

Beck Corporation, d/b/a Jessie Beck's Riverside Hotel and Casino and Hotel, Motel, Restaurant Employees and Bartenders Union, Local 86, Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO and Overland, Inc., d/b/a Pick Hobson's Riverside Hotel and Casino, Party-in-Interest. Case 32-CA-118 (formerly 20-CA-12107)

23 April 1986

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS DENNIS, JOHANSEN, AND BABSON

On 23 December 1982 Administrative Law Judge William L. Schmidt issued the attached supplemental decision. The Party-in-Interest, Overland, Inc., filed exceptions and a supporting brief, and the General Counsel filed an answering brief to Overland's exceptions.

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,¹ and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Party-in-Interest, Overland, Inc., d/b/a Pick Hobson's Riverside Hotel and Casino, Reno, Nevada, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

¹ The Party-in-Interest has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In agreeing with judge's conclusions, we find that at the time the Union requested recognition, the Party-in-Interest employed a substantial and representative complement of its work force, a majority of which had previously worked for the Party-in-Interest's predecessor in the appropriate unit.

Accordingly, in finding Overland to be the successor of Beck Corporation, we need not rely on three factors relied on by the judge.

(1) Overland's failure to recognize the Union may have contributed to the departure of some of Beck's employees.

(2) The unit was supplemented on and after 21 April 1978 with laid-off Overland employees who were also represented by the Union when they were actively working.

(3) Prior Overland employees and employees hired as result of the seasonal upturn or as replacements for employees who left for more desirable jobs are deemed to support the Union in the same proportion as the Employer's overall work force.

Bernard Hopkins, Esq., for the General Counsel.
Richard McCracken, Esq. (Davis, Cowell and Bowe), of San Francisco, California, for the Charging Party.
Roger H. Elton, Esq. (Roger H. Elton, Ltd.), of Reno, Nevada, for Overland, Inc.

SUPPLEMENTAL DECISION

STATEMENT OF THE CASE

WILLIAM L. SCHMIDT, Administrative Law Judge. This matter was heard by me on October 18, 1982, pursuant to a pleading of the General Counsel seeking to adjudicate the questions whether or not Overland, Inc. (Overland), is a successor of Beck Corporation (Beck) in the operation of the Riverside Hotel and Casino (the Riverside) and is liable to remedy the unfair labor practices found in the proceeding involving Beck which is reported as *Jessie Beck's Riverside Hotel*, 231 NLRB 907 (1977). Overland filed a timely response to the General Counsel's pleading wherein it asserted: (1) that the proceeding is moot; (2) that Overland is not a successor of Beck; (3) that Overland did not assume Beck's liability under the Board order; and (4) even assuming it is liable, Overland's obligation to bargain with Hotel, Motel, Restaurant Employees and Bartenders Local 86, Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO (Union), should be limited to the Riverside bar and restaurant employees.

On the entire record, my observation of the witnesses who testified in this matter, and my careful consideration of the timely posthearing briefs filed by the General Counsel and Overland,¹ I make the following

FINDINGS OF FACT

I. THE RELEVANT EVENTS

a. *The Prior Proceedings*

On November 15, 1975, certain employees of the Riverside in Reno selected the Union as their collective-bargaining representative in a Board-conducted election by a vote of 96 to 46.² Following a hearing on objections filed by the Employer, the Regional Director for Region 20 issued a supplemental decision and certification of representative on July 6, 1976. Thereafter, on September 16, 1976, the Board denied Beck's request for review of its Regional Director's decision.

On December 22, 1976, the Regional Director issued the complaint in this matter pursuant to a charge filed on November 4, 1976, which alleged that Beck was engaging in unfair labor practices within the meaning of Sec-

¹ No representative of Beck appeared in this proceeding.

² Altogether there were 176 eligible voters in that election. The unit found appropriate by the Regional Director in the representation proceeding was

All full-time and regular part-time employees of the Employer's Reno, Nevada operation, including engineering department employees, the stagehand, receiving clerk, and warehouse laborers but excluding front desk clerks, PBX operators, reservation clerks, night auditor, booth attendants in the coupon redemption center, employees in the casino, administration and security departments, guards and supervisors as defined in the Act.

tion 8(a)(1) and (5) and Section 2(6) and (7) of the Act. The substance of the complaint was that Beck had refused to bargain with the Union following the certification. After Beck filed its answer, the General Counsel moved for summary judgment and the Board transferred the case to itself in order to consider the General Counsel's motion. Subsequently, the Board granted the General Counsel's motion in the decision and order entered on August 31, 1977. *Jessie Beck's*, supra. The order entered by the Board required that Beck, "its officers, agents, successors and assigns" cease and desist from refusing to bargain with the Union on request concerning the wages, hours, and other terms and conditions of employment of its employees in the unit found appropriate in the above-mentioned representation matter. After Beck persisted in its refusal to recognize the Union, the Board applied for enforcement of its order to the Ninth Circuit of Appeals. The Ninth Circuit granted the Board's application in a memorandum of December 13, 1978. The court judgment enforcing the Board's order was entered on September 12, 1979.

In the meantime, Beck had disposed of the Riverside pursuant to a purchase agreement which it entered into with Overland about March 8, 1978. Pursuant to that agreement, Overland took possession of the premises of the Riverside at approximately 5 p.m., on April 21, 1978. Because Overland, a corporate entity separate and unrelated to Beck, has not heretofore been named as a Respondent in any of the proceedings involving Riverside employees, the General Counsel now seeks an order compelling Overland to comply with the order heretofore issued against Beck, as enforced by the Ninth Circuit. Pertinent to the resolution of the issues are the circumstances surrounding Overland's acquisition and operation of the Riverside.

B. Overland's Acquisition and Operation of the Riverside

For a number of years prior to 1978, Richard H. Hobson, the principal (if not the sole) owner of Overland, had engaged in a variety of enterprises in the Reno-Sparks area including the operation of certain hotels, restaurants, and gambling casinos. At some unspecified time about a year prior to the events relative here, Hobson discontinued the operation of the Overland Hotel and commenced efforts to acquire another hotel and casino in a tax-free exchange. In late 1977, or early January 1978, Hobson's agents made an offer to purchase the Riverside, a combined hotel, restaurant, and casino. The negotiations progressed off and on until March 8, 1978, when Overland and Beck entered into a purchase agreement.³ The purchase agreement provided for Overland's acquisition of the Riverside following the approval of the Nevada Gaming Commission. Once the application was made to the Commission for the transfer of ownership from Beck to Overland, the rumored sale of the Riverside became public knowledge. For this reason, and as there were several new hotel-casino operations opening

about this time in the Reno area, an element of instability was introduced into Beck's ability to retain employees. As a consequence, Beck requested that the Nevada Gaming Commission expedite its consideration of the application to transfer ownership of the Riverside. That approval came on April 20, and on April 21, at approximately 5 p.m., Overland took possession of the Riverside. According to James Page, the Overland executive who became general manager of the Riverside, Overland's agents had little opportunity to view the premises other than their presence to meet with employees, as discussed below, prior to the acquisition of the Riverside because of restrictions imposed by the Nevada Gaming Commission.

Approximately 2 weeks before Overland acquired possession, Beck's employees were given notification of the impending change. Thereafter, Overland executives were permitted to utilize the riverview room on the Riverside premises to conduct meetings with the Beck employees and to distribute applications. According to Page, Overland was seeking to hire all Beck's Riverside employees but it met stiff competition. Page graphically described the frantic and chaotic situation which existed at the time of Overland's takeover of the Riverside:

At that particular time, it was kind of unique to this area. The MGM was opening up and they were taking approximately I believe 3500 applications of the jobs they were trying to fill. There were probably two more casinos getting ready to open. In fact six opened up in about a five or six day area. I mean, it just—this town has never seen anything like that and we're taking about thousands and thousands of jobs at that time and it never happened before. My great concern at that time was were we going to be able to staff the hotel? I mean, in other words, there's no way anybody could say who was going to be there on April 21st because there were just a lot of jobs and some of them were paying higher than we were paying and there were problems involved with that because of the over-expansion. Or I call it over-expansion. It probably wasn't at the time but that's part of the reason that we were very very aggressive trying to compete against these bigger hotels and casinos coming in to make sure we had a staff.

Q. Could you amplify a little bit by what you mean by not having reached your full staffing level so that we can—

A. I have to tell you exactly my—from my situation. I couldn't really tell you at that particular time. April 21st, when we walked in at 5 o'clock. I mean I didn't really know what was going to happen. There were a lot of things happening. But I didn't know what was going to happen that time, as far as how many people we were going to have, how many we were going to need. We didn't have access to any records. We didn't have any idea how much volume they were doing. We had nothing. They supplied us absolutely nothing, so it was a lot of projections were made and different things like

³ The term purchase agreement is used for ease of description. The documents resulting in the exchange of the Riverside between Beck and Overland are actually a series of documents which are in evidence.

this on how many people we would need to staff the restaurant. I don't know whether I'm supposed to say these things but after we took over the problems really increased because apparently there was some planned walk-outs and some similar things like this which then even reduced the amount of work force we had to start with. The kitchen walked out, the parking attendants left.

Q. Did you count on the kitchen work force leaving?

A. They were part of our preliminary work force that we had figured that they were going to be there and at 5 o'clock they just walked right out the door. I had two people in the kitchen and it was Friday night. I had no cars—I had nobody to park cars. It was a total chaos.

Q. Subsequent to April 21st, as such, based on the information that has already been presented, you hired additional employees. Why did you hire the additional employees?

A. We just kept hiring until we felt we maintained the level that we could adequately service all the customers in their different departments.

Q. When do you feel you got to that adequate servicing level?

A. We leveled off pretty much and stabilized about oh, I'm going to say approximately July, August, right in through there. I don't have an exact date or an exact payroll at the time. I couldn't tell you.

On April 21, 1978, Beck had 148 employees engaged in the operation of the Riverside. Overland's April 30 payroll shows that it had 146 employees that week and that 82 were former Beck employees. A significant but unspecified number of the remainder were laid-off employees from the Overland Hotel. Those ex-Beck kitchen and parking lot attendants who did not return from the walkout on April 21 are not included in these numbers. By the following week, namely, the payroll period ending May 7, 175 employees were used in the Riverside operation. By the time the employee complement reached 175 employees, the unit ceased to be comprised of a majority of former Beck employees. There is evidence that in the payroll period ending May 22, which was 1 month after Overland's takeover of the Riverside, 187 employees appeared on the payroll, 63 of whom were former Beck employees. Other evidence shows that in June, over 200 employees appeared on the Overland payroll at the Riverside.⁴ As noted, Page testified that there was finally a leveling off of the employee complement by July or August. He further testified, however, that the casino operations are seasonal in nature with the season commencing to pickup in April, gaining steam in May, peaking in October, and then declining before the November-December holiday season.

Overland attempted to recruit several members of the managerial and supervisory staff of Beck but was only

partially successful in doing so. Thus, Overland did replace the hotel manager, but the manager of the house-keeping department and the bell captain, who were former Beck employees in those capacities, remained after Overland took over the Riverside. In addition the stage department manager remained and certain supervisory personnel in the kitchen remained. The restaurant manager walked out with certain of the restaurant employees at approximately 5:15 p.m., on April 21, for reasons which were never fully explained in this record. Page testified that the head hostess remained and that Beck's manager of the engineering department stayed as an assistant to the new chief engineer appointed by Overland.

Because the Overland executives had little opportunity to review the operations of the Riverside prior to the takeover, there were few immediate changes made. Eventually, however, Page testified that there were alterations in the restaurant buffet service and room service was added. In addition, the elevators were replaced which had the effect of displacing the elevator operators and the switchboard was replaced but it appears to have had little impact on unit employees. Page testified that the Riverside was in general disrepair. For example, six floors were without air conditioning. According to Page, Overland spent a year and a half and \$1 million in reconditioning the Riverside to obtain a certificate of occupancy from the local officials.

C. Overland's Knowledge of the Union's Representative Status

Page testified candidly that he was aware that the Beck Corporation was involved in litigation with the NLRB. Page's specific testimony on this point was as follows:

Q. Prior to April 21st, 1978, were you aware of the—that Beck Corporation was involved with litigation with the NLRB?

A. Just in passing. As far as details, I had no knowledge of any details or didn't pursue to gain any knowledge of anything of that, but as hearsay, yes and I can't even really honestly tell you where or if anything, it was probably from you as our attorney, but we had no knowledge as to any details of the election or outcomes other than the fact that they lost an election.

On cross-examination Page gave similar testimony as follows:

Q. Now, you testified on direct examination that you had—that prior to April 21st, 1982 you had some knowledge of some problem involving Jessie Beck's and the union election and whatever. What did you think was the source of that knowledge?

A. I really can't tell you who told me or where the knowledge came from. I knew there was an election and I would have to say it probably came through our attorneys somehow in these negotiations. I would imagine it come from there. This is prior to April, '78.

⁴ In his testimony Page made it clear that an employee would be included in the foregoing figures even if employed only for a small portion of the week. It appears that any effort to identify the actual number of jobs in any given week would be an impossible task.

Q. Well, right. Do you have any recollection of what may have been the reason that you and your attorneys would be discussing the labor problems of Jessie Beck?

Q. No.

I think probably the only thing I can think that it would be that it was a fact because they were just stating that this thing was out there or whatever.

Q. This thing, whatever it was?

A. Whatever, I mean, whatever it was it was there.

Overland's brief acknowledges that Overland "was aware of the existence of Beck Corporation litigation, but had no involvement in, or any detailed knowledge of, that litigation prior to April 21, 1978."

Other evidence was proffered showing the detailed extent of Overland's knowledge of the dispute between Beck and the Union concerning representation of the employees at the Riverside Hotel. Jerry McHugh is a representative of the Hotel and Restaurant Employees and Bartenders International Union who was, from April 1977 until August 1981, the trustee of Local 86, the Charging Party in this proceeding. McHugh testified that in late January or early February 1978, Page called him at the union office and said that he would like to talk to him at this office in Sparks, Nevada. McHugh said that he had heard street talk that Overland was about to acquire the Riverside. As a consequence, McHugh said that Page asked him if there was "some way that with the anticipation of acquiring Jessie Beck's Riverside to satisfy this election, could we come to some kind of agreement concerning union contracts concerning employees at Jessie Beck's Riverside." Following this initial meeting a second meeting occurred after the Union had an opportunity to prepare a proposal. According to McHugh, Page made an inquiry at this time whether or not the Union would be willing to include only the bar and the culinary employees in the unit and exclude the housekeeping employees. McHugh said that Page told him that there would be a likelihood of an agreement if they could come to terms about excluding the housekeeping employees. Following the second meeting when McHugh presented the Union's proposal there were, according to him, several phone calls back and forth between Page and himself and further visits by him to Page's office. Altogether McHugh said there were probably about four visits to Page's office in the period from February until April 21. According to McHugh, Page told him at one point that Pick Hobson was the type of individual who would make a deal and that the lawyers had "waxed fat" for too long and that it was time to give the money to the employees instead. McHugh said that no agreement was reached prior to the acquisition of the Riverside by Overland and that following that time he pursued the matter with Page at the Riverside. On one of these occasions, according to McHugh, Hobson sat two stools away from Page and McHugh but McHugh was never introduced to Hobson. McHugh said that the negotiations were finally effectively broken off when Page told him that "they were going to go the court route." According to McHugh, there were discussions as

late as the fall of 1979 with respect to the execution of an agreement at the Riverside

Page did not dispute the substance of McHugh's testimony with respect to their conversation about a proposed agreement for the Riverside. Instead, Page said that it was his recollection that the initial contacts took place in 1979 and not in 1978 as McHugh had testified. I do not credit Page's recollection with respect to the date of the initial conversations concerning the Riverside agreement. Thus, McHugh gave testimonial detail with respect to the location of Page's office in Sparks, Nevada, where their discussions about a potential Riverside agreement initially took place. Page testified that in the early months of 1978, his office was located in Sparks in a place similar to that described by McHugh in his testimony and that in the early months of 1979 his office was located in the Riverside. In addition, McHugh's testimony that the discussions were in anticipation of Overland's acquisition of the Riverside stands in effect uncontradicted on this record. Finally, Overland had agreements at the Overland Hotel, the Gold Club, and another property located at Topaz Lake in Nevada, and was not a novice in dealing with the Union. I find it, therefore, highly unlikely that Overland would approach the acquisition of the Riverside with vague knowledge about Beck's dispute with the Union, as Page testified, and make no effort whatsoever to investigate the basis for the dispute which existed between Beck and the Union, as Page implied in his testimony.

According to McHugh, there was one point in the protracted negotiations when he believed that there had been a handshake on a deal but it fell apart. McHugh testified that Page was concerned about Overland being looked down on by their peers if they broke from the "pack" and signed an agreement which covered the housekeeping department. Theretofore, the housekeeping department had historically been excluded from the bar and culinary units at various Reno establishments. Page acknowledged that McHugh probably asked him to sign a contract over 100 times.

D. Additional Findings and Conclusions

In *Perma Vinyl Corp.*, 164 NLRB 968 (1967), enforced sub nom. *U.S. Pipe & Foundry Co. v. NLRB*, 398 F.2d 544 (1968), the Board held that a successor-employer, who takes over and operates an enterprise in basically an unchanged form under circumstances which charge the successor with notice of the unfair labor practices committed by the predecessor employer, may be held liable for remedying the predecessor's unlawful conduct. The United States Supreme Court approved the *Perma Vinyl* rule in *Golden State Bottling Co. v. NLRB*, 414 U.S. 168 (1973). However, Justice Brennan's opinion in *Golden State* specifically noted that the Court was in no way attempting to qualify the holding in *NLRB v. Burns International Security Services*, 406 U.S. 272 (1972). Id. at 184. There the Court held, inter alia, that a mere change of employers or of ownership in an employing industry is not such an unusual circumstance to affect the force of a Board certification within the normal, operative period if a majority of the employees after the change of owner-

ship or management were employed by the preceding employer.⁵ To illustrate this point Justice Brennan noted that because a purchaser is not obligated by the Act to hire the predecessor's employees, a successor will not be bound by an outstanding order to bargain if it does not hire any or "a majority of [the predecessor's] employees." *Golden State Bottling v. NLRB*, supra at 184 fn. 6.

In the instant case, there is a substantial dispute when one should examine Overland's work force in order to determine whether or not a majority within the appropriate unit were former Beck employees. However, before reaching that question there are two threshold questions which must be resolved in this matter. The first question is whether or not Overland is a bona fide successor of Beck with respect to the operation of the Riverside. Regarding this preliminary matter, the Board observed in *Miami Industrial Trucks*, 221 NLRB 1223 (1975), as follows:

The keystone in determining successorship is whether there is substantial continuity of the employing industry.⁶ As noted by the Employer, the Board looks to several factors in determining whether there is sufficient continuity of the employing industry to warrant a finding of successorship. These factors include whether there is substantial continuity in operations, location, work force, working conditions, supervision, machinery, equipment, methods of production, product, and services.⁷

⁶ *John Wiley & Sons, Inc v Livingston*, 376 U.S. 543, 551 (1954)

⁷ *Georgetown Stainless Mfg Corp.*, 198 NLRB 234 (1972)

Here, of course, Overland simply took over an existing hotel, restaurant, and casino operation. To hold that the various elements alluded to above were not present in this case would require that one ignore the flavor of Page's testimony with respect to the chaotic conditions which existed shortly after 5 p.m., on April 21, 1978, quoted above. The essence of this testimony was that until Overland got its feet on the ground and had an opportunity to look around the premises, its major effort was to carry on the operation as Beck had done. In effect, at all times following Overland's acquisition of the Riverside, the Hotel remained open serving the public as it had done for a number of years. Although Overland eventually undertook to expand and improve the services offered at the hotel, such changes were not sufficient to alter the essential character of the Riverside. *NLRB v. Hudson River Aggregates*, 639 F.2d 865, 869 (2d Cir. 1980). Hence, Overland is clearly Beck's successor in the operation of the Riverside.

The second threshold question is whether or not Overland acquired the Riverside with the knowledge of Beck's unfair labor practices. Overland's claim that it had "insufficient knowledge" lacks merit. The essence of

Page's testimony was that he learned something of Beck's difficulties from the attorneys who were involved in the purchase negotiations. None of the attorneys were produced at the instant hearing to testify in support of the assertion in Overland's brief that Overland had "insufficient knowledge" of the Board proceedings in which Beck was involved. The failure of any of those attorney-negotiators to testify merits the inference that their testimony would not be favorable to Overland's position. Such an inference is also supported by McHugh's testimony—which I have credited—that he negotiated with Page prior to Overland's acquisition of the Riverside in an effort to resolve the dispute over representation. In particular, McHugh's testimony that Page remarked early in their negotiations that Hobson had a preference for paying the employees as opposed to the lawyers is indicative that there was knowledge of a dispute which was being litigated. Therefore, I find that Overland had knowledge of the NLRB proceedings involving Beck and the Union at the time it acquired the Riverside.

The most critical question insofar as the litigants in this proceeding are concerned is whether or not a majority of the unit employees employed by Overland at the Riverside were former Beck employees. As noted above, when, as here, the General Counsel seeks compliance by a successor with an order to bargain, Justice Brennan's opinion in *Golden State* specifically relies on this means of determining a union's representative status within the successor's work force. The General Counsel urges that it is appropriate to examine the numbers involved in this computation as early as the first payroll period after Overland took over the Beck operation at the Riverside. The credible evidence of McHugh supports the conclusion that the Union was continuing to demand recognition by Overland at that early date. Overland argues that it is not appropriate to examine the ratio of former Beck employees to the total Overland complement until it (Overland) had hired a "full complement" of employees which it asserts—relying on Page's testimony—did not occur until July or August.

In cases of this nature, the Board typically looks to the union's representative status as of the time that it requests recognition. *Hudson River Aggregates*, 246 NLRB 192 (1979); *First Food Ventures*, 229 NLRB 1228 (1977); *Daneker Clock Co.*, 211 NLRB 719 (1974), *Spruce-Up Corp.*, 209 NLRB 194 (1974). However, courts have held that a labor organization's representative status should be determined when the successor has employed a "full complement" of employees in the unit for which the union seeks recognition. *NLRB v. Burns International Security Services*, 406 U.S. 272, 294-295 (1972); *Pacific Hide & Fur Depot, v. NLRB*, 553 F.2d 609 (9th Cir. 1977). In the *Pacific Hide* case, the evidence disclosed that at the time of the successor's takeover and the union's demand for recognition, the total employee complement was significantly below that which was ordinarily maintained by the predecessor. Primarily for this reason, the Ninth Circuit declined to enforce the Board's order requiring the successor to bargain. In the Ninth Circuit's view, it was appropriate to delay the determination of the union's representative status in the circumstances of that case until

⁵ The operative period referred to by the Court is obviously the certification year discussed in *Ray Brooks v. NLRB*, 348 U.S. 90 (1954). Here, of course, the certification year period had never commenced to run in view of the failure by Beck to bargain with the Union in the appropriate unit. See *Jessie Beck's*, supra at 910.

the successor's employee complement was roughly comparable to the predecessor's "full complement." By doing so, the Court was of the view that the desires of all the various segments of the *Pacific Hide* work force would be considered concerning the question of representation. Overland is of the view that the *Pacific Hide* decision requires that I examine its work force in July or August 1978 to determine the Union's representative status.

I cannot agree with the approach taken by Overland in this case. Although it is true that the Ninth Circuit deemed it appropriate to look to a period when a successor-employer had employed a "full complement" of employees in order to determine the legal obligation of the successor to recognize the representative of the predecessor's employees, the process of identifying the so-called full complement will vary from case to case. *NLRB v. Hudson River Aggregates*, supra. In the recent case dealing with this issue, the Tenth Circuit observed:

The process of identifying a full complement thus involves balancing the objective of insuring maximum employee participation in the selection of a bargaining agent against the goal of permitting employees to be represented as quickly as possible. It would be ludicrous to postpone defining a full complement until the successor of a small enterprise has achieved the status of a multibillion dollar international corporation. But it could also be inappropriate to precipitately point to a full complement as existing at the moment a successor assumes operation of an essentially moribund predecessor.

NLRB v. Pre-Engineered Building Products, 603 F.2d 134 (10th Cir. 1979).

The circumstances of this case compel the conclusion that at the time Overland acquired the Riverside, it had employed a "full complement" of employees as that terminology is used in the *Burns* type cases. Clearly, when Overland took over the Riverside, it was not a moribund operation. Indeed, there was no hiatus in operation and the evidence shows that Overland took over with practically the same number of employees as Beck. It must also be recognized that Overland acquired the Riverside at a seasonal upturn period so that it could reasonably be expected that in the immediate future there would be additional employees. In these circumstances, no substantial justification has been shown for delaying the representation which this Act is designed to guarantee employees.

There are other circumstances here which sharply contrast this case from the *Pacific Hide* case. Thus, Overland undertook to retain every last Beck employee and manager it could induce to remain with the operation. The fact that it was unsuccessful in doing so was not related to any desire on Overland's part not to employ any particular individual. Indeed, Overland's failure to recognize the Union may have contributed to the departure of some of Beck's employees. The fact that the former Beck employees constituted a majority of the Riverside unit following the takeover by Overland for only a limited period also appears to have been due in part to the dynamics of the labor market in Reno at that particular

time resulting from the opening of several other major enterprises. Moreover, this industry has no reputation for the longevity of its employees. Similarly, it would be unfair in assessing the Union's representative status to overlook the fact that the unit was supplemented on and after April 21 with laid-off Overland employees who were also represented by the Union when they were actively working. Such employees, as well as those employees employed as a result of the normal seasonal upturn or as replacements for employees who depart to find more lucrative or personally desirable jobs elsewhere—as opposed to the ownership change—are normally deemed to support the union in the same proportion as the employer's overall work force. *W & W Steel Co.*, 233 NLRB 74 (1977). When these factors are considered together with the fact that representatives of Overland undertook to resolve Beck's dispute with the Union prior to its takeover of the Riverside, it becomes clear that what is at stake here is the efficacy of the orders entered by the Board and the court. They are not moot. In essence, this dispute would not exist if Overland had been successful in inducing the Union to forgo the right it gained from the protracted proceedings before the Board and the court to represent the housekeeping department employees. As McHugh's testimony clearly shows, Overland was torn between spending money on further litigation or "breaking from the pack" by entering into an agreement with the Union which included the housekeeping employees. Under these circumstances it is my conclusion that *Pacific Hide* is not a controlling precedent in this case, that the Union had an existing demand for recognition at the time Overland took over the Riverside; and that it was appropriate to look at the ratio between Overland's employee complement and the Beck employee complement at the time of the takeover. As it is undisputed that a majority of Overland's employees at the time of the takeover were former Beck employees, I find that Overland is legally obliged to remedy the unfair labor practices of Beck, as found by the Board and courts. Accordingly, I shall recommend that Overland be required to comply with the enforced Board order entered against Beck with respect to the Riverside.

CONCLUSIONS OF LAW

1. Beck is an employer within the meaning of Section 2(2) of the Act engaged in commerce or in an industry affecting commerce within the meaning of Section 2(6) and (7) of the Act.
2. Overland is an employer within the meaning of Section 2(2) of the Act engaged in commerce or in an industry affecting commerce within the meaning of Section 2(6) and (7) of the Act.
3. The Union is a labor organization within the meaning of Section 2(5) of the Act which at all times material has been the representative of the following appropriate unit within the meaning of Section 9 of the Act.

All full-time and regular part-time employees of the Riverside Hotel and Casino, Reno, Nevada, including engineering department employees, the stage-

hand, receiving clerk, and warehouse laborers; but excluding front desk clerks, PBX operators, reservation clerks, night auditor, booth attendants in the coupon redemption center, employees in the casino, administration and security departments, guards and supervisors as defined in the Act.

4 Overland is Beck's successor with respect to the operation of the Riverside Hotel and Casino in Reno, Nevada.

5. Overland is legally obliged to comply with the Board's order reported at 231 NLRB 907, as enforced by the Ninth Circuit Court of Appeals on September 12, 1979.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁶

ORDER

It is hereby ordered that Overland, Inc., d/b/a Pick Hobson's Riverside Hotel and Casino comply in all respects with the Order of the National Labor Relations Board, as enforced, heretofore entered in the matter of *Beck Corporation, d/b/a Jessie Beck's Riverside Hotel and Casino*, 231 NLRB 907 (1977).

⁶ 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