

**Public Services Planning and Analysis Corporation,  
d/b/a Airport Connection and Barrett R. Shames.**  
Case 32 CA 821

August 3, 1979

**DECISION AND ORDER**

**BY CHAIRMAN FANNING AND MEMBERS JENKINS  
AND MURPHY**

Upon a charge filed on March 27, 1978, by Barrett R. Shames, an individual, and duly served on Public Services Planning and Analysis Corporation, d/b/a Airport Connection, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 32, issued a complaint on February 28, 1979, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleged in substance that on March 23, 1978, Respondent discharged its employee Barrett R. Shames for engaging in protected concerted activities, and since that date has failed and refused, and continues to fail and refuse, to reinstate him to his former position of employment. On March 9, 1979, Respondent filed its answer, admitting in part and denying in part the allegations of the complaint, and asserting as an affirmative defense that Barrett R. Shames was discharged for cause.

On May 30, 1979, Respondent filed directly with the Board a Motion for Summary Judgment and a memorandum in support thereof, alleging that the charge is untimely and therefore barred by Section 10(b) of the National Labor Relations Act, as amended. Respondent therefore requests that summary judgment be entered in its favor and that the complaint be dismissed. On June 18, 1979, the General Counsel filed a response in opposition to Respondent's Motion for Summary Judgment, with exhibits attached, contending that the charge was timely filed and therefore properly reinstated.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

**Ruling on the Motion for Summary Judgment**

On March 27, 1978, Barrett R. Shames filed the original charge in this case, alleging that Respondent discharged him on March 23, 1978, in violation of Section 8(a)(3) of the Act. The charge was served on Respondent on March 29, 1978. After an investigation of the charge, the Region erroneously concluded that Respondent was a local transit system and that the Board would therefore not assert jurisdiction over it. Consequently, a Board agent solicited a withdrawal of the charge from Shames. The charge was withdrawn without prejudice on April 13, 1978, and a letter so notifying Respondent was sent on that date.

On September 6, 1978, Robert Hurley, another employee of Respondent, filed a charge alleging that he and two other employees were discharged in violation of Section 8(a)(3) and (1) of the Act. The charge was investigated and the Region concluded that Respondent's operation constituted a link in interstate commerce and that the assertion of jurisdiction was therefore proper. The Regional Director issued a complaint in that case on October 30, 1978. Some time during the month of November 1978, Shames contacted the Regional office to request reconsideration of his case in light of the Region's decision to assert jurisdiction over Respondent. Realizing its error, the Region notified Respondent that it had decided to reinstate Shames' original charge and requested that Respondent submit any additional evidence pertaining to the case.

On January 4, 1979, a legal representative and the president of Respondent met with a Board agent to discuss settlement in the aforementioned Hurley case. A settlement was reached which, by its terms, expressly reserved the right of the General Counsel to proceed to hearing in the Shames case. On February 8, 1979, the Regional Director again notified Respondent that he had granted Shames' request to reinstate the charge and again offered Respondent additional opportunity to submit evidence in that case. Respondent submitted no additional evidence, and on February 28, 1979, the Regional Director issued a complaint based on the reinstated charge.

In its motion, Respondent submits that Section 10(b) of the Act prohibits the reinstatement of a timely filed charge more than 6 months beyond the date of the alleged unfair labor practice. In the alternative, Respondent submits that assuming the General Counsel does have the discretion to reinstate a charge it is inequitable to have done so in the present case since Respondent was in no way responsible for the Region's mistaken belief regarding its jurisdiction and its subsequent withdrawal of the original charge.

In opposition to the motion, the General Counsel submits that it is within his discretion to reinstate a timely filed charge which has been withdrawn, and

that it is not an abuse of this discretion to have done so in the present case.

After careful consideration of the motion and the documents submitted in support thereof, as well as the briefs filed by the parties, we have decided that Section 10(b) does not require the dismissal of the complaint herein. Accordingly, we shall deny Respondent's Motion for Summary Judgment.

Initially, we find no merit in Respondent's contention that Section 10(b) prohibits the reinstatement of a timely filed charge more than 6 months beyond the date of the alleged violation. Section 10(b) of the Act provides that "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board." This section requires that a charge be filed and served on Respondent within 6 months of the date of the violation alleged in the charge. The charge herein was filed within 1 week of the alleged unlawful discharge and the Respondent was served with a copy within 1 week of the filing. Thus there is no question that the charge herein was timely filed. Furthermore, Section 10(b) imposes no time or other limitation on the authority of the General Counsel to issue a complaint once a timely charge is filed. Rather, the General Counsel, pursuant to Section 3(d) of the Act, has virtually unlimited discretion to proceed on such timely filed charges as he deems fit and, in the absence of a showing of abuse of this discretion, the Board will not interfere with the General Counsel's exercise thereof.<sup>1</sup> This discretion clearly includes the authority to reinstate timely filed charges which have been withdrawn.<sup>2</sup>

We also find no merit in Respondent's contention that the General Counsel abused his discretion in reinstating the charge herein. As stated in our decision in *Silver Bakery* and *California Pacific Signs*, the Board will not overrule the General Counsel's decision to reinstate a timely filed charge unless Respondent can show that the equities of the case compel such a result. There has been no such showing here.

First, the Charging Party in this case, as in *Silver Bakery*, has been prompt and diligent in the pursuit of his remedy. He filed the original charge within 1 week of his termination and withdrew it only upon being advised that it would be dismissed for lack of jurisdiction.<sup>3</sup> Upon learning that the Region erred in

soliciting the withdrawal he immediately requested reinstatement of the charge.

Nor can Respondent allege that it has relied to its detriment on the withdrawal of the original charge. In addition to being notified by the Region that the charge was being withdrawn "without prejudice," Respondent also consented in an unrelated settlement agreement to the right of the General Counsel to proceed to hearing based on the reinstated charge. Therefore, Respondent was on notice that the charge could be reinstated at any time, and that once reinstated, could proceed to hearing.

Finally, although Respondent was not responsible for the Region's mistaken belief that it lacked jurisdiction, we do not find that this is sufficient reason for dismissing the complaint. As the Board noted in *Silver Bakery*, an administrative agency, charged with the protection of the public interest, is certainly not precluded from taking appropriate action to that end because of mistaken action on its part in the past.<sup>4</sup> We therefore conclude that the General Counsel did not abuse his discretion in reinstating the charge herein and we shall deny Respondent's Motion for Summary Judgment and allow the merits of the complaint to be decided following a hearing before an administrative law judge.

## ORDER

It is hereby ordered that the Respondent's Motion for Summary Judgment be, and it hereby is, denied.

IT IS FURTHER ORDERED that a hearing be held before an administrative law judge to be designated by the Chief Administrative Law Judge for the purpose of receiving evidence on the issues raised by the allegations of the complaint.

IT IS FURTHER ORDERED that the above-entitled proceeding be, and it hereby is, remanded to the Regional Director for Region 32 for the purpose of arranging such hearing, and that the said Regional Director be, and he hereby is, authorized to issue such notice thereof.

IT IS FURTHER ORDERED that, upon the conclusion of the hearing, the administrative law judge shall prepare and serve on the parties a decision containing findings of fact, conclusions of law, and recommendations based upon the evidence received and that, following service of such decision on the parties, the provisions of Section 102.46 of the Board's Rules and Regulations, Series 8, as amended, shall be applicable.

<sup>4</sup> *Supra* at 426.

<sup>1</sup> *California Pacific Signs, Inc.*, 233 NLRB 450 (1977).

<sup>2</sup> *Silver Bakery Inc. of Newton*, 150 NLRB 421 (1964), enforcement denied 351 F.2d 37 (1st Cir. 1965); *California Pacific Signs, supra*.

<sup>3</sup> Unlike the Charging Party in *Koppers Company, Inc., Forest Products Division*, 163 NLRB 517 (1967), a case relied on by Respondent in its motion, the Charging Party here did not seek to have his original charge withdrawn pursuant to a voluntary adjustment with Respondent.