

United Food and Commercial Workers Union, Local 204, a/w United Food & Commercial Workers International Union, AFL-CIO, CLC and Belinda Shepherd. Case 11-CA-18090

September 25, 2002

DECISION AND ORDER

BY MEMBERS LIEBMAN, COWEN, AND BARTLETT

On January 2, 2002, Administrative Law Judge George Carson II issued the attached decision. The General Counsel filed exceptions and a supporting brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions¹ and brief and has decided to affirm the judge's rulings, findings,² and conclusions and to adopt the recommended Order.

ORDER

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

Jasper C. Brown Jr., Esq., for the General Counsel.
Joyce M. Brooks, Esq., for the Respondent.

DECISION

STATEMENT OF THE CASE

GEORGE CARSON II, Administrative Law Judge. I heard this case in Winston-Salem, North Carolina, on November 13 and 14, 2001. The charge was filed on September 2, 1998, and was amended on May 27, 1999.¹ The complaint issued on May 28, 1999. The complaint alleges a threat of job loss in violation of

¹ No exceptions were filed to the judge's finding that the Respondent did not threaten employee Belinda Shepherd with job loss in violation of Sec. 8(a)(1) of the Act.

² In adopting the judge's conclusion that the Respondent did not violate Sec. 8(a)(3), (4), and (1) of the Act when it laid off and failed to recall Belinda Shepherd, we find it unnecessary to pass on the judge's finding that the General Counsel did not satisfy his initial burden under *Wright Line*, 251 NLRB 1083, 1089 (1980), enf'd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), to establish that animus against Shepherd's protected activities was a motivating factor in the Respondent's employment decision. Thus, we find that even assuming arguendo that the General Counsel established that animus against Shepherd's protected activities contributed to the Respondent's decision to lay her off, the Respondent demonstrated that the layoff was economically motivated and that Shepherd was selected for layoff on the basis of seniority. Accordingly, we find that the Respondent met its burden under *Wright Line* to establish that it would have taken the same action against Shepherd even in the absence of her protected activities.

Member Cowen joins his colleagues in finding that it is not legally necessary to pass on the judge's finding that the General Counsel did not satisfy his initial *Wright Line* burden of showing that Shephard's protected activity was a motivating factor in the Respondent's employment decision, given the overwhelming rebuttal evidence offered by the Respondent. Nevertheless, Member Cohen notes that the evidence in this case, taken as a whole, does not support even a prima facie case of unlawful motivation.

¹ All dates are in 1998 unless otherwise indicated.

Section 8(a)(1) of the National Labor Relations Act (the Act) and the layoff of, and failure to recall, Belinda Shepherd because of her union activity in violation of Section 8(a)(3) of the Act and because of her cooperation with the National Labor Relations Board (the Board) during the investigation of an unrelated case in violation of Section 8(a)(4) of the Act. The Respondent's answer denies all of the alleged violations of the Act. I find that the evidence does not establish a violation of the Act and shall recommend that the complaint be dismissed.

On the entire record,² including my observation of the demeanor of the witnesses, and after considering the oral argument of the General Counsel and the brief filed by the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, United Food and Commercial Workers, Local 204, the Union, affiliated with United Food & Commercial Workers International Union, AFL-CIO, CLC (the International), is an unincorporated association with an office in Winston-Salem, North Carolina, engaged in the representation of employees regarding wages, hours, and working conditions. The Union annually remits to the International in Washington, D.C., in excess of \$50,000 in dues and initiation fees. The Respondent admits, and I find and conclude, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The General Organizing Association (GOA) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

In January 1995, following a campaign and election, Brian Murphy became president of UFCW Local 204, the Union, and David Kennedy became secretary/treasurer. Murphy made changes in the staff of the Union following his election. The staff of the Union was augmented by approximately 8 to 10 employees in the special project union representative (SPUR) program, which was administered by the International. Under that program, union members who expressed interest were trained in organizing and servicing local union members by representatives of the International. Those selected were assigned to assist local unions on a temporary basis. On February 20, 1995, Charging Party Belinda Shepherd, a union member and employee of the Kroger grocery chain, and seven to nine other members were selected to assist the Union. Referred to as "SPURs," these members were paid and supervised by the International, but their activities were coordinated through the Union.

In March 1996, Shepherd ceased to be a SPUR when she was offered, and accepted, a position as a permanent member of the staff of the Union. In November 1996, the staff members

² The Respondent's motion to admit a posthearing exhibit, opposed by the General Counsel for, inter alia, the failure of the Respondent to tender the exhibit in accord with the explicit instructions that I stated at the hearing, is denied. R. Exh. 9 is placed in the rejected exhibit file.

of the Union signed authorization cards designating the GOA as their collective-bargaining representative. The Union recognized the GOA based on the cards and, thereafter, negotiated a collective-bargaining agreement with the GOA that was effective by its terms from February 22, 1997, until February 22, 2000. Shepherd and James McGillberry were the shop stewards. In May 1997, the GOA sent a memorandum to the Union noting that SPURs, as temporary employees, were not covered by the collective-bargaining agreement.

B. Facts

After assuming office, President Murphy reconsidered his replacement of certain members of the staff of the previous administration. Secretary/Treasurer Kennedy urged Murphy "to get over it, to bring Mr. [Ray] Bonelli back to the Local." Murphy agreed. When negotiating the contract with the GOA, the GOA "thought it was appropriate that Mr. Bonelli would maintain his seniority from his original hire date." Murphy recalls responding, "If that is what you want to do, then that is what we are going to do." Thus, according to Murphy, Bonelli's seniority was "bridged" to "the time that he was first brought out of the Kroger store," October 17, 1994.

Although Shepherd was not involved in the negotiation of the collective-bargaining agreement, she was aware that Bonelli's seniority was to be bridged. She testified that, on February 3, 1997, Murphy informed her that Bonelli, who had been rehired in November 1995, was simply going to receive "credit for the amount of time that he was there, like, from October of '94 to January or February of '95," that Murphy called the GOA in her presence and stated, "[T]his is how I want it to be," and that he then informed her that "it is taken care of." Shepherd further testified that, at the contract ratification meeting on February 23, 1997, GOA negotiator, Carl Ariston, stated that "they were just adding his [Bonelli's] time together. And if people did not agree with it, they should vote against the contract."

The manner in which Bonelli's seniority was bridged determines whether Shepherd was the least senior employee on the Union's staff at the time of her layoff in 1998. If Bonelli were only to receive "credit for the time that he was there," he would have had a constructive seniority date in June or July 1995 and Shepherd would have had greater seniority. Shepherd's purported understanding regarding this issue is at odds with the position of the Union and the GOA. I credit Murphy. If, as Shepherd testified, the Union and the GOA had agreed that Bonelli was simply to receive credit, there would have been no reason for Murphy to have purportedly called the GOA to state how he "want[ed] it to be." If this matter had been "taken care of" in that manner, it would have ceased to be an issue and there would have been no reason for Ariston to have raised it at the ratification meeting. Confirmation that the Union and the GOA understood that Bonelli's seniority was to be bridged to "the time that he was first brought out of the Kroger store," October 17, 1994, is established by the testimony of GOA Secretary/Treasurer Bryon O'Neal that the October 17, 1994 date was correct and by the failure of the GOA to pursue the grievance filed by Shepherd in 1998 after she was laid off.

In February 1997, Chris Cooper, a SPUR, became involved with Amway, an organization that sells household products

though individuals who recruit friends, neighbors, and acquaintances as distributors. Shepherd testified that Cooper recruited her and that she provided a list of 30 names to Amway, including, according to her testimony, 12 employees of Kroger who were in a bargaining unit that she served as business agent. Although providing the names, Shepherd testified that she told Amway not to use the list and that she then informed Murphy of her actions "because I thought it might be a conflict." Secretary/Treasurer Kennedy explained that Amway is a competitor of Kroger because it sells many of the same type products and that giving the names of unit members to another organization constituted a violation of Shepherd's fiduciary duties as business agent.

There is conflicting testimony concerning Shepherd's involvement with Amway. Kennedy testified that Shepherd admitted giving Amway names, addresses, and telephone numbers and that she formally apologized to the executive committee. Shepherd denied giving addresses and telephone numbers or making any apology, but she did terminate her relationship with Amway. Kennedy credibly testified that Cooper and Shepherd were interviewed regarding their involvement and that each was given a document confirming their involvement and committing to discontinue that involvement. Cooper signed the document on May 12, 1997. When Shepherd was presented an identical document she did not sign it because "her story changed, and [she] said no, I didn't do that." Shepherd did not deny the foregoing testimony.

Although Shepherd acknowledged that "it might be a conflict," she claims that she was "just totally surprised" when Murphy contacted the Union's attorney regarding this matter. She admitted that she was upset with the manner in which Murphy handled the situation. Kennedy testified that, in view of Shepherd's changed story and reaction, he and Murphy informed her that they could not "meet with her or discuss it without counsel or a witness." Shepherd began calling the office, "[s]ome days it was multiple times," but Murphy and Kennedy continued to inform her that they would not discuss the situation without counsel being present.

In May, during the Union's investigation of the Amway matter, Cooper requested that Shepherd represent him as shop steward. The Union refused this request. Murphy explained to Cooper and Shepherd that SPURs were not covered by the collective-bargaining agreement with the GOA. Cooper acknowledged that Shepherd was not his shop steward.

In November 1997, Shepherd informed GOA negotiator Ariston that the Union had instituted work rules and complained that neither Murphy nor Kennedy would return her telephone calls. At some point, the record does not reflect the date, James McGillberry, the other GOA shop steward, was terminated by the Union. The GOA filed a charge, Case 11-CA-17835, on February 23, alleging the termination of McGillberry as an unfair labor practice. In addition, the charge alleges the unilateral implementation of work rules by the Union and harassment of Shepherd. The record discloses no evidence regarding the circumstances of the termination, the alleged change in work rules, or the basis for the harassment of Shepherd who, according to her testimony, simply reported that her telephone calls were not being returned.

Prior to the Union's receipt of the charge, Shepherd approached Murphy and stated that a charge "had been filed with her name and that she didn't have anything to do with it and it was none of her doing." Shepherd "was pretty adamant to talk about it," insisting she had nothing to do with the charge. Murphy informed Shepherd that he would not discuss it with her. He testified that he believed Shepherd but that he thought it "best to have the union that was representing her, or the Board . . . to speak on her behalf. I didn't think it was proper to talk with her about the charge." Shepherd did deny stating to Murphy that she "didn't have anything to do with" the charge.

Shepherd testified that, after the charge was filed, Murphy's conduct "dramatically changed," that he would not speak to her at staff meetings or executive board meetings and that she made "approximately thirty to forty phone calls during that time and he wouldn't return them." Because of this, she "started calling Butch Underwood, who was suppose[d] to be my supervisor." Notwithstanding the foregoing testimony regarding Murphy's conduct, Shepherd claims that she "was surprised" when, on April 1, she sought to speak with Murphy and he replied, "No, not without a witness."

During the Board's investigation of the charge, Shepherd met and spoke with a Board agent. She testified that she did not give a statement. The record does not reflect whether she refused or was not asked to give a statement. The GOA withdrew the charge on May 28.

Shepherd's testimony that Murphy would not speak to her at staff or executive board meetings is contradicted by another of the General Counsel's witnesses, Gene Davis, a former shop steward at Kroger who served on the Union's executive committee in 1998. Davis testified that he observed that Murphy's responses to Shepherd were "very precise and that was it." The minutes of the executive board meeting of March 30 reflect that Shepherd raised several issues to which both Kennedy and Murphy responded. Those minutes also reflect extended discussion regarding a loss of membership of approximately 10 percent due to facilities closing. Despite this, Murphy stated that he did not want to downsize the staff.

On April 3, the GOA received a seniority list from the Union. The list includes the names of the SPURs working with the Union as well as the names of Union Officers Murphy and Kennedy. The list reflects that Shepherd's seniority date is February 20, 1995, and that Bonelli's seniority date is October 17, 1994. Shepherd was not aware of the list or that it had been sent.

In early June, Shepherd learned from her supervisor, Underwood, that Murphy was handling a third-step grievance meeting relating to a Kroger employee that Shepherd had represented at the first two steps. Kennedy explained that this was not unusual, that "when a business agent is butting heads with the supervisor or . . . the store manager, and they couldn't get it settled in the first or the second step, then having them in there is not going to help them get it settled in the third step."

On June 12, there was an executive board meeting. Murphy acknowledged that he did not mention potential layoffs at that meeting. On June 15, Murphy and Kennedy met with Shepherd and Evattie Harrison and advised them that, due to financial constraints, they would be laid off as of July 1. Murphy testi-

fied that "due to the decline in membership, we just financially couldn't do it any more, so I had to act." The management-rights clause in the collective-bargaining agreement between the Union and the GOA gives the Union the right "to relieve employees from duty because of financial reasons."

Shepherd testified that she met with Kennedy and Murphy after Harrison. Murphy showed her the seniority list. Shepherd stated that she had not received the list. After reviewing it, she protested that SPURs and officers were on the list and that she did not "agree with Ray Bonelli being on the seniority list higher than me." Murphy told her that she had the right to file a grievance. Shepherd was offered the option of taking a layoff and drawing unemployment compensation or returning to her unit position with Kroger as provided in the collective-bargaining agreement between the Union and Kroger. In the course of the conversation, Shepherd testified that Murphy stated that the layoff had nothing to do with her filing charges against him but that filing charges against a local union president was "the same as charging a day care owner of molesting children." Shepherd did not state whether she would agree to take a layoff or elect to return to Kroger. That afternoon she called Murphy and asked what effect taking a layoff would have on her status with Kroger and he stated that he would check on that.

On June 18, Shepherd went on sick leave. On June 20, she filed a grievance through the GOA. On June 26, she called regarding her insurance and was referred to Kennedy. Shepherd initially testified that Kennedy told her "if I didn't stop the grievances, I wouldn't be able to take the layoff. I would have to go back to work for Kroger." When called by the Respondent as an adverse witness, Shepherd testified that Kennedy told her that she "couldn't take a voluntary layoff because I was filing a grievance." Kennedy recalls that Shepherd asked him whether, "if she took the voluntary layoff could she still grieve it," and that he explained that she could not "take a voluntary layoff and at the same time grieve it and say it wasn't a voluntary layoff. It was either one or the other." I credit Kennedy.

Shepherd did not agree to take a voluntary layoff. On June 30, the Union advised Kroger that her services under a union business leave of absence were no longer needed. Thereafter, Shepherd filed for and received disability retirement benefits. Kennedy testified without contradiction that the Union intervened with Kroger on Shepherd's behalf in that regard.

The GOA did not pursue the grievance filed by Shepherd. Bryon O'Neal, secretary/treasurer of the GOA, testified that there was no hostility in dealings between the GOA and the Union. He had no problem with the inclusion of SPURs and officers on the seniority list since the contract, in article 7, provides that an employee who is elected or promoted to management has "the option to return to his or her classification [in the unit] with no loss of seniority" and that temporary employees who become regular employees "shall include their temporary employment in seniority." Upon investigation of Shepherd's grievance, he testified that the GOA determined that Bonelli's seniority date was correct.

The General Counsel presented evidence that, at a staff meeting on September 29, 1997, Murphy announced that Bonelli and Chris Cooper were going to be laid off for a month.

Kennedy credibly explained that these were voluntary layoffs unconnected to seniority, that staff members regularly took voluntary layoffs to relieve “some of the financial burden” of the Union and that this had been the Union’s practice for “as long as I can remember.”

The General Counsel also presented evidence that, on May 28, the Union announced two management positions, director of manufacturing and organizing director. Although Kennedy testified that he sent this announcement to all staff members, Shepherd denied receiving it. Kennedy credibly testified that the International required that all locals create a position of organizing director. The position was given to Lionel Shephard, a SPUR. Isivoro Basurto, whose seniority date is in 1997, initially took the director of manufacturing position, but he transferred to the International. It appears that the position was not filled thereafter.

Shepherd, as already discussed, asserted that her seniority was greater than that of Bonelli. She also asserted that, although her seniority date was the same as that of employee Harrison, her seniority was superior because, according to her recollection, she had reported to work one hour sooner than Harrison on February 20, 1995. Kennedy testified that when employees share the same date, seniority is alphabetical. No representative from the Union or GOA, the parties to the contract, disputed this testimony which I credit.

The charge herein was filed on September 2. Shepherd also filed a claim with the Equal Employment Opportunity Commission (EEOC). In filing with the EEOC on January 23, 1999, Shepherd stated, “I believe I have been discriminated against because of my sex.” Although the foregoing statement is not inconsistent with the allegations of the complaint, it establishes that Shepherd believed there was this additional reason for her layoff.

C. Contentions

The General Counsel argues that Murphy’s refusal to talk with Shepherd alone after the charge was filed, his handling of the third-step grievance of the Kroger employee in June, and his statement equating the filing of charges with accusing a day care owner with child molestation justify an inference of animus. I do not agree. Murphy’s decision not to engage in a one-on-one conversation with an individual alleged as a discriminatee in an unfair labor practice charge would have been reasonable under the best of circumstances. It is even more understandable in view of Shepherd’s changed story regarding the Amway matter. Kennedy credibly explained the rationale for having different personnel at the third step of a grievance. The statement relating to child molestation, as counsel for the General Counsel correctly argued, reflects that “this was a serious matter to him [Murphy].” The statement is not alleged to violate the Act. It contains no threat, and it does not, standing alone, establish animus.

The General Counsel next addresses the circumstances surrounding the layoff, noting the creation of two management positions that purportedly would have protected two junior employees, the absence of any mention of layoffs at the executive board meeting on June 12, and Bonelli’s seniority. If the failure of Murphy to bring up the matter of layoffs at the June

12 executive board meeting or the creation of two positions provided any basis for arguing the merit of Shepherd’s grievance, I am satisfied that the GOA would have pursued the grievance. Even if I assume some sinister motive regarding the creation of the two management positions, Lionel Shephard was a SPUR and Basurto, with less seniority than Shepherd, transferred before the layoff. Thus, Shepherd’s unit seniority at the time of the layoff was not affected. Counsel for the General Counsel argues that Bonelli, not Shepherd, was laid off in 1997, but he does not address the testimony of Kennedy that staff members regularly took voluntary layoffs to relieve “some of the financial burden” of the Union or the testimony of GOA Secretary/Treasurer O’Neal that, after investigation, the GOA determined that Bonelli’s seniority was correct.

The Respondent argues that there is no evidence of animus, noting that Murphy and Kennedy refused to deal with Shepherd without a witness after she changed her story regarding her Amway involvement in 1997, well before the 10(b) date of March 2. Counsel for the Respondent points out that Shepherd was laid off in accord with seniority and that the Union and the GOA agree on Bonelli’s seniority date. The Respondent argues that there has been no failure to recall Shepherd since she is receiving disability retirement benefits.

D. Analysis and Concluding Findings

The minutes of the March 30 executive board meeting reflect a decline in membership due to various closings. Although Murphy did not reduce staff at that time, the General Counsel presented no evidence contradicting his testimony that, in June, “we just financially couldn’t do it any more, so I had to act.” I find that the layoffs were dictated by economic circumstances, thus the only issue before me relates to the selection of Shepherd for layoff.

I have credited Secretary/Treasurer Kennedy’s testimony that he informed Shepherd of the inconsistency in taking a voluntary layoff and filing a grievance asserting that her layoff was involuntary. He made no threat. Such sound advice does not constitute a violation of Section 8(a)(1) of the Act, and I shall recommend that this allegation be dismissed.

In assessing the evidence relating to the Section 8(a)(3) allegation under the analytical framework of *Wright Line*, 251 NLRB 1083 (1980), *enfd.* 662 F.2d 899 (1st Cir. 1981), I find that Shepherd did engage in union activity and that the Respondent was fully aware of that activity. There is, however, no evidence that the Respondent bore animus towards union activity or Shepherd’s involvement in that activity. I have credited Kennedy and shall recommend that the single 8(a)(1) allegation be dismissed. The only action that the record reflects that Shepherd took in her capacity as shop steward of the GOA prior to June 15 was attempting to represent a SPUR who was not in the bargaining unit. The Union was not obligated to deal with the GOA with regard to nonunit employees. Murphy’s failure to accord the GOA representational rights that it did not possess does not establish animus.

In evaluating alleged discrimination in violation of Section 8(a)(4) of the Act, the Board utilizes the *Wright Line* analytical framework. *Williamhouse of California, Inc.*, 317 NLRB 699, 715 (1995). Shepherd was named in a charge. Notwithstanding

her inclusion in the charge, she informed Murphy that she had nothing to do with the charge. The complaint alleges that the Respondent discriminated against Shepherd for cooperating with the Board in the investigation of the charge. Shepherd testified that she did not give a statement to the Board. The record does not reflect whether she was asked to do so and refused or whether no statement was requested. The charge was withdrawn by the GOA. There is no evidence that the Union had knowledge that Shepherd cooperated in the investigation.

There is no independent allegation relating to animus, thus animus must be inferred. There is no probative evidence that Shepherd cooperated in the investigation or that the Respondent had any reason to believe that she did so. The record establishes only that a charge was filed and withdrawn. Shepherd told Murphy that she did not have “anything to do with” the charge and Murphy, although reasonably refusing to speak with her one-on-one, credibly testified that he believed her. Although equating employee charges against a local union president with child molestation at a day care center, Murphy specifically told Shepherd that the charge was not related to her layoff. The General Counsel may not establish a prima facie case on the basis of inferences. The Board has long held that “[i]nferences must be founded on substantial evidence upon the record as a whole” and, since an inference is not substantial evidence, “an inference based on an inference” is impermissible. *Steel-Tex Mfg. Corp.*, 206 NLRB 461, 463 (1973); *Diagnostic Center Hospital Corp.*, 228 NLRB 1215, 1216 (1977). In order to establish a prima facie case on this record, one must discredit Murphy’s testimony that he believed Shepherd’s protestation that the charge was none of her doing and infer that he assumed she cooperated in the investigation, despite the absence of any evidence that she did so. One must then believe the exact opposite of what Murphy told Shepherd, that her layoff was not related to the charge, and infer the Respondent laid off Shepherd because of her assumed cooperation in the investigation, notwithstanding that the charge was withdrawn. The foregoing compilation of inferences defies logic. The logical inference is that, having informed Murphy that she had no involvement in filing the charge, Shepherd did not cooperate with the Board. Upon being advised that there was no evidence to support the charge, the GOA withdrew it. There is no evidence of animus. Even if an inference of animus were made, an inference that the Respondent acted on such inferred animus because of its inferred belief that Shepherd cooperated with the Board would be impermissible.

This record establishes a dysfunctional relationship between the leadership of the Union and Shepherd. That dysfunctional relationship was not a product of her activity on behalf of the

GOA or the filing of a charge or cooperation in an investigation. It stemmed from Shepherd’s disruptive behavior beginning with her changed story regarding her Amway involvement and her multiple telephone calls after Murphy and Kennedy had told her that they would not discuss that matter further without witnesses. It was exacerbated by her making “approximately thirty to forty phone calls” after Murphy informed her that he would not discuss the charge that she denied having “anything to do with” in the absence of her representative. Dissension within the staff of the Union would constitute protected activity if it were concerted, but there is no evidence of concert. Despite the dysfunctional relationship, the Union accorded Shepherd her rights under the collective-bargaining agreement with the GOA and assured that she received her entitlements under the collective-bargaining agreement with Kroger when she returned to the bargaining unit. Even if I were to have found that the Union attempted to manipulate the seniority list and staged the layoff, I would have further found that those actions were motivated by Shepherd’s disruptive behavior that was neither concerted nor protected. There is no evidence of animus towards Shepherd because of any protected activity in which she engaged.

In the absence any probative evidence of animus towards Shepherd because of activities on behalf of the GOA, I shall recommend that the 8(a)(3) allegations be dismissed. There is no evidence that Shepherd cooperated in a Board investigation or that the Respondent had any reason to believe that she did so. In the absence of any evidence of animus towards Shepherd because of the filing of charges or her assumed cooperation in a Board investigation, I shall recommend that the Section 8(a)(4) allegations be dismissed.

CONCLUSION OF LAW

The Respondent did not threaten the Charging Party or lay her off and refuse to recall her because of her union activities or filing of charges or cooperation in a Board investigation in violation of Section 8(a)(1), (3), and (4) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended³

ORDER

The complaint is dismissed.

³ 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.