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Hallelujah the Highest Praise, Inc. and American Federation of Musicians of the United States and Canada. Case 6-CA-28208

July 25, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

Upon a charge filed by the Union on May 30, 1996, the General Counsel of the National Labor Relations Board issued a complaint on November 1, 1996, against Hallelujah the Highest Praise, Inc., the Respondent, alleging that it has violated Section 8(a)(3) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On June 30, 1997, the General Counsel filed a Motion for Default Summary Judgment with the Board. On July 1, 1997, 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.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide 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. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated June 16, 1997, notified the Respondent that unless an answer were received by the third business day following receipt of the letter, 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

At all material times, the Respondent, a Michigan corporation, with an office and place of business in Detroit, Michigan, has been engaged in the business of operating a touring musical theatrical production. Dur-

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ing the 12-month period ending June 30, 1996, the Respondent, in conducting its business operations, derived gross revenues in excess of \$500,000 and performed services valued in excess of \$50,000 in states other than the State of Michigan. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

About April 21, 1996, the Respondent discharged its employee William Daulton because he formed, joined, or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (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. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by discharging William Daulton, we shall order the Respondent to offer the discriminatee immediate and full reinstatement to his former job, or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to expunge from its files any and all references to the unlawful discharge, and to notify the discriminatee in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Hallelujah the Highest Praise, Inc., Detroit, Michigan its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging its employees because they form, join, or assist the Union or engage in concerted activities, or to discourage employees from engaging in these activities.

(b) 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) Within 14 days from the date of this Order, offer William Daulton full reinstatement to his former job, or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make William Daulton whole, with interest, for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, expunge from its files any and all references to the unlawful discharge, and, within three days thereafter, notify the discriminatee in writing that this has been done.

(d) Preserve and, within 14 days of a 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.

(e) Within 14 days after service by the Region, post at its facility in Detroit, Michigan, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent 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 the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 30, 1996.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a

¹ 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."

responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 25, 1997

William B. Gould IV, Chairman

Sarah M. Fox, Member

John E. Higgins, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

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 discharge our employees because they form, join, or assist the Union or engage in concerted activities, or to discourage employees from engaging in these activities

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, within 14 days from the date of this Order, offer William Daulton full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make William Daulton whole, with interest, for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in a decision of the National Labor Relations Board.

WE WILL, within 14 days from the date of the Board's Order, expunge from our files any and all references to the unlawful discharge, and, within 3 days thereafter, notify the discriminatee in writing that this has been done.

HALLELUJAH THE HIGHEST PRAISE, INC.