

Heavy and Highway Construction Workers Local Union No. 158 (Contractors Assn. of Eastern Pennsylvania and Worthy Brothers Pipeline Corporation) and George Miller, Jr. Case 4-CB-4318

January 10, 1991

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On June 22, 1990, Administrative Law Judge Robert A. Giannasi issued the attached supplemental decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed an opposition brief, cross-exceptions, and a brief in support thereof.

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, 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 Respondent, Heavy and Highway Construction Workers Local Union No. 158, its officers, agents, and representatives, shall pay the amounts set forth in the Order.

Carmen P. Cialino, Esq., for the General Counsel.
Ira H. Weinstock, Esq., of Harrisburg, Pennsylvania, for the Respondent.

SUPPLEMENTAL DECISION

ROBERT A. GIANNASI, Administrative Law Judge. This case was tried on various dates from July through November 1989 in Harrisburg, Pennsylvania. The case involves the amount of backpay due to certain named discriminatees as a result of the Board's finding in the underlying case that the Respondent had discriminated against them. Since a controversy arose over the amounts due under the Board's Order in the underlying case, the General Counsel filed a compliance specification setting forth the amounts due and the Respondent filed an answer to the specification. The General Counsel's specification, which was amended in several respects during the hearing, included a formula for computation of the amount due. Later in the litigation, Respondent submitted its own formula. The parties filed briefs and reply briefs, which I have read and considered.

Based on the entire record, including my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

A. Background

On June 24, 1986, the Board issued its decision in the underlying case finding that Respondent violated Section 8(b)(1)(A) and (2) of the Act by refusing to refer Donald Stamets, Frank Rehm, Garland Walters, Robert Fisher, Kenneth Wiest, George Miller, Gerald Rockwell, and Gerald Rockwell III for work in its jurisdiction because of their intraunion, political, or protected concerted activity. 280 NLRB 1100 (1986), *enfd.* in an unreported order by the Third Circuit on November 10, 1988. The Board's Order requires that Respondent make the discriminatees whole for any loss of pay or other benefits "from the date of the discrimination, beginning 24 March 1981, until the time Respondent ceases its unlawful conduct by properly referring [them] to employment . . ." 280 NLRB at 1102 and 1112.

In that portion of the underlying case relevant here, the Board affirmed the rationale of Judge McNerny whose decision sets forth certain findings pertinent to the instant backpay proceeding. In making his finding of discrimination, Judge McNerny noted that Respondent kept no permanent referral records for the period 1977-1983 and submitted no records for any period of time. He also found that the Respondent's referral system was not an exclusive hiring hall. He further found that the Respondent's discrimination was shown, in part, by virtue of a disparity between the hours worked by the average union member and those worked by the discriminatees. He computed those hours by utilizing the hours reported by employers to the Respondent's health and welfare and pension funds. Judge McNerny also noted that this disparity could not be explained by nonreferral hours because 80 to 90 percent of the hours worked were the result of referrals from Respondent. Judge McNerny also found that the discrimination was "pervasive," the discriminatees were passed over "hundreds of times" between March 1981 and the last day of the hearing in January 1985, and that all the referrals made by Respondent while the discriminatees were passed over could be considered unlawful. Judge McNerny further found that the discriminatees regularly called or visited the Respondent's offices seeking work and that, at a certain point, they stopped because of the futility of continuing to make such requests.

During the hearing, after considering a motion by the General Counsel to strike certain portions of the Respondent's answer and the Respondent's response thereto, I issued an interim order, dated September 25, 1989, basically precluding relitigation on issues that had been litigated and decided in the underlying case such as whether referrals were made out of turn, whether the General Counsel could properly incorporate Judge McNerny's 80-90 percent referral finding into his specification and whether the discriminatees needed to request referrals. However, I did permit Respondent to raise the defense that some discriminatees may have removed themselves from the labor market for reasons other than Respondent's discrimination or the need to mitigate damages. The Respondent was unsuccessful in seeking Board review of my order. To the extent that Respondent continues to contest the rulings in my interim order, I reaffirm those rulings and incorporate by reference my interim order of September 25, 1989.

B. The Backpay Formula

The General Counsel's compliance specification is based on the formula utilized by the Board in the underlying case. The formula is, in turn, based on an estimate of that portion of the total hours which would have been worked by the discriminatees during the backpay period had they not been discriminated against. The need for such a formula is highlighted by the fact that Respondent did not have referral records for the relevant period, and by the fact, as found by the Board, that "between 80 and 90 percent of the work within the jurisdiction of the local is handled through the referral system." 280 NLRB at 1111.

Thus, the General Counsel's formula calculates the average hours worked per member for the years in question. The compliance officer, who testified and was subjected to vigorous and lengthy cross-examination, used the same figures used by the Board in the underlying case for the years 1978 to 1983 and the same formula for the years 1983 to 1988. The average hours' figure is based on dollar revenues received by the applicable fringe benefit funds divided by the hourly contribution rate with appropriate deductions for employees of the Respondent, its fringe benefit funds and employers who do not use the referral system. This figure was divided by the number of members, which was obtained from Respondent's per capita reports converted to monthly figures. This too was basically a continuation of the Board's analysis in the underlying case. The average hours per member tracked the Board's figures for the period 1978-1983; these hours declined for several years to reflect diminished work in the area but rebounded for the 1986-1988 period. The average number of members also decreased from 1978.

The average hours per member figure was reduced by 20 percent to reflect the Board's finding that 80 to 90 percent of the work in the jurisdiction was referral work. The General Counsel gave Respondent the benefit of the doubt by reducing the amount 20 percent rather than 10 percent. The result yielded a figure entitled average referral hours per member per year.

The discriminatees, however, were not necessarily average, and, prior to the discrimination, their hours worked could be compared to the average for all members. That relationship to the average could be expected to continue during the period in which they were denied work. The General Counsel's formula takes this into account by creating a multiplier which is the ratio of the hours of the discriminatees to average hours during a base period when no discrimination was taking place. Thus, if a discriminatee worked 1500 hours in a year prior to the discrimination when average referral hours were 1000, he was given a multiplier of 1.5 which means that he could be expected to work 1-1/2 times more hours than the average worker in the period when he was discriminated against. The multiplier was based on an average of the years 1978 and 1979 because these were the years immediately prior to the discrimination when the hours could be compared without the adverse influence of the discrimination. Postdiscrimination figures proved the reliability and accuracy of the multiplier in the cases of two discriminatees, Stamets and Miller, who worked in the unit after they were properly referred and the discrimination ceased.

The General Counsel's formula set forth above was reasonable in all the circumstances, which include the following: Respondent operated a nonexclusive referral system

and did not keep or submit, in either this or the underlying case, referral records for the applicable periods of time; and the formula basically tracked that utilized by the Board in the underlying case. It is well settled that the finding of a violation is presumptive proof that some backpay is owed and the General Counsel, in demonstrating the gross amounts of backpay owed, need not show exact amounts. "Any formula which approximates what discriminatees would have earned had they not been discriminated against is acceptable if it is not unreasonable or arbitrary in all the circumstances." *Laborers Local 38 (Hancock-Northwest)*, 268 NLRB 167, 168-169 (1983), *enfd.* 748 F.2d 1001 (5th Cir. 1984), and cases there cited. Moreover, where there are doubts or uncertainties, they may be resolved in favor of the wronged party rather than the wrongdoer.

The Respondent makes numerous attacks on the General Counsel's formula and urges adoption of its own formula instead. Respondent's contentions in these respects are unpersuasive in showing that General Counsel's formula is unreasonable or that its own formula, which I find unreliable, is the only reasonable formula which may be used in this case. I note that the General Counsel's formula is essentially one based on representative groups of employees, a model often used in cases dealing with the construction industry. See Section 10542 of the Board's Casehandling Manual (Part III, Compliance); *Iron Workers Local 378*, 213 NLRB 457, 458-459 (1974); *Midwest Hanger Co.*, 221 NLRB 911, 915-917 (1975).

Respondent argues that the General Counsel's total hours worked figure does not account for hours worked by nonmembers—a figure which Respondent's formula allegedly considers. Initially, Respondent has a difficult burden to show that the General Counsel's formula is wrong in this respect. The General Counsel basically followed the hours worked formula utilized by the Board in the underlying case. Moreover, there was no documentation either provided or in existence which would break down members' hours in the health and welfare reports. It is clear to me, however, that nonmember hours were not a significant component and, whatever they were, they were taken into account by another feature in the General Counsel's formula.

An attorney for Respondent, Edward Gleason, testified about how he put together Respondent's formula. He testified that he separated members' hours from nonmembers' hours. That information was obtained from a secretary who testified that someone placed notations on fringe benefit remittance sheets at Respondent's office indicating union membership. However, Respondent failed to provide underlying membership lists which the General Counsel could use to validate these notations. In these circumstances, I am not persuaded of the reliability of the Respondent's asserted information as to union membership. Accordingly, I find that Respondent's purported evidence of nonmembers' hours is not acceptable.

In any event, under the General Counsel's formula, the hours reported to the fringe benefit funds were reduced by 20 percent, a figure which would have included certain key employees who were not referred by Respondent and might not have been members. Indeed, the General Counsel's figure is on the high side and would take into account any other perceived discrepancies such as people working within the first 7 days before being required to join the Respondent under its collective-bargaining agreement. No evidence was

submitted as to how many if any hours were attributed to this factor. In short, there is no persuasive or reliable evidence which would render the General Counsel's formula in this respect unreasonable.

Respondent also argues that the average hours per member figure is faulty because it is not reduced by the number of stewards' and foremen's hours. Respondent may not contest the formula based on its foremen's hours contention since it did not raise the matter in its answer. See Section 102.56 (b) and (c) of the Board's Rules and Regulations; *Airports Service Lines*, 231 NLRB 1272, 1273 (1977); *Baumgardner Co.*, 298 NLRB 26 (1990). The stewards' hours were properly included since two of the discriminatees were stewards. More importantly, the General Counsel's figure is an average, accounting for people who work more and less than the average. There is no reliable evidence as to how many hours were attributable to stewards or foremen. One of Respondent's witnesses "guessed" at the numbers, but this is hardly reliable evidence on which to base findings of fact. Accordingly, I find that Respondent has not shown that the General Counsel's formula was unreasonable in this respect.

The Respondent also attacks the use of a multiplier in the General Counsel's formula and seeks to alter the multiplier used. Use of a multiplier in conjunction with an average or representative work force model in backpay computations is common. See, e.g., *Artim Transportation System*, 193 NLRB 179, 180 (1971); *Laborers Local 38*, supra, 268 NLRB at 170. Respondent argues that the General Counsel's multiplier erroneously compares the discriminatees' actual hours to average referral hours rather than average hours and submits an appendix A to its brief to correct the perceived error. Respondent's asserted correction comes too late because the point was not raised in its answer to the specification. See the authorities cited above with respect to Respondent's argument concerning foremen's hours.

In any event, the Respondent's argument does not prove that the General Counsel's multiplier is unreasonable. The multiplier compares the discriminatees' actual hours for 1978-1979—divided by 2 to make an average yearly figure—with the average referral hours for those years. The average hours per member were discounted by 20 percent to account for nonreferral hours. However, the record shows that the discriminatees in this case utilized the referral system. This was the whole basis for the violation in the underlying case. Indeed, the only two discriminatees who worked within the jurisdiction after being properly referred testified that essentially all of their work came through referrals. Thus, the comparison in the multiplier was between people who were utilizing the referral system and its use herein was reasonable in all the circumstances.

Continuing its attack on use of the multiplier, Respondent argues that the base period for the multiplier should have included the year 1980. The General Counsel's refusal to include that year in the multiplier was based on his view that the discrimination—at least the disfavored political activity and Respondent's objection to it—began in 1980, and that the political turmoil which resulted in the discriminatory refusal to refer was in full force in 1980. This view is supported by the record in the underlying case. For example, Stamets, who was removed as a union steward because of "politics" in August 1979, had a precipitous decline in hours worked between 1979 and 1980. 280 NLRB at 1107

and 1112. Thus, the General Counsel's approach was entirely proper in the circumstances, and it was consistent with Board law. See *Laborers Local 38*, supra, 268 NLRB at 171.

Contrary to Respondent's contention, the General Counsel properly made an exception in the case of George Miller and used only the year 1979 as the base for his multiplier. Miller's 1978 hours were not representative. He took a substantial amount of time off work that year to care for his wife and children during his wife's illness. He also suffered an injury that year for which he received workmen's compensation. Indeed, Miller's work experience in the unit after he was properly referred confirms the validity of the multiplier used for him. Miller's multiplier, based on the year 1979, was 1.30; in 1984 and 1985, after the discrimination was cured, Miller's hours were about 150 percent of the average member's referral hours.

Relying on *Iron Workers Local 373 (Building Contractors)*, 295 NLRB 648 (1989), Respondent also makes the argument that its backpay liability should terminate as of the close of the hearing in the underlying case. However, *Iron Workers* is distinguishable and provides no support for the Respondent's position. In *Iron Workers*, the Board terminated backpay liability as of the end of the unfair labor practice hearing because neither of the underlying Board orders in that case "provided specifically that backpay might be claimed for any period after the unfair labor practice hearings." In the instant case, the remedial language required backpay from the date of the beginning of the discrimination until Respondent properly referred the discriminatees to employment. The Board's Order specifically referred to Judge McNerny's remedial language set forth above. 280 NLRB at 1102 and 1112. The reason for the distinction is obvious. In this case, the Board found that the discriminatees were passed over "hundreds of times" and that it would have been futile for them to continue asking for referrals. The discrimination was thus found to have continued until Respondent ceased it. Moreover, as I indicated in my interim order, this is not a case where the General Counsel had to prove discrimination through individual passovers in the referral system; in contrast *Iron Workers* was a case where the General Counsel was required to prove discrimination by this method. Not only were the theories and the evidentiary bases in the two cases different, but, here, there was an absence of useful referral records which made it virtually impossible to litigate the case on a passover theory. In these circumstances, the General Counsel was not required to assume that the discrimination ended as of the end of the hearing in the underlying case.¹

Respondent also contends that the General Counsel's formula is unreasonable because it fails to make distinctions between four geographical areas within the Respondent's jurisdiction. Its own formula attempts to make such distinctions and relegates the discriminatees to certain work areas. The

¹In my interim order, I ruled that Respondent could not relitigate the Board's finding, in the underlying case, that 80 to 90 percent of the hours worked in the unit was due to referrals. However, I did permit Respondent to show that this changed after the close of the underlying hearing in January 1985. Respondent failed to submit any reliable evidence on this point. Nor does it contend in either of its briefs that there was any change in the percentage of referrals after January 1985. The General Counsel submitted evidence that two employees who worked in the unit after 1985 usually obtained work through the Respondent. Accordingly, it is fair to assume that the percentage of referrals continued after January 1985 as it existed prior to that date.

Respondent's contention in this respect is unsupported by reliable evidence and is without merit. First of all, there is no documentary evidence which would break down unit work into four distinct work areas. Respondent's attempt to do so was based on the testimony of Attorney Edward Gleason who consulted the Respondent's business agents. They, in turn, made estimates of the work in each area. Not only was this evidence unreliable hearsay, but there was no way for the General Counsel to examine the basis of these estimates.

The proposed geographical areas are based on the fact that Respondent has offices in each of the four areas. However, Respondent's contractual jurisdiction is not so limited. Moreover, several discriminatees testified in this proceeding that they took or would have taken work throughout the jurisdiction. For example, Frank Rehm actually moved himself and his family to "follow the work." Rehm also testified that he sought work through each of the Respondent's four offices and at the union meetings. Other discriminatees testified that they asked for work at the union meetings. There was no evidence that there were geographical restrictions in seeking or obtaining employment. Thus, there is no reason to apply such restrictions in this backpay proceeding.

The above demonstrates the impropriety of the Respondent's alternative formula in this case. However, its formula is flawed for other reasons as well. First of all, Gleason could not explain the discrepancy between the Board's finding in the underlying case that there were 2.2 million hours of work available for 1978 and Respondent's formula which set forth about 600,000 hours for that year for all four of its geographical areas. In addition, Respondent's formula keeps the number of union members constant for each region. However, this fails to comport with testimony in the underlying case that the number of working members in some areas dropped precipitously. For example, Field Representative Rocco Valvano testified that, in Williamsport, his area, the number dropped from 600 in 1980 to less than 25 in the summer of 1984. (Tr. 1381-1386.) In these circumstances, Respondent's formula cannot reliably be utilized to establish its backpay liability.

C. Pension and Dues Setoff Issues

Respondent also attacks the General Counsel's requirement that Respondent reimburse the applicable pension fund for pension contributions on behalf of four discriminatees:² Fisher, Rehm, Stamets, and Rockwell. It is, of course, well settled that such contributions are properly compensable in backpay proceedings. See, e.g., *Stone Boat Yard v. NLRB*, 715 F.2d 441, 446 (9th Cir 1983), cert. denied 466 U.S. 937 (1984). Since there is a presumption that some backpay is owed, where it is shown that the discriminatees would also have earned pension benefits absent the discrimination, it is a respondent's burden to show that it is not required to reimburse these sums. *Master Iron Craft Corp.*, 289 NLRB 1087 (1988).

Respondent argues that it may escape liability for pension fund contributions if it can show that interim benefits were "equivalent" to those lost due to discrimination. However, it is unclear that this would justify an offset, at least where

the interim pension benefits come from a different employer or entity from that which provided the original benefits. As the Board has stated, "a unique benefit flows from longevity in a specific pension fund that cannot be duplicated by contributions into another pension fund." *American Navigation Co.*, 268 NLRB 426, 428-429 (1983). Thus, it is highly unlikely that any interim pension benefit would be "exactly equivalent" to that lost through discrimination. *Ibid.* Moreover, as the Ninth Circuit has stated, even assuming some equivalency, "the diversion of contributions from the union funds undercut[s] the ability of those funds to provide for future needs." *Stone Boat Yard v. NLRB*, supra. In these circumstances, Respondent has a heavy burden to show the kind of equivalency which would justify an offset for pension contributions. I find that, on this record, Respondent has not shown persuasively that there was such equivalency here or that the General Counsel's pension contribution figures should be changed.

Respondent contends that it is not liable for pension contributions on Fisher's behalf from 1981 to 1985 when he worked for the U.S. Postal Service. The evidence on this point is both sketchy and ambiguous. Fisher began working for the Postal Service in March 1981 as a substitute rural carrier. He worked on an "on call" basis for about 4 to 8 hours every 2 weeks. He did not participate in a pension plan until he transferred to a part-time job in Harrisburg on January 8, 1983. At this point he apparently began working about 40 hours per week; he was still a part-time employee at the time of the hearing in this proceeding. Fisher was questioned about a paystub which he brought to the hearing but was not placed in evidence. The stub covered the last pay period in 1985 and it indicated some individual and employer contributions to a retirement plan. However, the testimony is unclear as to the amounts of the contributions by the employer or even the benefits of the plan itself. Indeed, the record does not show the benefits or the qualifications for either the interim plan or the Respondent's plan. There is thus no way I can make a determination of equivalency on this record. Since Respondent bears the burden of proof on this issue, and since any doubts are to be resolved against it as the party causing the discrimination, I will not disturb the General Counsel's estimated pension contributions for Fisher.³

Respondent also attacks the pension contribution for Rehm by asserting that he participated in a better pension plan while working for Pennsylvania Power and Light Company during the backpay period. Such employment of course reduced the gross backpay otherwise payable by Respondent. Here again Respondent's evidence of equivalency is deficient. I permitted Respondent to submit a copy of the interim

³In a separate contention, Respondent argues more broadly that Fisher's backpay period should terminate as of January 8, 1983—the date he testified he was no longer interested in working in Respondent's jurisdiction because he had a better job, even though it was part time. The General Counsel's cut off date for Fisher is September 14, 1985, when he received a letter from Respondent notifying him that work was available for him in the jurisdiction. As a practical matter this contention deals only with pension contributions from January 1983 through September 1985 because, after January 1983, Fisher's interim earnings were greater than the gross backpay owed him and thus the General Counsel does not request backpay for this period of time. In any event, Respondent's contention in this respect must fail. A discriminatee's testimony about what he would have done had a valid reinstatement offer been made is speculative. Such testimony does not toll backpay until or unless a valid offer of reinstatement is made. See *NLRB v. Louton, Inc.*, 822 F.2d 412, 414-415 (3d Cir. 1987), enfg. 281 NLRB 1153, 1154 (1986).

²Actually, the specification requires pension contributions for other discriminatees, but Respondent, in its briefs, focuses only on four discriminatees.

retirement plan as evidence after the close of the hearing. Such a document is attached to Respondent's brief, and I will receive it into evidence in accordance with my ruling at the hearing. However, in neither of its briefs does Respondent analyze the plan or relate it in any way to Rehm. Respondent's discussion on this point is conclusory at best. Nor is there any reference or discussion of Respondent's pension plan as it applies to Rehm. Rehm's testimony does not help on this point. He testified that he was a temporary employee at Pennsylvania Power and Light for a year and a half after starting work there and was not covered under the pension plan during that time. He started having contributions paid on his behalf sometime in 1983. Apparently he becomes vested in the plan after 10 years. In the absence of further evidence or analysis, I cannot determine whether Rehm's interim pension benefits were the equivalent of those which he lost due to discrimination. He may never become vested in the interim plan and he may choose to return to work under the Respondent's plan. Thus, Respondent has not shown equivalency and I will not disturb the General Counsel's pension contribution figure for Frank Rehm.

In the cases of Stamets and Rockwell, Respondent argues that they earned equivalent pensions while working for interim employers under other Laborer pension programs which have some kind of reciprocal benefits with Respondent's plan. In making its argument, Respondent relies on the testimony of Business Manager James Andrews. Andrews was not shown to have had any particular knowledge of or expertise in Respondent's pension plan or those of other locals. Moreover, his testimony, in my view, was ambiguous and therefore unreliable. He testified that there are reciprocal agreements regarding the pension plans of local Laborers unions with some involvement of the International. At one point, he testified that the employee who works under two different plans gets two checks, one from each plan; at another, he testified that the employee receives one check from the local to whom he has hours reported. There is no explanation of why or how one plan is considered the plan which pays the benefits. No documents were provided regarding the asserted reciprocal agreement. Nor was there any evidence that the Respondent's plan or the plans of the local plans in which Stamets and Rockwell earned benefits were part of this reciprocal arrangement, whatever it was. Indeed, Stamets testified that he had no idea if his interim pension plan had a reciprocal arrangement with Respondent's plan. Respondent's attorney conceded that Respondent's plan did not have reciprocal arrangements with all local plans; the administrator of the Respondent's pension fund testified to the same effect although it is not altogether clear whether he was referring to reciprocal arrangements in the pension plan or the health and welfare plan. In any event, it is clear that the attorney was talking about pension plans when he made his concession, and it is also clear that the plan administrator did not support Respondent's position, which is that Stamets and Rockwell earned pensions in their interim employment which were equivalent to those they would have earned had they not been discriminated against. In these circumstances, I cannot find that any credits earned by these employees in other Laborers Local plans would have been the equivalent of those earned under the Respondent's plan. Accordingly, Respondent has not shown that it is entitled to a set off for the

pension contributions required to make Stamets and Rockwell whole.

In order to shed further light on this issue, Respondent attached as Appendices C and D to its brief certain pension plan data relating to credits for Stamets and Rockwell during the backpay period. Appendix C appears to be a reproduction of a portion of Respondent's Exhibit 9, but Appendix D does not appear to have been submitted into evidence in this proceeding and is undated. The documents are barely legible and, standing alone, they have little meaning. At most Appendix C shows that Rockwell earned some pension credits in another local's plan; there is nothing to show that that plan had a reciprocal arrangement with the Respondent's plan or that the benefits would be the same. Appendix D is a statement purportedly from an employee of Respondent's plan stating that Stamets earned pension credits in another local's plan. Putting aside the propriety of relying on this document, it is clear to me that Appendix D, a hearsay report, does not show credit in Respondent's plan or any reciprocal arrangement which would make Stamets' credits equivalent to those he would have earned under Respondent's plan. Accordingly, Respondent's reliance on Appendices C and D to its brief does not advance its cause or provide the evidence necessary to make a finding of equivalency.

Respondent's contention that its backpay liability should be offset by dues supplements allegedly owed to it is completely without merit. See *Teamsters Local 705*, 227 NLRB 694, 695 (1977).

D. Other Contentions as to Individual Liability

Application of the General Counsel's approved and reasonable formula to the particular discriminatees⁴ yields a total backpay amount which is composed of a quarterly gross backpay figure⁵ less quarterly interim earnings for a backpay period which differs for each discriminatee.⁶

The contested issues as to individual discriminatees—as identified in Respondent's brief and reply brief—are discussed below.⁷

Respondent makes several contentions with respect to the end of the backpay period for discriminatees Stamets, Wiest, and Rockwell. None have merit. Its referral of Stamets and other discriminatees to certain jobs during the backpay period does not toll backpay. The referrals of Stamets in 1982 and 1983 were part of the litigation in the underlying case. The Board found that Stamets and the others were discriminated against throughout the period prior to the end of the underlying hearing and the discrimination would not be deemed to have ceased until the discriminatees received proper referrals. Thus, their acceptance of some referrals in

⁴No backpay or pension contributions were sought for Gerald Rockwell III and he is no longer part of this proceeding.

⁵There is no dispute as to the wage rates and the pension fund contributions for the applicable hours set forth in the formula.

⁶Although there is some dispute as to the conclusion of the backpay period for some of the discriminatees, the General Counsel agrees that the backpay period ended for all discriminatees at dates certain prior to the date of the hearing. At the hearing the General Counsel conceded that the backpay period for Frank Rehm ended on May 22, 1989.

⁷Some of Respondent's arguments as to individual discriminatees, such as Miller's base year, pension matters, and Fisher's backpay period, have been discussed above. Other arguments are precluded because the Board's findings in the underlying case were res judicata. See discussion and citation of authorities in my interim order.

the absence of any indication that Respondent was halting its discrimination would not toll backpay.⁸

Nor does the acceptance of interim employment act as a toll. Indeed, the Respondent obtains the benefit of such interim employment because the amounts earned act as an offset to gross backpay. Contrary to Respondent, neither Wiest nor Rockwell removed themselves from the labor market by joining other labor organizations. They did this to obtain other employment because Respondent had discriminated against them. Wiest's backpay liability did not end in September 1981 when he became a salesman. He had not received any indication that Respondent was ceasing its discrimination against him until September 1985. This is when his backpay period ended. Rockwell did not receive any such indication until August 1986 when his backpay period ended. The General Counsel's determinations as to the end of the backpay periods for these discriminatees are consistent with established principles. It is well settled that backpay will continue to accrue until a valid offer of reinstatement is made. See *Heinrich Motors*, 166 NLRB 783, 785-786 (1967), enf'd. 403 F.2d 145, 150 (2d Cir. 1968).⁹

Respondent also makes several attacks on the General Counsel's backpay figures as to Frank Rehm. First, Respondent claims that its liability ceased when it referred Rehm to a job in 1981. This matter was part of the underlying discrimination case and may not be relitigated here. Respondent was discriminating against Rehm throughout the period before the end of the McNerny hearing in January 1985, as the Board clearly found. Nor does Rehm's acceptance of interim employment in a different industry mean that he removed himself from the labor market. See *Fugazy Continental Corp.*, 276 NLRB 1334, 1341 (1985).

Respondent also contends that Rehm's backpay period ended when he failed to respond to an April 1985 letter from Respondent. This contention is without merit. The letter, which was properly addressed and received, asked that Rehm call Respondent's office and submit his address and phone number so that he could be put on an out-of-work list. Rehm called the office and stated that Respondent already had his address. The letter was not a "proper referral" within the meaning of the underlying Board Order which would have ended backpay liability. Nor did it indicate that Respondent was stopping its discrimination against Rehm. Respondent had work available at this time. It was referring other employees. Significantly, several months later, it sent letters to two other discriminatees, Weist and Fisher, stating explicitly that there was work available for them. These letters were deemed sufficient by the General Counsel to comply with the Board's Order that Respondent make proper referrals to those employees and the discrimination as to them. Thus, their backpay was cut off as of the receipt of those letters.

⁸This argument is repeated for a number of employees in a number of different ways. The short answer to the argument is the matter was decided in the underlying case and may not be relitigated in the backpay case. See *Overseas Motors*, 277 NLRB 552, 553-554 (1985), remanded on other grounds 818 F.2d 517 (6th Cir. 1987).

⁹At the hearing Respondent was permitted to amend its answer to allege that Wiest quit or was released from interim sales jobs in circumstances which would amount to a willful loss of earnings. The Respondent has abandoned this argument by not mentioning it in its brief. In any event, there is no record evidence to support the Respondent's contention. Wiest left those jobs because his earnings were so low that he reasonably concluded that he was not a salesman. See *P*E Nationwide*, 297 NLRB 454 (1989).

Rehm's April 1985 letter is different. It cannot be construed as an end of the discrimination or an offer of a proper referral. Any ambiguity in this respect must be resolved against Respondent who violated the Act in the first place. See *Teamsters Local 70 (Nielsen Freight Lines)*, 265 NLRB 220, 224 (1982).

Respondent's last point on Rehm is a contention that he should not be paid \$63.30 in medical expenses. The General Counsel included this in his specification because the expenses were incurred at a time when Rehm was not insured as he would have been had he been working in Respondent's jurisdiction and covered under Respondent's health and welfare plan. Respondent objects because no medical bills were produced or entered into evidence. The only documentary evidence on this point was three checks paid to Bloomsburg Hospital. Rehm testified that the payments were for x-rays and other services performed as a result of injuries to his daughter in the summer of 1982. Rehm also testified that Respondent's health and welfare plan normally covered these expenses. Documentary evidence confirms that the plan would have paid these expenses and that Rehm would have qualified for such payments had he not been discriminated against. Rehm searched for the underlying bills but could not find them. I find Rehm's testimony that this amount was expended for his daughter's medical expenses honest and reliable. The amounts are reasonable under the circumstances and thus further underlying documentation is not required. See *Best Glass Co.*, 280 NLRB 1365, 1369 (1986).

Respondent's most vigorous attack as to individual liability is reserved for Garland Walters whose backpay figure is the greatest of any of the seven discriminatees involved in this case. Respondent makes a number of contentions with regard to Walters.

Initially, Respondent contends that its liability to Walters ceased in the summer of 1982 when he declined a referral to a Gettysburg, Pennsylvania job because he lacked transportation to that job. He was apparently called by telephone the night before the job, located some 5 hours from his home, was to begin. This matter was the subject of testimony and litigation in the underlying case. Respondent may not urge that the incident tolls backpay liability because the Board essentially found that during this period Respondent was discriminating against Walters. In any event, the refusal of one job because of transportation problems does not warrant a finding that Walters removed himself from the labor market. He was still residing in Respondent's jurisdiction and still being discriminated against. The Gettysburg referral was on such short notice and at such a distance that it could be viewed as perfunctory. There was no reason to conclude that his inability to get to that job under those circumstances meant that Walters no longer wanted to work in the industry for reasons apart from Respondent's discrimination against him. Indeed, Walters credibly testified that he had transportation and would have gotten to a job had he been properly referred. He continued to seek referrals until he stopped, according to the Board, because he thought it was futile to continue to request referral. Accordingly, Respondent may not rely upon this one incident to show that Walters removed himself from the labor market for personal reasons unconnected with Respondent's discrimination.

Respondent also contends that its liability to Walters ceased when Walters moved to Florida in September

1983. This too was at a time prior to the end of the hearing before Judge McNerny and there was some testimony about the move in the underlying case. The question in such cases is whether the discriminatee moved out of the labor market for personal reasons apart from the discrimination or an attempt to mitigate backpay by seeking other work. Unless the move was undertaken for personal reasons, backpay will not be tolled. See *Best Glass Co.*, supra, 280 NLRB at 1370; *Sorenson Lighted Controls*, 297 NLRB 282 (1989).

Here, it is clear, as Respondent admits in its brief (Br. 77), that Walters left for Florida because there was “no work available” in Pennsylvania. In addition, he was faced with continued discrimination at the hands of Respondent. Walters testified that he had work opportunities in Florida, and, indeed, he did work in Florida, thus lessening Respondent’s backpay liability by virtue of his interim earnings. Walters did not move to Florida for personal reasons. He moved there to find work because Respondent discriminated against him, it was futile to continue requesting referrals from Respondent and there was no work available in Pennsylvania. Walters was thus not confined to looking for work in his former area of employment; he remained in the labor market by seeking work in Florida. See *Best Glass*, supra.¹⁰

The Respondent also contends that its liability to Walters ended when he refused a referral on August 22, 1984, during a break in his testimony in the underlying hearing. According to Walters, about 3 p.m. on August 22, 1984, Walters had a conversation outside the hearing room with Business Manager Joseph Di Geronimo. Di Geronimo told Walters that the principal contractor for whom he had worked, Holloway, was returning to the jurisdiction. Walters said that he would not move back to Pennsylvania just to work for Holloway. Di Geronimo then said, “We have other jobs available.” Walters then asked if Di Geronimo “could guarantee” him “a year or two years and help me move my family back.” Di Geronimo said that he could not, but he repeated that he had “jobs available.”

The question here is whether the August 1984 incident amounts to a proper offer of employment which would comport with the Board’s Order and toll backpay. Further, the question is whether, in his response to Di Geronimo’s offer, Walters removed himself from the labor market for reasons other than Respondent’s discrimination. I believe that the answer to both questions is yes. I believe that the offer was a proper referral and indicated an end to Respondent’s discrimination against Walters. I also believe that Walters, in his response, attached a condition to his acceptance of the offer which was not reasonable in the circumstances and evinced a desire not to return to the labor market—Respondent’s work unit—for reasons unrelated to the discrimination against him.

¹⁰For the same reasons, Respondent is liable for Walters’ moving expenses. See *Best Glass*, supra. Contrary to Respondent, Walters did not need to document his moving expenses any more than he did at the hearing. Walters’ uncontradicted testimony about his moving expenses was supported by his income tax return which set forth his moving expenses. The General Counsel, in his brief, has decreased the amount sought for moving expenses by \$1400.06 from the amount set forth in the specification because he inadvertently had not deducted them from interim earnings. Since this alteration actually benefits Respondent, I shall amend the specification in this respect.

Walters indicated that he would not move back to Pennsylvania from Florida to work for his old employer. He also said that he would not move back to work for any employer unless he had a guarantee of 1 or 2 years of work. In view of the nature of the construction industry and Respondent’s work unit in particular, especially at this time, in mid-1984, it was not within Respondent’s power to guarantee Walters anything but nondiscriminatory referrals. This is what Di Geronimo did and I believe his offer was genuine. Respondent is not an employer; it only has the authority to refer or make jobs available to employees if jobs are made available to it. Di Geronimo was making jobs available to Walters. I reject Walters’ subjective, conclusory, and self-serving testimony that the offer was token or made in an off-hand manner. Walters did not refer to any objective circumstances from which he or anyone else could conclude that the offer was not genuine. He did not take Di Geronimo up on the offer, but rather attached conditions to his acceptance of it. There is absolutely no evidence that Di Geronimo meant simply to inquire as to Walters’ availability for employment. He went further and offered specific work—as much as a union in the construction industry with a nonexclusive referral arrangement could possibly offer.

Indeed, Di Geronimo’s offer of work was the oral equivalent of the letters sent by Respondent to some discriminatees which the General Counsel concedes terminated backpay liability. Thus, in September 1985, Robert Fisher was told, “[p]lease be informed that we have work available for you” and was asked to contact a field representative by telephone. This was deemed to cut off Respondent’s backpay liability to Fisher. It is, of course, clear that an offer of reinstatement need not be in writing and Di Geronimo’s face-to-face offer was more precise than the letter offer to Fisher and at least one other offer found by the Board to toll backpay. See *Hickory’s Best*, 267 NLRB 1274, 1275–1276 (1983) (oral offer of reinstatement to Sanchez was valid even though transmitted through an unemployment compensation interviewer).

In these circumstances, I find that Respondent’s liability for backpay for Walters ceased as of August 22, 1984. I shall therefore credit Walters with only 58 percent of the amounts set forth in the third quarter of 1984 for backpay and pension contributions. This reflects the portion of the quarter wherein backpay was owed prior to the point when Walters turned down Di Geronimo’s offer.

On these findings of fact and conclusions of law and on the entire record,¹¹ I issue the following recommended¹²

ORDER

The Respondent, Heavy and Highway Construction Workers Local Union No. 158, its officers, agents, and representative, shall make whole the named discriminatees by payment to them of the amounts set forth below opposite their names. Respondent shall pay net backpay to each discriminatee, less

¹¹I have included as an appendix to this decision pertinent quarterly figures for each discriminatee which reflect amounts owed to each in accordance with my findings and conclusions. The appendix is based on exhibits received in evidence in this case.

¹²If 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.

tax withholdings required by Federal and state law. Respondent shall pay pension fund contributions on behalf of each discriminatee to the Heavy and Highway Construction Workers, Local 158 Pension Fund with appropriate credit to the account of the discriminatee. Respondent shall also pay \$63.30 to Frank Rehm for reimbursement of dependent medical expenses and \$1,162.17 to Garland Walters for reimbursement of necessary moving expenses. Interest shall be payable on all amounts due until such time as they are paid.¹³

Claimant	Net Backpay	Pension Contribution	Other
Robert Fisher	\$2,638.53	\$1,507.31	
George Miller	12,222.01	288.22	
Frank Rehm	7,770.76	6,368.26	\$63.30
Gerald Rockwell	2,122.94	845.83	
Donald Stamets	13,189.75	824.20	
Garland Walters	30,588.95	1,706.34	1,162.17
Kenneth Wiest	11,723.09	677.20	

APPENDIX

Yr./Qtr.	Adjusted Hours	Gross Backpay	Interim Earnings	Net Backpay	Pension Contribution
Robert Fischer					
Backpay Period = 3/24/1981-9/14/1985					
<i>1981</i>					
1st	16.27	\$148.20	\$114.23	\$33.97	\$4.07
2d	211.49	2,011.65	1,485.00	526.65	59.22
3d	211.49	2,053.52	1,485.00	568.52	63.45
4th	211.49	2,053.52	1,485.00	568.52	63.45
<i>1982</i>					
1st	211.49	2,053.52	1,903.00	150.52	63.45
2d	211.49	2,138.54	1,903.00	235.54	69.79
3d	211.49	2,180.41	1,903.00	277.41	74.02
4th	211.49	2,180.41	1,903.00	277.41	74.02
<i>1983</i>					
1st	156.98				54.94
2d	156.98				59.65
3d	156.98				62.79
4th	156.98				62.79
<i>1984</i>					
1st	250.82				100.33
2d	250.82				107.85
3d	250.82				112.87
4th	250.82				112.87
<i>1985</i>					
1st	267.38				120.32
2d	267.38				128.34
3d	226.24				113.12
Total Backpay				\$2,638.53	
Total Pension Contribution					\$1,507.31

Yr./Qtr.	Adjusted Hours	Pension Contribution	Gross Backpay	Interim Earnings	Net Backpay	Medical Expenses
Frank Rehm						
Backpay Period = 3/24/81-5/22/89						
<i>1981</i>						
1st	28.53	\$7.13	\$259.89	\$165.63	\$94.26	
2d	370.87	103.84	3,527.67		3,527.67	
3d	370.87	111.26	3,601.10	1,693.45	1,907.65	

¹³ Interest shall be computed in accordance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Interest on amounts accrued prior to January

1, 1987 shall be computed in accordance with *Florida Steel Corp.*, 231 NLRB 651 (1977).

<i>Yr./Qtr.</i>	<i>Adjusted Hours</i>	<i>Pension Contribution</i>	<i>Gross Backpay</i>	<i>Interim Earnings</i>	<i>Net Backpay</i>	<i>Medical Expenses</i>
4th	370.87	111.26	3,601.10	2,781.10	820.00	
<i>1982</i>						
1st	370.87	111.26				
2d	370.87	122.39	3,750.19	3,213.66	536.53	\$10.00
3d	370.87	129.80	3,823.62	3,374.65	448.97	53.30
4th	370.87	129.80	3,823.62	3,387.93	435.69	
<i>1983</i>						
1st	275.28	96.35				
2d	275.28	104.60				
3d	275.28	110.11				
4th	275.28	110.11				
<i>1984</i>						
1st	439.84	175.93				
2d	439.84	189.13				
3d	439.84	197.93				
4th	439.84	197.93				
<i>1985</i>						
1st	468.88	210.99				
2d	468.88	225.06				
3d	468.88	234.44				
4th	468.88	234.44				
<i>1986</i>						
1st	486.42	243.21				
2d	486.42	243.21				
3d	486.42	243.21				
4th	486.42	243.21				
<i>1987</i>						
1st	462.22	231.11				
2d	462.22	231.11				
3d	462.22	231.11				
4th	462.22	277.33				
<i>1988</i>						
1st	559.63	363.76				
2d	559.63	363.76				
3d	559.63	391.74				
4th	559.63	391.74				
Total Backpay & Expenses					\$7,770.76	\$63.30
Total Pension Contribution		\$6,368.26				

<i>Yr./Qtr.</i>	<i>Adjusted Hrs.</i>	<i>Gross Backpay</i>	<i>Interim Earnings</i>	<i>Net Backpay</i>	<i>Actual Pension Hrs. Credited</i>	<i>Shortage in Pension Hrs.</i>	<i>Pension Contribut.</i>
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George Miller
Backpay Period = 3/24/81-4/9/84

<i>1981</i>							
1st	15.33	\$139.61		\$139.61	15.23	\$3.83	
2d	199.23	1,895.03		1,895.03	195.33	3.89	1.09
3d	199.23				195.33	3.89	1.17
4th	199.23				195.33	3.89	1.17

<i>Yr./Qtr.</i>	<i>Adjusted Hrs.</i>	<i>Gross Backpay</i>	<i>Interim Earnings</i>	<i>Net Backpay</i>	<i>Actual Pension Hrs. Credited</i>	<i>Shortage in Pension Hrs.</i>	<i>Pension Contribut.</i>
<i>1982</i>							
1st	199.23	1,934.47		1,934.47	56.00	143.23	42.97
2d	199.23	2,014.56	\$416.20	1,598.36	56.00	143.23	47.27
3d	199.23	2,054.01	1,542.39	511.62	56.00	143.23	50.13
4th	199.23	2,054.01	670.15	1,383.86	56.00	143.23	50.13
<i>1983</i>							
1st	147.88	1,524.59		1,524.59	88.75	59.13	20.70
2d	147.88	1,524.59	1,524.59		88.75	59.13	22.47
3d	147.88				88.75	59.13	23.65
4th	147.88	1,524.59	964.76	559.83	88.75	59.13	23.65
<i>1984</i>							
1st	236.28	2,436.00	1,374.88	1,061.12			
2d	18.17	194.68	105.76	88.92			
Total Backpay				\$12,222.01			
Total Pension Contribution					\$288.22		

<i>Yr./Qtr.</i>	<i>Adjusted Hours</i>	<i>Pension Contribution</i>	<i>Gross Backpay</i>	<i>Interim Earnings</i>	<i>Net Backpay</i>
Gerald Rockwell					
Backpay Period = 3/24/81-8/22/86					
<i>1981</i>					
1st	6.84	\$1.71	\$62.29		\$62.29
2d	88.89	24.89			
3d	88.89	26.67	863.07	\$270.00	593.07
4th	88.89	26.67	863.07	849.52	13.55
<i>1982</i>					
1st	88.89	26.67	863.07		863.07
2d	88.89	29.33	898.81	307.85	590.96
3d	88.89	31.11			
4th	88.89	31.11			
<i>1983</i>					
1st	65.98	23.09			
2d	65.98	25.07			
3d	65.98	26.39			
4th	65.98	26.39			
<i>1984</i>					
1st	105.42	42.17			
2d	105.42	45.33			
3d	105.42	47.44			
4th	105.42	47.44			
<i>1985</i>					
1st	112.38	50.57			
2d	112.38	53.94			
3d	112.38	56.19			
4th	112.38	56.19			
<i>1986</i>					
1st	116.58	58.29			
2d	116.58	58.29			
3d	61.82	30.91			

<i>Yr./Qtr.</i>	<i>Adjusted Hours</i>	<i>Pension Con-tribution</i>	<i>Gross Backpay</i>	<i>Interim Earnings</i>	<i>Net Backpay</i>
Total Backpay					\$2,122.94
Total Pension Contribu- tion		\$845.83			

<i>Yr./Qtr.</i>	<i>Adj. Hours</i>	<i>Gross Backpay</i>	<i>Interim Earnings</i>	<i>Net Backpay</i>	<i>Actual Pension Hrs. Cred-ited</i>	<i>Shortage in Pension Hrs.</i>	<i>Pension Contrib.</i>
Donald Stamets							
Backpay Period = 3/24/81-6/4/84							
<i>1981</i>							
1st	20.16					20.16	\$5.04
2d	262.06					262.06	73.38
3d	262.06					262.06	78.62
4th	262.06					262.06	78.62
<i>1982</i>							
1st	262.06	\$2,544.58	\$753.73	\$1,790.85	41	221.06	66.32
2d	262.06	2,649.93	753.73	1,896.20	41	221.06	72.95
3d	262.06	2,701.81	2,712.63		41	221.06	77.37
4th	262.06	2,701.81	753.73	1,948.06	41	221.06	77.37
<i>1983</i>							
1st	194.51	2,005.42	878.85	1,126.57	2	192.51	67.38
2d	194.51	2,005.42	878.85	1,126.57	2	192.51	73.15
3d	194.51	2,005.42	878.85	1,126.57	2	192.51	77.01
4th	194.51	2,005.42	878.85	1,126.57	2	192.51	77.01
<i>1984</i>							
1st	310.79	3,204.27	1,535.36	1,668.91			
2d	239.08	2,560.49	1,181.04	1,379.45			
Total Backpay				\$13,189.75			
Total Pension Contribu- tion							\$824.20

<i>Yr./Qtr.</i>	<i>Adjusted Hours</i>	<i>Gross Backpay</i>	<i>Interim Earnings</i>	<i>Net Backpay</i>	<i>Moving Expenses</i>	<i>Pension Contrib.</i>
Garland Walters						
Backpay Period = 3/24/81-8/22/84						
<i>1981</i>						
1st	28.17	\$256.67		\$256.67		\$7.04
2d	366.27	3,483.94	\$267.36	3,216.58		102.55
3d	366.27	3,556.46		3,556.46		109.88
4th	366.27	3,556.46	2,195.00	1,361.46		109.88
<i>1982</i>						
1st	366.27	3,556.46	2,372.34	1,184.12		109.88
2d	366.27					120.87
3d	366.27	3,776.22	1,901.25	1,874.97		128.19
4th	366.27	3,776.22	633.75	3,142.47		128.19
<i>1983</i>						
1st	271.86	2,802.90		2,802.90		95.15

<i>Yr./Qtr.</i>	<i>Adjusted Hours</i>	<i>Gross Backpay</i>	<i>Interim Earnings</i>	<i>Net Backpay</i>	<i>Moving Expenses</i>	<i>Pension Contrib.</i>
2d	271.86	2,802.90	138.77	2,664.13		103.31
3d	271.86	2,802.90	97.15	2,705.75	\$97.15	108.75
4th	271.86	2,802.90	1,494.75	1,308.15	1,065.02	108.75
<i>1984</i>						
1st	434.38	4,478.48	808.25	3,670.23		173.75
2d	434.38	4,653.11	2,884.00	1,769.10		186.78
3d	434.38	4,739.11	2,884.00	*1,075.96		*113.37
Total Backpay & Expenses				\$30,588.95	\$1,162.17	
Total Pension Contribution						\$1,706.34

*This represents 58% of third quarter figures.

<i>Yr./Qtr.</i>	<i>Adjusted Hours</i>	<i>Gross Backpay</i>	<i>Interim Earnings</i>	<i>Net Backpay</i>	<i>Pension Contribution</i>
Kenneth Wiest					
Backpay Period = 3/24/81-9/13/85					
<i>1981</i>					
1st	7.31	\$66.58	\$26.58	\$40.00	\$1.83
2d	95.02	903.78	345.50	558.28	26.60
3d	95.02	922.60	345.50	577.10	28.50
4th	95.02	922.60	345.50	577.10	28.50
<i>1982</i>					
1st	95.02	922.60	756.63	165.97	28.50
2d	95.02	960.79	756.63	204.16	31.35
3d	95.02	979.60	756.63	222.97	33.26
4th	95.02	979.60	756.63	222.97	33.26
<i>1983</i>					
1st	70.53	727.11	437.06	290.05	24.68
2d	70.53	727.11	437.06	290.05	26.80
3d	70.53	727.11	437.06	290.05	28.21
4th	70.53	727.11	437.06	290.05	28.21
<i>1984</i>					
1st	112.69	1,161.78	170.44	991.34	45.07
2d	112.69	1,207.08	170.44	1,036.64	48.45
3d	112.69	1,229.39	170.44	1,058.95	50.71
4th	112.69	1,229.39	170.44	1,058.95	50.71
<i>1985</i>					
1st	120.13	1,310.56		1,310.56	54.06
2d	120.13	1,362.88		1,362.88	57.66
3d	101.64	1,174.99		1,174.99	50.82
Total Backpay				\$11,723.09	
Total Pension Contribution					\$677.20