United Basketball Players Association *and* Harlem Globetrotters, Inc., a Division of International Broadcasting Corporation. Cases 31-CB-6816 and 31-CB-6946

June 15, 1989

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT AND HIGGINS

Upon charges filed by the Employer on October 2, 1986 (amended on October 28, 1986), and January 30, 1987, the General Counsel of the National Labor Relations Board issued a second consolidated amended complaint against the Union, the Respondent, alleging that it has violated Section 8(b)(3) of the National Labor Relations Act.[1] Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On February 23, 1989, the General Counsel filed a Motion for Summary Judgment. On February 27, 1989, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the Second Consolidated Amended Complaint shall be deemed to be admitted to be true and may be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that counsel for the General Counsel, by letter dated January 10, 1989, notified the Respondent that unless an answer was received by January 24, 1989, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Employer, a Delaware corporation, is engaged in the operation of professional basketball teams at its facility in Hollywood, California. In the course and conduct of those operations, the Employer annually sells and ships goods or services valued in excess of $50,000 directly to customers located outside the State of California, and annually derives gross revenues in excess of $500,000. We find that the Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Respondent is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The Employer and the Respondent were parties to a collective-bargaining agreement that was effective from September 1, 1983, to August 31, 1986. The employees of the Employer described in article 1, section 1, and article 2, section 1 of that agreement constitute a unit appropriate for collective bargaining under Section 9(b) of the Act. Since at least 1980, and at all material times, the Respondent has been the lawfully designated collective-bargaining representative of the employees of the Employer. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which has been described above. At all relevant times, the Respondent, by virtue of Section 9(a) of the Act, has been and is the exclusive collective-bargaining representative of the employees in the unit described above.

At various times during July, August, September, and October 1986, the Employer and the Respondent met to engage in negotiations regarding wages, hours, and other terms and conditions of employment of the employees in the unit described above. During those negotiations, the Respondent demanded as a condition of consummating any collective-bargaining agreement that the Employer agree to include the following provisions:

> *Public Relations.* The Company shall have the right to use [e]mployees to assist and take part in public relations and other promotional activities in a reasonable manner, and the Company will endeavor to give all of the players a reasonable opportunity to participate in such

[1] On September 8, 1988, the Respondent and the Employer entered into an informal settlement agreement in settlement of the captioned cases That agreement was approved by the Acting Regional Director for Region 31 on September 13, 1988 Thereafter, the Respondent failed and refused to comply with the provisions of the agreement By letter dated November 1, 1988, the Acting Regional Director withdrew his approval of the settlement agreement and informed the Respondent that the captioned cases were subject to further proceedings

> activities . . . . Whenever the Company receives compensation for such appearances, the Company shall pay the [Respondent] and/or player who appears, one third (1/3) of the proceeds it receives for such appearances within ten (10) days of receipt.
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> *Network Television Shows.* Whenever a network television show, such as ABC Wide World of Sports, is contracted by the Company, then the [Respondent] shall receive additional compensation over and above the individual contracts of the various employees and said compensation shall be a sum equal to one third (1/3) of the net revenue generated by such contract. The one third (1/3) net revenue shall also be applicable for any second showing of the network television show for which any additional money is received by the Company.
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> *Bonus.* Employees shall share and participate at the end of each regular season in a bonus fund which shall not be less than One Hundred Fifty Thousand ($150,000.00) Dollars. The Bonus fund shall be paid directly to . . . [the Respondent] . . . and . . . [the Respondent] shall distribute the money to the employees in such proportion as . . . [the Respondent] shall determine.

The provisions demanded by the Respondent as set forth above, insofar as they would require the Employer to make payments to the Respondent, are prohibited by Section 302 of the Act. In furtherance and support of those demands, the Respondent bargained to impasse and, about September 17, 1986, engaged in a strike. By demanding as a condition of consummating any collective-bargaining agreement that the Employer make payments to the Respondent that are prohibited by Section 302, and by bargaining to impasse and striking in support of those demands, the Respondent has violated Section 8(b)(3) of the Act.

Since about November 11, 1986, the Employer has requested the Respondent to furnish the following information, which is relevant and necessary for the purposes of collective bargaining:

> Documents, records or other information indicating (a) the names and addresses of individuals who received payments from the Emergency Relief Fund and Scholarship Funds during 1983–86, (b) the amounts received by each individual in either Emergency Relief or Scholarship Fund payments, (c) whether [the Respondent] retained any of the Emergency Relief and/or Scholarship Fund monies, and if so, for what years and in what amounts, and (d) the criteria used by [the Respondent] in selecting recipients for these payments.

Since about November 21, 1986, the Respondent has failed and refused to furnish to the Employer the information described above. By failing and refusing to provide that information to the Employer, the Respondent has violated Section 8(b)(3) of the Act.

CONCLUSIONS OF LAW

By demanding, as a condition of consummating any collective-bargaining agreement, that the Employer make payments to the Respondent that are prohibited by Section 302 of the Act, by bargaining to impasse and striking in support of those demands, and by failing and refusing to provide information requested by the Employer that is relevant and necessary to collective bargaining, the Respondent has failed and refused, and is failing and refusing, to bargain collectively and in good faith with the Employer as required by Section 8(d) of the Act, and thereby has engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(3) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. We shall require the Respondent, on request, to furnish the Employer with information that is relevant and necessary to collective bargaining.

ORDER

The National Labor Relations Board orders that the Respondent, United Basketball Players Association, Detroit, Michigan, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Demanding, as a condition to consummating any collective-bargaining agreement, that Harlem Globetrotters, Inc., a Division of International Broadcasting Corporation (the Employer) make payments to the Respondent that are prohibited by Section 302 of the Act, and bargaining to impasse and striking in support of such demands.

(b) Failing and refusing to furnish the Employer with information that is relevant and necessary to collective bargaining.

(c) 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) On request, furnish the Employer with information that is relevant and necessary to collective bargaining. Specifically, the Respondent shall, on request, furnish the Employer with documents, records, or other information indicating the names and addresses of individuals who received payments from the Emergency Relief Fund and Scholarship Funds during 1983–1986; the amounts received by each individual; whether the Respondent retained any moneys from either fund and, if so, for what years and in what amounts; and the criteria used by the Respondent in selecting recipients for such payments.

(b) Post at its facility in Detroit, Michigan, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 31, 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 and members 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.

[2] 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."

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

APPENDIX

NOTICE TO EMPLOYEES AND 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 demand, as a condition to consummating any collective-bargaining agreement, that Harlem Globetrotters, Inc., a Division of International Broadcasting Corporation (the Employer), make payments that are prohibited by Section 302 of the Labor-Management Relations Act, as amended, and WE WILL NOT bargain to impasse or strike in support of such demands.

WE WILL NOT fail and refuse to furnish the Employer with information that is relevant and necessary to collective bargaining.

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, on request, furnish the Employer with information that is relevant and necessary to collective bargaining.

UNITED BASKETBALL PLAYERS ASSOCIATION