

Highland Yarn Mills, Inc. and Amalgamated Clothing and Textile Workers Union, AFL-CIO, CLC. Cases 11-CA-15111 and 11-CA-15224

December 27, 1994

ORDER

On January 4, 1993, the Respondent filed with the Board a Motion for Partial Summary Judgment, asserting that certain matters alleged as violations in Case 11-CA-15111 were known or should have been known by the General Counsel when a prior consolidated complaint in Cases 11-CA-14814 and 11-CA-14868 issued and that, accordingly, the allegations set forth in the instant proceeding are precluded by *Jefferson Chemical Co.*, 200 NLRB 992 (1972), and *Peyton Packing Co.*, 129 NLRB 1358, 1360 (1961).¹

Thereafter, on January 13, 1993, the General Counsel filed an opposition to Respondent's motion and, on January 19, 1993, the Charging Party filed a response. The General Counsel contended that the allegations in Case 11-CA-15111 are not precluded by *Jefferson Chemical* because they are not sufficiently related to the allegations in Cases 11-CA-14814 and 11-CA-14868 and were not contemporaneous with the allegations previously litigated. The General Counsel also argued that Respondent had not shown that the General Counsel was aware of the facts supporting the allegations in Case 11-CA-15111 at the time of the trial of

¹ The principle underlying these cases is that the General Counsel may not litigate an unfair labor practice allegation predicated on events which the General Counsel knew or should have known about when issuing an earlier complaint or at the time of the trial in that earlier complaint, if that allegation is of the same general nature as, or is related to, an allegation in the earlier complaint.

Cases 11-CA-14814 and 11-CA-14868 or that the General Counsel reasonably could have discovered those facts.

The Board found that the Respondent met its prima facie burden under *Jefferson Chemical* and, on March 12, 1993, issued a Notice to Show Cause² why the Respondent's motion should not be granted. Counsel for the General Counsel and the Charging Party filed responses to the Notice to Show Cause and the Respondent filed a reply thereto.

On November 21, 1994, the Board was administratively advised that on September 19, 1994, the above proceeding was closed on compliance by the Regional Director based on a non-Board settlement of the dispute which included, inter alia, the execution of a 3-year collective-bargaining agreement between the Respondent and the Charging Party Union. In light of the agreement between the parties, and the closing of this proceeding on compliance, the procedural issues presented in the Partial Summary Judgment Motion are moot. Accordingly,

IT IS ORDERED that the Respondent's Motion for Partial Summary Judgment is denied as moot and the Notice to Show Cause reported at 310 NLRB 644 is vacated.³

By direction of the Board: Joseph E. Moore, Deputy Executive Secretary.

² 310 NLRB 644.

³ In vacating this Order, the Board notes that it was purely interlocutory and could have been reconsidered by the Board sua sponte at any time before a final decision in the case. For this reason, among others, the Board finds the Supreme Court's recent decision in *U.S. Bancorp Mortgage Co. v. Bonner Mall*, 63 U.S.L.W. 4005 (S.Ct. No 93-714, Nov. 8, 1994), which dealt with vacation of civil judgments, inapposite.