

respect to rates of pay, wages, hours of employment, and other conditions of employment. and if an agreement is reached, embody such understanding in a signed contract. The bargaining unit is:

All our over-the-road drivers, excluding all professional employees, guards, and supervisors as defined in the Act.

All our employees are free to become or remain members of INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL No. 991, AFL, or TRUCK DRIVERS, WAREHOUSEMEN AND HELPERS LOCAL UNION 726, AFL, or of any other labor organization, except to the extent above stated.

J. L. DEAN, D/B/A D & D TRANSPORTATION COMPANY,

Employer.

By -----
(Representative) (Title)

Dated -----

J. L. DEAN & JOHN H. DOVE, A CO-PARTNERSHIP
FORMERLY D/B/A D & D TRANSPORTATION COM-
PANY,

Employer.

By -----

Dated -----

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

THE HUNKIN-CONKEY CONSTRUCTION COMPANY *and* STEWART LEROY
LIGHTFOOT

HOISTING, PORTABLE, SHOVEL ENGINEERS' AND FIREMEN'S LOCAL UNIONS
Nos. 18, 18-A, 18-B, 18-C, INTERNATIONAL UNION OF OPERATING
ENGINEERS, AFL *and* STEWART LEROY LIGHTFOOT. *Cases Nos.*
8-CA-307 and 8-CB-35. August 29, 1952

Supplemental Decision and Order

On July 23, 1951, the Board issued a Decision and Order in the above-entitled proceeding finding, *inter alia*, that by the discharge of Stewart Leroy Lightfoot by the Respondent Company at the request and demand of the Respondent Unions, the Respondent Company and the Respondent Unions had violated Section 8 (a) (1) and (3) of the Act and Section 8 (b) (1) (A) and 8 (b) (2) of the Act, respectively. Thereafter, on August 2, 1951, the Respondents filed a motion for reconsideration of this portion of the Board's Decision and requested that the record be reopened to afford the Respondents the opportunity to submit evidence which they contended would impeach the credibility of Lightfoot.

On August 17, 1951, the Board issued an Order in which it remanded the instant case to the Regional Director of the Eighth
100 NLRB No. 138.

Region for the purpose of reopening the record in this proceeding, to permit the Respondents at a further hearing to introduce the evidence proffered in their motion which was not available at the time of the hearing, and also to permit the General Counsel to offer any rebuttal evidence on this issue. The Board further ordered that the Trial Examiner, James A. Shaw, submit a supplemental Intermediate Report setting forth his findings of fact and conclusion with respect to the evidence adduced at the further hearing and the effect of such findings and conclusions upon the original Intermediate Report. The Board also ordered that its prior Order in this proceeding, insofar as it involved Lightfoot, be stayed pending the Board's reconsideration of this matter.

On May 20, 1952, Trial Examiner Shaw issued his Supplementary Intermediate Report, a copy of which is attached hereto, in which he found no reason to modify or change the findings, conclusions, and recommendations in his original Intermediate Report. Thereafter, the Respondents filed exceptions to the Supplementary Intermediate Report and a supporting brief.¹

The Board has reviewed the rulings made by the Trial Examiner at the further hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report and the Supplementary Intermediate Report, the exceptions and briefs to the Intermediate Report and Supplementary Intermediate Report, and the entire record in the case, and hereby finds, in accord with the supplementary findings, conclusions, and recommendations of the Trial Examiner which are hereby adopted, no reason to modify or change the Decision and Order of July 23, 1951,² herein.

Order

IT IS ORDERED that the Board's Order of August 17, 1951, which stayed its Decision and Order of July 23, 1951, insofar as it involved

¹ Respondent's request for oral argument is hereby denied, as the record and briefs and exceptions adequately present the issues and positions of the parties.

² The Respondents argue that the decision of the Ninth Circuit in *N. L. R. B. v. Atkinson Co. et al.*, 195 F. 2d 141, sustains their contention that it was arbitrary and capricious and an abuse of its discretion for the Board to proceed as it did in this case. We find no merit in this contention. The *Atkinson* case is not apposite here, for it was concerned with a situation where the parties entered into a closed-shop contract and an employee was discharged thereunder at a time when the Board was not asserting jurisdiction over the building and construction industry. The Board found a violation of the Act at a time when it was taking jurisdiction over that industry. The court reversed the Board because it held that the Board's change in jurisdictional policy should not be applied retroactively. In the instant case all the conduct of the Respondents which we have found illegal occurred at a time when the Board was asserting jurisdiction over the building and construction industry; since the passage of the Labor Management Relations Act of 1947, the Board has consistently taken jurisdiction over employers in the building and construction industry (*Brown and Root, Inc., et al.*, 77 NLRB 1136; *Starrett Brothers & Eken, Inc.*, 77 NLRB 275).

Stewart Leroy Lightfoot, be, and it hereby is, vacated and set aside, and the Board's Order of July 23, 1951, be, and it hereby is, after reconsideration, affirmed.

MEMBERS HOUSTON and STYLES took no part in the consideration of the above Supplemental Decision and Order.

Supplementary Intermediate Report

On August 17, 1951, the Board issued an Order remanding the instant case to the Regional Director for the Eighth Region (Cleveland, Ohio), for the purpose of reopening the record and the taking of further testimony for the reasons set forth below. Since the Board's Order itself clearly states the issues involved herein it is set forth immediately below:

Order Reopening Record and Remanding Case to Regional Director

On July 23, 1951, the Board issued a Decision and Order in the above-entitled proceeding finding *inter alia* that by the discharge of one Lightfoot by the Respondent Company at the request and demand of the Respondent Unions, the Respondent Company and the Respondent Unions had violated Section 8 (a) (1) and (3) of the Act and Section 8 (b) (1) (A) and 8 (b) (2) of the Act, respectively. Thereafter, on August 2, 1951, the Respondent Company and the Respondent Unions filed a motion for reconsideration of this portion of the Board's Decision and requested that the record be reopened to afford the Respondents the opportunity to submit evidence which the Respondents contend would impeach the credibility of the said Lightfoot. The Board having duly considered the matter,

IT IS HEREBY ORDERED that the record in this proceeding be reopened and a further hearing be held for the purpose of permitting the Respondent to introduce the evidence proffered in the aforesaid motion which was not available at the time of the hearing and also permitting the General Counsel to offer any rebuttal evidence on this issue.

IT IS FURTHER ORDERED that this proceeding be remanded to the Regional Director for the Eighth Region for the purpose of arranging such further hearing and issuing notice thereof.

IT IS FURTHER ORDERED that the Trial Examiner James A. Shaw submit a supplemental Intermediate Report setting forth his findings of fact and conclusions with respect to the evidence adduced at the further hearing and the effect of such findings and conclusions upon the original Intermediate Report.

AND IT IS FURTHER ORDERED that the Board's prior Order in this proceeding, insofar as it involves Lightfoot, be stayed pending the Board's reconsideration of this matter.

Thereafter on February 19, 1952, the Regional Director for the Eighth Region (Cleveland, Ohio), issued his "Notice of Further Hearing" in the above-entitled matters. Copies of the notice of hearing thereon were duly served upon the Respondents, together with a copy of the Board's Order.

Pursuant to notice, the hearing was held at Akron, Ohio, on March 10, 1952, before the undersigned Trial Examiner duly designated by the Board in its Order set forth above. The General Counsel and the Respondents were represented by counsel, and all participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence pertinent to and

limited to the issues set forth in the Board's Order was afforded all parties. Counsel for the parties availed themselves of the opportunity to argue orally before the undersigned. Pursuant to leave granted by the undersigned at the close of the hearing, counsel for the Respondents filed a brief with the undersigned. The General Counsel did not choose to do so.

Upon the entire record in the case, and from his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

As the undersigned sees it the Board ordered the record herein reopened to permit the Respondents to present newly discovered evidence that was unavailable to them at the time of the original hearing. The Respondents further contended that the evidence it would offer would so thoroughly impeach Lightfoot's original testimony that the undersigned would be compelled to reconsider and reverse his original findings; and that as a consequence the Board's original Decision and Order should be set aside as regards Lightfoot.

The answer to all of this is of course the record of both the original and reopened hearings. Let us look at the record as a whole.

To begin with it is the contention of the Respondents that Lightfoot perjured himself at the original hearing herein when he testified that he "had not done" any work at all "during the period between December 5, 1949, and February 21, 1950"; he further "perjured himself when he testified under oath, on March 10, 1952, that he had done virtually all his work cleaning cattle cars during the night season"; and that he "perjured himself in filing his income tax returns by failing to make any showing of the income derived from his work during the period with which we are here concerned."¹

By far the most important testimony offered by the Respondents in support of their contention that Lightfoot was and still is a perjurer was that of Lightfoot himself. At the onset of the hearing herein counsel for the Respondents called Lightfoot as a witness. The following is a summation of his testimony, that is pertinent to the principal issue involved herein.

Lightfoot testified that sometime in the winter of 1949-50 he cleaned manure out of stock cars that were parked in the Pennsylvania Railroad yards across the street from his home and later sold it to numerous individuals around Massillon, Ohio, as fertilizer for their gardens. When he started on this venture is not shown in the record, but it was sometime in November 1949, while he was still in the employ of the Respondent Company at Bowerston, Ohio. Before he started to clean out the cars and haul the manure away, he secured permission to do so from the brakeman in charge of the train crew that switched the empty cars around the yards.² Other than his conversations with the brakeman and the train crew he made no further effort to contact railroad officials such as the yardmaster or freight agent for permission to clean out the cars and haul away the manure.

It was the custom for the railroad company to switch the empty stock cars onto the siding and later assemble them and run them over to Crestline, Ohio, where they were cleaned out by laborers. The manure was then either given away or stacked.³

¹ Quoted portions from Respondents' brief. Of which more anon.

² From Lightfoot's undenied and uncontradicted testimony, which is credited by the undersigned

³ Crestline, Ohio, is an important junction point on the Pennsylvania. Railroad cars are assembled there and made into trains which then may be shuttled north, south, east, or west over its own lines. (See official map of Pennsylvania Railroad and connections.)

According to Lightfoot he would drive his truck up to the cars, and then, assisted by his son, load it up with manure and take it over to a field near his home and stack it. Some of it was stacked on lands owned by an unknown individual who operated a nearby gravel pit. There is no testimony in the record that anybody ever objected to this procedure. Along in the spring of 1950, Lightfoot had accumulated quite a bit of manure, and he decided to sell some of it. He placed an ad in the local paper to this effect. As a result he received several calls for manure from residents of Massillon to whom he sold and delivered it at the rate of \$5 per ton or \$7.50 for 2 tons. When the calls for manure would come in someone in the family, usually his daughter, Mrs. Owen Glick, would take the buyers' names and note the orders on a sheet of writing paper. Lightfoot and his boy would then load up the manure in the truck and deliver it. As near as the undersigned can determine from the record Lightfoot sold somewhere around 50 tons of manure during this period, and as a result of the venture received a gross total of around \$300. This price includes his work and labor, that of his boy, the upkeep of the truck, gas and oil, and other expenses.

When Lightfoot filed his income tax returns for the years 1949 and 1950, he failed to report the money he received from the sale of manure. One way or another the Bureau of Internal Revenue got wind of his manure business and sent an agent to see him and check their suspicions in this regard. Lightfoot told the agent about the venture and as a result \$100 was added to his earnings for 1949, and \$200 for 1950. According to the record this was the end of the manure business.

As indicated above, the Respondents contend that Lightfoot perjured himself at the original hearing herein when he testified therein that he "had not done any work at all" during the period between December 5, 1949, and February 21, 1950. Upon this testimony alone the Respondents contend that "Lightfoot was impeached from his own mouth," and "His perjury was demonstrated over and over again," by his admission and his entire testimony as regards the manure business.⁴ In other words that when Lightfoot testified that he had done no work he lied because he had in fact engaged in the above-described manure business during the period in question.

In order to determine this phase of the Respondents' contention as regards Lightfoot's veracity the undersigned is convinced that his testimony in the original hearing is of vital importance, particularly that portion of it from whence the phrase "had not done any work at all" was taken. It is set forth below.

Q. After you were laid off at Bowerston, did you ever go over to the Wright job which was three blocks from your home and make an application for work there?

A. No, I asked Morris for a job last spring.

Q. I am asking you if you ever went to the Wright job to make an application?

A. No, I never made an application. I talked with Mr. Morris. He is a superintendent. He said all his men were through the union office.

Trial Examiner SHAW. He said what?

The WITNESS. All his men were through the union office.

Q. (By Mr. Belkin) Did you go down to the union office and ask for a job?

A. They sent me to another job.

Q. When was that?

A. That was in the spring when the Wright Brothers opened their job.

Q. That's before?

A. Yes.

⁴ Quoted portion from Respondents' brief

Q. Did you go to the Wright Brothers and ask for work after you were laid off at Bowerston?

A. No, sir.

Q. And you had worked there before?

A. One day.

Q. You worked there one day, did you?

A. One day.

Q. And you didn't go back to ask for work after you were laid off?

A. I was laid off in the spring.

Trial Examiner SHAW. After the discharge?

The WITNESS. No, sir, I did not.

Q. Did you work at all during the period between December 5, 1949 and February 21, 1950, when you went to work at the Ferguson & Edmonson job?

A. No, I did not.

Q. Didn't do any work at all?

A. No, sir.

Q. Did you know that there was a demand for men of your caliber and training in the area?

A. You couldn't get a job.

Q. Did you know that there was a demand?

A. You couldn't get a job.

Q. Did you know that there was a demand for those people, Mr. Lightfoot?

A. No, there wasn't a demand. I didn't know it.

Q. Did you go to the union office at any time after December 8, 1949?

A. I put an out-of-work order in. They were supposed to call me.

Q. I am asking you whether you went to the office?

A. No, sir.

Q. You were out of work and you didn't go to work after December 8, 1949?

A. No.

Q. You didn't, did you?

A. No.

Q. Isn't it a fact that you had a job tending bar during this time?

A. No, sir, I did not.

An examination of the above testimony shows that counsel for the Respondents was interrogating Lightfoot as regards what "Jobs" he had held and for whom he had either worked or attempted to secure employment from during the period in question. The record is silent as regards "self help" or self-employment. Moreover, the record clearly shows that when Lightfoot uses the word "work" in his testimony he means working for wages for an employer. The undersigned does not subscribe to the philosophy that a sentence taken out of the context of a witness' testimony is sufficient to label him a perjurer when it is placed alongside other testimony that shows a contrary situation. It is the record as a whole that is to be dealt with; not excerpts therefrom that tend to create a doubt as to a witness' credibility.

Under the circumstances described above the undersigned is convinced and finds that Lightfoot did not perjure himself at the original or at the reopened hearing as regards his activities during the times material herein.

In further support of its position as regards Lightfoot the Respondents offered the testimony of C. N. Burchfield, district representative of the Respondent Union. According to Burchfield, Roy McIlhaney, Lightfoot's brother-in-law, came into the Union office in Canton, Ohio, to pay his dues, and in the course of a conversation with the bookkeeper said that "Lightfoot had made over \$700.00 last year on fertilizer." Burchfield in order to verify the bookkeeper's account of McIlhaney's statement concerning Lightfoot's earnings, questioned McIlhaney him-

self, and received the same reply. Burchfield, on cross-examination, testified that at the time McIlhane "was pretty well oiled and I guess he was just running off at the mouth," and that by "oiled" he meant "had too much whisky."

The undersigned questioned counsel for the Respondents as to the purpose of this line of inquiry and was advised by him in substance that it was to show Lightfoot's earnings in the manure business, and as further evidence of his unreliability as a witness.

While the undersigned credits Burchfield's testimony regarding the above incident, he nevertheless must reject it *in toto* for the obvious reason that it is not only the sort of hearsay testimony that is objectionable but under the circumstances described by Burchfield of no probative value in the determination of the issues involved herein.

We now come to the second contention of the Respondents that Lightfoot perjured himself when he testified, under oath, on March 10, 1952, "that he had done virtually all his work cleaning cattle cars during the night season." In support of its contention in this regard the Respondents rely on the testimony of Lightfoot's daughter, Mrs. Owen Glick. According to the Respondents, Lightfoot "attempted to maintain that this work was only done in the evening, yet later his own daughter, who had been present in the hearing room throughout his testimony, testified that he had not performed work in the evening."⁵ Here again we are faced with the proposition that a line or two out of the context of a witness' testimony is legally sufficient to predicate a finding of fact thereon. As the undersigned has stated above he does not subscribe to such a theory for the simple reason that he feels that it not only does violence to the accepted rules of evidence but likewise to the reasoning of the Supreme Court in the *Universal Camera* case.⁶ Consequently the answer to the Respondents' position is the record itself.

Lightfoot testified that while he was working on the Bowerston, Ohio, job for the Respondent Company, he would clean manure out of the stock cars in the daytime if there was any on the siding across from his home. At this time he was working at nights, so it would have been impossible for him to have cleaned the cars out during the "night season." After he was discharged by the Respondent Company on December 6, 1949, he cleaned out cars whenever they were available, sometimes in the daytime but mostly in the *evening*.⁷ Nowhere in his testimony does he state that he entered into the stock cars during the "night season" and took therefrom the manure that littered the cars. Nor did his daughter so testify as will be shown below.

Now, as to the testimony of Mrs. Glick (Lightfoot's daughter) as regards Lightfoot's alleged perjured testimony to the effect⁸ that he had done virtually all his work cleaning cattle cars during the "night season." On direct examination at page 443 *et seq.* of the record, she testified as follows in this regard:

Q. Directing your attention to the first part of December of 1949 and up to April or May of 1950, during that time you heard this testimony that your father did some unloading of some cars?

A. Yes.

Q. And that was at the railroad tracks right across from your home?

A. Yes.

Q. Could you see him from your home?

A. Yes, I could.

⁵ Quoted portions from Respondents' brief, middle of page 2.

⁶ See *Universal Camera Corp. v. N. L. R. B.*, 340 U. S. 474.

⁷ According to the record the stock cars were unloaded at the yards of a local meat packer. Since Massillon, Ohio, is a small city, of approximately 30,000, it is reasonable to infer that stock cars were not placed on the siding every day.

⁸ Quoted portion from Respondents' brief.

Q. When did he do this unloading?

A. Well, sometimes—whenever the cars came in.

Q. What time of the day did he do it?

A. Well, sometimes in the afternoon, and in the evening, early in the evening.

Q. Did your father work any place else between December and around February 21st, when he went to work at a job?

A. No.

On cross-examination *her entire testimony in this regard* is found at pages 446 and 447 of the record. It is set forth below:

Q. (By Mr. Belkin) Mrs. Glick, you said your dad did this work sometimes in the afternoon and sometimes in the early evening; is that correct?

A. Yes.

Q. When would he quit work when he worked early in the evening?

A. Well, it didn't get dark till about 8:30 or nine o'clock. He always worked while there was daylight.

Q. He worked as long as there was daylight?

A. Not every day. There wasn't cars every day.

Q. When there were cars he only worked in the daylight?

A. Yes. Sometimes it got dark before he got it all off.

Q. Would he work in the dark?

A. Sometimes.

Q. That was very seldom, wasn't it?

A. That was very seldom.

Q. He didn't have any light in those cars, did he?

A. No, no light at all.

Q. Therefore he did his work as much as possible as long as there was daylight?

A. Yes.

Q. This work was done in the months of December 1949 on through March 1950?

A. Yes.

Mr. BELKIN. I would appreciate it if the Trial Examiner would take judicial notice of the times of sun rises and sunsets during the months of December through March in this area, sir.

Trial Examiner SHAW. I have a recent Farmers' Almanac I will take judicial notice of.

Mr. BELKIN. I think I will show that the time of the setting is certainly by 7:00 p. m.

Upon the foregoing and upon the record as a whole the undersigned is convinced and finds that Lightfoot at no time perjured himself in his testimony before the undersigned as regards the time of day he engaged in the business of cleaning manure out of stock or cattle cars in the yards of the Pennsylvania R. R. Co., Massillon, Ohio.

As indicated above, the Respondents also contend that Lightfoot's failure to report his earnings from the manure business for the years 1949 and 1950 to the Bureau of Internal Revenue is further evidence of his instability as a witness and unsavory characteristics in general.

It is true that Lightfoot did not report the monies he received for the manure he sold during the years 1949 and 1950 to the Bureau of Internal Revenue for income tax purposes. According to Lightfoot this matter was later settled with the income tax division.⁹ There is no evidence in the record that the collector

⁹ From Lightfoot's undenied and uncontradicted testimony. It is credited by the undersigned.

took either disciplinary action or referred the matter to the Department of Justice for prosecution. Moreover there is no evidence that Lightfoot either wilfully concealed his earnings from the sale of manure, or that he even considered them as such for income tax purposes.

While the undersigned does not condone Lightfoot's derelictions, nevertheless he is of the opinion that his conduct in this regard was not of such a heinous and/or larcenous nature that reasonable men would find him unworthy of belief as to other matters nor compel the drawing of such an inference.

At the hearing herein and in their brief, the Respondents make other contentions as regards Lightfoot's character, particularly that in addition to being a "liar by the clock" he was also a "thief," and had been an accessory after the fact in the theft of an automobile, by harboring a fugitive from justice, both of which are felonies under Ohio criminal law. Since the record is barren of any reliable, probative, or substantial evidence to support the Respondents' contentions in this regard,¹⁰ the undersigned feels that it not only would needlessly

¹⁰ For example, the Respondents contend that Lightfoot was a thief because he stole the manure from the Pennsylvania Railroad Company. They predicate their contention in this regard on the fact that Lightfoot did not first secure the permission of any responsible official of the railroad before cleaning the manure out of the cars and carting it away.

It is quite true that Lightfoot did not seek out the yardmaster or some person in the hierarchy of the railroad's management and secure such permission. Admittedly he went ahead with the manure business on the say-so of some member of the switching crew. This procedure, while unorthodox, does not necessarily make him a thief. To begin with, to dub a man a thief he must have first taken something of value from the lawful owner. This brings us to the question of who owned the manure. Certainly not the Pennsylvania Railroad Company. The undersigned is convinced that as far as it was concerned the manure was manure and hence a nuisance. This is evidenced by the fact that the cattle cars that accumulate in its Massillon, Ohio, yards are taken over to Crestline, Ohio, where they are purged of the manure and placed back into service. If the manure originally had any value as personal property, then surely title thereto was vested in the owners of the animals who had excreted it on the floors of the cattle cars. Nobody knows who these original owners were, or where they resided. But aside from that, it is clear that if they had any such claim to the manure they intended to abandon it. Under the usual rules of personal property law this abandoned manure could lawfully be appropriated by the first person who with intent to appropriate it assumed possession. It did not become the property of the Pennsylvania Railroad Company either by reason of their ownership of the cattle cars nor by reason of its temporary custody of the manure splattered by the animals on the floors of its cars. Under all the circumstances Lightfoot had as much right to appropriate the manure to his own use as did the railroad company to haul it over to Crestline and there cast it upon the ground for others to take and cart away. For a thorough discussion of manure as abandoned personal property, and abandoned property in general, see *N. L. R. B. v. Wilbur Ford, Chester Ford, and John Ford, Co-partners, doing business as Ford Brothers*, 73 NLRB 49, 170 F. 2d 735. In the Board's brief, at page 33, footnote 22, the following interesting citation is set forth

. . . See also *Huslem v. Lockwood*, 37 Conn. 500, 9 Am Rep 350 :

Manure left in the streets belongs originally to the owners of the animals that dropped it, but is to be regarded as abandoned by them. Being abandoned property, the first taker has the right to appropriate it; and after one has gathered it into heaps he must be regarded as entitled to it, against any person having no title, and must be allowed a reasonable time to take it away. . . .

Clearly Lightfoot's activities in the manure business were not of such a nature to dub him a thief or even a trespasser, but on the other hand, they do indicate to the undersigned that he valued his work and labor in this regard at a ridiculously low premium when all factors are taken into consideration.

In the considered opinion of the undersigned, the same reasoning applies to the contention of the Respondents that Lightfoot further evidenced his larcenous characteristics by purchasing junk from the garbage collectors of the city of Massillon, Ohio. The junk referred to is that usually found in the back alleys of towns and cities across the land, such as old bottles, tin cans, pieces of iron, old and worn out overshoes, bicycle tires, auto tires, and all manner of things, which the average citizen not only discards, but insists be carted away as quickly as possible.

encumber this Report to set forth herein the numerous accusations of counsel by means of innuendo and otherwise as regards Lightfoot's character, but would serve no useful purpose in the undersigned's ultimate findings herein. In passing, the undersigned has this comment to make, in justice to all concerned with these proceedings, that in the absence of any substantial evidence (as a matter of fact not even a scintilla) that Lightfoot had ever been arrested, arraigned, indicted by a grand jury, or convicted of any crime, either misdemeanor or felony, such accusations must of necessity be ignored by a trier of the facts in testing a witness' credibility.

In its brief the Respondents further contend that the Board acted in an arbitrary and capricious manner by processing the instant case. Its contention is set forth below:

Finally, we would like to call to the attention of the Trial Examiner the fact that the 9th Circuit Court of Appeals has sustained these contentions we originally raised before him and also before the Board to the effect that since the Board did not permit Union Security elections in the Building Construction Industry during the period in question it was arbitrary and capricious and an abuse of its discretion for the Board to then proceed as it did in this case. I am referring to the decision of that Court in *NLRB versus Guy F. Atkinson Company*, 21 Labor Cases No. 66809.

Clearly the Respondents' contention in this regard is beyond the scope of the Board's Order reopening the record herein. Consequently the undersigned makes no comment.¹¹

Conclusions

In view of the foregoing and upon the entire record in the case the undersigned finds no reason to modify or change the findings, conclusions, and recommendations in his original Intermediate Report.

¹¹ See *Matter of Operating Engineers Local Union No. 3 of the International Union of Operating Engineers, Plaintiff v. Gerald A. Brown as the Regional Director of the Twentieth Region of the National Labor Relations Board, et al., Defendants*, in the District Court of the United States for the Northern District of California, Southern Division, Case No. 31262, original filed March 5, 1952; before Pope, Circuit Judge, and Carter and Murphy, District Judges.

THE HILLS BROTHERS COMPANY *and* AMERICAN FEDERATION OF LABOR, PETITIONER. *Case No. 10-RC-1599. August 29, 1952*

Supplemental Decision, Order, and Second Direction of Election

On March 20, 1952, pursuant to the Board's Decision and Direction of Election, an election by secret ballot was conducted under the direction and supervision of the Regional Director for the Tenth Region, among the Employer's employees at Bartow, Florida, to determine whether or not the said employees wished the Petitioner to represent them in collective bargaining.¹

Upon the conclusion of the election, a tally of ballots was furnished the parties. The tally shows that of approximately 230 eligible

¹ Unpublished decision issued December 4, 1951.