

Urban Laboratories, Incorporated and Hotel and Restaurant Employees and Bartenders Union of San Diego Local 30, AFL-CIO

Gerald Burke, Lemont Combs, Jr., and Carl J. Brown, Parties Charged with Derivative Liability and Urban Laboratories, Inc., and Gerald G. Burke and Lemont Combs, Jr. and Carl J. Brown, Parties Charged with Derivative Liability and Carolyn Ramseur and National Maritime Union of America, AFL-CIO, ITPE Division and Jacqueline C. Williams and Esperanza Rodriguez. Cases 19-CA-20948, 19-CA-20949, (formerly 21-CA-18910, 21-CA-19213), 19-CA-20950 (formerly 21-CA-25279; formerly 1-CA-14531), 19-CA-20951 (formerly 21-CA-25280; formerly 1-CA-14554), 19-CA-20952 (formerly 21-CA-25281; formerly 1-CA-14587), and 19-CA-20953 (formerly 21-CA-25282; formerly 1-CA-14588)

September 16, 1992

SECOND SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

On February 14, 1992, Administrative Law Judge James M. Kennedy issued the attached decision. Respondent Gerald G. Burke, a party charged with derivative liability, filed exceptions and a supporting brief. ITPE Division of District Number 1, MEBA/NMU, AFL-CIO (successor to the National Maritime Union, ITPE Division), one of the Charging Parties, filed a brief in opposition.¹ Respondent Burke filed a response to the Charging Party's brief.²

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the second supplemental decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,³ and conclusions as modified and to adopt his recommended Order.

¹In its answering brief, the Charging Party requested attorney's fees based on *Tiidee Products*, 194 NLRB 1234 (1972), which provides for reimbursement of certain litigation costs when a party engages in frivolous litigation. We do not find that an award of attorney's fees would be appropriate under that standard in this case. See generally *Heck's, Inc.*, 215 NLRB 765 (1974).

²In his response, Respondent Burke alleges that the Charging Party's brief is based "on its counsel's racial prejudice and his personal vendetta." We have carefully examined the brief and the entire record and find no basis to support this allegation.

³Respondent Burke 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), enf. 188

The judge found that Respondent Urban Laboratories, Incorporated is liable for the total amount of backpay due the discriminatees, as set forth in the compliance specifications. There is no exception to this finding, and we therefore adopt it.

The judge further found that Respondent Gerald G. Burke is personally liable for the full backpay amount. In his exceptions, Respondent Burke argues, inter alia, that he is insulated from liability because at all relevant times he was acting as an officer of a viable corporation, Respondent Urban Laboratories. We disagree. As discussed below, the record supports the judge's critical finding that beginning in January 1980 Respondent Urban Laboratories effectively ceased to exist, i.e., "it was only a shell and a front for [Respondent Burke's] real [business]." We further find, for the reasons set forth below, that Respondent Burke's "real business" operated as an alter ego of the defunct corporation. On this basis, we conclude that Respondent Burke is personally liable for the backpay due, and we find it unnecessary to rely on the alternative theories of liability set forth in the judge's decision.⁴

Respondent Urban Laboratories was incorporated in 1977 for the purpose of bidding on mess and dining contracts at various military posts throughout the United States. When it obtained a contract, Respondent Urban Laboratories would take over an existing mess hall and operate it. Respondent Burke was the president of Respondent Urban Laboratories. Initially, he was one of three equal stockholders, but the stockholders agreed that he would become the majority stockholder because of his "services in terms of putting the corporation together."

Commencing in 1978, Respondent Urban Laboratories violated the Act in its relations with employees at a Groton, Connecticut facility.⁵ In 1980, Respondent Urban Laboratories again violated the Act in its relations with employees at a San Diego, California facility.⁶

Respondent Urban Laboratories is now defunct and unable to remedy the unfair labor practices it committed. The question before us is whether Respondent

F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

Additionally, Respondent Burke asserts that the judge's decision is arbitrary and biased. After a careful examination of the entire record, we are satisfied that this allegation is without merit.

⁴Although the General Counsel did not use the term "alter ego," we find that he argued this theory of liability both in his compliance specification and his brief to the judge when he claimed that the Respondent corporation effectively dissolved and that Respondent Burke carried on the business.

⁵*Urban Laboratories*, 246 NLRB 590 (1979), enf. (Nos. 80-7095 and 80-7164) (unpublished) (9th Cir. Jan. 13, 1981).

⁶*Urban Laboratories*, 254 NLRB 515 (1981), enf. (No. 81-7328) (unpublished) (9th Cir. June 25, 1981).

Burke should be held individually liable for the corporation's backpay obligations.

The following relevant principles were recently set forth by the Board in *Greater Kansas City Roofing*, 305 NLRB 720 (1991), and quoted with approval by the Ninth Circuit in *NLRB v. O'Neill*, 965 F.2d 1522, 1531 (1992):

Section 10(c) of the Act empowers the Board with broad authority to fashion appropriate remedies to meet the needs of a particular situation so that "the victims of discrimination may be treated fairly." *Phelps Dodge Corp. v. NLRB*, 313 U.S. 177 (1941). . . . When the incentive value of limited liability to corporations and their owners is outweighed by the competing value of basic fairness to parties dealing with a corporation, the Board should look past that corporation's formal existence and hold controlling individuals liable for "corporate" obligations.

Also pertinent to the instant case is the Fourth Circuit's observation that "in applying the . . . 'alter ego' doctrine, the courts are concerned with reality and not form." *DeWitt Truck Brokers v. W. Ray Flemming Fruit Co.*, 540 F.2d 681, 685 (4th Cir. 1976).

Here, Respondent Urban Laboratories may have continued in existence in form after 1979,⁷ but the reality is that on December 27, 1979, the stockholders agreed to dissolve it and liquidate its assets.⁸ This stockholders' agreement provided that all corporate stock would be retired. After repayment of loans and other obligations, the corporate assets, including 10 military contracts, were to be divided between the two principal stockholders, Respondents Gerald G. Burke and Lemont Combs Jr.⁹

Although the stockholders' agreement provided that the corporation would be dissolved no later than Sep-

tember 30, 1980, the judge found that "the corporation was actually dissolved almost immediately after the execution" of the stockholders' agreement. The record supports that finding. Thus, Respondent Combs testified that shortly after the stockholders' agreement was signed, no funds remained in the corporate bank account. In addition, at the hearing Respondent Burke failed to produce any corporate records showing that Respondent Urban Laboratories continued in existence.¹⁰ Burke's and Combs' conduct subsequent to their signing of the stockholders' agreement further supports a finding that the corporation was effectively dissolved in December 1979: they divided the 10 military contracts between themselves and they each formed a new company in an effort to take the contracts over from Respondent Urban Laboratories. A January 1980 addendum to the stockholders' agreement specifically stated that "it is the further and consistent intention of the parties to express and to establish the fact that there is no continuing business relationship between Combs and Burke."

In light of the foregoing, we find, in agreement with the judge, that Respondent Urban Laboratories was effectively dissolved at the end of 1979. Of course, once the corporate entity effectively ceased to exist, so, too, did the protection from personal liability it provided its corporate officers, such as Respondent Burke.

Shortly after the execution of the stockholders' agreement, Respondent Burke's and Combs' plan to substitute newly formed companies to perform the mess contracts encountered what the judge termed a "serious snag": the military contracting officers refused to recognize the new entities. The judge found that beginning in January 1980 these individual Respondents attempted "to get around the Navy's opposition" by "ma[king] it appear as if Respondent corporation was still operating," whereas "it had actually been dissolved." The judge further found that Respondent Urban Laboratories' bank accounts were used "as a conduit to receive money from the government." In sum, the judge found, and we agree, that during this period the Respondent corporation was "only a shell and a front for [Burke's and Combs'] real businesses."

In April 1980, Respondent Burke took over the San Diego, California contract and ousted Combs.¹¹ By letter dated April 14, 1980, Respondent Burke advised the disbursing officer for the Naval facility in San

⁷In support of his exceptions, Respondent Burke filed certain "supplemental information," including an alleged copy of the Certificate of Administrative Dissolution of Urban Laboratories, Inc., effective December 30, 1983. This document was not introduced into evidence at the hearing. Respondent Burke also submitted for the first time a 1981 affidavit of Robert C. Halliburton. The Charging Party has moved to strike all references to the alleged 1983 dissolution of Respondent Urban Laboratories, the affidavit, and other factual matters that were not first presented to the judge. The motion is granted. See *Weldment Corp.*, 275 NLRB 1432 fn. 1 (1985).

⁸The agreement stated that as of December 26, 1979, the corporation had in its bank account approximately \$110,000 and, in addition, indicated that the accounts receivable exceeded anticipated liabilities through December 31, 1979, by more than \$50,000.

⁹On the day of the hearing, Respondent Combs and the General Counsel entered into a partial settlement agreement which provided for payment of \$10,000 to be apportioned among the discriminatees. The settlement further provided that the payment constituted Respondent Combs' entire liability but that the potential liability of other Respondents was not affected. At the Board's direction, the judge approved the settlement. See *Urban Laboratories*, 305 NLRB 987 (1991).

¹⁰We note that the judge totally discredited Respondent Burke's claim that the corporate records disappeared as a result of two alleged burglaries.

¹¹In sec. II,B, par. 20, the judge stated that Lemont Combs testified that the Navy contracting officer contacted Burke and asked him to take over the contract. We note that it was Burke, whose testimony the judge has generally discredited, rather than Combs, who testified that the Navy contracting officer asked Burke to take over the contract.

Diego that he was the only individual authorized to pick up contract reimbursement checks for the San Diego contract. The letter was on Urban Laboratories stationery and was signed by Burke as president. The unfair labor practices committed at the San Diego facility occurred after Burke began running the operation. Burke also personally took over the remaining military contracts and operated them in the name of the defunct corporation.

On these facts, we have little difficulty in concluding that by virtue of his 1980 operations Respondent Burke is the alter ego of Respondent Urban Laboratories. Notwithstanding the effective dissolution of the corporation, Respondent Burke continued to control and manage the performance of the same military contracts at the same facilities for the same patrons in the same apparent manner. See *Crawford Door Sales Co.*, 226 NLRB 1144 (1976) (test of alter ego status is whether there is "substantially identical management, business purpose, operation, equipment, customers, and supervision, as well as ownership"). As an alter ego, Respondent Burke is individually responsible for the obligations of Respondent Urban Laboratories. *IMCO/International Measurement Co.*, 304 NLRB 738 (1991). Accordingly, we agree with the judge that Respondent Burke is jointly and severally liable with Respondent Urban Laboratories for remedying the unfair labor practices found in the court-enforced Board decisions.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Urban Laboratories, Incorporated, Tacoma, Washington, its officers, agents, successors, and assigns, and Gerald G. Burke, an individual, jointly and severally, shall pay the amounts as prescribed in the judge's second supplemental decision.

Daniel R. Sanders, for the General Counsel.

John J. O'Connell, of Tacoma, Washington, for Derivative Respondent Lemont Combs Jr.

Gerald G. Burke, of Tacoma, Washington, Derivative Respondent, pro se.

Carl J. Brown, of Bellevue, Washington, Derivative Respondent, pro se.

Sidney H. Kalban (Phillips, Cappiello, Kalban, Hoffman & Katz), of New York, New York, for National Maritime Union of America, AFL-CIO, ITPE Division.

SECOND SUPPLEMENTAL DECISION

JAMES M. KENNEDY, Administrative Law Judge. This compliance matter was heard before me in Seattle, Washington, upon consolidated backpay specifications issued by the Regional Directors for Regions 1 and 21 of the National Labor Relations Board on April 30 and May 13, 1986, respectively. In addition to seeking to liquidate the backpay, the trust fund contributions, and the back union dues

amounts required to remedy the unfair labor practices, the specifications allege that three individuals, Gerald G. Burke, Lemont Combs Jr., and Carl J. Brown are derivatively liable, jointly, and severally, for the amounts due.

The first case arose at the U.S. Navy Submarine Base in Groton, Connecticut, and resulted in a Board Decision and Order dated November 28, 1979. *Urban Laboratories*, 246 NLRB 590. On January 13, 1981, that order was enforced by an order of the United States Court of Appeals for the Ninth Circuit. The second case originated in San Diego, California. The Board issued its decision and order in that matter on January 14, 1981. *Urban Laboratories*, 254 NLRB 515. The Ninth Circuit enforced that order on May 22, 1981.

Respondent Urban Laboratories did not file answers to the backpay specifications, apparently because well before 1986 it had become defunct.¹ However, the Derivative Respondents did file answers. Thereafter, the matters having been consolidated in Region 21, the General Counsel filed a motion to strike portions of the answers and a Motion for Partial Summary Judgment. On July 13, 1989, the Board, in a Supplemental Decision, denied those motions and directed that a hearing be held on the issues of the monetary amounts due pursuant to its earlier orders and whether Respondents Burke, Combs, and Brown were derivatively liable. On August 23, 1990, the matter having been transferred to Region 19, the director for that Region commenced to schedule the hearing directed by the Board. The hearing was held on April 24, 1991.

Immediately prior to the hearing, Respondent Combs and counsel for the director reached a settlement in principle. The agreement was not reduced to writing until May 22, 1991, whereupon it was submitted for my approval. I initially declined to approve it, but upon a directive of the Board (*Urban Laboratories*, 305 NLRB 987 (1991)), did so on January 9, 1992. The approval of the Combs settlement agreement effectively removes Combs from the case and no supplemental order regarding him is now being sought or contemplated. The issues remaining for resolution are the liquidation of the amounts due and whether Burke and Brown are individually liable for any or all of that sum.

I. THE MONETARY AMOUNTS

The Groton backpay specification alleges that there are three different types of loss to Respondent's Groton employees. The first is the unlawful deduction of certain insurance premiums from employee pay. The second is the loss of half an hour's pay per day for a large number of Groton employees. The third is reimbursement to employees Jacqueline C. Williams, Carolyn Ramseur, and Esperanza Rodriguez for the discriminatory loss of certain pay. These three employees had been placed on unpaid "on call" status for a period; additionally, Ramseur's work schedule was wrongfully reduced by an additional half hour for a period of slightly over 5 months.

With respect to calculating the amounts due, the then compliance officer for Region 1, Charles McElroy, testified that he was the individual who drafted the Groton backpay specification and did some of the calculations; he also supervised

¹As noted, *infra*, Respondent corporation did not even file an answer to the San Diego complaint issued in August 1980. There is reason to think the corporation was defunct even before that date.

others who performed the remaining calculations. McElroy testified that based upon his investigation he concluded that the backpay period for the Groton employees was January 1, 1978, to December 27, 1979. Insofar as the actual calculations are concerned, he testified they were relatively straightforward, since the records no longer exist. With respect to the unlawful deduction of insurance premiums, McElroy simply calculated the deduction at 16 cents per hour on a straight-time basis for each quarter of the year during the backpay period. He observed that the Urban Laboratories work force, for the most part, was divided into three categories: "top" (i.e., 8 hours per day), "split" (6 hours per day) and "part-time" (3 hours per day). Placing each employee in the appropriate category, McElroy simply multiplied the number of hours they would have worked per quarter during the backpay period by 16 cents.

The lost half hour was treated similarly. Here, however, the so-called part-time employees did not lose that period of employment. Accordingly, the only persons entitled to backpay under this theory were the top and split employees. According to McElroy, there were 519 workdays during the backpay period. He noted that an hourly wage increase, granted on October 1, 1978, was factored into the calculations at that point. Between January 1 and October 1, 1978, he calculated that each employee who lost the half hour per day was entitled to an additional \$1.94 for each of the days he or she probably worked. The rate was increased to \$2.25 per half hour from October 1, 1978, through December 27, 1979. This rate was applied by quarters; moreover, he took into consideration such questions as whether or not the employee was hired or terminated during the backpay period. The last category of calculation, the named individuals, was also straightforward. Williams and Ramseur lost 5 days of work while Rodriguez only lost 3 because she had quit. McElroy simply calculated the actual lost pay for those days (less the half hour already accounted for in the previous category). All the calculations are set forth in Exhibit A attached to the Groton backpay specification. It covers some 96 employees.²

With respect to the San Diego specification, the Board found in the underlying unfair labor practice proceeding that Respondent had failed to comply with certain terms of the extant collective-bargaining contract it had with the Hotel and Restaurant Employees and Bartenders Union of San Diego, Local 30, AFL-CIO. That contract required Respondent, under a dues-checkoff arrangement, to deduct from the employees' pay certain monthly union dues and to remit them to that Union. The contract also required Respondent to pay certain moneys to the San Diego Bartenders and Culinary Workers Insurance and Pension Trust Fund for each of the employees covered by the contract. As a remedy, the Board has ordered Respondent to remit the dues to the Union and to make the appropriate payments to the trust fund.

²It should be observed here that during the hearing counsel for the director corrected Exh. A upon observing that employee Iva Dantzler's name appears twice. The first time it is incorrectly spelled as "Ivan" Dantzler. For that reason counsel for the director has stricken that paragraph, leaving the second, correct version. Dantzler is alleged to be due \$1771.60. Since that amount appears improperly twice, I have deducted it from the total amount due under the Groton specification.

Kevin Steen, the compliance official from Region 21, testified that he drafted the specification and did the calculations. He observed that the period of dues delinquency was the months of July, August and September 1980. Since the dues were \$10 per employee per month and since there were 66 employees, he simply multiplied those two figures to obtain the monthly dues amount of \$660. As 3 months were involved, he multiplied \$660 by three for a total of \$1980. With respect to the trust fund payments, Steen observed that the delinquent months were March, April, May, June, July, August, and September 1980 and that the monthly rate for each employee was \$43.25. He simply multiplied 66 employees times \$43.25 to obtain a monthly amount of \$2854.50. Since 7 months were involved, he multiplied that figure by seven for a total of \$19,981.50.

Both compliance officials were severely handicapped by the fact that Respondent's payroll and business records were not available. There is some evidence in the record that Respondent's headquarters in Tacoma, Washington, may have been burglarized in August 1979. Its former president, Gerald G. Burke, asserts that there was another burglary as well. In both cases, he says he believes the bank and payroll records were stolen. I find that explanation for the missing records to be most unimpressive. Burglars do not twice steal paperwork having no sale value. As will be seen, Burke has his own motives to declare the books and records nonexistent.

In any event it is clear that the compliance officials responsible for determining the amounts due under the Board orders were operating without perfectly accurate records, although they did have some employee supplied exemplars. Accordingly, each was forced to make estimates. The San Diego figures would appear to be the most likely to be accurate since they were done on a monthly basis. The Groton figures are subject to a larger error factor because the time records were not available and the actual hours worked by each of the employees is no longer known. However, McElroy and his subordinates appear to have done the best they could in the circumstances.

None of the Respondents has actually challenged the compliance officials' methods or mathematics. Burke contends he is unable to do so because he, like the compliance officials, has no access to the underlying records. He has merely and cursorily questioned whether the top employees at Groton would actually have worked 40-hour weeks; even so, he has offered no substitute method for calculation.

It is clear that both the Groton and San Diego backpay specifications are reasonable estimates of the monetary amounts due. Even if the actual timecards or time records had been available, there is no reason to think that the current estimates would be greatly different from those which might have been gleaned from the time records themselves. It has long been held that the backpay specifications need not be perfect; only that they be reasonable approximations. *NLRB v. Brown & Root*, 311 F.2d 447, 452 (8th Cir. 1963); *NLRB v. Iron Workers Local 378*, 532 F.2d 1241, 1242 (9th Cir. 1976). I can find nothing which the compliance officials have done which would warrant the conclusion that these specifications are unreasonable. Indeed, given the difficulties presented, the passage of time and the lost records, their work seems to be remarkably able.

Moreover, Board Rule 102.56(b)³ requires any respondent who wishes to challenge a backpay calculation to explain in its answer why the compliance official's calculations or formulae are unreasonable and must also propose an alternative. No Respondent has taken either step. I conclude, therefore, that the Groton (as corrected) and San Diego backpay specifications offer an appropriate means of determining the total amounts of money due the discriminatees in both those locations. I recommend that the Board adopt them in their entirety. Since no calculation has been challenged, it will serve no purpose to reiterate what readily appears in appendix A of the Groton backpay specification and in paragraphs 8 and 9 of the San Diego specification. The totals, less interest, are as follows: Groton: \$61,527.49; San Diego: union dues: \$1980; trust fund payments: \$19,981.50. The total is \$83,488.99.

II. THE DERIVATIVE LIABILITY OF CERTAIN INDIVIDUALS

A. Contentions

Both backpay specifications allege that Gerald G. Burke, Lemont Combs Jr., and Carl J. Brown are derivatively liable, on a joint and several basis, for the monetary sums due under the specifications. As previously noted, Combs has separately settled the case against him. Any remaining respondent is entitled to an offset of the amount which Combs has actually paid under the terms of his settlement. Furthermore, there is no doubt that the corporate respondent has always been liable for the entire amount. The difficult questions are presented by the cases of Burke and Brown.

Both Burke and Brown appeared pro se in this matter. Subsequent to the demise of the corporate Respondent, Burke went to law school and eventually became admitted to the practice of law in the State of Washington. He has filed answers to both specifications and during the hearing filed a motion to dismiss based on the statute of limitations, Section 10(b) of the Act. After the hearing closed he filed another motion to dismiss, a brief in support of the motion, and a posthearing brief. Burke now asserts that the case against him should be dismissed not only on 10(b) grounds, but also on the business judgment rule and the equitable doctrine of laches, i.e., inordinate delay.

Brown, a layman, filed an answer to the Groton backpay specification which I have read and deem equally applicable to the San Diego specification. Among other things, it can be read as a request that the complaint be dismissed as to him on 10(b) grounds. He also asserts that he was essentially a creditor of Respondent corporation and the money he received was only the repayment of a loan.

Both assert that they are not proper parties to the action not having been named until the issuance of the backpay specifications in 1986. Since that postdates the filing of the unfair labor practice charges by 7 years or more, they assert that they cannot be added to the case now. The Board has already held, however, that in derivative liability allegations, Section 10(b) is not a valid defense. *Coast Delivery Services*,

198 NLRB 1026, 1027 (1972); *Southeastern Envelope Co.*, 246 NLRB 423 (1979). That reasoning is based on the public policy that victims of unfair labor practices are entitled to a public remedy and, to the extent that individuals have improperly obtained money from employers who have a duty to remedy unfair labor practices, the money can be sought from them whether or not those individuals were named in the underlying charge or complaint. That is not to say that an individual who obtains money from a convicted corporation must necessarily be found liable for the corporation's wrongdoing, but does mean he cannot assert the statute of limitations as a defense. Other defenses remain available.

One remedy which is not available, however, is that of laches. The reasoning is the same. Public policy requires the vindication of the rights of the employees who have been victimized by an employer committing unfair labor practices. The Supreme Court has held that such equitable defenses are not generally available in these circumstances. *NLRB v. J. H. Rutter-Rex Mfg. Co.*, 396 U.S. 258, 264-265 (1969). Accordingly, the Section 10(b) and laches defenses are rejected as a matter of law and the motion to dismiss on those grounds is denied.

B. The Facts

Both Burke and Brown also interpose factual defenses, including Burke's claim that he, as corporate president, was only acting pursuant to the business judgment rule. That rule generally holds that a corporate officer, acting in his corporate capacity, cannot be held personally liable for the acts he committed as a corporate officer if he was exercising prudent business judgment. It is simply a restatement of the commonly seen rule prohibiting plaintiffs from piercing the corporate veil to reach the personal assets of corporate directors, officers, or shareholders. That, of course, is the norm. See Justice Douglas' observation in *NLRB v. Deena Artware*, 361 U.S. 398, 402-403 (1960), where he said, "The insulation of a stockholder from the debts and obligations of his corporation is the norm, not the exception." Also *Anderson v. Abbott*, 321 U.S. 349, 362 (1944). Thus, Burke is simply defending on the ground that he had done nothing to warrant piercing the corporate veil and he therefore is not personally liable.

The facts, although not in dispute, are in large part nebulous. Some instances involve finger pointing between Burke and Combs. Much of that, in the final analysis, is not particularly relevant to the Board's inquiry or even to Burke's business judgment rule argument. The latter is not applicable because Burke is being pursued for taking corporate assets upon the corporation's dissolution, not because of any unfair labor practice he may have authorized in his capacity as a corporate owner, officer, or director.

In any event, reciting facts which are not in significant dispute, it appears that Respondent Urban Laboratories, Inc., was incorporated in the State of Washington in March 1977 with the specific purpose of bidding on mess and dining contracts at various military posts throughout the United States. Upon obtaining a contract with one of the military branches, Respondent would take over an existing mess hall and operate it pursuant to the agreement.

Respondent's first owners and officers were Burke, Combs, and one Robert Halliburton. According to Burke, he was to be the "majority" stockholder and president. Initially,

³ In pertinent part that rule reads:

[I]f the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

however, all three had equal shares in the firm. Burke served as president, Halliburton as vice president, and Combs as secretary-treasurer. At some point in 1978 Halliburton's interest was terminated. Thereafter it was operated solely by Burke and Combs. It was during 1978 that Halliburton apparently committed the unfair labor practices which were the subject of the Groton case. Charges were filed between May and June 1978 and a complaint issued in July. It resulted in the December 11, 1978 hearing before Administrative Law Judge Elbert D. Gadsden. No one appeared at the hearing on Respondent's behalf. Judge Gadsden rendered his decision on July 6, 1979, and Board affirmed it, as modified, on November 28, 1979.

The unfair labor practices at San Diego did not begin until March 1980. The first charge was filed in April 1980; subsequent charges were filed in June. A consolidated complaint was issued on August 4, 1980, but Respondent did not file an answer. That resulted in the General Counsel's Motion for Summary Judgment which the Board ultimately granted on January 18, 1981. In each case the Board's order was directed at Respondent and "its officers, agents, successors and assigns."⁴

While this litigation was going on, the corporation was coming apart at the seams. In mid-1979, Burke and Combs began a bitter dispute over the percentage of ownership stock, supposedly in return for his services, despite the fact that he was also receiving a salary. Combs became sufficiently angry over Burke's apparent self-dealing that a physical altercation, perhaps involving the brandishing of a firearm, occurred. Burke barred Combs from the premises and lawsuits were commenced against each other.

In the meantime, the corporation was attempting to run the mess contracts at 10 separate military installations throughout the United States. Two of these were the ones at Groton and at San Diego,⁵ although Groton by that time may have been terminated or was winding down.

According to Burke, the contracts were becoming exceedingly difficult to fulfill. He observes that these contracts are labor intensive, in the sense that most of the money used to run the businesses goes for the wages of the mess employees. He says each month the military issued checks to cover those wages and even before the pendency of the dispute between himself and Combs, cash flow problems were common. While it is not clear whether their dispute exacerbated the cash flow difficulty, it is possible that it did. At one point there seems to have been an argument over who should sign what sort of checks; on the other hand it appears from some documentary evidence that several of the contracts were operating at a loss. Burke testified that the way the corporation normally handled cash flow difficulties was to obtain short-term loans from its bank. This required the signatures of both Combs and Burke. When their dispute began, Combs either

would not or could not sign and the bank would no longer lend money to cover temporary shortfalls.

Burke says he then sought out Brown, apparently sometime in mid-1979, and obtained a loan for \$10,000. Brown puts the loans somewhat earlier saying it was "in late 1978 or early 1979" and that the figure was actually \$11,000.⁶ No current paperwork appears to exist describing the nature of the loan, although no one disputes that it occurred.

Brown never participated in the day-to-day operation of the business. Apparently, however, in the late summer of 1979, when things had come to a severe impasse between Burke and Combs, Burke asked Brown if he would join the board of directors. Brown agreed and at some point became the owner of some stock.

The amount of stock Brown held is unknown, as is its value. Whether his ownership of stock was simply to permit Brown to legitimately serve on the board of directors or whether it was considered a pledge to secure the loan is also unknown. No party asked these questions.⁷ What is clear is that the corporate books and records have long since disappeared. The board of directors minutes no longer exist. Burke claims that at some point Brown became secretary to the corporation; Brown said all he ever did was serve as recording secretary for the board of directors during the two or three brief meetings which may have occurred and which Burke apparently dominated. Nor is there any oral evidence regarding what transpired at any of these board meetings.

Also during 1979, at a point not clear in the record, Burke fired Combs from his capacity as director of field operations. Brown credibly denies participating in that decision. Combs' dismissal left Burke in sole charge of the business, with Combs on the outside looking in.

A series of meetings then ensued over the lawsuits, i.e., how to work out an arrangement which would accommodate the two main owners. Combs' lawyer, Ralph H. Baldwin, eventually drafted a settlement agreement in which the two principals were to divide the corporation's assets. Although Baldwin was able to propose language which was satisfactory to both Burke and Combs, he had no access to revenue figures, which were provided solely by Burke. Both Baldwin and Combs say that the figures Burke gave them turned out to be grossly inaccurate.

In any event, on December 27, 1979, the three signed the settlement agreement in which they divided the assets of the corporation using Burke's figures. One of the provisions recognized that Brown owned some of the capital stock of the corporation (but does not recite how much) and was a member of the board of directors. An additional term provided that the corporation would be dissolved no later than September 30, 1980.⁸ They further agreed all corporate stock would be retired and the corporation would transfer to the stockholders all its assets, subject to its liabilities. This was followed by three schedules which described the property, in-

⁴This is standard Board injunctive language and tracks, for the most part, Rule 65(d) of the Federal Rules of Civil Procedure, the rule applying to Federal court injunctions.

⁵The others were located at the Navy's New London (Connecticut) Submarine Base; Bergstrom A.F.B., Texas; Reese A.F.B., Texas; Eglin, A.F.B., Florida; Kirtland A.F.B., New Mexico; Pope A.F.B., South Carolina; Travis A.F.B., California; Santa Cruz Island (California) Naval Base; and the Fort Vancouver (Washington) National Historic Site.

⁶Brown's recollection was understandably vague. The dissolution agreement and probability place the date of the loan in mid- to late-1979 and in the amount of \$10,000.

⁷Brown gave oral testimony only upon Burke's request; much of his evidence consisted, by stipulation, of the adoption of his letter-style answer to the Groton specification.

⁸From all that appears, the corporation was actually dissolved almost immediately after the execution of the settlement agreement, long before the agreement's deadline.

cluding the military contracts, to be distributed to the three individuals.

The provision relating to Brown stated that he would receive \$11,000 in cash at 15-percent interest per annum on the unpaid balance from August 15, 1979, until paid in full. This is where, I find, that Brown recalled the \$11,000 figure. In fact, it represents a \$10,000 loan, plus \$1000 interest. Indeed, it is not clear why the August 15 date was chosen. It may be that recollections are now so faulty that now that no one can recall that was the day the loan was actually made. Or, possibly that was the day Brown obtained the stock; or that he became a member of the board of directors; conceivably it is an arbitrary date. Most probably, it is the date of the loan and I so find.

It is useful to note that the settlement agreement, dated December 27, 1979, occurred about a month after the Board issued its decision and order in the Groton case. It is further useful to note that the settlement agreement made no specific provision whatsoever for compliance with that order, although the "subject to liability" clause may be so read. Even so, it does not discuss outstanding liabilities to employees in any meaningful way.

Instead, the two principal stockholders, Burke and Combs, pursuant to their settlement, proceeded to divide the military contracts between themselves and to attempt to novate themselves or their newly created corporations to take those contracts over from Respondent corporation. Combs got the San Diego contract, among others. However, a serious snag developed.

None of the military contracting officers would recognize the new entities. In Combs's case it was a company called Lemac, and in Burke's situation the company he created was called Urban Enterprises. For a short while, in order to save the contracts, the two made it appear to the military as if Respondent corporation was still operating the business. They used Urban Laboratories bank accounts as a conduit to receive money from the Government. Payroll continued to be issued on Respondent corporation checks, despite the fact that the corporation had been dissolved and all corporate stock retired. This togetherness continued, at San Diego at least, until Combs was ousted altogether in April 1980. Even after that, Burke continued the practice of issuing payroll checks in the now-defunct corporation's name.

Additional difficulties occurred when it became apparent to Combs in early 1980 that the figures used in the settlement agreement to describe the profitability of the contracts which he had taken were woefully inadequate. Instead of showing profitability, they showed severe losses. He had no personal assets to cover them and was about to default on the San Diego contract. Indeed, other contracts elsewhere had already defaulted.

There are two different stories regarding how Burke repositioned himself to run Combs's San Diego contract, but it is clear that he did so. He contends Combs asked him to come back as a "consultant." Combs says that is simply untrue; that the Navy contracting officer contacted Burke and asked him to take over the contract. In any event, on April 14, 1980, utilizing Urban Laboratories, Inc., stationery, Burke, signing himself as president, wrote a letter to the disbursing officer for the Naval facility in San Diego stating that he was the only individual who was authorized to personally pick up contract reimbursement checks for that con-

tract. After that occurred, Combs says he was effectively frozen out of the receipt of any corporation accounts receivable. Later, also utilizing Urban Laboratories' stationery, Burke on two separate occasions, August 13 and October 30, 1980, billed the Navy for wage reimbursement and for the bonus which normally comes at the end of the contract term.⁹ Burke asserts that the bonus is really the only way that any contractor ever makes any money because, until that time, the contracts are essentially a wash between accounts receivable and accounts payable.

It was during this period, after Burke began running San Diego, that the San Diego unfair labor practices occurred. Beginning in April, after Burke seized sole control over its income, Respondent corporation began defaulting on its obligations to the trust, and no trust payments were made for the months of March, April, May, June, July, August, or September. Furthermore, Respondent corporation failed to pay the union dues it had withheld for the months of July, August, and September.

September 30, 1980, was the end of the San Diego contract with the Navy. At that point the contract was awarded to someone else. As noted, the unfair labor practice charges were filed in April and June 1980, and the consolidated complaint issued on August 4, 1980. The Board's Order covering the San Diego operation did not issue until January 18, 1981, and was not enforced by the Ninth Circuit until May 22, 1981.

III. ANALYSIS

Unlike the issues of liquidation of net backpay amounts, proving interim earnings, or challenging the formula or the calculations, the burden of proving the derivative liability of individuals rests with counsel for the Director for he is the party making the assertion. *Senco, Inc.*, 177 NLRB 882, 887 (1969); *Dews Construction*, 246 NLRB 945 (1979); *Sheet Metal Workers Local 13 (Sheet Metal Contractors Assn.)*, 266 NLRB 59 (1983); and *Eldridge Bros. Coal Co.*, 269 NLRB 536 (1984). The question therefore is whether or not counsel for the director has proven that Brown and Burke are derivatively liable at all. I conclude that counsel for the director has failed to meet his burden with respect to Brown, but has done so with respect to Burke.

A. Carl J. Brown

The principal problem with the Regional Director's case with respect to Brown is that there is no evidence demonstrating what Brown's ownership interest in Respondent corporation was. We do know that he lent \$10,000 to that firm, apparently serving as a substitute lender for a bridge loan when the bank would not lend without Combs' signature. At that point Brown was simply an unsecured creditor. By his answer, and by his testimony as well as that of Burke, it is apparent that he did obtain some stock in the corporation. Neither he, Burke, nor anyone seems to know when or how much. We also know that the loan and the stock are not necessarily of congruent value. There is nothing to show that his entire \$10,000 was converted to stock. A common re-

⁹These were not immediately paid because the military authorities demanded reimbursement for what they believed they had been overcharged during the course of the contract. This dispute resulted in some litigation, the results of which are unclear.

quirement of corporate charters is that to be a member of the board of directors, one must hold at least one share of the corporate stock.¹⁰

Thus, Brown's ascension to the board may have been based simply on his ownership of one share, not the number of shares which \$10,000 may have purchased. Of course it is equally true that we do not know, because the corporate records no longer exist, how many shares of stock were actually authorized or issued or what percentage Brown may have acquired, or even whether the corporate bylaws even required directors to own some stock.

Although Brown's testimony seems to be to the contrary, he may have been put on the board of directors simply to assist Burke with his management problems involving Combs. Combs, having a nearly equal amount of stock with Burke, had the undoubted right to sit on the board of directors. That, of course, meant, because of their quarrel, no corporate business could be performed, particularly if a quorum of more than one was required. A third board member was obviously necessary to break deadlocks or constitute a quorum. Another possibility is that the stock which was subscribed to Brown was simply an informal pledge to secure the loan. The difficulty with that observation, though not insurmountable, is that no stock certificates were ever issued to anybody, including Brown. The stock ownership appears to have taken place as a paper transaction in the corporate records. Obviously Brown could not have taken possession of stock as in a true pledge.

I recognize that Burke had control of the corporate records and has a strong motive to cause them to disappear. He did not want to give Combs any information which Combs might use against him; he undoubtedly does not want to provide similar ammunition to the Board, either. That, however, does not help counsel for the director in his assertion that Brown was a significant owner of the Company. The one thing that Brown, Burke, and Combs have all agreed upon was that Brown could get his loan out of the corporation, together with interest, upon the execution of the settlement agreement. Indeed, Brown was not even a signer of two addenda executed a few days later. That treatment leads me to the conclusion that the other two regarded him either as some sort of straw man within the corporation or an outsider such as a creditor. Once the corporation was dissolved, pursuant to the terms of the December 27, 1979 settlement agreement, those two were able to proceed to try to run the contracts which they had obtained. Brown was simply repaid, together with interest. He was well out of the picture by the time the San Diego unfair labor practices were committed.

Furthermore, there is no evidence that Brown even knew of the earlier NLRB action at Groton. There is no proof that he knew of the Groton situation at the time he made his loan. When he finally joined the board of directors in the fall of 1979, it is conceivable that he learned of the Board order; yet there is no actual proof of that fact. He only sat on the

¹⁰ Washington State law does not require stock ownership as a condition for membership on the board of directors. See R.C.W. 23A.08.340 (which was in effect from 1967 through 1989) and its successor, R.C.W. 23B.08.020, adopted in 1989. These statutes both permit corporations to require stock ownership as a condition of becoming a director. Any further citations to Washington statutes herein will refer to the statutes in effect in 1979 and not to the 1989 amendments.

board of directors for a very short time, the fall of 1979 to December 27, 1979, the date of the dissolution agreement. Neither did he take any management role. It therefore seems unlikely that his investment was ever a capital one. The loan had preceded his stock ownership, and it was mere convenience that he became a member of the board of directors at all.

I am therefore unable to conclude that the \$11,000 which Brown obtained pursuant to the terms of the dissolution agreement was anything other than repayment of his original loan. Compare *Ford v. Magee*, 160 F.2d 457 (2d Cir. 1947) (opinion of L. Hand, J.), cert. denied 332 U.S. 759 (1947). There the court held that a shareholder/officer/director had the right to prove that his true interest in the corporation was that of a creditor rather than an owner, and could seek to bar the trustee in bankruptcy from recouping money which the bankrupt estate had conveyed to him.

Here I think counsel for the Director has failed to prove that the loan was not bona fide. That being the case, Brown's acceptance of the repayment was perfectly proper. At that point, it is true that the National Labor Relations Board had issued its decision and order in the Groton matter but its rights and Brown's rights were not really equal. At best they both stood in the shoes of unsecured creditors, yet the Board's claim, unlike Brown's, remained unliquidated. In 1980, had the matter gone through bankruptcy court or Washington State insolvency procedures, which follow bankruptcy rules,¹¹ they would not have been equally preferred for a liquidated sum is generally required. Brown's claim would have had priority. Therefore, it is clear that Brown's acceptance of this money was not a fraud on any judgment creditor.¹²

In any event, counsel for the director has cited no authority which declares the Board order to have precedence over an ordinary creditor. Usually the rule is "first in time is first in right," unless bankruptcy or insolvency proceedings are invoked. The bankruptcy act does permit a reachback by defining as avoidable preferences certain pre-filing conveyances.¹³ No such filing occurred here and Brown was clearly first. Moreover, counsel for the director has not shown that the repayment of the loan to Brown rendered the corporation insolvent. It is entirely likely that this corporation was in financial difficulty; even so, it may have been technically solvent.

In his brief, counsel for the director has referenced several Washington statutes in support of his argument that the payments to both Brown and Burke are recoverable under a

¹¹ See R.C.W. 23A.28.160.

¹² It is not clear to me that the issuance of a Board order clearly places the Board in the shoes of a judgment creditor even if the figures are known. Its order must be enforced by the Court of Appeals before there is an actual right to coerce payment. See Sec. 10(e) of the Act. In that sense, the Board order in the Groton case was not enforced until well after Brown obtained repayment of his loan. Indeed, the amount due remains unliquidated until the conclusion of the instant proceeding. In that circumstance it seems to me that the Board was far too late to compete with Brown. This circumstance could have been avoided by a timely protective order under Sec. 10(j) or (e) of the Act; it appears, however, that no such order was ever sought.

¹³ However, Washington insolvency proceedings do not follow the Federal example with regard to avoidable preferences. See *Post v. Fischer*, 191 Wash. 577, 71 P.2d 659 (1937).

fraudulent conveyance theory. In general, the statutes do not assist him in that regard. The first is R.C.W. 23A.08.420. This statute, by its terms, refers only to the improper payment of dividends which would render the corporation insolvent. Since dividends are not at issue here, the statute cannot apply. The second is R.C.W. 23A.44.100 which holds persons personally liable for the unauthorized use of corporate powers. This statute is directed at persons holding themselves out as the corporation during the corporate formation process. Although having language appeal, contextually it does not apply to persons exercising corporate powers during a windup. The third statute is R.C.W. 23A.08.450(3). This statute would hold directors personally liable for distribution to shareholders during liquidation for those debts which the liquidation procedures had not made provision. However, it makes the directors liable to the corporation, not to third party creditors. Moreover, since there has been no showing that the payment to Brown rendered the corporation insolvent, the fraudulent conveyance argument has no merit. There is no statutory warrant for me to set aside that conveyance in favor of the Board.

Furthermore, nothing in the Board's order itself gives the Board any greater priority over any other bona fide creditor. It only prohibits transfers which are designed to evade its order. The language of Federal Rule 65(d) ordering Respondents, their "officers, agents, successors, and assigns" to take certain affirmative action including payment of backpay, does not operate to create a greater right to be paid debts over and above any other legitimate creditor. It is aimed only at persons involved in the underlying action, not outsiders. *Regal Knitwear v. NLRB*, 324 U.S. 9 (1945). As one district court has said:

The provision relating to "officers, agents, servants, employees, etc.," was inserted merely to make the decree effective *as against the named defendants*, adopting to a great extent, the language of Rule 65(d) . . . Such clauses are a standard provision in injunction decrees and do not impose any liability which would not exist without them. *United States v. Wilhelm Reich Foundation*, 17 F.R.D. 96 at 101 (S.D. Me. 1954), *affd. per curiam sub nom. Baker v. United States*, 221 F.2d 957 (1st Cir. 1955), cert. den. 350 U.S. 842. [Emphasis added.]

Accordingly, I conclude that counsel for the director has failed to prove that the money which Brown obtained was anything other than the innocent repayment of his \$10,000 loan, plus interest. He was, in reality, an outsider—a creditor—and not personally subject to the Board order.¹⁴ By definition, he was not evading it. Brown is therefore not personally liable for the debts of Respondent corporation.

B. *Gerald G. Burke*

Probably the most striking characteristic Burke showed during the hearing was artful glibness. His testimony in every respect was aimed at dodging any responsibility for his own or his company's actions. He blamed Combs for failing

¹⁴Brown's situation contrasts markedly from that of the inside creditor and semisecret successor in *Greater Kansas City Roofing*, 305 NLRB 720 (1991).

to appear at the Groton unfair labor practice hearing; he accused Combs of being incompetent with company money; and he asserts it is the Navy which is entirely responsible for Respondent corporation's demise.

Some of his contentions may be partly true. What is also true, however, is a great deal of evidence which adds up to a showing that Burke has a deceitful side and regularly uses it. The first, and most noteworthy, is his claim that essential corporate records have disappeared. He argues that their disappearance is an event beyond his control and responsibility. Therefore, he says, he should not bear any consequences of that happening—particularly since the office was burglarized.

His testimony and argument must both be rejected. Even if one or more burglaries happened, there is no reason to think the types of records with which the current litigants are concerned were stolen. They were corporate records and bank statements, having no intrinsic value to a thief. Moreover, according to the police report, the first burglary occurred on August 25, 1979, during the height of Burke's quarrel with Combs. Despite the loss of these important papers, Burke did not even make an effort to obtain copies from other sources, such as the bank. Nor is there any evidence that substitute recordkeeping—new minute books, for example—were begun. Moreover, the later records are supposedly not available either. Burke says a second burglary took place, but no police report appears to have been filed. It certainly seems unlikely to me that the exact same kind of records would have been appropriated again.

Later, Burke moved the entire office to another location, but declined to tell Combs where it was. He claims he did not do so because he believed Combs was removing material without his knowledge and without reporting what he was taking to the clerical staff.

After the Board orders were enforced in 1981, an NLRB investigator questioned Burke about Respondent's assets, some of which were thought to have been transferred to his new company, Urban Enterprises. In an affidavit, he claimed to have sold that business to another person, but he specifically declined to reveal that individual's name. He also omitted any mention of his supposed "consultancy" to Combs at San Diego. When he testified, however, he denied ever selling Urban Enterprises to anyone. Furthermore, he insisted that he had given a supplemental affidavit describing his status as a consultant. His testimony here is more than lame; it is patently deceitful. There is no evidence that a second affidavit ever existed. He was interviewed only once. Moreover, this testimony is belied by his correspondence with the Navy in April when he told the disbursing officer he was the only person authorized to receive the checks. That supports Combs's testimony that Burke froze him out, hardly consistent with a consultant's station.

Burke also says he failed to pursue his claims against the Navy for nonpayment of the last portion of the contract even though he had received a favorable decision, dated June 27, 1984, from a panel of administrative judges for the Armed Services Board of Contract Appeals. This claim was supposedly worth several hundred thousand dollars. His indifference is inexplicable. Did he give this testimony because he has actually been paid and does not want Combs or anyone else, such as the Board, to know?

Based on Burke's testimony and his behavior, I must conclude that he is not to be believed regarding monetary trans-

fers or the supposed lack of them. The disappearance of the bank records is far too convenient to his purposes. Therefore, I find that their disappearance is connected to his dispute with Combs and is his effort to hide income from Combs or any other claimant such as the Board; he is engaged in an enterprise aimed at covering up his financial circumstances and concealing the truth from anyone wishing to learn it.

Indeed, both he and Combs have admittedly attempted to deceive the Navy regarding the true nature of their business arrangements after December 27, 1979. When they tried to substitute either themselves or their newly formed companies for Respondent in the performance of the mess contracts, the Navy balked. To get around the Navy's opposition, they made it appear as if Respondent corporation was still operating. As we now know it was only a shell and a front for their real businesses. This fooled not only the Navy, but seems to have been aimed at Local 30 as well.

I think it is clear, therefore, that Burke has engaged in conduct designed to evade the Board's court-enforced orders; indeed, he has been evading everybody insofar as taking responsibility for his actions is concerned. On that ground alone he is derivatively liable to remedy the unfair labor practices.

With respect to the San Diego matter, it is quite clear that Burke, as an individual, was in charge of the operation beginning at least on April 14 and thereafter. It was at that time that the March payments to the trust became due. He held the money that came from the Navy at that time and declined or refused to pay the trust. He continued to hold himself out as if he were Respondent corporation, even though Respondent corporation was essentially dissolved. In doing so he subjected himself to personal liability for the unfair labor practices which were committed during that period of time. Also, because of his personal takeover of the San Diego contract, Burke is a successor within the meaning of *Golden State Bottling Co. v. NLRB*, 414 U.S. 168 (1973), and *Perma Vinyl Corp.*, 164 NLRB 968 (1967), enfd. sub nom. *U.S. Pipe & Foundry v. NLRB*, 398 F.2d. 544 (5th Cir. 1968). As such he is personally liable to remedy not only the corporation's unfair labor practices at Groton, but those he committed as an individual at San Diego. Whether Combs would have been liable for that amount as well is immaterial at this stage as Combs has now bought his peace by settlement.

The most significant item, however, is the settlement agreement itself. It specifically provides that Burke (and Combs) are to take corporate assets upon dissolution subject to the liabilities of the corporation. That language itself is sufficient to warrant a finding that Burke is personally liable for the debts of the corporation which have not been paid and which were not taken into account by the agreement. In a very real sense it is a third party beneficiary contract in which Burke agreed to pay the debts of the corporation including those which were then inchoate such as the backpay

due under the Board's Groton order. Burke can have no complaint about such a finding. He has, in essence agreed to it.

Therefore, on four grounds I find Burke to be personally liable. First, the settlement agreement makes him liable; second, the Board order runs to him as an "assign." The Rule 65(d) language used by the Board easily reaches him. See the discussion, supra, regarding Brown. Unlike Brown, Burke was a corporate insider. Moreover, he has used all sorts of devices to evade responsibility. He hid his real self from the Navy, Local 30 and the Board. He claimed to those three entities that beginning in January 1980 Respondent corporation continued to exist and utilized checks and other paperwork to make it appear as if it did when it had actually been dissolved. Later, he hid the office from his former business partner Combs so Combs could not obtain information regarding any legitimate claims he may have had. In doing so, all of the corporate records conveniently disappeared while in his custody. Third, he is the individual, who although using the corporation's name, actually committed the San Diego unfair labor practices. Fourth, he is a "successor" under the *Golden State Bottling* and *Perma Vinyl* rules obligated to remedy the unfair labor practices at Groton.

Burke's defenses do not offer him any shield here. He is personally liable for the entire backpay amounts outstanding "less" any credit for the amount paid by Combs.

Accordingly, I make the following recommended findings.¹⁵

1. The unfair labor practices found by the Board in the underlying complaint cases, will be remedied by payment of the following sums:

a. To the Groton employees as set forth in the Groton backpay specification, as corrected the sum of: \$61,527.49.

b. To Hotel and Restaurant Employees and Bartenders Union of San Diego, Local 30, AFL-CIO, the sum of: \$1980.

c. To the San Diego Bartenders and Culinary Workers Insurance and Pension Trust Fund the sum of: \$19,981.50. Total: \$83,488.99.

2. Respondent Urban Laboratories, Inc., is wholly liable for payment of the entire amount.

3. Respondent Gerald G. Burke is wholly liable for the entire amount.

4. Respondent Carl J. Brown is not obligated to pay any of the above amounts.

5. Interest and/or penalties (if called for by the trust's rules) on said amounts is still accruing per the original Board orders.

¹⁵ 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.