful. Under these circumstances it would be inappropriate to order their amendment or deletion from Respondents' bylaws. In our opinion, it is sufficient to order Respondents to cease and desist from engaging in the unlawful conduct. The Charging Party also requests that the notice be mailed to each member of the American Federation of Musicians; be printed in the publications of the International and all its locals; and be posted in the headquarters of all locals and in places where musicians report for work in Reno establishments. The Charging Party also requests that a copy be mailed to all booking agents, recording companies, and other persons with whom the American Federation of Musicians has working arrangements. In our opinion, however, it is sufficient that the Respondents, in addition to posting the notice at their respective headquarters, also publish it in an issue of their respective publications.

Finally, the Charging Party urges the Board to issue a broad order. In support of this contention, it cites other Board cases involving the American Federation of Musicians and some of its locals, all but two of which were resolved by settlement agreements. The Board was held that settlement agreements do not establish prior violations and, hence, are not probative of a "proclivity" to violate the Act.⁵ Only one of the cases not resolved by settlement involved American Federation of Musicians as a respondent. Neither case involved Local 368. In these circumstances we do not deem it appropriate to issue a broad remedial order.

¹ 178 NLRB 707.

² 446 F.2d 471. This case was consolidated before the court with the Board's decision in *Harrah's*, 176 NLRB No. 77.

³ 404 U.S. 192.

⁴ The Charging Party has requested oral argument. This request is hereby denied because the record and statements submitted by the parties adequately present the issues and the positions of the parties.

⁵ *Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (H. A. Carney and David Thompson, Partners, d/b/a C & T Trucking Co.)*, 191 NLRB No. 2.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondents, American Federation of Musicians, AFL-CIO; and Reno Musicians Protective Association \$368, AFL-CIO, their officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Inducing or encouraging any individual employed by Judy Lynn to refuse in the course of his employment to perform any services with an object of forcing or requiring Judy Lynn to cease doing business with Harrah's Club.

(b) Threatening, coercing, or restraining Judy Lynn, Gaylord and Holiday, George Liberace, 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 and/or the Ponderosa Hotel Co.

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

(a) Post at their headquarters and in each of their offices, including all places where notices to members are customarily posted, and reprint in a copy of their respective publications which are distributed to their respective memberships, copies of the appropriate attached notice marked "Appendix A" and "Appendix B."⁶ Copies of said notices, on forms provided by the Regional Director for Region 20, after being duly signed by an authorized representative, shall be posted by Respondents immediately upon receipt thereof, and be maintained by Respondents for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondents to insure that said notices are not altered, defaced, or covered by any other material. Respondents reprinting of the notices in their respective publications shall be within 60 days of receipt of the notices from the Regional Director.

(b) Sign and mail sufficient copies of said notices to the Regional Director for Region 20, for the information of Harrah's Club, the Ponderosa Hotel, Judy Lynn, Gaylord and Holiday, and George Liberace, and for the posting by said employers or persons, if willing, at locations on their premises where notices to employees are posted.

⁶ In the event that 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 be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

(c) Notify the Regional Director for Region 20, in writing, within 20 days from the date of this Order, what steps the Respondents have taken to comply herewith.

APPENDIX A

NOTICE TO MEMBERS

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

WE WILL NOT induce or encourage any individual employed by Judy Lynn to refuse in the course of his employment to perform any service with an object of forcing or requiring Judy Lynn to cease doing business with Harrah's Club.

WE WILL NOT threaten, coerce, or restrain Judy Lynn, Gaylord and Holiday, George Liberace, 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 and/or the Ponderosa Hotel Co.

AMERICAN
FEDERATION OF
MUSICIANS
AFL-CIO
(Labor Organization)

Dated _____ By _____ (Title)
(Representative)

This is an official notice and must not be defaced by anyone.

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.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 13018 Federal Building, Box 36047, 450 Golden Gate Avenue, San Francisco, California, 94102, Telephone 415-556-3197.

APPENDIX B

NOTICE TO MEMBERS

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

WE WILL NOT induce or encourage any individual employed by Judy Lynn to refuse in the course of his employment to perform any service with an object of forcing or requiring Judy Lynn to cease doing business with Harrah's Club.

WE WILL NOT threaten, coerce, or restrain Judy Lynn, Gaylor and Holiday, George Liberace, 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 and/or the Ponderosa Hotel Co.

**RENO MUSICIANS
PROTECTIVE
ASSOCIATION
#368, AFL-CIO
(Labor Organization)**

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

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.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 13018 Federal Building, Box 36047, 450 Golden Gate Avenue, San Francisco, California 94102, Telephone 415-556-3197.