

International Sound Technicians, Cinetechnicians & Television Engineers Local 695, I.A.T.S.E. & M.P.M.O; International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada and The Vidtronics Company, Inc. Case 31-CB-4394

9 March 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER

On 21 March 1983 Administrative Law Judge Harold A. Kennedy issued the attached decision. The Charging Party and the General Counsel each 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, and conclusions and to adopt the recommended Order.

We agree with the judge that the Respondent did not violate the Act by seeking to compel arbitration of its dispute with the Charging Party Employer. Both the General Counsel and the Charging Party contend otherwise, arguing that the Respondent, by invoking arbitration, sought to extend its collective-bargaining agreement with the Charging Party to unaccreted employees. Thus, they contend, the Respondent seeks to resolve, through arbitration, issues of accretion and further seeks to represent employees it is not entitled to represent.

Certainly, questions of accretion must ultimately be decided by the Board. However, parties should not be prohibited from pursuing their chosen dispute resolution mechanism, particularly where the question of representation has not been previously determined by the Board. At present, the finding of a violation would be premature. The arbitrator has made no award, and it is speculative whether his award will necessarily encompass a finding on the accretion issue. At this point, the Respondent is not attempting to implement an arbitrator's award that decides an accretion issue and/or gives it representational rights over employees it is not entitled to represent. Rather, the Respondent is merely seeking a determination whether it, in fact, has any contractual rights with regard to the group of employees in dispute.¹

¹ Member Hunter agrees with the result reached by his colleagues for the reasons stated by the judge. He finds it unnecessary to consider what

ORDER

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

_____ action the Board might take in the future should this matter come before the Board again in a different posture.

DECISION

HAROLD A. KENNEDY, Administrative Law Judge. Respondents in this proceeding are the International Sound Technicians, Cinetechnicians & Television Engineers Local 695, I.A.T.S.E. & M.P.M.O., referred to as Local 695 or as the Local, and International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, referred to as IATSE or as the International. The Employer involved in this proceeding is the Charging Party, The Vidtronics Company, Inc. (Vidtronics), a wholly owned subsidiary of Technicolor, Inc. Vidtronics filed a charge against the Local on October 6, 1981, and an amended charge on November 25, 1981, against both the Local and IATSE.¹ Both charges alleged violation of Section 8(b)(1)(A), (2), and (3) of the National Labor Relations Act.² Complaint issued charging violation of the cited provisions of the Act on November 30, 1981, and the case came on for hearing in West Los Angeles on September 22, 1982. The trial was completed on the following day, September 23, 1982, and briefs were thereafter received from the General Counsel, Local 695, and the Charging Party.

Prior to January 26, 1981, Vidtronics had two operating divisions: (1) The Vidtronics Division, which was engaged in "video post production" work at 855 North Cahuenga Boulevard, Hollywood, California, and (2) The Gold Key Entertainment Division, which was engaged in film distribution. Gold Key operated "partially" at 931 North Cole in Hollywood, where the corporate office was located, and also at 6922 Hollywood Boulevard in Hollywood. On January 26, 1981, a new division, The Videocassette Division (Videocassette) was organized. The Vidtronics Division was renamed "Post-Production Division" a few days later, approximately on February 1.³ Initially, Videocassette operated out of the corporate

¹ An answer was filed on behalf of IATSE but no appearance was made at the trial on behalf of such Respondent.

² Sec. 8(b) in pertinent part provides that it is an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided*, that this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership:

(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9(a)

³ The Post-Production Division was later renamed around February 1982 as "Technicolor, Vidtronics Division."

office of Vidtronics, but it was located later in the year in Ventura County at 2000 North Anchor Street, Newberry Park, California. Since approximately February 1982 the Newberry Park operation has been known as Technicolor, Videocassette Division.

A collective-bargaining agreement, called the 1978 Agreement (G.C. Exh. 3(a)), was executed by IATSE and Vidtronics, the Charging Party, for the period August 1, 1978-July 31, 1981. An IATSE official did not sign the agreement until late in 1980 when required to do so as a part of a settlement of another Board proceeding. Article I provides for recognition of IATSE as the exclusive collective-bargaining representative of "all classifications of employees covered by this Agreement." Paragraph 1 of article II provides:

The provisions of this Agreement shall be applicable to all employees performing any work within the trade jurisdiction defined in Article V and performing such services in the County of Los Angeles, or hired by the Employer in the County of Los Angeles to perform such services outside the said County, but within the limits of the United States, its Territories and Canada.

The introductory paragraph of article V reads:

The trade jurisdiction of this Agreement shall cover all job positions associated with, and include all equipment and work functions involved in the making, taking, production, post-production and/or reproduction of video and/or electronic recordings.

Article VI contains a union-security provision which requires employees to join IATSE and one of its locals after 30 days of employment and remain in good standing as a condition of employment. Article IX provides for representation of unit employees at all negotiations by an elected committee and ratification of all agreements by secret ballot. Article XXXV provides that:

New classifications established shall be jointly classified by the parties hereto subject to all of the other provisions of this Agreement.

Finally, article XXXVIII sets forth the weekly wage rates for 17 different classifications (e.g., tape editor, video operator, etc.).

It is not disputed that Respondent IATSE delegated to Respondent Local 695 authority to administer the 1978 collective-bargaining agreement (as alleged in par. 6(e) of the complaint).

Vidtronics informed Local 695 in the fall of 1980 that it was considering the possibility of engaging in the business of videocassette duplication on a large scale from a nearby facility in Hollywood. Vidtronics proposed to the Local that the 1978 agreement be extended to employees hired to perform the videocassette duplication work.

As indicated above, in early 1981 the Employer Charging Party reorganized its operations. The Vidtronics Division was renamed Post-Production Division, the Gold Key Division retained its name, and a new division, called the Videocassette Division (Videocassette) was created. About March 6, 1981, the Local advised the

employer that its proposal had been ratified. Videocassette operated initially out of the corporate office in Hollywood but in April 1981 moved to a new location, 40 to 45 miles away in Ventura County, at 200 North Anchor Street, Newberry Park. Production started at the Newberry Park sometime in the summer of 1981.

In May and June 1981 management representatives of Vidtronics and Local 695 representatives held discussions looking to a new 3-year collective-bargaining agreement. Application of the 1978 collective-bargaining agreement to Videocassette Division employees was raised during certain discussions but Vidtronics maintained that it could not be.

On June 11, 1981, Local 695 filed a written grievance. Vidtronics refused to go to arbitration. On September 22, 1981, the Local filed a petition in Los Angeles County Superior Court to compel arbitration. The action was removed to the United States District Court which stayed the matter pending the outcome of this Board proceeding.

The above matters are well established by the pleadings, admissions, or undisputed facts of record. The record also establishes:

1. That Vidtronics is now, and at all times material, an employer engaged in commerce and in business affecting commerce within the meaning of Section 2(6) and (7) of the Act. The Company, a Delaware corporation, annually sells and ships goods or services valued in excess of \$50,000 directly to customers located outside the State of California.

2. Both Respondents, Local 695 and the International or IATSE, are labor organizations within the meaning of Section 2(5) of the Act.

3. James A. Osburn is now and has been, at all times material, business representative and an agent of Respondent Local 695.

The General Counsel and the Charging Party Employer contend that the Videocassette operations constitute a separate bargaining unit and not an accretion to the bargaining unit covered by the 1978 collective-bargaining agreement. They assert that the alleged⁴ efforts of the Respondent Unions to compel arbitration, by filing a grievance and a lawsuit in an attempt to apply the agreement to Videocassette employees, violated the Act. Respondent Local argues that an accretion could have occurred but that, in any event, it was within its rights to seek arbitration to determine whether the Company should recognize it as the representative of Videocassette employees working at Newberry Park. These contentions must be analyzed and ruled on in the light of the whole record which includes the testimony of eight witnesses, three of whom were called by the General Counsel, one by the Charging Party, and four by the Local 695. A summary of their testimony follows.

Burton I. Lippman testified that he had been employed by Vidtronics since November 1972. From 1978 to February 1981 he was "senior and then executive vice president of Vidtronics." Between February 1981 and Febru-

⁴ The record indicates that IATSE did not support the Local's arbitration efforts.

ary 1982 he was president of the Post-Production Division, successor name of Vidtronics Division, and at the time of the hearing he was president of Technicolor, Vidtronics Division.⁵ Since being employed by Vidtronics Lippman's office has always been located at 855 North Cahuenga Boulevard in Hollywood. Since at least October 1980 he has reported to the president of Vidtronics, which position was held by Jerry Kurtz until February 1982 when Ray Gaul succeeded to the position.

Lippman explained that Gold Key Entertainment has been involved in the syndication and distribution of motion pictures. He explained that The Vidtronics Division has been "primarily a Post-Production Video tape facility" performing three main functions:

Number one is the editing of television shows; number two would be the transferring of film to video tape and number three would be the syndication of off network or shows that were made specifically for syndication.

The editing, Lippman said, involved the "use of sophisticated computers, sophisticated switching equipment and basically very high technology equipment which is used to take parts of shows that are shot at studios and other networks and edit it together in a final edited master which would be delivered to the networks or to television stations for viewing." The editing done by the Vidtronics Division involved such shows as the "The Jeffersons" and "Barney Miller." The Vidtronics Division also duplicated video tapes of television shows. In addition, the division transferred motion pictures to video tape.

The Vidtronics Division was organized into four functioning groups—engineering, operations, finance, and sales. Lippman said employees working in engineering and in operations were covered by the collective-bargaining agreement negotiated with the International Union in 1978 for the period August 1, 1978, to July 31, 1981.

Lippman said he acted as the Company's chief negotiator in 1978 and signed for the Company as did three members of the employees' negotiating committee (Shafer, Scuito, and Nielson). He noted, however, that it was not executed by the International or IATSE representative until sometime in the fall of 1980 when it was signed (by Donald Zimmer) as part of a Board settlement agreement. (See G.C. Exhs. 3(a) and 3(b) and Tr. 52.)

Lippman named "the management hierarchy" of Post-Production Division as of February 1981 as consisting of himself as president; Jim VanEaton, director of engineering; Frank Fleming, director of technical operations; Ed Migliore, controller; and Neil Rydell, sales manager or vice president of sales.

Lippman said on direct examination that neither he nor his staff hired employees for the Videocassette Division, which he said was located 40 to 50 miles from the Post-Production Division. No employees covered by the

1978 agreement were ever transferred to Videocassette; there had been no interchange of employees and no common supervision of employees of the two divisions.

Lippman indicated he had been responsible for labor relations of his division. He said that neither he nor his staff had any control over labor relations of the Videocassette Division whose "books were formally set up for it on January 26, 1981."

Lippman stated that his Post-Production Division stood on its own and was a "separate profit center," for which he was responsible. The division, he said, was responsible for its own advertising, planning, hiring, scheduling of (three shifts) employees, etc. He said he learned from Vidtronics President Jerry Kurtz in late January 1981 that a Videocassette Division was being formed and that John Donlon would be its president.

Lippman said he first discussed the work that Videocassette was to perform with Local 695 on October 22, 1980. On that day, according to Lippman, Local 695 official Doug Adam had telephoned Lippman, and the latter explained that Vidtronics was planning to go into the business of videocassette reproduction for the home market. Quoting from Lippman's direct examination:

Basically the conversation was that we were in the process of negotiating a videocassette contract with a major studio and although we were not yet close enough to know if it would come to fruition, if it did we had technically made some plans on taking a building up the street from where we were and we would want to include those employees under our contract and there was not [sic] category within the contract that covered this type of employees.

I explained the functions that had to be performed. They were already being performed at some of our competition. Doug Adam told me that he was negotiating with one of our competitors at a rate somewhere between \$5.25 an hour and \$5.75 an hour. I told him that inasmuch as we were getting somewhat close to tying up a deal, I had to have some protection, to know that I had a separate category and I would offer \$6.25 an hour or \$250 per week if I could get a reasonably quick response that we would go ahead with it.

Doug told me he would get with Jim Osburn and Jim Osburn who was his boss would call me back later that day.

Q. Okay. Now did you have a later conversation that day?

A. Jim Osburn called me back. We went over the situation, the fact that we had a technicolor building one block away, the fact that it would be videocassette duplicating, mass duplicating for the whole market primarily, the fact that they would have their own complement of employees, primarily videocassette operators, videocassette handlers and tape operators to play back the master tapes but one of the benefits to us would be that we would have the interchangeability of sending our engineers down there to maintain the equipment if it went down, we would have a singular management and

⁵ Lippman said the organizational structure did not change when his division became Post-Production and presumably it did not later when it was renamed Technicolor, Vidtronics Division. On cross-examination Lippman said he is "the executive new president of the parent company."

avoid double overhead by having two presidents and all the division was to come under my auspices.

Q. Do you recall anything else about that conversation?

A. Yes. I had told Jim that we were going to him with it first because we usually spoke to him and we really had no contact with the IA but that this would have to be put in as part of the overall contract with the IA.

Q. Okay. Okay, by the way, why is it you went to—that you discussed this matter with the Local 695 instead of the International?

A. 695 had always administered the contract between us. When we had questions or grievances, they were with 695 and except for the period of negotiations each three years, we really never did see anybody from the International.

Lippman said he followed up his telephone conversations with the officials of Local 695 by sending a letter dated October 24, 1980, which recited that "we agreed" on a new classification "Video Cassette Handler" calling for a \$6.25 hourly rate (\$250 for a regular 40-hour week) for the balance of the current contract. The last paragraph of the letter stated:

As we are anxious to proceed with our acquisition of the property in question, your prompt confirmation of the foregoing as an acceptable amendment to our current agreement will permit me to go forward and finalize those arrangements. Would you please signify the agreement of the I.A.T.S.E. to the foregoing by having an authorized signature(s) affixed at the place provided below, and return same to me.

Lippman said he had conversations with Local 695 official Osburn between October 24, 1980, and January 30, 1981, the latter being the date when he and John Donlon met in his (Lippman's) office with Osburn and the members of the Local's negotiating team, Bob Shafer, Frank Sciuto, and Dennis Nielson. Such conversations with Osburn were "not particularly" distinct in his mind at the time of the hearing. He thought, however, there were "telephonic conversations primarily," dealing "primarily" with whether the membership of the Local would ratify what was "spelled out" in the letter and whether the International would approve. Lippman said he called the January 30 meeting as Vidtronics had become committed by that time to Warner Brothers to do all of its "videocassette duplicating work" and other "ancillary work" beginning on July 1. There were "some doubts" at that time whether Vidtronics could obtain a lease on the nearby building for the new work, but Lippman "still had to have a commitment from the Union that they would go ahead with the new category" and wage rate agreed on for it. At the January 30 meeting "a few minor changes" were made in the October 24 letter and Lippman agreed to spell out the new terms and conditions of the new category in writing. Lippman then prepared a memorandum (G.C. Exh. 4(b)), outlining such terms and conditions and submitted it to Vidtronics at-

torney Howard Fabrick for approval. On February 2, after obtaining Fabrick's approval, Lippman gave the shop steward a copy of the memorandum. Lippman said he asked Shafer "almost every day" in mid-February whether employees had given their approval. He explained to Shafer at that time, he said, that the Hollywood property was no longer available and the Company had made an offer on a property in Northridge and another offer on property in Ventura County. Lippman stated that he told Shafer that if the Company went "out of the county that there be no agreement."

Lippman testified that Shafer informed him on March 6 that the Local membership had approved (47 to 13) the new classification, but he thought he told Shafer then that it was "too late." Said Lippman: "A final lease was delivered to us an hour or two before the vote was taken and that was on March 6 on a Friday and on March 9, the lease was signed."

Lippman's next contact with Local 695 took place approximately 2-1/2 months later when the parties met in Lippman's office to negotiate a new 3-year contract. Lippman recalled that the Local's negotiating committee was present, along with one or two other company people and a representative of the International, Arthur Melli. The question of whether the Videocassette Division would be covered by the new contract was raised, and Lippman said his answer was "absolutely not."

Another negotiating session was held in his office on June 11 when Lippman was handed the grievance referred to in paragraph 8 of the complaint. The grievance (G.C. Exh. 5) read in part as follows:

Part A. Failure of the Vidtronics Co., Inc. to execute and implement into the collective bargaining agreement between the I.A.T.S.E. and the Vidtronics Co., Inc. agreement of 1978 a new classification and bargaining unit personnel into its "Vidtronics Cassette Division" as was negotiated and agreed upon by the Vidtronics Co., Inc. (and the Vidtronics Cassette Division), and the union/employee negotiating committee, details of which were then submitted to the bargaining unit for a secret ballot ratification or rejection. The bargaining unit ratified said agreement as submitted.

Part B. Failure to use bargaining unit personnel and operate under the terms and conditions of the existing contract. The union demands the company cease and desist continuing violations of the agreement between the parties.

Lippman recalled saying "thank you" when the grievance was handed to him but no discussion concerning it.

On cross-examination Lippman indicated that initially it was planned that the mass video tape duplicating work would be done within his Vidtronics Division. "The plan changed I guess in the end of January 1981 when I was told that John Donlon was going to be president of the new videocassette division." It was formally announced, he said, on February 9, 1981, that Donlon was to be president of Videocassette.

Lippman testified on cross-examination that he told union representatives on January 30, 1981, that there was

to be a new Videocassette Division and that Donlon, not he, would be responsible for it. It was still the Company's intention at that time, he said, that the videocassette duplicating work would be performed under the existing collective-bargaining contract. "There would be an interchangeability of maintenance and engineering people if the facility were to be close enough," he said. According to Lippman, the Company had begun considering locations other than Hollywood in January 1981, and Ventura County was mentioned at the January 30 meeting. Brokers were contacted around February 2, the day Lippman said he told Shafer that the Vidtronics attorney had approved of the memorandum covering the proposed new classification.

Lippman denied on cross-examination that there had been any transfer of Vidtronics (Post-Production) personnel to Videocassette but conceded that there were persons who had "resigned and transferred." Pete Wood, Les Meszaros, and Don Pinsker were among such persons. Lippman was shown a letter dated February 13, 1981, signed by Pete Wood, vice president of engineering for the Vidtronics Company, Inc., which confirmed employment of Pinsker as a maintenance engineer in the Duplicating Division of that company. The letter also indicated that there would be "job interchangeability" and that Pinsker would be required to join the Union as provided in the collective-bargaining agreement. Lippman said that when he saw a copy of the letter he had told Wood to get it back as it was null and void. Lippman conceded that a similar letter had been sent to another Videocassette employee, a Mr. Razanskas.

Lippman conceded that his Vidtronics or Post-Production Division had been involved in video or electronic recordings. He allowed that there had been "just a few" of such reproductions by bargaining unit employees of his division in Hollywood but, he said, there had not been any "mass production." He denied that there had been any transfer of films to video tape at the Newberry Park location.

James Curtis VanEaton identified himself as vice president of engineering for Post-Production Division of Vidtronics, a position he succeeded to in August 1982. He was first employed in the division as a maintenance engineer and later rose to be assistant director of engineering and later director of engineering. VanEaton said only his first job, maintenance engineer, was covered by the collective-bargaining agreement but he has continued to maintain his membership in Local 695. Since being director of engineering he has been responsible for engineering construction, engineering maintenance, and for research and development. He is responsible for hiring as well as training of employees.

VanEaton explained that engineering breaks down "in an informal way" into different sections—"on-line" editing, "off-line" editing, "telecine" and "dub" room operations. He identified photographs (G.C. Exhs. 6(a) through (f)) depicting certain operations and certain classifications performed by employees in his division. VanEaton estimated the division employed about 15 tape editors, 12 to 15 maintenance engineers (5 to 8 of whom would be "senior"), 3 audio control operators, 13 to 15 tape operators, 1 or 2 tape cleaning and repair persons,

and 8 telecine operators. Tape editors, VanEaton explained, are in charge of a particular project and possess artistic skills. An audio control operator performs "sweetening" and may add special effects, such as applause. Telecine operators are "highly skilled" and must "have the eye" to make "the most plausible color rendition of the film recorded onto the video tape." Tape cleaning and repair work, on the other hand, require no particular technical ability.

VanEaton explained that on-line editing involves work on original material. The cost of an on-line base was built by the Company 3 or so years earlier for approximately \$1 million, he said. Off-line editing involves working with duplicates and can be replaced by "redubbing."

VanEaton explained that most picture films are transferred to 1-inch video tapes which become a "duplicate master." Two-inch duplicates are produced "mostly" for syndication. One-half inch tapes are used in video cassettes for the home market.

VanEaton explained on cross-examination that he and a few (two of five) others, at the request of General Manager Bob Belcher, in the summer of 1980 were involved in the "conceptualization" of a system for the mass duplication of half-inch tape cassettes. The conceptualization was later implemented, he said, when equipment was installed at the Newberry Park operation. Following such installation, according to VanEaton, "our R&D section continued work on software that is used there" with Videocassette being billed for the work. VanEaton agreed that Vidtronics had produced "a limited number of half inch cassettes" in Hollywood prior to February 1981.

Donald H. Pinsker was employed as a maintenance engineer by the Vidtronics Company, Inc. in February 1981 (as indicated in Pete Wood's February 13, 1981 letter, R. Exh. 1) and was let go in November of the same year.⁶ Pinsker said he got in touch with VanEaton in the summer of 1980 about a possible video tape duplicating position with the Company. Later on, sometime in November 1980, he met with Vidtronics officials Pete Wood and Carl Rasmussen and discussed a possible job opportunity in "a brand new venture that was coming up." Pinsker said he was hired later as "part of the construction crew" to set up the new project.

Pinsker began work under Pete Wood at a weekly rate of \$589.66 (at the maintenance engineer's scale as provided in the collective-bargaining agreement), reporting initially about February 17, 1981, to the Cole Street address in Hollywood. The first 35 days of his employment were spent at the Cahuenga plant in Hollywood "putting together tool lists" and doing things preparatory to starting up a new shop. He and Frank Razanskas, another person employed about the same time, were then assigned to the Cole Street address where they worked until around April 1. At that time Pinsker "went out to Newberry Park to a vacant shell building" to perform his duties. At Newberry Park he worked with, and apparently under

⁶ At the time of the hearing Pinsker was employed as a tape technician by CBS Television. Pinsker returned the February 13 letter to Wood as requested after being on the job 2 or 3 weeks.

the direction of, Les Meszaros and Ed Shelton, although both Meszaros and Shelton remained at the Cahuenga address for a time. Later both Meszaros, who became the new project's engineering supervisor, and Shelton, who worked on computer control boards, moved up to Newberry Park.

Newberry Park became operational around August 1981, and Pinsker was placed on a salary as an operations supervisor. However, on November 2, Donlon, president of Vidtronics, and Bill Hickey, the "World-Wide Vice President of Engineering," told Pinsker that he and 40 or so others were being let go because "there was no work."

Pinsker testified that 600 half-inch video tape recorders—400 Panasonic VHF's and 200 Sony Beta type machines—were installed at Newberry Park while he was there. He said he had seen both types of recorders in use at the Cahuenga plant. He stated that all the recorders installed at Newberry Park had been transported from the Cahuenga address to Newberry Park and that later VanEaton on "a couple of occasions" had taken 15 or 20 of the recorders back to Hollywood. Pinsker testified that he later checked the machines "in" when they were returned.

John Donlon became president of the Videocassette Division (now called Technicolor, Videocassette Division) about February 2, 1981, shortly after the division was set up, and he has held the position ever since. He said the division maintained only an administrative office at first at the Hollywood corporate headquarters on North Cole Street before moving to its present address in Newberry Park later in the year.

Donlon testified that he is responsible for "the entire operation of the Division," including labor relations. Videocassette, he said, is a separate profit center, doing its own hiring, advertising, and planning and maintaining its own books and records.

Videocassette does some "industrial and educational work," but essentially the business of the division is "the production of half-inch videocassettes for the home market and production of videotape for the pay TV market." Donlon explained that the division's customers (e.g., Warner Home Video) arrange for Videocassette to have access to a "master" which the division uses to make copies on blank, loaded video cassettes. About 1200 tapes are recorded simultaneously. Approximately 30,000 tapes are produced a week. The cassettes are packaged and then shipped by the division to places designated by the customer.

When Donlon came to Videocassette, the division employed Pete Wood as its "main engineer" and Carl Rasmussen as an assistant. Around April 1981 the division, which then consisted of Donlon, Wood, Rasmussen, Hickey, Razanskas, and Pinsker, moved from the North Cole address into trailers located in the building at Newberry Park. Production began on June 21, 1981.

Donlon identified the organizational structure and the "management hierarchy" at Videocassette as follows:

The company is made up of . . . the warehouse, the maintenance area, the master control playback area, the dub floor, quality control area, packaging

and shipping, and our services order processing department

There is myself, as President, and there is a Vice President of Operations, William Hickey; Chief Engineer, Les Meszaros; Industrial Engineer, Wyman Dunford; an Order Processing Supervisor, Sandra Embrey; Shift Supervisor, Brian Allen.

Videocassette employs 23 or 24 utility operators, approximately 3 playback operators (1 for each of the 3 shifts the Company operates), and about 6 maintenance technicians. Donlon indicated that the utility operators perform most of the job functions. He indicated that they need no specific skills and can learn the job within a week. The playback operators, who thread the machines and monitor the recording, can become proficient in approximately 3 months. Donlon identified two photographs taken at the Newberry Park operations—G.C. Exh. 7(a), the "dub room" containing "blocks" of recording machines and G.C. Exh. 7(b), the quality control room.⁷

Donlon said he hired Les Meszaros, Videocassette's current chief engineer, who resigned from the Post-Production Division. Ed Shelton also resigned from Post-Production and came to work for Videocassette. Donlon indicated that there were additional employees brought in but he was not sure of their source. He recalled that Videocassette advertised for employees and "put a sign up in front of the building." He denied that any employees were "officially transferred" from Post-Production to Videocassette. He also denied that there had been any interchange of employees between the divisions or that there had been any supervision of such employees. Technical assistance had been provided early on by both Meszaros and Shelton while they were both assigned at North Cahuenga, but Videocassette was billed and paid for their services, he said.

Under questioning by the General Counsel, Donlon stated that he had never been asked by IATSE or Local 695 to bargain over the terms and conditions of Videocassette employees. Nor had he been informed, he said, that IATSE or the Local had ever been designated the collective-bargaining representatives of such employees.

On cross-examination, Donlon acknowledged that he had been an employee of Technicolor for 10 years prior to becoming the president of Videocassette. He also acknowledged that Videocassette employees Pete Wood, Les Meszaros, Don Pinsker, Carl Rasmussen, Frank Rasmussen, and Ed Shelton had worked previously for Vidtronics. He stated that Videocassette employees are paid by the Payroll Department of Technicolor, which is officed in Hollywood, and that purchases of equipment by Videocassette are processed through Technicolor.⁸

⁷ It was stipulated at the end of the trial that the Videocassette utility operator classification calls for a \$4 to \$5 hourly rate; Videocassette technician, \$6 to \$7 per hour; and Videocassette playback operator, \$6 to \$8 per hour. The levels of pay for classifications covered by the collective-bargaining agreement ranged from \$700 to \$1100 for a 40-hour week.

⁸ Donlon acknowledged that Vidtronics had purchased 5-inch Sony recording machines for Videocassette in 1982.

Donlon said as president of Videocassette he reports to Ray Gaul as an "executive vice president of the group," which he identified as including "Professional Film Division, Vidtronics Post Production, Technicolor Vidtronics Division, and Technicolor Videocassette, I believe." According to Donlon, Gaul holds two titles: president of the Professional Film Division and executive vice president of Technicolor.

Howard Fabrick, attorney for Charging Party Vidtronics, testified that, sometime in March 1981, he telephoned Josef Bernay, whom he identified as the person in charge of IATSE's west coast office, concerning "a slightly unusual reopening provision" in the 1978 collective-bargaining agreement between Vidtronics and IATSE. Fabrick said he called Bernay because Vidtronics official Lippman had reported to Fabrick that the Company had not yet received a "reopener" notification. Fabrick said he was concerned that IATSE might attempt to abdicate its bargaining obligation, "a battle" the Company had "fought" before. Bernay indicated during the telephone conversations, Fabrick said, that Local 695 had been acting without IATSE's consent in discussing "some new classification at this Vidtronics Division" and IATSE was not certain "what it was going to do about Vidtronics." Fabrick assured Bernay that the matter "was really moot at that point" as the Company had decided "to locate the facility outside of Los Angeles County . . . under different management and control."

On cross-examination Fabrick agreed that IATSE had refused to sign the 1978 collective-bargaining agreement until after a proceeding was brought by the National Labor Relations Board. Also on cross-examination Fabrick authenticated correspondence between him, as counsel for Vidtronics, and Local 695's counsel concerning the grievance filed by the Local on June 11, 1981. The correspondence (R. Exhs. 4(a)-(c)) indicates that Vidtronics declined to join in the selection of an arbitrator in part on the basis that IATSE, the collective-bargaining representative, had not pursued the claim.

Robert Lee Shafer, testifying for the Respondent Local, stated that he had worked for Vidtronics at 85 North Cahuenga since October 1972.⁹ Shafer had been elected shop steward about 2 years previously, and at the time of the hearing his job title was "Technical Director." He said he does "almost everything" at Vidtronics—edit, technical directing, playback and recording, but no audio or telecine work. He said he is "in contact with almost every operation" and tries to converse "with everyone in the bargaining unit." According to Shafer, Vidtronics had been recording, including the transfer of film, on cassettes for various customers as long as he could remember.

Shafer thought that Lippman had first contacted him about "needing a classification in our contract" so the Company could enter "the business of mass duplication of videocassettes for home use" sometime in January 1981. Lippman explained, Shafer said, that others were already in the field, and Vidtronics needed a lower wage scale to be competitive. After some study Shafer con-

cluded that the contract would allow creation of such lower wage classification without it being reopened, and on January 30, 1981, met with Lippman, along with other members of the unit's bargaining committee and company representatives, to discuss the matter. A new classification was essentially agreed to, including the duties to be performed, its title ("videocassette handler" or "VCH"), and wage scale at such meeting. At the end of the meeting it was agreed that Lippman was to have something typed up so specific language could be approved by Vidtronics attorney Howard Fabrick and then presented to the unit membership for ratification. Lippman prepared such document in the form of a letter or memorandum from Lippman to Fabrick dated January 30, 1981 (R. Exh. 4(b)), and gave Shafer a copy a few days later. Shafer said Lippman thereafter inquired of him three or four times whether the proposal had been ratified, but Shafer would respond by asking whether the company attorney had approved the language.¹⁰ "[F]inally, he said, 'Yes, Howard—it is all right, go ahead with what we have.'" Shafer said a vote was then taken over a 2-day period, and the count was made on March 6. Shafer did not recall the exact vote. He thought that about 65 of 74 ballots were returned and that he told Lippman "almost immediately" that the proposal had been ratified. A written tally was furnished to the Company and to the Local shortly thereafter. Shafer said he could recall no response from Lippman stating that "it never entered my mind that it wouldn't be in the contract." He said he did not learn that Videocassette employees were not covered by the collective-bargaining agreement until "early May."

Shafer denied that he had been responsible for any delay in obtaining a vote on the new classification. He said he had prepared for each member of the unit a "package," which included the ballot and an explanation of the matter being voted on. He initially had put a return date of February 6 on the ballot but had waited for Fabrick's approval of the January 30 memo. The proposal was submitted "almost immediately, no more than a day" later, he said, after he learned that Fabrick had approved the memo.¹¹

Shafer stated that Lippman had indicated at the January 30 meeting the possibility that the mass videocassette duplicating might be done outside Los Angeles County. Quoting from Shafer's direct testimony:

Mr. Lippman had said that they had been looking at the—a building up the street on Cahuenga. He wasn't sure if they would be able to get that. They

¹⁰ Shafer explained on cross-examination that his answer was in accord with the last paragraph of the January 30 memorandum, adding that he had "everything printed and ready to distribute."

¹¹ Shafer described the package given to unit members as follows:

I put together a package, actually xeroxing this particular letter [R. Exh. 4(b)], a page from our contract regarding the classification, the wage scale, and also a third page [R. Exh. 6] which was something that I had written briefly explaining what we were doing and why we were asking the bargaining unit to do it.

Shafer stated he distributed the packages to unit members in early March. He said he told "everybody" what the issues were and to contact him if there was any question.

⁹ Shafer said he was not sure of his employer's name as "they keep changing it."

had been looking at other areas within Los Angeles County and also in other counties.

As I remember it, Orange County was mentioned because I live in Orange County and I thought that would be very convenient.¹²

Shafer testified that he and another bargaining committee member, Frank Sciuto, prepared the June 11, 1981 grievance and handed it to Lippman at a bargaining session on that date. Shafer said he made a statement to the effect that the Videocassette handler classification had been "bargained," ratified, and it should now be implemented. He thought Lippman's response at the time was that it was that it would have to go to arbitration. Shafer indicated on cross-examination that coverage of Videocassette employees was probably discussed during the new contract bargaining sessions prior to June 11. He agreed that International representative Arthur Melli was at the June 11 meeting, but Shafer could not recall that Melli said anything at the time. Shafer acknowledged that he knew that IATSE, as the collective-bargaining representative, must approve of any agreement reached and that Melli was opposed to placing Videocassette employees under the 1978 agreement. IATSE's position apparently did not surprise Shafer. Said Shafer: "The International had been very slow to sign our contracts so when they don't do something, it doesn't particularly upset us."

But Shafer and other members of his negotiating committee became concerned about the IATSE's backing following Melli's appearance at the June 25 bargaining session and wrote to the president of IATSE asking for a "clarification."¹³

Frank Sciuto had been a Vidtronics employee since 1974 and a member of Local 695's negotiating committee for 6 years. He said he worked in the company's "Technical Department."

Sciuto indicated he first heard about a new videocassette duplication project in December 1980 when Local 695 business manager Jim Osburn telephoned him. Sciuto testified:

[Osburn] said that he was discussing with Burt Lippman, at Vidtronics, a new classification change of videocassette handlers, at a lower rate, to take care of the competition that is out there for a new facility in duplication, that would have the ability to do more duplications.

I told him that he should contact Bob Shafer, the shop steward, and through the negotiating committee, handle it. And he told me there was nothing signed and that was the end of it, from that.

¹² Shafer stated on cross-examination that he was not sure when he heard about the move to Newberry Park but he thought it was after the March 6 vote. He agreed that he did not protest the possibility of locating outside Los Angeles County, noting that he understood "that wherever it was we were part of it." Shafer stated that Lippman explained at the January 30 meeting that Videocassette was to be a separate division, probably to be headed by Donlon, who was present at the meeting, but also under the supervision of Lippman. Shafer acknowledged that the Company wanted Videocassette employees to be under the 1978 agreement.

¹³ See G.C. Exh. 8.

Sciuto thereafter attended the January 30, 1981 meeting and met, for the first time, John Donlon, who was introduced as the person who was to be in charge of the new "Cassette facility." Sciuto said he mentioned the absence of any IATSE representative at the meeting but Osburn responded that the "IA office" knew about the meeting. Using Lippman's October 24, 1980 letter to Osburn (G.C. Exh. 4) as a guide, the assembled group undertook to work up a new (VCH) classification. Possible locations for the new duplicating operation were discussed (including Hollywood, Orange County and Ventura County), as were the duties and the wage scale of persons hired in the new classification. Agreement was reached on the new classification along the lines proposed in Lippman's October 24 letter, except that Sciuto sought revision of the description of a new videocassette handler's work. Quoting from his testimony:

. . . paragraph three . . . says, "The duties to be performed by the videocassette handler shall include"—I wanted "include" to be taken out and struck and in place of that "shall be only."

Ultimately it was agreed that it would be left up to the Vidtronics' attorney, Howard Fabrick, to determine whether the language "could be changed."

Sciuto testified that he participated in meetings in May and June 1981 looking to the negotiation of a new 3-year collective-bargaining agreement. He referred to certain specific meetings in June that were attended by International representative Melli and at which the Videocassette operation was mentioned. Sciuto recalled that Lippman had stated on June 4, before the bargaining session got started, that Lippman had "no control" over the Videocassette facility. Members of the Local's bargaining committee "looked at each other," and thereafter discussed "the issue." Shafer and Sciuto prepared the grievance in question and submitted it to Lippman at the start of the next bargaining session on June 11. Sciuto said Lippman remarked that he had "nothing to do with it" and that Fabrick would "take care of it." The grievance matter was raised again on June 17 and Lippman stated (in part):

"Let's not fool around with step one and step two. Let's go to arbitration with it." And, "Send me a letter, and I will give it to Howard Fabrick and let him take care of it."

A couple of days later local business representative Osburn handed Lippman a letter (bearing an earlier date, June 17, R. Exh. 8), that requested selection of an arbitrator in accord with the collective-bargaining agreement. According to Sciuto, Lippman "accepted this and he said, 'Let's go to arbitration.'"

Sciuto testified that Lippman had asked at "the very opening of negotiations" whether the International Union would sign any agreement negotiated (as he did not "want to end up like we did previously"), and IATSE representative Melli replied that he would sign if a contract were negotiated and the employees ratified it.

However, Melli later walked out of the June 25 bargaining session and never returned.¹⁴

Sciuto explained that he was the Charging Party in the NLRB proceeding that resulted in the International Union finally (in December 1980) signing the 1978 agreement.¹⁵

Sciuto also identified a letter dated March 31, 1981, addressed to Lippman and handwritten by shop steward Shafer. The letter recites Shafer's efforts to initiate the negotiation of a new contract, concluding with the statement, "I do this because of the inaction by the I.A.T.S.E. and in order to avoid any jeporady [sic] of the bargaining unit employees." (R. Exh. 7.)

James Osburn, business representative and executive director of Local 695, testified that he communicated the results of the ratification vote to the International Union as soon as he was advised of it by shop steward Shafer in March 1981. He said the Local was given "strike sanction" authority after the "company's final offer" was submitted during the negotiations that took place in the summer of 1981.

The General Counsel and the Charging Party are undoubtedly correct in contending that Videocassette is not an accretion to the Post-Production operation, although there is, as Local 695 points out, evidence that supports the Local's argument that an accretion could have occurred.¹⁶ Decisions of the National Labor Relations

¹⁴ See the June 26, 1981 letter of the Local's negotiations committee to IATSE President Walter Diehl in evidence as G.C. Exh. 8. The International's actions are inexplicable. Vidtronics and the Local concluded an agreement on July 22, 1981, but at the time of the hearing the IATSE still had not executed it. Vidtronics was not concerned about IATSE's absence from the July 22 bargaining session. According to Sciuto, Lippman or Fabrick (of all "probability, it was Howard") indicated IATSE was committed as Local 695 business representative Osburn was there and "they are the agent for the IATSE."

¹⁵ Vidtronics and the General Counsel indicated during the trial that the International's lack of support of Local 695, at least with respect to executing of the 1978 agreement, had no relevance. The General Counsel's attorney asserted that the International had not been directed to sign the 1978 agreement, pointing out that a "settlement agreement is a voluntary document and nobody is required to sign it." However, the Charging Party's witness, attorney Fabrick, indicated that it was the Board's proceeding which led to IATSE executing the 1978 contract. The Charging Party's counsel later explained, with apparent agreement of the other parties, that the prior proceeding involving Vidtronics and IATSE concerned a multiemployer bargaining issue.

¹⁶ The Local points out that it was the Charging Party's chief executive, Burton Lippman, who initiated the idea that the new VCH classification could be negotiated by the parties under the 1978 agreement and that it should not be presumed that he sought to make an unlawful prehire contract. There was, of course, some common control of management and labor relations, involving Lippman and John Donlon under the president of Vidtronics Company, Inc. (Kurtz at first and later Gaul). There was also "movement" of employees between Hollywood and Newberry Park, and whether it occurred by resignation or transfer is of no particular significance. The skills and functions of employees at Newberry Park were not unlike some required and carried out in Hollywood. Nor was the "work" produced at the two sites entirely different. The geography—i.e., the distance between Newberry Park and the Hollywood site—certainly suggests, however, that employees of Videocassette should be in a separate unit from those working in Hollywood, although the Local notes that predicated such determination only on the basis that the two sites are in different counties would be anomalous—i.e., "The new location would be an accretion if it was located 26 miles away in Northridge [in Los Angeles County] but would not be an accretion if it was located 30 miles away in Newbury Park [in Ventura]."

Board satisfy me that Videocassette employees working in Newberry Park would be an appropriate unit, and they should therefore determine for themselves whether they should be represented by the Respondent Unions, another union, or no union at all. The Videocassette employees are separated physically and geographically from the members of the unit working in Hollywood, work under separate supervisors, have a different pay scale, and have a community of interest of their own. See *Melbet Jewelry Co.*, 180 NLRB 107 (1969), and *Safeway Stores*, 256 NLRB 918 (1981).

Deciding that Videocassette is not an accretion does not dispose of the complaint, however. The real question presented in the proceeding is simply whether a labor organization may lawfully invoke a grievance-arbitration procedure, mutually agreed upon, to settle the contractual dispute that arose between the union and the employer. I hold that it may do so.

I reject the notion that the challenged conduct of Respondent Local 695 (or IATSE which gave it no support) operated to restrain or coerce the Section 7 rights of employees. Likewise, I find Respondents have not failed or refused to bargain in good faith with the employer. No violation of the National Labor Relations Act has been established, and this is true whether there was an accretion or not. An arbitration award could, in fact, be helpful to the Board in deciding the accretion issue, although it may not necessarily be required to defer to it. *Carey v. Westinghouse Electric Corp.*, 375 U.S. 267 (1964). See also *Retail Clerks 588 (Raley's, Inc.) v. NLRB*, 565 F.2d 769 (D.C. Cir. 1977).

My holding in this matter is in accord with, if not directed by, the Supreme Court's decision in *Carey*. In that case a union (IUE) sought arbitration of the issue of whether certain laboratory work should be performed by workers belonging to the bargaining unit it represented (or by another union, "Federation") whereas the employer (Westinghouse) refused to arbitrate on the ground that it was a representation matter that only the NLRB could resolve. The courts in New York had agreed with the employer, but the Supreme Court ruled otherwise. The Court held that invoking the arbitration machinery was appropriate whether the dispute was considered a "work assignment" (jurisdictional) dispute or a "representation" issue. Said the Court (375 U.S. at 264-272):

The Board, as admonished by Section 10(k), has often given effect to private agreements to settle disputes of this character; . . . and that is in accord with the purpose as stated even by the minority spokesman in Congress . . .—"that full opportunity is given the parties to reach a voluntary accommodation without governmental intervention if they so desire." 93 Cong. Rec. 4035; 2 Leg. Hist. 1046 LMRA (1947). And see *Labor Board v. Radio Engineers*, 364 U.S. 573, 577. [Footnotes omitted.]

As Judge Fuld, dissenting below, said: "The underlying objective of the national labor law is to promote collective bargaining agreements and to help give substance to such agreements through the

arbitration process." 11 N.Y. 2d 452, 458, 230 N.Y.S. 2d 703, 706 .

Grievance arbitration is one method of settling disputes over work assignments; and it is commonly used, we are told. To be sure, only one of the two unions involved in the controversy has moved the state courts to compel arbitration. So unless the other union intervenes, an adjudication of the arbiter might not put an end to the dispute. Yet the arbitration may as a practical matter end the controversy or put into movement forces that will resolve it. . . .

Since Section 10 (k) not only tolerates but actively encourages voluntary settlements of work assignment controversies between unions, we conclude that grievance procedures pursued to arbitration further the policies of the Act.

What we have said so far treats the case as if the grievance involves only a work assignment dispute. . . .

If this is truly a representation case, either IUE or Westinghouse can move to have the certificate clarified. But the existence of a remedy before the Board for an unfair labor practice does not bar individual employees from seeking damages for breach of a collective bargaining agreement in a state court, as we held in *Smith v. Evening News Assn.*, 371 U.S. 195. We think the same policy considerations are applicable here; and that a suit either in the federal courts, as provided by Section 301(a) of the Labor Management Relations Act of 1947 (61 Stat. 156, 29 U.S.C. Sec. 185 (a)); *Textile Workers v. Lincoln Mills*, 353 U.S. 448), or before such state tribunals as are authorized to act (*Charles Dowd Box Co. v. Courtney*, 368 U.S. 502; *Teamsters Local v. Lucas Flour Co.*, 369 U.S. 95) is proper, even though an alternative remedy before the Board is available, which, if invoked by the employer, will protect him.

Should the Board disagree with the arbiter, by ruling, for example, that the employees involved in the controversy are members of one bargaining unit or another, the Board's ruling would, of course, take precedence; and if the employer's action had been in accord with that ruling, it would not be liable for damages under Section 301

By allowing the dispute to go to arbitration its fragmentation is avoided to a substantial extent; and those conciliatory measures which Congress deemed vital to "industrial peace" (*Textile Workers v. Lincoln Mills*, *supra*, at 455) and which may be dispositive of the entire dispute, are encouraged. The superior authority of the Board may be invoked at any time. Meanwhile the therapy of arbitration is brought to bear in a complicated and troubled area.

The court's opinion in *Bergman v. NLRB*, 577 F.2d 100 (9th Cir. 1978), upholding the Board's dismissal of a

complaint predicated on the filing of a 301 action in the United States District Court by a union to establish a breach of a collective-bargaining agreement supports the decision herein. Said the court in *Bergman* (577 F.2d at 103):

In *Clyde Taylor, d/b/a Clyde Taylor Co.*, 127 NLRB 103 (1960), the Board held that "while the making of a threat . . . to resort to the civil courts as a tactic calculated to restrain employees in the exercise of rights guaranteed by the Act" was a violation of Section 8(a)(1) of the Act, an actual suit was not similarly unlawful. *Id.* at 108-109. The stated rationale for the holding was that

the Board should accommodate its enforcement of the Act to the right of all persons to litigate their claims in court, rather than condemn the exercise of such right as an unfair labor practice.

Id. at 109. Since *Clyde Taylor*, the Board consistently has held that, despite the coercive effect upon employees' statutory rights, the filing of a civil suit by an employer or by a union cannot be found to be an unfair labor practice

The Board in the present case, consistent with its long-standing position, relied on *Clyde Taylor* to conclude that Local 767's institution of the Section 301 suit was not an unfair practice. Petitioner argues that, under the circumstances, the rationale of *Clyde Taylor* and its progeny is not applicable.

Petitioner also points out that the Board itself has deviated from the general rule announced in *Clyde Taylor*. Our research confirms that the Board, in some instances, has departed from *Clyde Taylor* to hold that filing suit is an unfair labor practice. [Citations omitted.] However, the facts of this case do not bring the union's suit within any of the recognized exceptions.

We conclude that petitioner has failed to advance any persuasive justification for a departure from *Clyde Taylor* in this instance. The union filed suit only after its efforts to negotiate the contractual disputes had failed. There is no suggestion that the union failed to take all requisite preliminary steps before filing suit or that the union's action approaches malicious prosecution or abuse of process. Suit was filed to enforce the terms of a contract which, on its face, regulates wage and fringe benefits with respect to 645 employees. There is no indication the union did anything other than attempt, in good faith, to enforce a facially valid and binding labor agreement. On these particular facts, we hold that the Board's reliance upon *Clyde Taylor*, and therefore its dismissal of the complaint, was proper. . . .

. . . At least in the circumstances presented here, we think that it would be inconsistent with the basic principles underlying Section 301 to burden a labor union or an employer seeking judicial enforce-

ment of its contract rights with the threat that such action may precipitate an unfair labor practice charge and its concomitant administrative proceedings. "Once parties have made a collective bargaining contract, the enforcement of that contract should be left to the usual processes of law and not to the National Labor Relations Board." H.R. Conf. Rep. No. 510, 80th Cong., 1st Sess. 42 (1974), quoted in *Textile Workers of America v. Lincoln Mills*, 353 U.S. 448, 452, 77 S.Ct. 912, 916, 1 L.Ed. 2d 972 (1957).

Our decision on the propriety of the Board's dismissal in this case is not intended in any way to reflect a predisposition as to the merits of the union's Section 301 suit or the possible defense available to Sierra Glass. We hold only that Local 767 did not commit an unfair labor practice by filing suit in a court of competent jurisdiction for the purpose of establishing a breach of contract and proving that extent to which it may have been injured thereby.

The Board must of course be on guard to protect Section 7 rights of employees, avoiding "excessive preoccupation" with the "appropriate unit" concept of Section 9(b) with the result that the former are subordinated. *Melbet Jewelry*, supra. But the decision herein cuts off no self-determination rights of unaccreted employees. Local 695's efforts to have its grievance arbitrated raised only a contractual coverage issue between it and the employer, and an arbitrator's award could not have determined the accretion question conclusively for the Board. In any event, I consider the Supreme Court's *Carey* decision, along with the Board's *Clyde Taylor* ruling, to be dispositive.

Raley's, Inc., supra, which was later reversed, and *Hershey Foods Corp.*, 208 NLRB 452 (1974), wherein a union sought to have the Board defer to an arbitration award "as a final and binding determination" of the accretion issue, do not require, as the Charging Party and the General Counsel contend, that I find Respondents violated the Act.¹⁷

¹⁷ Nor do I consider *Electrical Workers IBEW Local 323 (Active Enterprises)*, 242 NLRB 305 (1979), also cited by both the General Counsel and the Charging Party, to be controlling. If the *Active Enterprises* case is indicative that the Board adheres to its *Raley's* decision notwithstanding its reversal by the D.C. Circuit as the Charging Party suggests, it is sufficient here to note that the facts of the case are somewhat different from

Believing that Local 695 did not commit an unfair labor practice by filing a grievance to determine whether the 1978 collective-bargaining agreement should be applied to Videocassette employees, or by requesting arbitration of such grievance, or by filing an action in a Los Angeles County court to compel such arbitration, I will dismiss the charges against such Union and IATSE.

Based on the foregoing findings of fact, I enter the following

CONCLUSIONS OF LAW

1. The Vidtronics Company, Inc. is, now and at all times material herein, an employer engaged in commerce and in business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2. Each of the Respondents, Local 695 and the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, is, now at all times material herein, a labor organization within the meaning of Section 2(6) and (7) of the Act.

3. Neither Respondent violated the Act as alleged in the complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁸

ORDER

It having been found and concluded that Respondents International Sound Technicians, Cinetechnicians & Television Engineers Local 695, IATSE & MPMO and International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada have not engaged in unfair labor practices, the complaint herein is dismissed in its entirety.

those in the case at bar. The respondent union in *Active Enterprises* had invoked grievance and arbitration machinery to enforce an "Inside Wireman" collective-bargaining agreement against electrical work performed in residences even though it had previously agreed (in a "Residential Wiring" agreement) to allow contractors to utilize nonunion workers to do such work. The union had demanded termination of the "residential" employees and utilization of only those workers who were "acquired through the referral procedures of the Insiding Wiring Agreement."

¹⁸ 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.