Anchor Motor Freight, Inc. and Teamsters Local 294, affiliated with the International Brother-hood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO

Nu-Car Carriers, Inc. and Teamsters Local 294, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO.¹ Cases 3-CA-14003-1 and 3-CA-14003-2

September 29, 1989

DECISION AND ORDER

By Chairman Stephens and Members Cracraft and Devaney

On March 31, 1989, Administrative Law Judge Joel P. Biblowitz issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Respondent filed an answering brief.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,² and conclusions and to adopt the recommended Order.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

¹ On November 1, 1987, the Teamsters International Union was readmitted to the AFL-CIO Accordingly, the caption has been amended to reflect that change

Alfred Norek, Esq., for the General Counsel.

Nicholas J. D'Ambrosio, Jr., Esq. (Bond, Schoeneck & Kina), for Respondent Anchor.

David R. Knowles, Esq. and Daniel G. Zeiser, Esq. (Allport, Knowles & Miller), for Respondent Nu-Car. Bruce C. Bramley Esq. (Pozefsky, Pozefsky & Bramley), for

the Charging Party.

DECISION

STATEMENT OF THE CASE

JOEL P. BIBLOWITZ, Administrative Law Judge. This case was heard by me on November 2, 1988, in Albany, New York. The consolidated complaint issued on November 10, 1987,1 and was based on unfair labor practice charges filed on October 2 by Teamsters Local 294, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (the Union). The consolidated complaint alleges that in August and September the Union made separate (although nearly identical) requests for information from Anchor Motor Freight, Inc. (Respondent Anchor or Anchor) and Nu-Car Carriers, Inc. (Respondent Nu-Car or Nu-Car) (collectively Respondents), information which was necessary and relevant to the Union's performance as the collective-bargaining representative of the drivers, yard employees, and garage employees employed by Respondents. The complaint alleges that the Respondents failed and refused to provide the Union with this requested information, in violation of Section 8(a)(1) and (5) of the Act.

On the entire record, I make the following²

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATION STATUS

There being no dispute, I find that Respondent Anchor and Respondent Nu-Car are each employers engaged in commerce within the meaning of Section 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. FACTS AND ANALYSIS

Respondents Nu-Car and Anchor are involved in the same business—transporting new automobiles from (relevant to this matter) a Conrail ramp in Selkirk, New York, to automobile dealers throughout New York State and southern New England. Prior to August 31, Anchor transported only automobiles manufactured by General Motors (GM), while Nu-Car transported cars manufactured by Ford Motor Co. (Ford), as well as other manufacturers, except GM. For many years Anchor has been owned by Leaseway Transportation Corp. (Leaseway); in December 1986, Nu-Car was purchased by Leaseway, and the Union was so informed at the time.

Both Anchor and Nu-Car (as well as the Union) are signatories to the National Master Automobile Transporters Agreement (the National Agreement),³ as well as the Eastern Conference Area Truckaway, Yard and Shop Supplement (the Supplement), which were effective June 1, 1985, through May 31, 1988. In addition, Anchor and Nu-Car each executed local riders (Riders)

² The judge omitted a description of the jurisdictional facts. As alleged in the complaint, Respondent Anchor, in the course and conduct of its operations, annually derives gross revenues in excess of \$50,000 from providing transportation services to other employers directly engaged in interstate commerce, including General Motors Corp. During the same period, Anchor, in the course and conduct of its operations, provides and performs transportation services valued in excess of \$50,000 in States other than the State of New York Respondent Nu-Car, annually, in the course and conduct of its operations, derives gross revenues in excess of \$50,000 from providing transportation services to other employers directly engaged in interstate commerce, including General Motors Corp During the same period, Respondent Nu-Car, in the course and conduct of its operations, provides and performs transportation services valued in excess of \$50,000 in States other than the State of New York.

¹ Unless indicated otherwise, all dates referred to herein are for the year 1987

² Certain errors in the transcript are noted and corrected.

³ Art. 2, sec 4 of the National Agreement states "The employees, Unions, Employers and Association covered by this Master Agreement and the various Supplements thereto, shall constitute one bargaining unit"

with the Union to these other agreements. Because Anchor performed hauling work exclusively for GM, it was considered a contract carrier under these agreements; as Nu-Car performed hauling work for Ford and others, it was considered a common carrier under the agreements. The two principal differences in the agreements between these two classifications were in premium pay and the employment of yardmen. As a contract carrier, Anchor was subject to certain higher pay rates and overtime premium pay under the National Agreement, while Nu-Car was not. In addition, under its Rider, Anchor was obligated to employ yardmen to pull and load the new cars for its drivers, while Nu-Car was not so similarly obligated.

The situation changed when, by letter dated June 8, GM wrote to Nu-Car and Anchor:

Due to economic conditions and, in particular, truckaway rates at Selkirk which are the highest in the General Motors distribution system, we are requesting that you present a bid package to handle all General Motors traffic from the Selkirk rail facility.

By letter dated July 16, GM thanked Anchor for its bid on the Selkirk work, but stated "that due to economic reasons a change in carriers is necessary at that location," and, effective August 30, Anchor would no longer perform that work. By letter dated July 17, GM confirmed its decision to accept Nu-Car's bid to perform the hauling work for GM at Selkirk. In July, John Bulgaro, business agent, was called to a meeting by representatives of Anchor and Nu-Car. At this meeting, he was informed by Bruce Jackson, vice president and general manager of Nu-Car, that GM has requested bids for the hauling work at Selkirk and Anchor lost the work and it was awarded to Nu-Car, effective August 31. Bulgaro asked Jackson for copies of those letters and by letter dated August 12, Jackson sent Bulgaro GM's request to Nu-Car for a bid and GM's July 16 and 17 letters to Anchor and Nu-Car regarding the awarding of the bid.

On July 30, the Union filed a grievance against Anchor, "grieving the subterfuge of the existing Rider by Anchor Motor Freight" the basis for this grievance (as well as the demands for information) is, as testified to by Bulgaro:

My feeling was that the companies were trying to circumvent the use of the Anchor rider. The Anchor rider produced better conditions for our members in Selkirk, New York, and it was more expensive for the company to operate under and we felt that they were trying to eliminate this and work under the cheaper rider, which would have been Nu-Car.

In other words, the Union was alleging that Respondents and/or Leaseway instigated the rebidding of the Selkirk work for GM, so that Nu-Car, with the cheaper contract, could obtain the work from Anchor, with more profits, presumably, going to the parent of both, Leaseway.

The grievance could not be resolved at the first level so it was argued before the Eastern Conference Automobile Transporters Joint Committee (the Joint Committee), where the parties presented witnesses and oral argument. On August 25, the Joint Committee issued a decision stating that it was deadblocked.

Also on the agenda of the Joint Committee on that day was a grievance filed by Respondents. Since Nu-Car obtained the GM work previously performed by Anchor at Selkirk, it was offering transfer rights to all (or almost all) of Anchor's employees. According to Jackson: "The purpose of filing this case is to determine the proper seniority positions for all of the affected employees." Respondent proposed four possible solutions for the Joint Committee to choose from; minutes of the meeting state: "Mr. Jackson explained to the panel that the Company did not have any preference as to which list was used, but that they needed a decision prior to the work being performed." Bulgaro told the Joint Committee that the seniority issue should not be determined until after the Joint Committee decided the Union's subterfuge grievance. The Joint Committee disagreed with the Union and decided that the seniority lists of Anchor and Nu-Car should be dovetailed on the basis of one-to-one, which Nu-Car did.

On November 2, the National Automobile Transporters Joint Arbitration Committee (the Arbitration Committee), heard the arguments of both sides regarding the deadlocked grievance; Bulgaro also argued that the seniority decision issued by the Joint Committee was incorrect, but it appears that the Arbitration Committee did not answer this argument. On November 18, the Arbitration Committee issued its findings; the principal finding is as follows:

On the basis of the above findings, the Committee holds that Local Union 294's contention that General Motors' bidding procedure was initiated by Leaseway Transportation and not by General Motors Corporation solely to permit Leaseway to take advantage of the Nu-Car Local Rider which the Anchor drivers claim is less advantageous to the drivers is not supported by any evidence. The evidence, moreover, establishes that General Motors work at Selkirk is being handled by Nu-Car pursuant to an agreement with General Motors. The Local Union's assertion that this represents evidence of subterfuge is not supported by the evidence. In event new evidence becomes available to the Local Union as the result of charges filed with the National Labor Relations Board, the Committee notes that pursuant to its Rules of Procedure, such evidence may be produced and submitted to this Committee by the Local Union as a basis for request for rehearing to be considered by the Committee consistent with its existing Rules of Procedure.

Based on its claim of subterfuge, on August 12 and 13, the Union made its requests for information to Anchor and Nu-Car; the August 12 letter to Anchor begins by stating, inter alia:

We believe that there is or may be a violation of the collective bargaining agreement to the extent that our union has recently been notified that your company will be or may be in the near future terminating its operations in Selkirk, New York and, contrarily, Nu-Car Carriers, Inc. (Leaseway Transportation), will be continuing its operations in Selkirk, New York, on an expanded basis. Based on the information we presently have, it is our belief that such an action is merely a subterfuge in an effort to avoid the provisions of your company's collective bargaining agreement with our union.

As noted above, it is our belief, based on the information we presently have, that the object of your company's notification of its termination of operations in Selkirk, New York, is strictly and solely the result of your company's efforts to circumvent the provisions of your collective bargaining agreement with our union.

The letter then requests "the following records and information in order to allow us to both properly administer the collective bargaining agreement and prepare for and present the pending grievance herein":

- 1. All written documentation in the possession of your company with respect to the most recent two bids/negotiations for the General Motors work in the geographic jurisdiction covered by your company's Selkirk, New York, terminal, including, but not limited to, all correspondence from and to General Motors regarding the contracts for such work; all bid/negotiation specifications and written correspondence for the bidding of such work; all correspondence and documentation relating to the bids for such work, including the manner in which such bids came about; all notices for the bidding for such work issued by General Motors; copies of the two most recent contracts for such work; and all documentation and correspondence setting forth the terms and conditions of the new (most recent) contract between your company and General Motors, if
- 2. Identify the individuals in your company who worked on and had any part in the preparation of the most recent two bids for the General Motors work described in item No. 1 above.
- 3. Identify what contact, if any, occurred between individuals employed by your company and individuals employed by Nu-Car Carriers, Inc. (Leaseway Transportation) with respect to the most recent two bids for the General Motors work described in item No. 1 above.
- 4. Specify the manner in which your company found out about the bidding process/negotiation process for the General Motors work described in item No. 1 above.
- 5. Identify the following services that are provided to your company by or at Nu-Car Carriers, Inc. (Leaseway Transportation):
 - a) administrative bookkeeping;
 - b) clerical work bidding;

- c) labor relations;
- d) managerial;
- e) supervision, and
- f) other (please identify and specify)
- 6. Identify the following services that are provided to Nu-Car Carriers, Inc. (Leaseway Transportation) by or at your company:
 - a) administrative bookkeeping;
 - b) clerical work bidding;
 - c) labor relations;
 - d) managerial;
 - e) supervision, and
 - f) other (please identify and specify)
- 7. Identify any other terminals operated by your company affected by the most recent notification of termination of General Motors work in the near future.
- 8. The manner or method of ownership of your company, including its stockholders, the date of acquisition of such stock and the names of the principal officers of your company, its board of directors and the stockholders.
- 9. Identify by name and position all individuals having a supervisory or management responsibility over and for your employees employed at your Selkirk, New York terminal, including, but not limited to, labor relations.
- 10. Specify the anticipated closing date of your facility located in Selkirk, New York.
- 11. Specify the anticipated date on which your company will lose the General Motors work at your Selkirk, New York, facility.
- 12. Specify the names of, positions held, and proportionate amounts of time spent by any employees or officers of your company who now work for or may have worked for or on behalf of Nu-Car Carriers, Inc. (Leaseway Transportation) during the preceding two (2) years on a shared or full-time basis.

The August 13 letter to Nu-Car begins by stating:

It has recently come to our attention that your company is, or may be in the process of, violating its collective bargaining agreement with this union, by reason of the concerted actions between your company and Anchor Motor Freight, (Leaseway Transportation), an associated company also under contract with this union. Specifically, we believe that there is or may be a violation of the collective bargaining agreement to the extent that our union has recently been notified that Anchor Motor Freight, Inc. (Leaseway Transportation) will be or may be in the near future terminating its operations in Selkirk, New York, and contrarily, your company will be continuing its operations in Selkirk, New York, on an expanded basis. Based on the information we presently have, it is our belief that such an action is merely a subterfuge in an effort to avoid the provisions of Anchor Motor Freight, Inc.'s (Leaseway Transportation) collective bargaining agreement with our union.

In an effort to aid us in our attempts to administer our union's collective bargaining agreement with your company and in an effort to pursue our rights as they are set forth in Article 7 of the National Master Automobile Transporters Agreement (Section 3 thereof), we hereby request the following records and information in order to allow us to both properly administer the collective bargaining agreement and prepare for and present the pending grievance herein:

The requested information is almost identical to that requested from Anchor. Obviously, certain of the requests name Nu-Car rather than Anchor and request 10 to Nu-Car states: "Specify the anticipated date on which your company will gain the General Motors work at your Selkirk, New York facility," rather than the requests of Anchor, requests 10 and 11.

By letter dated August 21, J. R. O'Mullane, vice president of the Automotive Carrier Division of Leaseway, wrote to Bulgaro:

I have been asked to respond to your August 12, 1987 correspondence requesting certain information pertaining to the relationship between Anchor Motor Freight, Inc., and Nu-Car Carriers, Inc.

In response to your request for information, I would appreciate it if you would provide me with the specific basis of Local 294's claim that Anchor Motor Freight and Nu-Car Carriers are alter egos or single employees. [sic]

Once I have received your response, Anchor will review the requests contained in your August 12th correspondence and supply appropriate responses. If you have any questions concerning my request, please contact me. Thank you for your assistance.

By letter of the same date, Bob Brigham, of Nu-Car, wrote to Bulgaro:

Your August 13, 1987 correspondence to Nu-Car Carriers, Inc., has been forwarded to me for reply. As you know, we have already provided to you the letters you requested from General Motors.

In order to evaluate the relevancy of your lengthy request for additional information, it is necessary that you advise me as to the specific factual basis of the Union's apparent allegation that Nu-Car Carriers, Inc., is a single employer with Anchor Motor Freight, Inc., and/or Nu-Car and Anchor Motor Freight are alter egos. Pursuant to current National Labor Relations Board law, the information you have requested is not presumptively relevant.

Upon receipt of your response, Nu-Car will provide an appropriate response to your request. Thank you very much for your cooperation.

Jackson, as vice president and general manager of Nu-Car, also replied to Bulgaro on that date:

Your August 13, 1987 correspondence to Nu-Car Carriers, Inc., has been forwarded to me for reply.

As you know, we have already provided to you the letters you requested from General Motors.

In order to evaluate the relevancy of your lengthy request for additional information, it is necessary that you advise me as to the specific factual basis of the Union's apparent allegation that Nu-Car Carriers, Inc. is a single employer with Anchor Motor Freight, Inc. and/or Nu-Car and Anchor Motor Freight are alter egos. Pursuant to current National Labor Relations Board law, the information you have requested is not presumptively relevant.

Upon receipt of your response, Nu-Car will provide an appropriate response to your request. Thank you very much for your cooperation.

On September 20 counsel for the Union sent identical letters to O'Mullane, Brigham, and Jackson:

Our law firm represents Teamsters Local 294. In that capacity, we have been asked to respond to your letter to the Local dated August 21, 1987.

As you know, the Local is presently pursuing a grievance filed by it against Anchor Motor Freight, Inc., under the terms of the National Master Automobile Transporters Agreement. As you also know, that grievance deals specifically with the circumstances surrounding the so-called "loss" of the General Motors work by Anchor Motor Freight, Inc., at its Selkirk, New York facility on or about August 30, 1987 and the simultaneous "gaining" of that very same work by Nu-Car Carriers, Inc. at its Selkirk, New York facility on August 31, 1987.

As has been the Local's position throughout these proceedings, the Local believes that under the terms of the National Master Automobile Transporters Agreement and particularly, pursuant to Articles 1, 5 and 33 therein, the loss by one company and the simultaneous gain by the other is simply a subterfuge in order to allow the sole parent company, Leaseway Transportation, to perform the very same work at less than the high wages and terms and conditions previously agreed to in the Anchor collective bargaining agreement. It is the position of the Local that both companies (Anchor and Nu-Car) are a single employer and that the entire procedure described above is a direct violation of the Articles cited above, and even more specifically, Article 33. The two facilities in question, under the terms of the National Master Automobile Transporters Agreement comprise a single bargaining unit and are both owned, upon information and belief, by the same entity, namely, Leaseway Transportation. Accordingly, it is the position of the Local that all three entities (Anchor, Nu-Car and Leaseway) have, in an improper manner, "transferred" and "diverted" the General Motors work in question from Anchor to Nu-Car.

As noted in the Local's original letters to Anchor and Nu-Car, the Local is operating at this time based upon the information it has been able to gather. The information requested in the earlier letters is necessary not only for the purpose of allowing the Local to administer its collective bargaining agreement with the named employers, but moreover, is required pursuant to the terms of that agreement as information properly requested under the provisions of the grievance procedure.

It is the Local's belief that both Anchor and Nu-Car are equally as involved in this matter for the simple reason that, based upon the Local's information and belief, labor relations and other key management personnel shared responsibilities with respect to both companies as well as shared offices and administrative services and that separate and distinct bid procedures could not possibly have taken place with respect to the so-called "rebidding" of the General Motors work in question. Based upon the information presently known by the Local, it is the Local's belief that Anchor and Nu-Car could not possibly have acted separate and distinct in this matter, but rather, only as a single employer.

Based on all of the above, the Local respectfully requests that each and every one of the items of information previously requested be supplied. Additionally, the Local hereby requests that it be advised what happened with all of the pieces of equipment, including vehicles and trailers, formerly operated by Anchor at its Selkirk, New York facility, vis-a-vis Nu-Car Carriers.

By letter dated October 8, counsel for Respondent informed Bulgaro that Nu-Car would not grant the Union's request for information; he closed the letter by stating: "In short, given the particular facts of this case, your request for information is neither relevant nor necessary." Anchor also refused to provide the requested information.

Under well-settled Board law an employer must provide a union with requested information "if there is a probability that such data is relevant and will be of use to the union in fulfilling its statutory duties and responsibilities as the employees' exclusive bargaining representative." Associated General Contractors of California, 242 NLRB 891, 893 (1979); NLRB v. Acme Industrial Co., 385 U.S. 432 (1967). In Bohemia, Inc., 272 NLRB 1128, 129 (1984) (cited by counsel for the General Counsel, as well as counsel for Respondents), stated:

The Board uses a liberal, discovery-type standard to determine whether information is relevant, or potentially relevant, to require its production. NLRB v. Truitt Mfg. Co., 351 U.S. 149 (1956). Information about terms and conditions of employment of employees actually represented by a union is presumptively relevant and necessary and is required to be produced. Ohio Power Co., 216 NLRB 987 (1975), enfd. 531 F.2d 1381 (6th Cir. 1976). Information necessary for processing grievances under a collective-bargaining agreement, including that necessary to decide whether to proceed with a grievance or arbitration, must be provided as it falls within the ambit of the parties' duty to bargain. NLRB v. Acme

Industrial, supra; Bickerstaff Clay Products, 266 NLRB 983 (1983).

However, when a union's request for information concerns data about employees or operations other than those represented by the union, or data on financial, sales and other information, there is no presumption that the information is necessary and relevant to the union's representation of employees. Rather, the union is under the burden to establish the relevance of such information. *Ohio Power, supra.*

Based on this criteria, it is the Union's burden to establish the relevancy of its August 12 and 13 requests to its collective-bargaining obligations.

These cases usually arise from "double breasted" situations where a union learns that an employer with whom it has a contract is also involved in a nonunion operation. In order to learn whether the employer is violating its agreement, the union requests information regarding the ownership and operation of the two (or more) companies. As the administrative law judge stated in Professional Eye Care, 289 NLRB 738, 752 (1988): "The union may require information that will help determine whether a recipient of transferred work is in some way related to the transferring employer where it represents the employees of the transferring employer." However, prior to being entitled to such information, the union must establish "a reasonable basis to suspect such violations have occurred." Walter N. Yoder & Sons v. NLRB, 754 F.2d 531 at 535 (4th Cir. 1985), enfg. 270 NLRB 652 (1984); Pence Construction Co., 281 NLRB 322. In Proctor Mechanical Corp., 279 NLRB 201 (1986), the refusal to furnish the information was a violation (in part) because the union "had documentary proof, not mere suspicions, the Proctor and IOTEC shared officers." In Bentley-Jost Electric Corp., 283 NLRB 564 (1987), the union was in possession of a sufficient amount of information for the administrative law judge to conclude that it "had a reasonable basis for its belief that Respondent" was diverting work to a nonunion operation, in violation of its contract.

In Sheraton Hartford Hotel, 289 NLRB 483, 484 (1988), the Board stated:

When the requested information does not pertain to matters related to the bargaining unit, to satisfy the burden of showing relevance, the union must offer more than mere suspicion for it to be entitled to the information.

In dismissing the complaint, the Board stated:

At best, the Union has advanced a hypothetical theory explaining how the information might be useful in determining whether the Respondent has violated the parties' contract. We find that the Union's preferred reason for believing the information relevant is nothing more than mere suspicion.

In Bohemia, Inc., supra, the Board stated:

The Union's request for information was based solely on the suspicion of some Culp Creek employ-

ees that work had been transferred to Drain because of the wage cut there. The Union does not contend, nor does the record demonstrate, that it had any objective factual basis for believing such a transferred occurred.

One reason for the dismissal of the complaint in *Bohemia*, was "the absence of any objective basis for believing unit work was being diverted." See also *Calmat Co.*, 283 NLRB 1103 (1987).

These are the criteria upon which the instant matter is to be judged. The evidence here establishes no objective basis for the Union's demand here; rather it appears that the demand is supported solely by sheer conjecture. For example, when asked what he meant by subterfuge, Bulgaro testified: "My feeling was that the companies were trying to circumvent the use of the Anchor rider." Additionally, the September 10 letter of counsel for the Union to the Respondent states:

the loss by one company and the simultaneous gain by the other is simply a subterfuge in order to allow the sole parent company, Leaseway Transportation, to perform the very same work at less than the high wages and terms and conditions previously agreed to in the Anchor collective bargaining agreement.

Although this is not an unreasonable argument it is still only "mere suspicion" (Sheraton Hartford) and not sufficient to satisfy the Board's criteria for relevance. For

this reason, I recommend that this allegation and the consolidated complaint be dismissed.⁴

CONCLUSIONS OF LAW

- 1. Respondents Anchor Motor Freight, Inc., and Nu-Car Carriers, Inc. are each employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
- 2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
- 3. Respondent did not violate Section 8(a)(1) and (5) of the Act as alleged in the consolidated complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁵

ORDER

It having been found and concluded that Respondents, Anchor Motor Freight, Inc. and Nu-Car Carriers Inc., have not engaged in unfair labor practices as alleged, the consolidated complaint is dismissed its entirety.

⁴ Counsel for Respondent Nu-Car, in his brief, requests that the consolidated complaint be dismissed on another ground, as well, that the Board should defer to the determination of the Joint Committee issued on November 18. Based on my reading of Olin Corp., 268 NLRB 573 (1984); United Technologies Corp., 274 NLRB 609 (1985); and Federated Answering Service, 288 NLRB 341 (1988), and the Board's concern for "two-tiered arbitration process" (General Dynamics Corp., 268 NLRB 1432 (1984)) I would not defer

⁵ If no exceptions are filed as provided by Sec 102 46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102 48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.