

**Wolf Trap Foundation for the Performing Arts and Regina M. Becker**

**Ford's Theatre Society and Regina M. Becker**

**513 13th Street, N.W., Inc., t/a Warner Theatre and Regina M. Becker**

**The New National Theatre Corporation t/a National Theatre and Regina M. Becker**

**International Alliance of Theatrical Stage Employees and Moving Picture Operators of the United States and Canada, Local 22, AFL-CIO (Wolf Trap Foundation for the Performing Arts) and Regina M. Becker**

**International Alliance of Theatrical Stage Employees and Moving Picture Operators of the United States and Canada, Local 22, AFL-CIO (Ford's Theatre Society; The New National Theatre Corporation, t/a National Theatre; 513 13th Street, N.W., t/a Warner Theatre) and Regina M. Becker. Cases 5-CA-13813, 5-CA-13836-1, 5-CA-13836-2, 5-CA-13836-3, 5-CB-3889, and 5-CA-3898**

June 30, 1988

**SUPPLEMENTAL DECISION AND ORDER**

**BY CHAIRMAN STEPHENS AND MEMBERS JOHANSEN AND CRACRAFT**

On January 13, 1988, the National Labor Relations Board issued a Decision and Order in the above-entitled proceeding<sup>1</sup> in which it affirmed, in part, the rulings, findings, and conclusions of the administrative law judge and adopted his recommended Order with certain modifications. The Board found, *inter alia*, that the Respondent Union and Respondent Employers Wolf Trap and Ford's Theatre violated Sections 8(b)(1)(A) and 8(a)(1), respectively, by maintaining closed-shop provisions in their collective-bargaining agreements that gave work preference to union members. We further held that by refusing to refer Charging Party Regina Becker for employment pursuant to a lawful hiring hall arrangement between the Respondents because of her nonunion status the Union violated Section 8(b)(2). Finally, we announced a new policy of finding employers jointly and severally liable for a union's discriminatory operation of a hiring hall only if they know or can be reasonably charged with notice of a union's discrimination. Previously, the Board had adhered to the principle of strict liability and held employers responsible even if they had no knowledge, either actual or constructive, of a union's discriminatory operation of a referral system. Applying the new

<sup>1</sup> 287 NLRB 1040

standard, we found that despite the absence of actual knowledge on the part of Respondents Wolf Trap and Ford's Theatre it was, nevertheless, reasonable to charge them with notice of the Union's discriminatory treatment of Becker because they knowingly agreed to the unlawful closed-shop clause.<sup>2</sup> We therefore found these Respondents violated Section 8(a)(3) of the Act and ordered them to cease and desist, to post a notice to employees, and to make Becker whole for any losses she may have suffered as a result of the discrimination practiced against her.

On February 8, 1988, Respondents Wolf Trap and Ford's Theatre filed a "Joint Motion to Reconsider and Stay Further Proceedings" stating various reasons for the Board to reconsider its finding of violations against them. Alternatively, the Respondent Employers submit that even if the Board adheres to its decision, their backpay liability should be limited to the duration of the contracts that contained the unlawful closed-shop clauses. In addition, Respondent Ford's Theatre contends that, in any event, the 10(b) date for imposing liability against it is May 2, 1981, rather than April 20, 1981, as set forth in the notice to employees that the Board ordered to be posted.

The Board has considered the Respondent's motion and finds merit in their contention that their liability for the Union's discrimination against Regina Becker should cease upon expiration of the contracts, which contained unlawful closed-shop provisions in their contracts with the Union. The sole basis for assessing liability against Wolf Trap and Ford's Theatre was the presence of the closed-shop provisions in their contracts with the Union. It follows that such liability should extend no longer than the life of the contracts containing those unlawful clauses, *i.e.*, December 31, 1981, in Ford's Theatre's case and April 30, 1982, for Wolf Trap.

Thus, on reconsideration, we shall modify our original Order by limiting the Respondent Employers' backpay liability in accordance with the above dates. In addition, Respondent Ford's Theatre correctly points out that the charges against it were not filed until November 2, 1981, and, therefore, we shall amend the 10(b) date set out in the notice to read May 2, 1981, rather than April 20, 1981.

<sup>2</sup> Conversely, we dismissed the complaint against Respondent National Theatre because it had neither actual knowledge of the Union's discrimination nor a closed-shop bargaining agreement under which it could be reasonably charged with notice of the unlawful conduct. The General Counsel did not contend, and there is no evidence to support a finding, that any Employer Respondents had actual knowledge of the Union's discrimination.

We have modified our Order to reflect the changes made in accordance with this decision and to more accurately reflect our original Decision and Order. The Order as so modified is set out below as well as the attached notices, which are substituted for those that are attached as appendices to our original Decision and Order.

In all other respects, the Respondents' motion raises no other issues not previously argued and fully considered by the Board and is denied.

#### ORDER

The National Labor Relations Board orders that:

A. Respondent International Alliance of Theatrical Stage Employees and Moving Picture Operators of the United States and Canada, Local 22, AFL-CIO, Washington, D.C., its officers, agents, and representatives, shall

1. Cease and desist from

(a) Discriminating in the operation of a hiring hall system against Regina Becker or any other person on the basis of gender or nonmembership in a union.

(b) Agreeing to and maintaining provisions in collective-bargaining agreements that give preference for employment to members of a union over nonmembers.

(c) Making statements to employees that other employees would be discriminated against because of their gender and their nonmembership in a union.

(d) Proclaiming a referral policy that gives preference to union members and their sons.

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

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

(a) Jointly and severally with Ford's Theatre and Wolf Trap Foundation make whole Regina Becker for any loss of wages and other benefits she may have suffered by reason of the Respondent Union's discriminatory failure to refer her to employment after April 20, 1981. Backpay shall be computed as described in the remedy section of the judge's decision with interest thereon to be computed in accordance with footnote 3 of our original Decision and Order. In addition, jointly and severally with Ford's Theatre and Wolf Trap Foundation, make whole Regina Becker by making contributions on her behalf to any funds to which such contributions would have been made had she been lawfully referred to employment.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment

records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its business offices, union halls, and any other places where it customarily posts notices to members, copies of the attached notice marked "Appendix A."<sup>3</sup> Copies of the notice on forms provided by the Regional Director for Region 5, after being signed by an authorized representative of the Respondent Union, shall be posted by the Respondent Union immediately upon receipt thereof in the places provided above. Notices are to be posted for 60 consecutive days, in conspicuous places. Reasonable steps shall be taken by the Respondent Union to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Forward signed copies of the notice to the Regional Director for Region 5 for posting by Respondents Wolf Trap and Ford's, at all locations in their places of business where notices to employees are customarily posted.

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

B. Respondent Wolf Trap Foundation for the Performing Arts, Washington, D.C., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Agreeing to and maintaining provisions in collective-bargaining agreements that give preference for employment to members of a union over nonmembers.

(b) Maintaining with Respondent Local 22 or any other labor organization an exclusive hiring hall system under which applicants for employment are discriminated against because of their gender or nonmembership in a union.

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

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

(a) Jointly and severally with International Alliance of Theatrical Stage Employees and Moving Picture Operators of the United States and Canada, Local 22, AFL-CIO, and Ford's Theatre make whole Regina Becker for any loss of earnings and benefits she may have suffered between April 20, 1981, and April 30, 1982, by reason of the discrimi-

<sup>3</sup> If 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."

nation against her. Backpay shall be computed as described in the remedy section of the judge's decision with interest thereon computed in accordance with footnote 3 of our original Decision and Order. In addition, jointly and severally with Ford's Theatre and the Union, make whole Regina Becker by making contributions on her behalf to any funds to which such contributions would have been made had she been lawfully referred to employment.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its place of business copies of the attached notice marked "Appendix B."<sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In addition, post in such places copies of "Appendix A," which are forwarded to Respondent Wolf Trap by the Regional Director for Region 5.

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

C. Respondent Ford's Theatre Society, Washington, D.C., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Agreeing to and maintaining provisions in collective-bargaining agreements that give preference for employment to members of a union over nonmembers.

(b) Maintaining with Respondent Local 22 or any other labor organization an exclusive hiring hall system under which applicants for employment are discriminated against because of their gender or nonmembership in a union.

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

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

<sup>4</sup> See fn 3, supra.

(a) Jointly and severally with International Alliance of Theatrical Stage Employees and Moving Picture Operators of the United States and Canada, Local 22, AFL-CIO, and Wolf Trap Foundation make whole Regina Becker for any loss of earnings and benefits she may have suffered between May 2 and December 31, 1981, by reason of the discrimination against her. Backpay shall be computed as described in the remedy section of the judge's decision with interest thereon computed in accordance with footnote 3 of our original Decision and Order. In addition, jointly and severally with Wolf Trap and the Union make whole Regina Becker by making contributions on her behalf to any funds to which such contributions would have been made had she been lawfully referred to employment.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its place of business copies of the attached notice marked "Appendix C."<sup>5</sup> Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In addition, post in such places copies of "Appendix A," which are forwarded to Respondent Ford's by the Regional Director for Region 5.

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

<sup>5</sup> See fn 3, supra

## APPENDIX A

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

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

WE WILL NOT discriminate against Regina Becker or any other applicants for referral to employment because of their gender or their nonmembership in our Union or any other union.

WE WILL NOT agree to or maintain with employers any collective-bargaining agreements that contain provisions giving preference for employment to members of our Union or any other labor organization.

WE WILL NOT tell employee that other employees will be discriminated against because of their gender or nonmembership in a labor organization.

WE WILL NOT announce at membership meetings or elsewhere a policy of giving preference to union members and their sons over nonmembers.

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

WE WILL jointly and severally with Ford's Theatre and Wolf Trap Foundation make Regina Becker whole, with interest, for any losses suffered as a result of our discrimination against her after April 20, 1981.

INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE OPERATORS OF THE UNITED STATES AND CANADA, LOCAL 22, AFL-CIO

#### APPENDIX B

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

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

WE WILL NOT maintain with International Alliance of Theatrical Stage Employees and Moving Picture Operators of the United States and Canada, Local 22, AFL-CIO, or any other labor organization, a collective-bargaining agreement that contains provisions giving preference in employment to union members over nonmembers.

WE WILL NOT maintain with Local 22 or any other labor organization an exclusive hiring hall ar-

angement that discriminates against applicants for referral to employment on the basis of their gender or nonmembership in a union.

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

WE WILL jointly and severally with Ford's Theatre and the Union make whole Regina Becker for any losses she may have suffered as a result of the discrimination against her by Local 22 after April 20, 1981, until April 30, 1982, plus interest.

WOLF TRAP FOUNDATION FOR THE  
PERFORMING ARTS

#### APPENDIX C

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

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

WE WILL NOT maintain with International Alliance of Theatrical Stage Employees and Moving Picture Operators of the United States and Canada, Local 22, AFL-CIO, or any other labor organization, a collective-bargaining agreement that contains provisions giving preference in employment to union members over nonmembers.

WE WILL NOT maintain with Local 22 or any other labor organization an exclusive hiring hall arrangement that discriminates against applicants for referral to employment on the basis of their gender or nonmembership in a union.

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

WE WILL jointly and severally with Wolf Trap and the Union make whole Regina Becker for any losses she may have suffered as a result of the discrimination against her by Local 22 after May 2, 1981, until December 31, 1981, plus interest.

FORD'S THEATRE SOCIETY