

Tanner Motor Livery, Ltd., Tanner Motor Tours, Ltd., and Avis Tanner, Inc. and Chauffeurs Union, Local No. 640, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America; Teamsters Automotive Workers, Local No. 495, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America; International Association of Machinists, AFL-CIO, Lodge No. 1186; and Office Employees International Union, Local No. 30, AFL-CIO

West Coast Transportation Co. and Chauffeurs Union, Local 640, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America and Drivers Committee, Party in Interest. Case 31-CA-399 and 31-CA-479

June 11, 1969

DECISION AND ORDER

BY CHAIRMAN McCULLOCH AND MEMBERS
BROWN AND JENKINS

On June 25, 1968 Trial Examiner James R. Hemingway issued his Decision in the above-entitled proceeding, finding that Respondents had not engaged in unfair labor practices warranting the issuance of a remedial order, and recommending that the complaint be dismissed in its entirety, as set forth in the attached Trial Examiner's Decision. Thereafter, the General Counsel filed exceptions and a supporting brief. However, subsequent thereto the General Counsel filed a motion to amend such exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with these cases to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the amended exceptions and brief,¹ and the entire record in these cases, and with the limited modification indicated below, hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.²

¹We hereby grant the unopposed motion of the General Counsel to amend its exceptions, by withdrawing those which pertain to Case 31-CA-479. Such withdrawal was a part of the settlement approved by us and reflected in an unpublished Supplemental Decision and Order of the Board issued February 12, 1969 in Case 31-CA-40.

²In adopting the Trial Examiner's Decision in Case 31-CA-339, we do so solely on the ground that an issuance of an order in this case would be a needless duplication of our Order in *Tanner Motor Livery, Ltd.*, 160 NLRB 1669. See *New Enterprise Stone and Lime, Inc.*, 176 NLRB No. 71. In the absence of exception thereto, we adopt, *pro forma*, the Trial Examiner's Decision in Case 31-CA-479.

ORDER

It is hereby ordered that the complaint herein be, and it hereby is, dismissed in its entirety.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

JAMES R. HEMINGWAY, Trial Examiner: The charge in Case Number 339 was filed by the four unions named in the caption, above, against Tanner Motor Livery, Ltd.,¹ and against its affiliates, Tanner Motor Tours, Ltd., and Avis Tanner, Inc. (all called herein Tanner) on March 7, 1966, alleging refusal to bargain with the said unions on and after February 28, 1966. The charge in Case Number 479 was filed by Chauffeurs Union, Local No. 640, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called Local 640, against West Coast Transportation Company, herein called West Coast, on July 1, 1966, alleging discriminatory discharge of two employees and refusal to bargain. On January 23, 1967, Local 640 filed an amended charge against West Coast alleging, in addition to those unfair labor practices specified in the original charge, the discriminatory refusal by West Coast, as successor to Tanner, to reinstate eight named employees, because they had engaged in a strike. Upon these charges, the General Counsel for the National Labor Relations Board, by the Regional Director of Region 31, of the Board, on April 10, 1967, issued a consolidated complaint and notice of hearing alleging violation by each Respondent of Section 8(a)(1), (3), and (5) of the National Labor Relations Act, as amended, 29 U.S.C. sec. 151, *et seq.*

West Coast, on June 20, 1967, filed an answer, denying the commission of the unfair labor practices and pleading affirmatively denial of due process, the 6 months' bar of Section 10(b) of the Act, and waiver by Local 640, because Local 640 allegedly had knowledge of the existence of its predecessor's, and Pacific Coast Transportation Company's, existence as early as August 10, 1965, and failed to request bargaining at the expiration of the contract between Tanner and Local 640 on September 1, 1965. West Coast further pleaded that it had a good-faith doubt that Local 640 represented a majority of its employees.

Identifying itself as "Grand Rent A Car Corp. (formerly Tanner Motor Livery, Ltd.),"² Tanner filed an answer on June 21, 1967, in effect denying all of the alleged unfair labor practices.³

Pending consolidated hearing in Cases 31-CA-339 and 479, the General Counsel on April 19, 1967, moved the

¹This Respondent changed its name (but underwent no corporate change otherwise) at some time before the date of its answer, June 20, 1967.

²Tanner Motor Tours, Ltd., is now called Gray Line Tours Company. No change of name was noted for Avis Tanner, Inc. As found in and earlier case, 31-CA-40 (160 NLRB 1669), Tanner Motor Tours and Avis Tanner are wholly owned subsidiaries of Tanner Motor Livery, Ltd. which is now called Grand Rent A Car Corp. On the appearance sheet, counsel for Tanner showed Gray Line Tours Company as "formerly Tanner Motor Livery, Ltd.," and Grand Rent A Car as "formerly Tanner Motor Tours Co." This was probably an error, but to avoid confusion herein, Respondents in Case 339 will continue to be called Tanner.

³On the second day of the hearing, Respondent Tanner moved to add Tanner Motor Tours Company (now Gray Line Tours Company) to the answer, and the motion was granted. No mention was made of Avis-Tanner.

Board to reopen the record in Case 31-CA-40 (160 NLRB 1669) and to approve consolidation of that case with the two here involved, for the purpose of hearing. Thereafter, on August 9, 1967, the Board granted the motion to reopen the record in 31-CA-40, and directed the Trial Examiner to issue a Supplemental Decision and Recommendation following the hearing.

Pursuant to notice, a consolidated hearing was held in Los Angeles, California, on various dates between September 26 and November 20, 1967; and on June 11, 1968, I issued a Supplemental Decision and Recommendation in Case 31-CA-40, recommending that the Board join Pacific and West Coast as Respondents on the ground that they are successors to Tanner. The Board's Decision is pending as of this date. Following the close of the hearing, the parties were afforded an extended time in which to file briefs. Within that time, briefs were filed by the General Counsel and by West Coast.

I. THE BUSINESS OF RESPONDENT

Respondent Tanner is a California corporation engaged, through wholly owned subsidiaries, in providing touring bus service, limousine service, and car rental service to the general public in various cities in Los Angeles County, California. During the 12 months preceding the date of issuance of the complaint, Tanner received gross revenues exceeding \$500,000 from the operation of the foregoing services. During the same period, Tanner provided transportation services for firms located within the State of California, which firms, during the same period, sold and shipped goods valued in excess of \$50,000 directly from California to firms and points located outside the State of California. During the same period of time, Tanner purchased tires, vehicles, and other supplies for use in its operations, described above, valued in excess of \$50,000 from suppliers located within the State of California, which suppliers purchased and received these same items directly from firms and points located outside the State of California. Tanner admits that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and I so find.

Respondent West Coast is a California corporation engaged in providing taxicab service to the general public in Glendale, Pasadena, and Santa Monica, California. During the 12-month period immediately prior to issuance of the complaint, West Coast received gross revenues exceeding \$500,000 from the operation of said service. During the same period of time, West Coast purchased tires, vehicles, and other supplies for use in its operations, described above, valued in excess of \$50,000 from suppliers located within the State of California, which suppliers purchased and received these same items directly from firms and points located outside the State of California. West Coast's answer, for want of denial, admits that it is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act, and I so find.

II. THE LABOR ORGANIZATIONS

The Charging Parties, herein separately referred to as Local 640, Local 495, Lodge 1186, and Local 30 are now, and at all times material herein have been, labor organizations within the meaning of Section 2(5) of the Act. Each was also a charging party in Case 31-CA-40, where it was found that each represented certain employees of Tanner. Local 640 represented Tanner's

taxicab drivers, and it, alone, has charged West Coast, as successor to Tanner's taxicab business, with unfair labor practices.

III. THE UNFAIR LABOR PRACTICES

A. Refusal to Bargain

1. Appropriate units

The complaint herein, as respects Tanner, alleges as appropriate units the same ones as were found to be appropriate in the Board's Decision and Order in the case of *Tanner Motor Livery, Ltd.*, 160 NLRB 1669, except for the unit of taxicab drivers, there found appropriate, which the complaint, with respect to West Coast, alleges to be appropriate.

West Coast denies the appropriateness of the unit of taxi drivers. Tanner admits the appropriateness of all units alleged except that of taxi drivers and an alleged unit composed of Tanner's U-drive men tire changers, lubemen, washers and polishers, and clean-up men employed in Los Angeles County, California, which it denies. Ordinarily, a unit once found to be appropriate by the Board, presumptively continues to be appropriate in the absence of a showing of a compelling change in circumstances which affects the appropriateness of the unit.⁴ Here no evidence was offered to show why the units alleged in the complaint and denied by Tanner and West Coast were not appropriate. Except for the change in ownership, West Coast has offered no evidence to show any changed circumstance which might even suggest why a unit of taxicab drivers is not still appropriate, and neither Tanner nor West Coast has suggested that any unit other than those described in the complaint and in the Board's earlier decision is appropriate. Accordingly, for want of evidence to the contrary, I find the same units to be appropriate now, regardless of which employer is now employing the employees in the respective appropriate units.

2. The majority of the several unions in the appropriate units

The General Counsel makes no attempt to prove the majority of any of the several unions in the unit in which they had represented Tanner's employees at any date after the sale of the taxicab business to West Coast on October 5, 1965. He relies entirely upon the presumption of continued majority growing out of Tanner's recognition of the several unions when, in 1965, Tanner agreed to extend their contracts to September 1, 1965. Since any loss of majority of the unions may be attributed to Tanner's refusal to execute the agreed contracts and thereby to recognize the several unions as majority representatives in the respective units, the Respondents may not rely upon a good-faith doubt as to the union's majorities.⁵ Tanner continued to be bound to bargain collectively with the respective unions (except to the extent that it sold the taxicab business to Pacific, now West Coast) on the basis of the majority found by the Board in 160 NLRB 1669. The same presumption of continued majority of Local 640

⁴See *Bowman Transportation, Inc.*, 142 NLRB 1093; *National Carloading Corp.*, 167 NLRB No. 116; *Little Rock Downtowner, Inc.*, 168 NLRB No. 18; *Rish Equipment Company*, 169 NLRB No. 129.

⁵*C & C Plywood Corporation*, 163 NLRB No. 136; *Schill Steel Products, Inc.*, 161 NLRB 939.

as to the taxicab drivers applies so far as West Coast, as successor, is concerned.

A question arises, however, as to whether or not such presumption of majority may be relied on to support a charge of refusal to bargain as a new and independent violation of 8(a)(5) of the Act entirely independent of the original refusal to bargain or whether Section 10(b) of the Act prohibits the issuance of a complaint in such case. This will be discussed hereinafter.

3. The request and refusal to bargain

The complaint alleges new requests to bargain made by Local 640, to Tanner on March 4, 1966,⁶ with respect to the bus operators' units, and by Local 640 to West Coast on May 27, 1966, with respect to the taxicab operators; but with respect to the other three unions, the complaint merely alleges that "at all times material herein, and continuing to date," the respective unions had requested Tanner to bargain with them. In addition to alleging a refusal by each Respondent to bargain with the respective unions, the complaint also alleges changes in conditions of employment made by Tanner on February 28, 1966, and by West Coast in January and May 1966 without consulting with the union representing the employees affected. Tanner and West Coast, in their answers, denied the requests and refusal to bargain except that Tanner admits the refusal to bargain with Local 640 for the bus drivers.

The evidence establishes that on March 4, 1966, R. C. Wilson, secretary-treasurer of Local 640, on behalf of that Union, sent Tanner a telegram requesting a meeting to bargain for agreements covering the bus drivers and the taxicab drivers, and on March 10, 1966, Tanner's counsel, Bruce R. Geernaert, replied on behalf of Tanner, expressing doubt as to that union's majority and, in effect, refusing to meet with Local 640. On May 13, 1966, Local 640 wrote to West Coast and requested a meeting concerning a grievance over the discharge of an employee. On May 20, 1966, Donald Bebout, West Coast's attorney, wrote denying the existence of any contracts but offering to discuss the matter. Later, Julius Reich, attorney for Local 640, and Jack Shore, secretary-treasurer of Local 640 met with Bebout at Bebout's office and demanded recognition and bargaining. Bebout said he would take the matter up with the Board of Directors of West Coast and would inform Local 640 of the position of West Coast. On June 10, 1966, not having heard from Bebout, Reich wrote him and requested an immediate response. None was forthcoming. Davis conceded that he and his associates in West Coast had told Bebout that they felt they were not obligated to bargain with Local 640, but Davis also testified that they had given him no instruction to reply.

It is clear, then, that Local 640 had requested bargaining in 1966 with Tanner for the bus drivers and with West Coast for the taxicab drivers, that Respondent refused such requests and that loss of majority is no defense.

Some question may be raised, however, with respect to the cases of Local 30, Local 495, and Lodge 1186. No request to bargain for a new contract after the expiration of the contract on September 1, 1965, has been shown for any of the three.⁷ Even if the Respondents were not able successfully to interpose a defense of good-faith doubt as

to majority as to these three unions, this fact would not dispense with the necessity for a request to bargain. The Board's Order in Case 31-CA-40 required Tanner to bargain, upon request, with the unions named therein even after the expiration of the contract on September 1, 1965, but there is no evidence of a request thereafter by these three unions. Local 30 did write to Tanner's attorney, Kirshman, on March 9, 1966. But this letter requested the reinstatement of eight employees and requested a date for a meeting at which an authorized representative of Tanner could "execute a written collective bargaining agreement with this organization for a period consistent with the decision of the Trial Examiner." (In Case 31-CA-40). This refers to the contract (expiring on September 1, 1965) which the Trial Examiner had found had been reached orally but had never been reduced to writing. No request was made for bargaining by Local 30 after September 1, 1965, the end of the period mentioned in its letter any more than by Local 495 or by Lodge 1186.

It is ordinarily not enough that a union may have desired bargaining if it did not request it,⁸ but where there is a continuing refusal to bargain collectively, it is not required that proof be adduced of a new request and refusal to bargain, especially where, as here, Tanner, before the expiration date of the contract found to exist by the Board in its previous decision (160 NLRB 1669), had amply demonstrated that it was refusing to execute the contract or to bargain with the unions here involved as early as February 1965, on the ground, among others, that the unions had lost their majority.⁹ Tanner never abandoned this position and never complied with the Board's Order in Case 31-CA-40 to execute a written contract and to continue to bargain collectively after the expiration date of that contract. Obviously, a request to bargain would have been an empty and useless gesture.¹⁰ That a request would have been fruitless is further exemplified by the fact that Tanner made unilateral changes in terms of employment of its bus drivers¹¹ and by letter of March 10, 1966, rejected the express request of Local 640 to bargain collectively.

4. The effect of Section 10(b)

It is obvious that Tanner has continuously refused to bargain with the charging unions as alleged in the complaint. But West Coast has pleaded and argues that, under Section 10(b) of the Act, it cannot be found to have committed an independent unfair labor practice in violation of Section 8(a)(5) of the Act on the basis of unilateral changes made in conditions of employment or on the basis of a request to bargain made within 6 months prior to the filing and service of the charge where its alleged duty to bargain depends upon the unfair labor practice of Tanner in refusing to bargain in 1965 and

⁶On stipulation, the General Counsel introduced in evidence a letter from IAM District Lodge 94 to Tanner dated June 28, 1966, in which Lodge 94 requested a meeting to negotiate a modified contract. There is no evidence, however, that Lodge 94 is a successor to Lodge 1186, which is a party to these proceedings. In any event, the acknowledged existence of a contract in that letter implies that there has been bargaining, and there is no evidence that Tanner either did or did not refuse the request of Local 94.

⁷*Western Aluminum of Oregon, Inc.*, 144 NLRB 1191.

⁸*Wynn-Dixie Stores, Inc.*, 147 NLRB 788, *enfd.* as modified 361 F.2d 512 (C.A. 5).

⁹*The Texas Pipe Line Company*, 129 NLRB 705; *Old Town Shoe Co.*, 91 NLRB 240.

¹¹Local 640 protested the unilateral action taken without notification or bargaining by letters dated December 20, 1966, and April 12, 1967.

⁶The Trial Examiner's Decision was issued on February 25, 1966, in Case 31-CA-40.

where West Coast, itself, had never been held to have violated Section 8(a)(5) of the Act. The same argument might also be made as to Tanner, unless a new and independent unfair labor practice was committed by it within the 6-month period.

A request to bargain and a refusal within 6 months of the date of the filing and service of the charge will be proof of an unfair labor practice only if it is not necessary to rely upon proof of an unfair labor practice which occurred more than 6 months prior to the filing and service of the charge.¹² Here, it appears that it would be necessary to rely upon an unfair labor practice committed by Tanner more than 6 months prior to the date of the filing of the charge in order to show the right of Local 640 to represent employees of either Tanner or of West Coast. As against Tanner, in February 1965, Local 640 established its majority and its right to recognition in an appropriate unit, a concomitant of an unfair labor practice refusal to bargain, by showing its majority prior to the strike and by showing Tanner's agreement to renew the contract. After that time, the presumption of majority continued because of the unremedied unfair labor practice. I conclude, therefore, that a new and independent unfair labor practice of refusal to bargain cannot here be found on the basis, alone, of a request and refusal to bargain or on the basis of unilateral changes in conditions of employment unless there be proof of a majority without dependence upon the evidence that established a majority in the prior unfair labor practice case.

Even the General Counsel's allegation that West Coast committed an unfair labor practice within the meaning of Section 8(a) (5) and (1)¹³ by dealing with the Drivers Committee in derogation of the bargaining rights of Local 640 could be sustained only by proof, independent of that in the prior unfair labor practice case, that Local 640 is the current representative of a majority of the taxicab drivers, proof which was not offered.

5. Duplication of remedies

But wholly aside from the question of limitation under Section 10(b) of the Act, I can see no reason for a new charge of refusal to bargain which is just a continuation of an old refusal to bargain which has already been found by the Board to be an unfair labor practice and which can still be remedied by enforcement of the outstanding Order of the Board. This applies to both Tanner, the original respondent, and to West Coast, found to be successor to Tanner with respect to the taxicab business in my Supplemental Decision in Case 31-CA-40, issued on June 11, 1968, and therefore to be required to bargain in lieu of Tanner with Local 640.

B. Failure and Refusal to Reinstatement Former Strikers

The complaint alleges as continuing violations of Section 8(a)(3) of the Act the failure and refusal by Tanner and by its successors, Pacific and West Coast, to reemploy certain strikers who, after the strike, had made unconditional application for reinstatement. Ten such men were identified by the General Counsel in a bill of particulars.¹⁴ In the reopened hearing in Case 31-CA-40, West Coast raised certain issues regarding its responsibility as successor for reinstatement of former strikers and payment of backpay. These issues were

disposed of in my Supplemental Decision in that case issued on June 11, 1968. In the current case, issues have been raised by West Coast regarding its liability under the new charge against it. The first is that a continuing refusal to reinstate is not a new and independent unfair labor practice but one dependent on the original discrimination which took place (in this case) in 1965 and that, hence, the allegation of the complaint of violation of Section 8(a)(3) is barred by Section 10(b) of the Act; but that even if West Coast is liable at all, its liability should be limited to the period within 6 months prior to the service of the charge. Other issues raised are to the effect that there was no unfair labor practice in the refusal to reinstate because (1) the alleged discriminatees did not apply for work at the very time when taxicab drivers were being hired and (2) there were valid nondiscriminatory business reasons for declining to reinstate some of the men who were not reinstated.

Because West Coast may misconceive its obligation to reinstate former strikers under the Board's Order in Case 31-CA-40, and because, in my Supplemental Decision in that case, I stated that I would discuss the cases of the individuals allegedly discriminated against, I shall first point out that West Coast is in error in assuming that none of the ten employees herein concerned can be shown to have been discriminated against unless he made application for work when a job actually was available. Its reliance on *N.L.R.B. v. Brown & Root, Inc.*, 132 NLRB 486, is misplaced. There the economic strikers had been replaced before they applied for reinstatement. The General Counsel had there argued that such returning strikers should have then been placed on a preferential list and offered employment when it became available. The Board held that it was not necessary for the employer to establish a preferential list of applicants and to offer work to those on such list when an opening might thereafter arise. Economic strikers no longer have status as employees if their jobs are filled during the strike. So where a striker is seeking backpay on the basis of a job later becoming available, it is incumbent upon him to apply for the job when it opens up and it is not incumbent upon the employer to convey an offer of the job to him. The case at hand does not, however, concern newly created jobs or jobs opening up as a result of terminations. It concerns only the jobs which remained unfilled at the end of the strike — jobs which remained unfilled because it took Tanner several months to get back to full scale operations. In this respect the facts here are similar to the facts in *N.L.R.B. v. Fleetwood Trailer Company, Inc.*, 389 U.S. 375, where the United States Supreme Court held that it was incumbent on the employer to offer employment to strikers who had already made unconditional application for reinstatement. As in the *Fleetwood* case, the evidence here shows that, after jobs became available by activating cabs after April 15, 1965, Tanner hired at least ten new employees to the exclusion of the ten here involved who had previously made application for reinstatement. "Unless the employer who refuses to reinstate strikers can show that his action was due to 'legitimate and substantial business justifications' he is guilty of an unfair labor practice."¹⁵ The court also held there that such failure to offer employment to the returning strikers who had applied for

¹⁴The allegation of discrimination by West Coast in discharging Joseph Polin was dismissed at the hearing for want of sufficient proof.

¹⁵*Fleetwood, supra*, citing *N.L.R.B. v. Great Dane Trailers*, 388 U.S. 26.

¹²*Local Lodge No. 1424, IAM v. N.L.R.B.*, 362 U.S. 471.

¹³It was not alleged to be a violation of Section 8 (a) (2) the Act.

reinstatement would be an unfair labor practice even without a showing of antiunion motivation.

In the case at hand, I find no general changes in methods of operation which would have resulted in eliminating the jobs of the ten strikers here involved who had applied for reinstatement. It is true that during 1965, Tanner eliminated cabs with automatic shift. This, however, could have affected only one returning striker, Irvin McKenney, who, before the strike, usually, but not exclusively, drove automatic shift cars, because he had a physical defect. But when McKenney was making inquiries as to when he would be reinstated, Rounds did not tell him that he could not be reinstated because Tanner had eliminated automatic-shift cars. In fact, Rounds testified that he did not even know in February or March of 1965 that McKenney had a license restricting McKenney to driving automatic-shift cars or cars equipped with a hand throttle. (I find it difficult to believe, if this was implied by Rounds' answer, that Rounds did not know of McKenney's handicap.) Rounds testified that in late February or early March he had asked McKenney if he wanted to come back to work and that McKenney had said that he did not want to return then. If such an incident occurred, I am inclined to believe that it occurred before the end of the strike instead of afterwards. In April 1965, Tanner sent, in registered envelopes, cards asking former strikers to mail the cards back, indicating whether or not they were available for work. McKenney, who had made application for reinstatement on February 3, 1965, testified that he had received such a card and brought it to Rounds personally in April and asked when he could go to work. He testified that Rounds told him that it would be three or four months before he could use him. Following that time, however, the records show that Tanner hired five new men in May 1965, and five more new men in June 1965, not to mention other new men hired in July and August of that year, without any offer of work having been made by Tanner to McKenney. Since Rounds failed to inform McKenney of any valid business reason why he would not be rehired, I find that McKenney's physical handicap was not the real reason.

In some instances, Tanner failed to reinstate former

strikers, who had applied for reinstatement, because of their age, but it was conceded that Tanner had no mandatory retirement age before the strike and there was no such rule adopted afterward which indicated a clean-cut change of policy.

In one case, that of Syd Commins, the excuse for failure to reinstate was that an unknown doctor had telephoned and advised Davis against reemploying Commins in a job where he would be dealing with the public. Commins was not then questioned by Davis, Rounds, or any other agent of Tanner authorized to hire concerning any medical or psychiatric treatment he might have been undergoing. Until 1967, Commins was not told by an agent of either Tanner or Tanner's successor that he could not be reemployed without a doctor's release. Until he was so informed, I find that he was not justifiably denied employment.

It is, however, my conclusion that the reinstatement rights of the ten employees whose cases were gone into here should not have been made the subject of a new charge and complaint but should have been taken up in a supplemental proceeding for the determination of backpay in Case 31-CA-40. An order is already outstanding for reinstatement and backpay which is broad enough to cover the ten employees here involved. If a new order were to issue, it could (in view of Section 10(b) of the Act) at best cover backpay for a period of 6 months prior to the service of the charge even if the complaint of discrimination were not altogether barred by Section 10(b) of the Act because they depend upon proof of an unfair labor practice committed more than 6 months prior to the service of the charge. But regardless of Section 10(b) of the Act, I find that a new order of reinstatement and backpay would be an unnecessary duplication.

RECOMMENDED ORDER

For the reasons hereinbefore stated, I recommend that the complaint in Cases 31-CA-339 and 479 be dismissed.