Liberty Ashes Inc. *and* Local 813, International Brotherhood of Teamsters, AFL–CIO

Jamaica Recycling Inc. *and* Local 813, International Brotherhood of Teamsters, AFL–CIO. Cases 29–CA–16852 and 29–CA–16856

July 11, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND DEVANEY

On December 3, 1993, Administrative Law Judge Raymond P. Green issued the attached decision. The Charging Party filed exceptions and a brief, the Respondents filed an answering brief, the General Counsel filed a motion, and the Respondents filed a brief in response to the motion.

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

The Board has considered the record in light of the exceptions and briefs and has decided to adopt the judge's rulings,[1] findings, 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] The Charging Party has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The General Counsel filed a motion to issue a reprimand to the Respondents' attorney, Gary C. Cooke, and to bar him from further proceedings in this case. The General Counsel contends that during the judge's examination of a witness Cooke sought permission to ''jump in here'' and ''clear this up.'' When the General Counsel objected and Cooke was advised to wait his turn, Cooke exclaimed, ''I'm going to smack him [counsel for the General Counsel] in the face.'' We do not condone Cooke's statements. The transcript, however, reveals that the judge, during the hearing, properly admonished Cooke regarding his conduct and that Cooke apologized. In our opinion, the judge fully dealt with the matter and no further action is required; but, any future misconduct by Cooke would be considered in light of the admonition given by the judge in this case. Therefore, we deny the General Counsel's motion.

The judge, in his decision, states that the collective-bargaining agreements between the Union and the Respondents expired on November 1, 1990. These agreements expired November 30, 1990. We correct this error.

Jonathan Leiner, Esq., for the General Counsel.
Gary C. Cooke, Esq. (Horowitz & Pollack), for the Respondents.
Joseph Scantlebury, Esq. (Eisner, Levy, Pollack & Ratner), for the Charging Party.

DECISION

STATEMENT OF THE CASE

RAYMOND P. GREEN, Administrative Law Judge. This case was heard by me in Brooklyn, New York, on June 29, July 1, and August 18 and 19, 1993.

The charge in Case 29–CA–16852 was filed on September 18, 1992, and the charge in Case 29–CA–16856 was filed on September 21, 1992. A consolidated complaint was issued on November 30, 1992, which after amendment, alleged as follows:

1. That, for many years, the Union has been the recognized collective-bargaining representative of certain employees of the respective Employers in the following units:

(a) For Jamaica Recycling:

(1) All chauffeurs and helpers
(2) All bulldozer operators and utility men excluding pickers.

(b) For Liberty Ashes:

(1) All chauffeurs and helpers.
(2) All mechanics and welders.

2. That, on December 20, 1990, the Respondents and the Union reached full and complete agreements to succeed those collective-bargaining agreements that had expired on November 30, 1990.

3. That, notwithstanding various requests by the Union, made between April 3, 1991, and July 1992, the Respondents have refused to execute the agreements referred to in paragraph 2.

In addition to the allegations made in the complaint, the Union alleged in its brief that the Respondents, after failing to execute the agreed-upon contracts, have unilaterally subcontracted work thereby additionally violating Section 8(a)(1) and (5) of the Act. In this regard, the Union seeks a remedy which would, among other things, compel the Respondents to reinstate with backpay any employees terminated due to the alleged unilateral subcontracting.

Having signed the proffered contract on behalf of truckdrivers and helpers, the Respondents assert that Liberty and Jamaica should not be compelled to sign the same agreement in relation to drivers and helpers because it does not now, and has not for many years, employed any people within those categories. They also take the position, vis-a-vis, that Jamaica no longer has any employees in the bulldozer and utility man categories and therefore that this unit no longer exists. The Respondents take the position that Liberty should not be compelled to execute any contract on behalf of mechanics and welders because it no longer employs people in either classification and therefore such a unit no longer exists.

The Respondents took no position regarding the unilateral change allegations asserted by the Union as these were not alleged in the complaint and not raised until the Union filed its brief. Because these allegations were not part of the complaint and were not litigated, they shall not be considered by me.

In addition, in their answer the Respondents asserted that the complaint should be barred by Section 10(b) of the Act.

FINDINGS OF FACT

I. JURISDICTION

The complaint alleges, the Respondents admit, and I find that each of them are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The Respondents also admit and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

Both Liberty Ashes and Jamaica Recycling are owned by Steven and Michael Bellino. Although having separate mailing addresses, the two companies share a contiguous piece of property owned by the Bellinos, which is bordered by Merrick Boulevard and 165th Street in Jamaica, New York. Indeed, as far as I can see they are operated as a single enterprise and would, in my opinion, comprise a single collective-bargaining unit if the Board were called on to determine an appropriate unit in the first instance.

Notwithstanding the above, based on the history of bargaining between the Companies and the Union, the General Counsel has alleged that there exists four separate bargaining units, two each for each company.

It is not clear from this record when or how the Union was first recognized as the representative for employees of either company.

In the case of Jamaica, it seems that this company had executed a collective-bargaining agreement covering drivers and helpers from some period of time before 1986 inasmuch as it also executed a letter agreement dated October 7, 1986, which, by its terms, applied the terms of the driver's contract to a bulldozer operator and a utility man, but with differing rates of pay. That letter agreement was then renewed on June 22, 1988, when Jamaica agreed to new pay rates for the bulldozer operator and utility man. This renewal agreement was to run for the same period of time as the term of a separate contract executed by Jamaica covering drivers and helpers. Both agreements had a term from December 1, 1987, through November 1, 1990. At the time that these agreements were executed and during the period of time covered by the agreements, it is clear that Jamaica did employ one bulldozer operator and one utility man. On the other hand, the unrebutted testimony of the Company's witnesses was that Jamaica did not employ any drivers or helpers during that period of time.

As to Liberty, it appears that this entity also executed a driver's contract covering the period from 1984 to 1987. In this instance, however, it is agreed that Liberty had then and does now employ a group of people who drive garbage trucks. Additionally, the evidence shows that in June 1985 and July 1988, Liberty executed letter agreements applying the terms and conditions of the driver's contract to the classifications of mechanic and welder. Accordingly, there was, prior to the 1990–1991 negotiations, a contract between Liberty and the Union covering chauffeurs and helpers for the period from December 1, 1987, through November 1, 1990, and a letter agreement covering one mechanic and one welder for the same period of time.

Although I believe that the two companies operate in an integrated fashion as a joint employer, one can make a distinction between the Companies by saying that Liberty operates the trucks and employs the drivers, whereas Jamaica operates the yard where trash is separated and processed before being sent on its way to landfills. In this respect, the bulldozer is used to tamp down the garbage so that it takes up a smaller volume. There also was a payloader which was used in the yard to load garbage onto trucks taking it to landfills. With respect to Jamaica, it is noted that this company also employs a group of people called pickers who have been represented by a different union.

On August 24, 1990, the Union sent letters to Liberty and Jamaica advising them that the Union desired to amend and modify the terms of the existing collective-bargaining agreements, which were set to expire on Novemer 30, 1990.

By letter dated October 26, 1990, the law firm of Horowitz and Pollack advised the Union that they represented a group of individual companies and would like to commence negotiations on November 6, 1990. Among the companies listed in the letter were Jamaica Recycling and Liberty Ashes.

It should be noted that there is no contention here that a multiemployer bargaining unit was created. Thus, notwithstanding the fact that these various companies got together and retained this law firm to represent them in negotiations, it apparently was the intent of the respective employers to maintain themselves as separate bargaining units.

After about a month of negotiations and a 4-day strike, a document entitled ''Settlement Agreement'' was executed by the Union and one of the law firm's attorneys on December 20, 1990. Essentially, this agreement, which resolved the terms and conditions for the chauffeurs and helpers, stated inter alia:

> It is hereby agreed that the Collective Bargaining Agreement between Local 813, I.B.T. and the individual Employers who are bound by the negotiations conducted by Sanford Pollack, Esq. is hereby amended as follows:
>
> . . . .
>
> 7. To the extent that the Union presently represents employees of the Employer in job functions outside of the chauffeur and helper classification, the Employer will execute a separate Collective Bargaining Agreement, identical to the chauffeur and helper agreement except for the appropriate indication of unit definition. Employees in these separate contracts will receive the same wage adjustments as are granted to the chauffeurs and helpers. Subcontracting of such work will be permitted for so long as employees are not adversely affected; i.e. loss of employment.

On January 23, 1991, the Union mailed a draft of a new contract to Pollack, intended to incorporate all changes agreed to in the ''Settlement Agreement.'' At some point thereafter, the Union received from Liberty (and from other companies that had retained Pollack's law firm) an executed collective-bargaining agreement with a term from December 1, 1990, through November 30, 1993. This agreement covered the drivers and helpers who were on Liberty's payroll.

It should be noted that as of late 1990 and early 1991, Jamaica had lost its license to operate as a transfer station. Accordingly, the bulldozer, which had been operated by the bulldozer operator or utility man, was not in operation. This shutdown, however, was understood to be temporary by the

owners, and operations were recommenced after a several-month hiatus.

The evidence shows that at the time of the negotiations the mechanic and the welder who had been on Liberty's payroll had either been discharged or laid off. Thus, at the time that the ''Settlement Agreement'' was executed on December 20, 1990, the evidence shows that Liberty did not actually employ any persons in the welder or mechanic category. Additionally, the evidence shows that Jamaica had no current chauffeurs and no employees in the utility man or bulldozer operator category.

On March 8, 1991, Pollack wrote a letter to the Union stating that he was awaiting the text of the addendum to the contract covering units other than drivers and helpers. Here again, he listed the names of those companies he represented including Liberty and Jamaica.

According to Union Attorney Michael Lieber, he and Bernard Adelstein met with Pollack either in late February or early March 1991. He states that Pollack asked if the Union would agree to exclude the bulldozer operator from the letter agreement with Jamaica and indicated that the Company intended to have a management person operate the bulldozer. He states that when Adelstein asked why he should give up a man, Pollack said that the Company had two or three positions that it intended to fill in the near future; these being a utility man, a welder, and a mechanic. Lieber states that after a caucus, Adelstein, on behalf of the Union, agreed to allow the Company to exclude the bulldozer from Jamaica's unit but only if the job was done by a management person. Lieber states that Pollack's only response was ''fine.'' He also states that there was no actual quid pro quo stated, except that he and Adelstein relied on Pollack's statement that the Company would soon be filling the three positions that were vacant at that time.

Pollack's version of this meeting is somewhat different. He agrees that he asked to have the bulldozer category exempted from Jamaica's letter agreement and indicated that the Company intended to have a management person do this job. Pollack states that he also told the Union that the Company would probably never rehire a utility man but that if it did, he would be employed under the terms of the union contract. Pollack states that he said that the Company wanted the right to subcontract mechanic's or welder's work, but that if the Company hired anyone in the mechanic or welder classifications, those people would be covered by the letter agreement between Liberty and the Union. (That is, he proposed that the welder be moved from the Jamaica to the Liberty payroll so that this job and the mechanic job would be under one agreement.) Pollack asserts that all this was all agreed to by the Union. Lieber, on the other hand, denies either that there was any discussion at all regarding subcontracting or that the Union agreed to anything other than the bulldozer issue.

With respect to the above meeting, it appears from the testimony of both sides that there was no mention of the fact that Jamaica had not signed the driver's agreement. This might be explained by the evidence that Jamaica did not employ any drivers or helpers.

On March 22, 1991, Pollack sent a letter asking the Union to forward a ''set of documents establishing which companies would be expected to sign which of the unit contracts together with the language which you proposed that would be applicable to the non-chauffeurs unit.''

On March 25, 1991, Martin Adelstein forwarded to Pollack a set of proposed contracts which included the two proposed letter agreements for Jamaica and Liberty. The proffered letter agreement for Liberty proposed to cover a mechanic and a welder. The proffered letter agreement for Jamaica proposed to cover a utility man and a bulldozer operator with the proviso that the category of bulldozer operator would be a nonbargaining unit job so long as it was performed by management personnel.

On March 27, 1990, Pollack responded:

> I have carefully read the proposed Letter Agreement as it concerns the classifications other than chauffeurs and helpers and believe that the first paragraph of your proposal leads to more confusion than is necessary. May I suggest a deletion of that paragraph and this substitution thereof:
>
> The parties agree that the Union represents a separate unit comprised of the classifications listed below and has represented said unit in the past and further,
>
> All terms and conditions of the collective bargaining agreement covering chauffeurs and helpers for the period December 1, 1990 through November 30, 1993 (except in the case of the debris haulers which shall be December 20, 1993) shall apply except as to the minimum wage which is set forth below.
>
> Obviously if this is in accordance with your desires, please feel free to prepare the appropriate letters for signature, failing which, please contact me for discussion.

It is noted that there is nothing in the March 27 letter which indicates that Pollack was objecting to the execution of any of the proffered agreements *because* they did not reflect a separate understanding about subcontracting. That is, the initial ''Settlement Agreement'' which was signed on December 20, 1990, explicitly stated that subcontracting would be permitted for the nonchauffeur units unless it adversely affected employment. If, as Pollack asserts, he got the Union to agree to a further concession on subcontracting on behalf of Jamaica and Liberty, he did not say so in this letter of March 27, 1991.

On April 3, 1991, the Union sent another set of documents to Pollack including a redraft of the letter agreements for Jamaica and Liberty. These redrafts incorporated the changes suggested by Pollack in his letter of March 27, 1991.

Pollack testified that he verbally told Adelstein in March or April 1991 that the Company would not sign the unsigned proffered agreements for Liberty and Jamaica. But he could not recall exactly when or under what circumstances such a communication was made. There is nothing in writing to this effect and I conclude that the Respondents have not shown that there was a clear and unambiguous refusal which would have served to trigger the 10(b) statute of limitations. *A & L Underground*, 302 NLRB 467, 469 (1991).

A little more than 1 year later, on May 12, 1992, the Union sent a letter to Pollack which, inter alia, reminded him that although it had received the signed chauffeur's agreement from Liberty it had not received any of the other agreements from Liberty and Jamaica.

Martin Adelstein testified that on or about July 13, 1992, he spoke to Pollack and pointed out that the Union had not received the contracts from Liberty or Jamaica. According to Adelstein, Pollack said that he had sent the documents to the Company and couldn't understand why they weren't signed.

In the meantime, at some point during 1991, Jamaica obtained a license to reopen its transfer station and began operating the bulldozer again. Initially, the bulldozer was operated by a man named Matty Silaco who the Company claimed was a manager. Later, however, Bellino testified that the bulldozer was operated by a person who was a manager but whose name he could not recall. Based on this testimony, it is my opinion that there came a time when Jamaica hired someone to operate the bulldozer and that this person was a nonmanagerial or nonsupervisory employee. However, from this record, I cannot ascertain who that person was or when he began operating the bulldozer.

In addition, Union Business Agent Jerry Jackson testified that he visited the jobsite on various occasions in 1991, 1992, and 1993 and observed activity there for about 5, 10, or 15 minutes at a time. Jackson testified that occasionally he observed utility work being done at the yard; such work defined by him as being anything that needed to be done such as sweeping, painting, etc. Although he testified that he observed that a person named Kevin Armstrong was employed to drive a flatbed truck and do some utility work until replaced in 1993 by a short white man with a pony tail, Jackson's testimony was too vague on this point as it is obvious that he simply was not in a position to competently testify about the types of jobs and work that was done in the yard at any time after 1990. Jackson could not testify that either Armstrong or anyone else was regularly assigned to be a utility man. As there was no other evidence to show that Jamaica hired or employed any individual to be a utility man at any time after 1990, it seems to me that the evidence shows that in relation to the bulldozer operator/utility man unit, this consisted at most of one man.

Jackson testified that he observed that Kevin Armstrong, in addition to performing utility functions, drive a flatbed truck for Jamaica which was used to carry dumpsters to and from the yard to commercial customers. (He states, however, that he observed this on at most 10 occasions.) According to Bellino, Armstrong worked for Jamaica during the years 1991 and 1992 as a supervisor. As noted above, Armstrong left the Company in 1993 and may have been replaced by the unnamed man who wore a pony tail.

In addition to the flatbed truck, Jackson testified that he has observed a payloader being used in the yard and assumes, without any supporting evidence, that it was operated by someone on Jamaica's payroll. A payloader is a machine which is operated exclusively in the yard to load garbage onto container trucks for shipment to landfills. There was no competent evidence to show who did this work, or that the operation of this machine was covered by any of the contracts that either Liberty or Jamaica had with Local 813. Clearly, that job would not be covered by the chauffeur's contract, which I construe as being applicable to over-the-road drivers and not to vehicles which are operated exclusively in an employer's yard. This is evident from the fact that the Union felt it was necessary to have a separate contract covering the bulldozer, which like the payloader, is a vehicle used exclusively in the yard.

Additionally, Jackson testified that he has observed people working at the premises doing welder's and mechanic's work. The problem is, however, that Jackson was not in a position to testify that any of these people were employees of either Jamaica or Liberty and it may be that they were simply employees of subcontractors who, as in the past, have done this type of work for the Respondents.

Apart from examining Bellino, pursuant to the Fed.R.Evid. 611(c), the General Counsel only presented Jackson to testify regarding who was employed by these companies after the old contract had expired. Although, I believe that Jackson testified truthfully, the fact is that he simply was not in a position to give meaningful evidence on these questions. It may be that neither the General Counsel nor the Charging Party could obtain the cooperation of the employees who worked at the Respondents, but their testimony would have shed a good deal more light on these issues than was presented through either Jackson or Bellino. (While I conclude that Jackson was not in a position to have sufficient knowledge, I also note that Bellino's testimony was marked by evasiveness.)

Moreover, the General Counsel subpoenaed and the Respondents turned over the payroll records of both companies. As these records were examined, but not offered into evidence, I can only assume that they did not support the General Counsel's assertions as to what employees were hired by which company.

To date, although having executed the chauffeur's contract, Liberty has not executed the proffered letter agreement in relation to mechanics and welders.

To date, Jamaica has not executed the proffered chauffeur's agreement and has not signed the proffered letter agreement covering the bulldozer operator and utility man.

Analysis

There is no doubt that on December 20, 1991, a collective-bargaining agreement was consummated between Liberty Ashes and Local 813 covering chauffeurs and helpers. (In this case, the employees of Liberty who drove garbage trucks.) In fact, Liberty executed that agreement and there is no contention by the General Counsel or the Charging Party that Liberty has failed to fulfill the terms and conditions of that contract

By the same token, there is no doubt that on December 20, 1990, a chauffeur's agreement was reached on behalf of Jamaica and Local 813. The question is, did there exist a bargaining unit to which this contract could attach.

The evidence demonstrates to me that during the term of the 1987 to 1990 contract Jamaica did not employ any drivers and therefore there were no bargaining unit people employed by Jamaica to be covered by that contract. Moreover, the evidence shows that at the time that the new contract was reached (December 20, 1990) Jamaica did not employ *any* persons within the driver or helper category. From that day to the present, the evidence shows that, at most, there was one person at any given time (Kevin Armstrong or his replacement) who may have occasionally driven a flatbed truck in addition to doing other work at the yard. While the General Counsel asserts that the testimony of Jerry Jackson shows that another employee operated a payloader at the yard, thus yielding a unit of two drivers, it is evident that Jackson's testimony was insufficient to establish who oper-

ated the payloader, what company he worked for, or how much of his time was spent in such work. Moreover, for the reasons stated above, I don't believe that the chauffeur's agreement was intended to cover employees who operated vehicles, such as bulldozers or payloaders, which are operated exclusively in the yard.

As I conclude that the Jamaica chauffeur's unit either did not exist or at most had one employee during any relevant period of time, I find that the Respondents did not violate the Act insofar as the complaint alleges that Jamaica refused to execute a collective-bargaining agreement with Local 813 covering chauffeurs and helpers. See *Rice Growers Assn.*, 312 NLRB 837 (1993), where the Board held that an employer which had lawfully closed did not violate the Act when it refused to furnish certain information because, inter alia, ''there were no unit employees who could generate a bargaining obligation.'' See also *Crescendo Broadcasting*, 217 NLRB 697 (1975); *Crispo Cake Cone Co.*, 190 NLRB 352 (1971); and *Westinghouse Electric Corp.*, 179 NLRB 289 (1969), where the Board held that even with a Board certification having issued within 12 months, a respondent can lawfully refuse to bargain if the bargaining unit has been reduced to a permanent one-man unit.[1]

With respect to the other two units set forth in the complaint, I will state at the outset that I believe the testimony of Lieber. That is, I credit his version of the meeting that was held probably in early March 1991. Therefore, the only issue raised by Pollack on behalf of Liberty and Jamaica was the desire to have the bulldozer operator not covered by the contract because that job was being performed by a managerial or supervisory person. When Pollack stated that the Companies expected to hire, in the future, a mechanic, a welder, and possibly a utility man, Adelstein agreed to Pollack's position, vis-a-vis the bulldozer operator, and told him so. In response, Pollack said ''fine,'' but he did not specifically guarantee that the Companies would hire three people for these positions or state when they would be hired.

It is noted that as of December 20, 1991, when the ''Settlement Agreement'' was executed and as of March 1991 at the time of the above-noted meeting, Liberty did not employ either a welder or a mechanic, as both of the people who had done that work during the 1987–1990 contract period had left the Company for nondiscriminatory reasons.

It is also noted that, as of both dates described above, Jamaica did not employ a utility man and employed a bulldozer operator who the Union agreed to exclude from the unit per the March 1991 discussion.

With respect to the Liberty mechanic and welder unit, the Company denies that it has, at any time since the expiration of the 1987–1990 contract, directly employed any persons in those categories. It asserts that to the extent that such work has been done for it, that work has been contracted out in the same fashion as it had been done during the term of the previous collective-bargaining agreement. As the testimony of Jerry Jackson is not, in my opinion, sufficient to show that any individuals doing mechanic and/or welding work are employees of Liberty or Jamaica, I feel compelled to dismiss that allegation of the complaint which alleges that Liberty refused to execute the letter agreement covering these categories of employees.

Finally, with respect to the Jamaica bulldozer operator/utility man unit, I think that the evidence shows that, at most, there was only one employee in this unit; that person being a nonsupervisory bulldozer operator. (The person who replaced Silaco.) The Company denies that it has employed any person as a utility man and the General Counsel has not produced evidence which, in my opinion, is sufficient to rebut that assertion. As the evidence shows that after the expiration of the 1987–1990 contract, this unit had been reduced either to a zero or one-person unit, I shall recommend that the complaint be dismissed insofar as it alleges that Jamaica has refused to execute a collective-bargaining agreement covering this unit.

CONCLUSIONS OF LAW

1. The Respondents are employers engaged in commerce within the meaning of Section 2(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. The Respondents have not violated 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 recommended[2]

Order

It is ordered that the complaint be dismissed in its entirety.

[1] In my opinion, the cases cited by the General Counsel are inapposite. In *Steiner Trucraft*, 237 NLRB 1079 (1978), the employer refused to execute an agreed-upon contract after it closed a plant for economic reasons. The Board found that the employer violated Sec. 8(a)(5) by refusing to execute the contract and by not applying such provisions as severance pay, etc., to the employees who were affected by the plant closing. The present case is distinguishable in that at the time that Liberty and Jamaica allegedly entered into the agreements there were no employees employed in the categories covered by the contracts. *Benchmark Industries*, 269 NLRB 1096 (1984), is also distinguishable. In that case, the company was found to have violated the Act by refusing to bargain about its decision to close a plant which had been destroyed by a fire. In concluding that a bargaining order would be warranted despite the plant closing, the administrative law judge concluded that there was no evidence to show that the company had completely gone out of business or that it might not resume operations in the future. In *W-1 Forest Products Co.*, 304 NLRB 957 fn. 1 (1991), the issue was not whether the unit had ceased to exist or had turned into a one-man unit at the time that an agreement was reached or thereafter when a company was asked to sign it. In that case, the violation had already occurred and had affected a defined valid unit of employees prior to a plant closing. The issue in *W-1 Forest Products Co.* was not whether a violation of the Act had occurred, but whether the case should be dismissed for being moot. Finally, in *Walter Pape, Inc.*, 205 NLRB 719 (1973), the issue was whether the employer violated the Act by unilaterally disposing of its routes and thereby causing an existing represented unit of employees to lose their jobs. Thus, unlike the present case, the violation in *Walter Pape* occurred at a time when there was an existing unit of employees who were adversely affected by the employer's conduct.

[2] 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.