

**Florida Tile Company and International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL-CIO. Case 10-CA-24224**

March 5, 1993

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

The issue in this case is whether the judge correctly found that the Respondent has failed to prove any willful loss of earnings by discriminatee Benjamin Deleski in his search for interim employment during the backpay period.<sup>1</sup> The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,<sup>2</sup> and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Supplemental Order of the administrative law judge and orders that the Respondent, Florida Tile Company, Rome, Georgia, its officers, agents, successors, and assigns, shall take the action set forth in the recommended Order.

<sup>1</sup> On December 8, 1992, Administrative Law Judge William N. Cates issued the attached supplemental decision. The Respondent filed exceptions and a supporting brief.

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

<sup>2</sup> We note that the judge misstated the date of Deleski's refusal of a route sales job with a cola company. The correct date is June 5, 1990. This factual error does not affect the judge's ultimate findings and conclusions. The Respondent failed to prove that the route sales position was substantially equivalent to Deleski's former job with the Respondent.

Mary L. Bulls, Esq., for the General Counsel.  
John M. Breckenridge Jr., Esq., of Tampa, Florida, for the Respondent.

SUPPLEMENTAL DECISION

STATEMENT OF THE CASE

WILLIAM N. CATES, Administrative Law Judge. This case involves the amount of backpay owed by Florida Tile Company (Company or Respondent) to discriminatee Benjamin Deleski (Deleski) pursuant to the National Labor Relations Board's (Board) Decision and Order (300 NLRB 739) of November 21, 1990.<sup>1</sup> The Regional Director for Region 10 of the Board (counsel for the General Counsel) contends the Company owes Deleski \$31,495.72.<sup>2</sup> The Company does not

<sup>1</sup> The United States Court of Appeals for the Eleventh Circuit in an unpublished per curiam opinion (No. 90-9147) issued on September 30, 1991, affirmed the Board's Decision and Order.

<sup>2</sup> The Regional Director issued a compliance specification and notice of hearing on July 24, 1992, after the parties could not agree

contest the methodology utilized by counsel for the General Counsel in arriving at, or the amount of, gross pay owed Deleski. However, the Company contends Deleski created a willful loss of earnings by not making a good-faith effort to seek and obtain interim employment that would have paid him substantially more than the interim earnings he reported.

The case was tried before me in Rome, Georgia, on September 11, 1992. The Company called Deleski and nine additional witnesses. Counsel for the General Counsel presented no witnesses. The trial testimony is not disputed.

I have studied the whole record, including the briefs filed by counsel for the General Counsel and counsel for the Company and the authorities which they invoke, and I make the following

FINDINGS OF FACT

I. LEGAL AUTHORITIES

It is beneficial to examine certain legal authorities before outlining the undisputed facts herein. The legal principles are well established. A finding by the Board that an unfair labor practice was committed is presumptive proof that some backpay is owed. *G. Zaffino & Sons*, 289 NLRB 571 (1988); *NLRB v. Mastro Plastics Corp.*, 354 F.2d 107, 178 (2d Cir. 1965), cert. denied 384 U.S. 972 (1966). The burden to prove the gross amount of backpay rests with counsel for the General Counsel. *NLRB v. Brown & Root*, 311 F.2d 447, 454 (8th Cir. 1963). The burden is on the employer who committed the unfair labor practice to establish facts that would reduce the gross amount of backpay owed. *Chem Fab Corp.*, 275 NLRB 21 (1985), *Kawaski Motors Mfg. Corp. v. NLRB*, 850 F.2d 524 (9th Cir. 1988). Facts the employer may attempt to establish may relate to interim earnings or to a willful loss of interim earnings. Although it is an employer's burden to establish a discriminatee's interim earnings, if any, it is counsel for the General Counsel's voluntary policy to assist in gathering such information and including such in the Regional Director's compliance specification. *Chem Fab Corp.*, supra. Although a discriminatee must attempt to mitigate his/her loss of income, the discriminatee is held only to a reasonable assertion and not to the highest standard of diligence. *Arlington Hotel Co.*, 287 NLRB 851 (1987); *NLRB v. Westin Hotel*, 758 F.2d 1126, 1130 (6th Cir. 1985). The burden a discriminatee bears in this regard is not onerous and does not mandate that the discriminatee be successful. *NLRB v. Westin Hotel*, supra; *Kawaski Motors Mfg. Corp. v. NLRB*, supra. In determining the reasonableness of a discriminatee's efforts at interim employment, the discriminatee's skills, qualifications, age, and labor conditions in the area are factors to be considered. *Mastro Plastics Corp.*, supra. A discriminatee that limits his/her work search for personal or no valid reasons that excludes jobs for which the discriminatee is otherwise qualified may create a willful loss of earnings. *EDP Medical Computer Systems*, 302 NLRB 54 (1991). Because the ultimate test of a discriminatee's efforts is whether they are consistent with the inclination to work and be self-supporting, the backpay period must be viewed as a whole and not in isolated portions. *Sioux Falls Stock-*

on the amount the Company owed Deleski. Counsel for the General Counsel amended the specification at trial and the amount claimed has been adjusted to account for interim earnings.

yards Co., 236 NLRB 543, 551 (1978). If a discriminatee incurred any reasonable and necessary expenses in earning interim income, it is counsel for the General Counsel's burden to establish the amounts of those expenses. *Arlington Hotel Co.*, supra. Any doubts, uncertainties, or ambiguities must be resolved against the employer who is the wrongdoer in that an employer should not be allowed to benefit from any uncertainty caused by its discrimination. *Chem Fab*, supra; *Kawaski Motors Mfg. Corp.*, supra.

## II. THE EVIDENCE

It is undisputed that the backpay period for Deleski began on June 8, 1989, and continued through February 15, 1992.

Deleski was hired by the Company in January 1987<sup>3</sup> as a "palletizer"<sup>4</sup> and was promoted to assistant audit laboratory technician<sup>5</sup> 1-1/2 years later. He was unlawfully discharged on June 8, 1989.

Deleski testified that after his discharge, he registered with the Georgia Department of Labor (Ga. DOL) and sought jobs that were "comparable" "on the same pay scale"<sup>6</sup> with the one he had at the Company. Deleski said that as time went

on and he found no employment, he lowered his sights to lesser paying jobs. Deleski said he applied for work at two of the largest manufacturing employers in the Rome, Georgia area, namely, Inland Container Corporation (ICC)<sup>7</sup> and General Electric Company (GE).<sup>8</sup> Deleski was interviewed but not hired by ICC. Deleski said he learned from friends that ICC might be hiring. Deleski said he made application with GE through the Ga. DOL. Deleski testified he not only looked for work based on referrals from friends, but utilized yellow pages from the local telephone company<sup>9</sup> and newspaper advertisements.<sup>10</sup>

Deleski's Ga. DOL "Claimant Job Search Plan" prepared on or about October 5, 1989, reflects under the caption "what type work are you seeking" that he desired "service" and "sales" positions.

Deleski's "Record of Work Search" submitted to the Ga. DOL for the period September 9, 1989, through December 20, 1989, reflects he sought employment with approximately 19 employers. Deleski said he appeared in person at each of the following employers on the dates indicated and sought employment as follows:

<i>Employer</i>	<i>Date</i>	<i>Type Work Sought</i>	<i>Action Taken</i>
Ivan Allen	09-25-89	delivery, sales	made application & interviewed <sup>11</sup>
Lowe's Building Supply	10-04-89	delivery, sales	made application
Floyd Outlaw Appliances	10-11-89	delivery, sales	made application
Kerns Bakery Shorter Industries	10-11-89	delivery	no applications being taken <sup>12</sup>
Rocky Mountain Project	10-18-89	any	no openings available
Jennings Funeral Home	10-19-89	any	no openings available
Garden Lakes Supply	10-24-89	any	no openings available
Rome Business Machines	10-30-89	service, delivery	made application
Christie's Office Supply <sup>13</sup>	11-03-89	any, delivery	made application
Design Printing & Graphics	11-08-89	any	no openings available
Kroger Grocery	11-11-89	any	made application
Rome Fire Dept.	11-13-89	firefighter	made application & went through screening process <sup>14</sup>
Allen Murphy Appliance	11-17-89	delivery	made application
Atlanta Gas Co.	11-21-89	service technician	made application
Babcock Furniture	11-24-89	delivery	no openings available
Jackson Business Machine	11-30-89	delivery	no openings available
Fast Printing & Copies	12-01-89	any	made application

<sup>3</sup>Prior to his employment at the Company, Deleski worked for various employers. From September 1980 until September 1981 he attended Floyd Junior College, Rome, Georgia, and at the same time worked for Hess Oil Company as a cashier at \$4 per hour. From September 1981 to September 1982, he, at various times, worked for Fox Pools as a laborer performing "all types" of pool construction and repairs at \$4.50 per hour. From September 1982 until he was employed by the Company, Deleski worked for Wood Craft, a lumber company, where he worked as a "package maker operator" assembling "bundles of lumber" for truck shipment to customers.

<sup>4</sup>*Florida Tile Co.*, 300 NLRB 739 (1990). Administrative Manager Frank Shropshire described a palletizer's job as placing full cartons of tile weighing 35 to 40 pounds on pallets holding 75 cartons. Shropshire testified pallet jacks are then used to move the pallets into a holding area for shipment.

<sup>5</sup>It appears an assistant audit laboratory technician is another name for a quality control inspector. *Florida Tile Co.*, supra, at 740.

<sup>6</sup>Deleski said he was earning \$8.63 per hour at the time of his discharge.

<sup>7</sup>According to the 1992 Directory of Manufacturers, Rome (Floyd County), Georgia, prepared by the Greater Rome Chamber of Com-

merce (R. Exh. 2), ICC manufactures corrugated containers and currently has approximately 891 employees.

<sup>8</sup>General Electric, at its Rome facility, manufactures electrical transformers and currently has approximately 975 employees. (R. Exh. 2.)

<sup>9</sup>Deleski said he utilized the yellow pages "dozens" of times searching for employment.

<sup>10</sup>Deleski said he did not keep complete records regarding all attempts he made to be employed. He said he personally went to employer locations "dozens" of times telling the employers he would "like to have a job."

<sup>11</sup>On October 2, Deleski followed up on his interview via telephone and was told the Company was still interviewing applicants.

<sup>12</sup>Deleski visited this company again on October 13, and again no applications were being taken by the company.

<sup>13</sup>This company is listed in the Directory of Manufacturers for Rome as a printing business currently employing 16. (R. Exh. 2.)

<sup>14</sup>Deleski was interviewed by the fire department on December 7 and 11.

<i>Employer</i>	<i>Date</i>	<i>Type Work Sought</i>	<i>Action Taken</i>
City of Rome Water Treatment	12-04-89	technician	made application
Farmer Furniture	12-20-89	any, delivery	made application

In early 1990 (January 15), Deleski registered with a private employment agency—Rome Employment Service, Inc.—seeking employment in “delivery (any).”<sup>15</sup> Deleski said he continued seeking employment during the first two quarters of 1990. At or near the end of June 1990, Deleski

filed a “Claimant Expense and Search for Work Report”<sup>16</sup> with the Board. In the report, Deleski listed 11 employers<sup>17</sup> at which he sought employment between March 30 and June 22, 1990. Deleski’s efforts at these 11 employers follows:

<i>Employer</i>	<i>Date</i>	<i>Type Work Sought</i>	<i>Action Taken</i>
Martha Berry Museum	1803-30-90	groundskeeper	application made, opening pending interviews
Dennis Hodges Office Supply	04-19-90	delivery, sales representative	application made, no openings available
Christie’s Office Supply <sup>19</sup>	04-23-90	delivery, sales representative	application made, interview given
Lowes of Rome, Inc.	05-08-90	n/a	application made
Kmart	05-19-90	sales associate	application made
Babcock Home Furnishings	05-25-90	delivery	no openings available
Poor Man’s Palace Furniture	06-01-90	delivery	application made, interview given, no openings available
Dayton Steel <sup>20</sup>	06-12-90	n/a	application made, job pending interview
Colortyme TV Rental	06-13-90	set up & collection	application made
O’Neil Mfg. Co. <sup>21</sup>	06-18-90	n/a	application made, interview given
West Rome Animal Clinic	06-22-90	veterinarian assistant	job had been filled

On July 1, 1990, Deleski obtained employment<sup>22</sup> as a construction worker for Terafern, a company specializing in concrete foundations for buildings. The project at which Deleski worked was at the GE facility in Rome. The project lasted until mid-November 1990 at which time Deleski was laid off.

Approximately 2 weeks after his concrete construction job ended, Deleski obtained employment with Wal-Mart<sup>23</sup> as a sales associate. Deleski worked December 1990 but was laid off the month of January 1991; however, he was recalled in February 1991 and worked for Wal-Mart continuously until the Company reinstated him in mid-February 1992. Deleski’s starting pay at Wal-Mart was \$5 an hour and he advanced to \$6 plus per hour by the time he was reinstated by the Company.<sup>24</sup>

Howard Smith Jr., executive vice president of the Greater Rome, Georgia Chamber of Commerce, testified there were 110 to 120 manufacturing businesses<sup>25</sup> in Rome, Georgia, in 1989. As of 1992, the Chamber of Commerce lists 100 manufacturing employers as members of its organization and those 100 employers employ approximately 11,491 employees.<sup>26</sup>

Joyce Eastridge, a litigation consultant on matters related to calculating economic damages and providing expert opinions, compiled from data supplied by the Ga. DOL a profile of labor force data for Floyd County (including the city of Rome), Georgia, for pertinent times herein. Eastridge’s compilations, which are self-explanatory, follow:

<sup>15</sup> Deleski explained the “any” meant he would take any reasonable job offers. The employment service referred Deleski to a temporary delivery job at Rome Tool & Dye Company, Inc., a dies and brake shoes manufacturer employing approximately 100. (R. Exh. 2) Deleski said that when he arrived at the jobsite, he was told he would be a janitor cleaning bathrooms and machines at \$5 an hour. Deleski worked an hour and quite because he did not consider the position to be a “reasonable” job. Rome Employment Service, Inc.’s office manager Margie Turner testified upon examining Deleski’s records that he refused on May 21, 1990, a temporary (2–3-day position) handing out sample products in a supermarket. She said the records also reflect he rejected a route salesman job with a cola company on June 5, 1991.

<sup>16</sup> Form NLRB-5224 (R. Exh. 7).

<sup>17</sup> Deleski was sure he visited other employers during this same time but said he could not recall any specifics about these other attempts.

<sup>18</sup> In his trial testimony, Deleski corrected the date on Respondent’s 7 from May 30 to March 30.

<sup>19</sup> As noted elsewhere in this decision, this Company is listed in the 1992 Directory of Manufacturers as being in the printing industry currently employing 16 employees. (R. Exh. 2.)

<sup>20</sup> This company manufactures slit soil steel and currently employs approximately 27 employees. (R. Exh. 2.)

<sup>21</sup> O’Neil Manufacturing is an architectural mill work lumber and building supply company currently employing 34. (R. Exh. 2.)

<sup>22</sup> Deleski learned of the job from a friend.

<sup>23</sup> Deleski was referred to the job by a friend.

<sup>24</sup> Deleski said he did not look for better paying employment while working at Wal-Mart because Wal-Mart had excellent benefits and he knew it would be just a matter of time until the Company reinstated him.

<sup>25</sup> Smith said manufacturing included any enterprise that produced a product. He gave as an example the local newspaper which produces daily newspapers.

<sup>26</sup> One employer declined, absent a specific request, to provide the Chamber with the number of employees it employed.

<i>Period Year/Qtr</i>	<i>Size of Labor Force</i>	<i>Total Number of New Hires</i>	<i>Total New Hires in Manufacturing</i>	<i>Percent Turnover in Labor Force</i>	<i>Unemployment Rate</i>
1989/2	40,103	n/a	n/a	n/a	6.67%
1989/3	40,173	n/a	n/a	n/a	6.47%
1989/4	40,660	6,229	967	15.32	5.97%
1990/1	40,292	5,382	941	13.36	6.63%
1990/2	40,549	7,065	1,159	17.42	6.87%
1990/3	41,564	7,030	1,162	16.91	7.93%
1990/4	41,466	5,329	n/a	12.85	6.60%
1991/1	40,854	4,295	505	10.51	6.53%
1991/2	40,452	5,171	900	12.78	5.73%

The Company presented four witnesses who gave testimony regarding the hiring needs at their companies during the last half of 1989. From this evidence, the Company contends Deleski would have been hired by any of the four had he made application with them.

Charles Forbes, corporate manager of employee relations for Galey & Lord, a textile manufacturing firm located at Rome, Georgia, testified his company hired 15 employees during the month of June 1989 and a total of 168 during the second quarter 1989 and 118 during the third quarter of that same year. Forbes said his company “predominantly” hired at entry level positions. Forbes said his company required an application which he said was reviewed for background and past work history along with the educational level of the applicant. Forbes said his company was “generally” looking for someone with a “stable work record” and a secondary level of education although the latter was not absolutely essential. After reviewing Deleski’s job application at the company herein and noting his postapplication work history, Forbes testified Deleski would have been qualified for employment with his company and that he “probably” would have been considered for a “doffer’s” job.<sup>27</sup> Forbes said his company does not advertise its job vacancies but rather interviews “walk-ins.” Forbes acknowledged it was possible an applicant could come to the plant on a day they were not hiring and in that case the individual’s application would be kept on file for 60 days—and longer if updated. Forbes said his company hired an average of 15 employees per week during the 1989 timeframe in question and he explained the turnover rate at his plant was 30 percent.<sup>28</sup> Forbes said that if an applicant indicated he/she had been fired from a previous employer, his company would attempt to ascertain from the prior company the reason(s) for the applicant’s termination. Forbes said his company had hired employees fired from other companies and he specifically recalled one such employee that had been fired from the company herein and that employee currently has the highest paying job classification in his company’s work force.

Sandra McCain, personnel director for Lindale Manufacturing, a textile company manufacturing denim and chambray fabrics located at Lindale, Georgia,<sup>29</sup> testified her company

<sup>27</sup> According to Forbes, a doffer removes full bobbins from a spinning frame and replaces them with empty ones. Forbes said prior textile experience was not necessary, that the company had a 14-week training program for its doffer positions.

<sup>28</sup> Forbes could not explain the reasons for that level of turnover.

<sup>29</sup> According to McCain, Lindale is approximately 5 miles south of Rome, Georgia.

was hiring in the last half of 1989 in entry level positions. After reviewing Deleski’s unemployment application at the Company herein and also considering his postapplication work history, McCain said “Mr. Deleski would have qualified . . . to have learned to perform that [a cloth doffer loom servicer] job.” McCain testified her company hired five or six cloth doffer loom servicers during the last half of 1989. McCain testified her company hired 100 to 150 entry level employees in the last half of 1989. McCain said her company takes applications at its facility during office hours Monday through Friday but does not advertise for employees. McCain said her Company keeps applications on file for 60 days unless otherwise updated. McCain said that although her company attempts to get an opinion from a previous employer about an applicant, the fact an applicant had been fired at a previous employer would not disqualify the applicant for consideration at her company.

Patrick Montgomery, director of personnel for Pharr Yarns of Georgia, Incorporated, a textile manufacturer located at Rome, Georgia, testified his company hired entry level employees during the last half of 1989. Montgomery estimated his company hired 18 to 20 such employees. Montgomery said his company uses applications primarily to get an applicant’s employment history.<sup>30</sup> Montgomery said his company checks references and tries to contact all previous employers. Montgomery said the fact an applicant had been fired from a previous employer would not necessarily eliminate the applicant from consideration at his company. After examining Deleski’s employment application with the company herein and noting his postapplication work history, Montgomery testified Deleski would have been qualified for the position of twister/singles winder operator at his Company.<sup>31</sup> Montgomery said no prior textile experience was needed to qualify for this position but that it took from 3 to 8 weeks to “master” the job. Montgomery’s company does not advertise for jobs but rather interviews walk-in applicants.

Ted Bridges, personnel director for World Carpets, a textile manufacturing company located in Rome, Georgia, testified his company “probably” hired “50 or so” employees during the last half of 1989. After reviewing Deleski’s employment application for the Company herein and after considering his post application work history, Bridges testified he was not familiar with a “palletizer” job classification but he was sure Deleski would “fit entry level” positions with his company. Bridges saw nothing on Deleski’s application with the company herein which would have disqualified him from consideration with his company. Bridges said his company attempts to speak with an applicant’s last employer but the fact an applicant had been fired from his/her last employer would not disqualify the applicant from consideration at his company. Bridges said his company had “considerably” more applicants for positions in the last half of 1989 than it was able to hire.

Deleski, when asked why he did not make application for employment at Galey & Lord responded he “knew nothing of the rug industry, the yarn industry.” Deleski said he was aware that Lindale Manufacturing and Pharr Yarns existed

<sup>30</sup> Montgomery said certain entries or omissions on an application can eliminate an applicant without an interview.

<sup>31</sup> Montgomery said a twister/singles winder operator operated three machines, a twister, a winder, and a rewinding machine.

but he offered no explanation for not making application with either of those employers.<sup>32</sup>

### III. DISCUSSION, ANALYSIS, AND CONCLUSIONS

In attempting to meet its burden of establishing that Deleski failed to make a reasonable effort to find interim work resulting in a willful loss of interim earnings, the Company makes two primary arguments. First, the Company contends that in light of Deleski's 7 years of experience in manufacturing, he created a willful loss of earnings when, for unexplained reasons, he limited his work search to service, sales, and delivery jobs notwithstanding the fact there were over 100 manufacturing companies in the Rome, Georgia area which had a total of approximately 967 new hires in manufacturing during the fourth quarter of 1989.<sup>33</sup> Second, the Company contends Deleski created a willful loss of interim earnings when, solely for personal or no reason and without legal justification, he refused to explore the possibility of getting a job at Galey & Lord, Pharr Yarns, and Lindale Manufacturing particularly in light of the fact all three companies were hiring for entry level positions and that Deleski was qualified for such entry level jobs.

Neither of the Company's contentions withstands scrutiny.

First, the Company failed to establish that Deleski unreasonably limited his search for interim employment. Deleski testified he first searched for "something comparable to what I was doing, on the same pay scale" but added "[t]hat slowly got knocked down the ladder" as time went by.

Contrary to the Company's contention, Deleski sought manufacturing, as well as other, type jobs. Deleski named five manufacturing companies that he sought employment with—namely—GE (approximately 975 current employees), Inland Container Corporation (approximately 891 current employees), Dayton Steel Service, Inc. (approximately 27 current employees), O'Neil Manufacturing Company (approximately 34 current employees), and Christie's Office Supply (approximately 16 current employees).<sup>34</sup>

During Deleski's 7-year work history, he worked as an oil company cashier (1980–1981), as a laborer constructing and repairing swimming pools (1981–1982), as an assembler of lumber bundles for truck shipment to customers (1982–January 1987), and as a stacker of tile on pallets at the Company herein (January 1987–June 1989). With that employment history, Deleski sought, after being wrongfully discharged from the Company herein, employment at "dozens" of employers<sup>35</sup> including but not limited to positions in service, delivery, and sales. Deleski, for example, sought employment as a veterinarian assistant at an animal hospital, a fire fighter for the city, a groundskeeper for a museum, any job at a funeral home, any job at a grocery store, a technician at the city water treatment facility, and as a sales associate at a department store. Deleski obtained employment (July 1990–November 1990) as a laborer with a concrete construction com-

pany (Terafern) and as a sales associate (December 1990–January 1991 excluded—February 1992) at a department store (Wal-Mart).

In light of all the above, including the 6.60 average unemployment rate for the entire time in question, I find the Company failed to establish that Deleski did not make an honest, good-faith, reasonable effort to obtain interim employment that would have produced interim earnings to offset the Company's liabilities herein.

In reviewing the second of the Company's primary contentions, the question arises as to whether Deleski's failure to make application for employment at four specific employers that were hiring in the second half of 1989 establishes he failed to make a good faith and reasonable effort to find interim employment. I conclude it does not. First, none of the four companies (Galey & Lord, Lindale Manufacturing, Pharr Yarns, and World Carpets advertised for employees but rather filled positions from walk-in applicants. Second, there were more applicants for positions than positions filled. In that regard, Personnel Director Bridges of World Carpets testified there were "considerably" more applications for positions with his Company in the last half of 1989 than his company was able to fill. The uncertainty regarding whether Deleski would have been employed by this or any of the other three employers must be resolved against the wrongdoer, the Company herein. Although Corporate Manager of Employee Relations Forbes of Galey & Lord said Deleski was qualified for employment with his company and would have been considered "probably" for a doffer's position, he stated his company reviewed the overall work history of an applicant and "generally" looked for someone with "a stable work record." Nothing was presented to show that applicants that were hired by Galey & Lord had an overall work history and work stability similar to that of Deleski. There is no showing Deleski would have been selected over other applicants at Galey & Lord. The fact Deleski asserted at trial in response to a question by company counsel that he did not have any work experience in the yarn or rug industry as a reason for not going to Galey & Lord does not establish a rejection by Deleski of the textile industry for personal reasons. There is no showing on this record that Deleski had any reason to believe or suspect that Galey & Lord was hiring. There are perhaps other industries in the area that Deleski did not make application at and for which he might not have an explanation for not doing so. That, however, is not the measure of whether he made a reasonable good-faith effort to obtain substantially equivalent interim employment. Deleski's employment efforts, as outlined earlier in this Decision, indicate he had an inclination to work and to be self-supporting and demonstrates he made a good-faith effort to secure interim employment.<sup>36</sup>

<sup>32</sup> Deleski was not asked why he did not apply for work at World Carpets.

<sup>33</sup> The Company also notes that the unemployment rate for that quarter for the entire area was 5.97 percent.

<sup>34</sup> The exact number of employees at each of these employers in 1989 is not available in this record.

<sup>35</sup> Deleski registered with the Ga. DOL, searched newspapers, and utilized telephone yellow pages and a private employment agency in his search for employment.

<sup>36</sup> Deleski's employment efforts are distinguishable from those of discriminatee David Burgos in *EDP Medical Computer Systems*, 302 NLRB 54 (1991), a case the Company contends is on point with the instant case. In *EDP Medical Computer Systems*, supra, Burgos had been employed for approximately 1 year as a collections agent for the New York City Environmental Control Board at the time of his wrongful discharge. After his wrongful discharge, Burgos did not look for work as a collections agent or for any related office clerical work. Burgos' reason for not doing so was that he didn't have enough experience in that field. However, his testimony at the un-

*Continued*

Lindale Manufacturing Personnel Director McCain testified, after reviewing Deleski's work history, that Deleski would have been qualified to have learned to perform as a cloth doffer loom servicer, however, there is no showing Deleski knew of any opening(s) at that company nor is there any showing anyone referred him to that Company. There is no showing Deleski would have been selected to fill one of the five or six vacancies in that classification at Lindale Manufacturing during the last half of 1989.

Director of Personnel of Pharr Yarns testified, after reviewing Deleski's work history, that he would have been qualified for employment with his company as a twister/singles winder operator but acknowledged his company did not advertise its job openings. Again, there is no showing that Deleski knew of, or was referred to, any openings at Pharr Yarns.

In light of all the above, I conclude Deleski's activities during the backpay period were not inconsistent with his

derlying unfair labor practice trial indicated he had sufficient experience, and the Board held that contrary to Burgos' self-evaluation, he possessed the skills to have sought a job as a collections agent and by confining his employment search to postage machine operator positions only he failed to make an adequate search for employment. In the instant case, Deleski did not reject an entire industry (textile), he simply stated he did not go to Galey & Lord because he knew nothing about the rug or carpet industry. Deleski did, however, apply for employment in other manufacturing industries whereas the discriminatee in *EDP Medical Computer Services*, supra, not only rejected a complete field of work, i.e., collections agent positions, he also rejected any "related office clerical work."

duty to seek interim employment resulting in interim earnings to offset the Company's liabilities. Stated differently, the Company failed to prove that Deleski did not make a reasonable good-faith effort to obtain interim employment at any time during the backpay period.<sup>37</sup>

#### CONCLUSIONS OF LAW

1. Florida Tile Company has failed to establish that Benjamin Deleski incurred, in any manner, a willful loss of earnings during the backpay period June 8, 1989, to February 15, 1992.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>38</sup>

#### ORDER

The Respondent, Florida Tile Company, its officers, agents, successors, and assigns, shall pay to Benjamin Deleski \$31,495.72, with interest, as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).<sup>39</sup>

<sup>37</sup>The Company also failed to demonstrate that Deleski refused any substantially equivalent positions of employment.

<sup>38</sup>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.

<sup>39</sup>Under *New Horizons*, interest is computed at the "short term Federal rate" for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621.