

**Hansen Brothers Enterprises and Chauffeurs,
Teamsters and Helpers Local Union No. 150,
International Brotherhood of Teamsters, AFL-
CIO.**¹ Case 20-CA-18393

November 26, 1993

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On April 30, 1986, the National Labor Relations Board issued a Decision and Order in this proceeding,² directing Hansen Brothers Enterprises, the Respondent, inter alia, to make whole employees for their losses resulting from its unfair labor practices. The United States Court of Appeals for the District of Columbia Circuit enforced the Board's Order in its entirety on March 12, 1987.³ A controversy having arisen over the amount of backpay due under the terms of the Board's Order, as enforced by the court of appeals, the Regional Director for Region 20 issued an amended backpay specification and notice of hearing on June 28, 1991.⁴ The Respondent filed an answer. A hearing was held on October 8, 9, and 10, 1991, before Administrative Law Judge Richard J. Boyce.

On December 17, 1992, the administrative law judge issued the attached Supplemental Decision and Order. The Respondent filed exceptions and a supporting brief, the General Counsel filed cross-exceptions and a supporting brief, and the Respondent filed an answering brief in response to the General Counsel's cross-exceptions.

The Board has considered the record and the attached supplemental decision in light of the exceptions and briefs and, for the reasons set forth below, has decided to affirm the judge's rulings, findings, and conclusions, as modified below.⁵

¹ On November 1, 1987, the Teamsters International Union was readmitted to the AFL-CIO. Accordingly, the caption has been amended to reflect that change.

² 279 NLRB 741.

³ *Hansen Brothers Enterprises v. NLRB*, Case No. 86-1277 (unpublished).

⁴ The original backpay specification issued on July 29, 1988, and was amended on August 2, 1988, and again on April 21, 1989.

⁵ In its answer, the Respondent argued that the parties had reached a bargaining impasse on the issue of payments to the Health and Welfare Fund as of November 1, 1983, and therefore that its obligations to the Fund ceased. The judge would not permit evidence to be introduced concerning the alleged impasse on the ground that impasse would be irrelevant to the issue here. The Respondent excepts. We need not reach the merits of the legal argument, however, because the Respondent did not make an offer of proof at the hearing on the bargaining impasse issue, did not contend at the hearing and does not now contend that it made a final contract offer concerning elimination of payments to the Fund, and, in its exceptions, states only generally that the parties had reached a bargaining impasse and not specifically an impasse over the Health and Welfare Fund.

In the underlying decision, the Board found that on September 7, 1983, the Union had conveyed to the Respondent a valid offer to return to work on behalf of strikers it represented and that the Respondent had violated Section 8(a)(3) and (1) of the Act by failing and refusing to reinstate the strikers. The Board ordered the Respondent to make whole the strikers for wages and benefits lost due to this failure to reinstate.

We agree with the judge's conclusions except those regarding medical expenses and expenses deductible from interim earnings.

A. Medical Expenses

The judge disallowed all medical expense claims, holding that the General Counsel had failed to offer any reliable evidence in support of the claimed out-of-pocket medical expenses set forth in the amended backpay specification.⁶ The General Counsel excepts to this finding. We find merit in the exception although, for the reasons set forth below, we do not award the amounts in the specification and leave it to compliance to reconcile differences between those amounts and the amounts listed in the claimants' backpay forms.

The General Counsel introduced into evidence backpay data forms filled out by the claimants. Among other things, the forms asked the claimants to "[l]ist any medical expenses or health insurance expenses [they] would not have had if [they] were still working for [their] former employer." One claimant's packet also contained a document entitled "Hansen Brothers Medical Expenses Questionnaire." The General Counsel did not question the claimants at the hearing about their entries.

The judge found that the backpay forms were unreliable because of certain inconsistencies between the amounts on some of the forms and the amounts in the specification. He additionally noted that many of the forms were not signed. The judge also found that there was no probative evidence of the coverage that was available under the Respondent's later medical plans.

It is customary to include out-of-pocket medical expenses in make-whole remedies for fringe benefits lost where a respondent has not introduced evidence that would negate or mitigate its liability.⁷ No such evidence was introduced in this case and the reasons proffered by the judge are insufficient to deny medical ex-

⁶ Two types of out-of-pocket medical expenses were claimed: those that would have been covered by the Health and Welfare Trust Fund occurring between the onset of the claimants' backpay period and the Respondent's lawful withdrawal of recognition of the Union and those occurring thereafter that would have been reimbursed by the health plan the Respondent had provided to its replacement workers.

⁷ *G. Zaffino & Sons*, 289 NLRB 571, 573 (1988).

penses.⁸ Thus, that many of the claim forms were unsigned does not serve to make the claimants' figures unreliable in the circumstances. We note that the General Counsel was prepared to introduce the forms through each claimant. The Respondent could have objected to the claim forms' introduction, but instead chose generally to waive any objection as to foundation for all succeeding claimants after the first set of forms was introduced through the claimant who had filled them out.

The relatively small discrepancies between the amounts listed on some of the claimants' backpay forms and the amounts in the specification is hardly sufficient reason to deny awards of medical expenses entirely. Plainly, some of the claimants were entitled to some medical expenses, although on this record the exact amounts are uncertain in some instances. We shall therefore leave to compliance the reconciliation of these discrepancies.⁹

B. Expenses Deductible from Interim Earnings

The specification alleged that 12 claimants incurred certain expenses while seeking or retaining interim employment. The Respondent's answer alleged lack of knowledge to admit or deny the allegation, but stated that the amounts alleged "represent[ed] the maximum amounts of deductible expenses." The appendices incorporated in the Respondent's answer contained figures that were designated as "Maximum Deductible Expenses" for the 12 claimants. Each entry was accompanied by a footnote stating, inter alia, that the Respondent reserved its right to present evidence showing that the actual amount of deductible expenses was less than that set forth in either the specification or in its answer.

The General Counsel introduced a packet of material for each claimant with the claimant's listing of expenses sustained while searching for interim employment or while working for interim employers. The judge, while not finding any specific deficiencies with respect to the amounts set forth in the specification, concluded that the evidence proffered had no probative value and instead determined that the amounts set forth in the Respondent's answer were the proper amounts to deduct from the claimants' interim earnings.

The General Counsel excepts. We find merit in the General Counsel's exception. The General Counsel's burden in backpay cases is simply to show the gross

backpay due each claimant.¹⁰ The burden then shifts to the respondent to establish facts that negate or mitigate its liability.¹¹ We find that the General Counsel has met her burden of establishing the claimants' expenses deductible from interim earnings by listing these expenses in the backpay specification, as supported by the introduction of the claimants' backpay forms. The burden then shifted to the Respondent to rebut the General Counsel's submission. Thus, the Respondent had the burden of showing why any modifications should be made to the amounts set forth in the backpay specification. The Respondent made no such showing.¹² Therefore, contrary to the judge, we will allow the amounts of expenses deductible from interim earnings as set forth in the amended backpay specification.

ORDER

The National Labor Relations Board orders that the Respondent, Hansen Brothers Enterprises, Grass Valley, California, its officers, agents, successors, and assigns, shall make whole the following claimants by paying each the amount opposite his name, plus interest:

	¹³ <i>Net Backpay</i>
Ronald J. Baker	\$38,231
William A. Browning	18,321
Richard L. Desmond Estate	5,531
Gerald J. Gomes	15,982
George L. Horner	47,544
William J. Locatelli	56,695
Larry McConnell	28,229
Thomas W. Osborne Jr.	28,714
Thomas Resetar	37,870
Keith E. Sonke	18,099
Edward J. Tellam	54,121
Gerald L. Tennell	19,321
David M. Vaars	53,513
Hubert W. Woodruff	26,246

The Respondent shall make whole Thomas Browning by paying him \$60,615, together with any additional amounts attributable to the third quarter of 1984, plus interest, plus medical expenses. The General Counsel shall recompute Thomas Browning's entitlement for the third quarter of 1984, resolving the ambiguities concerning gross backpay and interim earnings, and factoring in deductible expenses of \$2954. Regarding the claimants' medical expenses, the compliance officer shall also reconcile the differences in the

⁸We note that the judge was incorrect in stating that the compliance officer was provided with a copy of the Respondent's health plan. The compliance officer testified without contradiction that she was provided with a copy of the health plan that the Respondent put into effect for a portion of the time in question, but not a copy of the plan in effect for the entire backpay period.

⁹*Honda of Mineola*, 303 NLRB 676 fn. 3 (1991).

¹⁰*Mastro Plastics Corp.*, 354 F.2d 170, 178 (2d Cir. 1965), cert. denied 384 U.S. 972 (1966).

¹¹*NLRB v. Brown & Root, Inc.*, 311 F.2d 447, 458 (8th Cir. 1963).

¹²*Colonie Hill Ltd.*, 256 NLRB 1076, 1079 (1981).

¹³The backpay amounts are subject to reconciliation of the claimed medical expenses as set forth infra.

amounts set forth in the claimants' backpay forms that were introduced into evidence and the amounts set forth in the backpay specification.

On behalf of the respective claimants, the Respondent shall pay \$30,316.44, plus interest and late payment penalties, to the Western Conference of Teamsters Pension Trust, and \$32,687.40, plus interest and late payment penalties, to the Construction Teamsters Health and Welfare Trust Fund for Northern California.¹⁴

CHAIRMAN STEPHENS, dissenting in part.

I would adopt the decision and recommended Order of the judge in full; and I therefore dissent from the reversal of his disposition of the claims for medical expenses and expenses incurred in seeking and holding interim employment.

¹⁴Interest and late payment penalties owing the Pension and Health and Welfare Trusts shall be computed in accordance with *Merryweather Optical Co.*, 240 NLRB 1213 (1979).

Lucile L. Rosen, Esq., for the General Counsel.
Robert L. Rediger, Esq. (Thierman, Cook, Brown & Prager), of Sacramento, California, for the Respondent.
Michael Tobin, Business Representative, of Sacramento, California, for the Charging Party.

SUPPLEMENTAL DECISION

RICHARD J. BOYCE, Administrative Law Judge. I heard this compliance matter in Sacramento, California, on October 7, 8, 9, and 10, 1991.

I. PROCEDURAL HISTORY

By decision and order dated April 30, 1986, reported at 279 NLRB 741, the National Labor Relations Board (Board) directed Hansen Brothers Enterprises (Respondent) to:

Offer to economic strikers on whose behalf the Union offered to return to work immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them

The Board's Order was enforced by an unreported order dated March 12, 1987, from the United States Court of Appeals, District of Columbia Circuit.

The compliance specification as now constituted issued on June 28, 1991, was amended during the hearing, and lists 15 claimants.¹ The claimants and their alleged entitlements are: Ronald Baker, \$46,463 in backpay, plus \$200 in reimbursable medical expenses; Thomas Browning, \$63,730 in backpay, plus \$1251 in reimbursable medical expenses; William

¹The original compliance specification herein issued on July 29, 1988, and was amended on August 2, 1988, and April 21, 1989. The present specification, styled amended compliance specification, superseded the original specification in toto.

Browning, \$21,526 in backpay, plus \$530 in reimbursable medical expenses; the estate of Richard Desmond, \$5,531 in backpay; Gerald Gomes, \$19,253 in backpay, plus \$1037 in reimbursable medical expenses; George Horner, \$61,901 in backpay, plus \$1801 in reimbursable medical expenses; William Locatelli, \$61,726 in backpay, plus \$6332 in reimbursable medical expenses; Larry McConnell, \$28,229 in backpay, plus \$1575 in reimbursable medical expenses; Thomas Osborne, \$26,250 in backpay, plus \$150 in reimbursable medical expenses; Thomas Resetar, \$40,778 in backpay, plus \$1899 in reimbursable medical expenses; Keith Sonke, \$19,665 in backpay; Edward Tellam, \$73,228 in backpay, plus \$5300 in reimbursable medical expenses; Gerald Tennell, \$23,507 in backpay, plus \$770 in reimbursable medical expenses; David Vaars, \$53,513 in backpay; and Hubert Woodruff, \$27,441 in backpay.

The specification also alleges that Respondent owes the Western Conference of Teamsters Pension Trust (Pension Trust) \$30,316.44 and the Construction Teamsters Health and Welfare Trust Fund for Northern California (Health and Welfare Trust) \$32,687.40 on behalf of the respective claimants.²

II. OVERVIEW

The latest bargaining agreement between Respondent and the Union expired on July 1, 1983. The strike began on August 18, and Respondent hired temporary replacements. On September 7, as the Board found in the decision below, the Union conveyed to Respondent a valid offer to return on behalf of all the strikers. The Board concluded that Respondent violated Section 8(a)(3) and (1) of the Act by failing and refusing to reinstate the strikers on receiving that offer.

Respondent adhered to the terms of the expired agreement until the strike. It hired the replacements at wage rates below those specified in the agreement, and ceased contributing to the Pension and Health and Welfare Trusts on behalf of its employees effective November 1, 1983.

On September 24, 1984, Respondent withdrew recognition from the Union. The General Counsel does not challenge the withdrawal's validity.

By letters sent and received on about November 3, 1987, Respondent offered the 14 surviving claimants recall to their former positions, giving them a 1-week acceptance deadline. Respondent extended the deadline to November 16 by subsequent correspondence, and the Union advised Respondent on November 13 that 11 named claimants were "ready, willing and able to return to work." The advisory added that the Union had been unable to "contact" George Horner or Thomas Resetar "on such short notice." It did not mention Keith Sonke.

By letter dated November 24, 1987, the Union's attorney asked Respondent's attorney "when employment will be available to those individuals requesting it." Apart from a letter by which Respondent directed Locatelli to report on December 11, the record is silent whether or how Respondent answered.

None of the claimants rejoined the payroll.

III. CONTROLLING LEGAL PRINCIPLES

Among the legal principles applicable to compliance proceedings are these:

²The specification also calls for interest wherever money is owing.

First, quoting from *Mastro Plastics Corp.*:³

[T]he general burden of proof is upon the General Counsel to establish the damage which has resulted from Respondent's established [misconduct], i.e., the gross backpay over the backpay period

Second, the General Counsel "has wide discretion in selecting criteria for reconstructing what would have happened . . . but for the discrimination,"⁴ and "is only required to employ a formula reasonably designed to produce the approximate awards due."⁵ Although "several equally valid methods of computation" may be available, "each yielding a somewhat different result," the choice of "one method rather than another hardly makes out a case of abuse of discretion."⁶ Moreover, "the backpay claimant should receive the benefit of any doubt rather than . . . the wrongdoer responsible for the existence of any uncertainty."⁷

Third, again quoting from *Mastro Plastics Corp.*:⁸

[T]he burden of proof is upon the Respondent as to diminution of damages, whether from the willful loss of earnings by the [claimant's] failure to look for or keep a substantially equivalent job or from the unavailability of a job . . . for some reason unconnected with the discrimination.

IV. THE GENERAL COUNSEL'S BURDEN

A. Gross Backpay

1. The backpay periods

a. *The positions of the parties*

The specification alleges that the backpay periods for all claimants began on September 7, 1983, coincident with the Union's return-to-work offer, and that the period for each of 13 surviving claimants ended on a stated later date in November or December 1987 when he refused reinstatement; that the period for Ronald Baker ended on November 11, 1987, when he retired from the labor market; and that for Richard Desmond ended with his death on September 19, 1985.

The answer alleges that a valid offer to return never was made on behalf of the claimants. It does not dispute the termination dates of the several backpay periods should the offer to return be found valid.

The answer further alleges that unnamed claimants declined recall offers in September 1983. Respondent particularizes in its brief that two claimants, Thomas Browning and Thomas Osborne, declined recall offers on September 7. It argues in support of this contention that Judge Heilbrun "found," in the underlying decision, that it offered recall to Browning and Osborne on September 7; and that, while the

Board affirmed Judge Heilbrun's "rulings, findings, and conclusions only to the extent consistent with" the its decision and order, it tacitly adopted the judge's "finding" as concerns these two claimants inasmuch as it "did not take issue with or even mention" that aspect of the judge's decision.

b. *Conclusions*

Respondent, by its answer, impermissibly seeks to relitigate the Board's determination that the September 7 return-to-work offer was valid.⁹ I conclude, consistent with the Board's determination and in agreement with the specification, that the backpay periods began on September 7. So doing, I reject Respondent's contention with regard to Browning and Osborne as outside the Board's intentment.

I further conclude that the backpay periods ended on the respective dates set forth in the specification. Not only are those dates compatible with the evidence, but, as dictated by Section 102.56 of the Board's Rules and Regulations, Respondent effectively conceded their appropriateness by failing to propose alternative dates in its answer.

2. The backpay formula

a. *The positions of the parties*

The specification regards replacements¹⁰ who were on the payroll for at least 11 weeks in a calendar quarter, or an equivalent portion of a partial quarter, as "full-quarter replacements"; and posits that a like number of the most senior claimants would have worked their average hours in such a quarter but for the discrimination.

For that portion of the backpay periods predating the withdrawal of recognition in September 1984, the specification states in essence that the proper measure of the most senior claimants' wage rates is their average hourly rates from January 1, 1983, until they struck in August—that is, rates derived from the agreement; and that the gross wages properly due them are the product of those rates times their replacements' average hours.

For the postwithdrawal portion of the backpay periods, the specification states that the gross wages properly due the most senior claimants are the product of the replacements' average rates times their average hours.

The specification regards replacements not identified as full-quarter replacements as "partial-quarter replacements"; and posits that the remaining claimants, by seniority, would have worked their hours. The specification states that the gross wages properly due these claimants are to be figured by an averaging process analogous to that proposed for the most senior claimants.

The specification alleges, further, that the expired agreement provided that each employee receive credited an hourly \$2 vacation-allowance credit, and that each claimant properly should be credited accordingly for hours he would have worked, but for the discrimination, until the September 1984 withdrawal of recognition.

The answer admits that the hours worked by the replacements otherwise would have worked by the claimants. It

³ 136 NLRB 1342 at 1346 (1962).

⁴ *Alaska Chapter, AGC*, 119 NLRB 663, 667 fn. 8 (1957).

⁵ *Trinity Valley Iron & Steel Co. v. NLRB*, 410 F.2d 1161, 1177 fn. 28 (5th Cir. 1969).

⁶ *NLRB v. Overseas Motors*, 818 F.2d 517, 520 (6th Cir. 1987), quoting from *Bagel Bakers Council v. NLRB*, 555 F.2d 304, 305 (2d Cir. 1977).

⁷ *United Aircraft Corp.*, 204 NLRB 1068, 1068 (1973).

⁸ 136 NLRB at 1346.

⁹ *Best Glass Co.*, 280 NLRB 1365, 1367 (1986); *Sumco Mfg. Co.*, 267 NLRB 253, 254 (1983).

¹⁰ Alone or in combination with others who succeeded to their positions.

seems to dispute the appropriateness of seniority as a determinant of the claimants' relative priorities, however, citing the language in the latest labor agreement requiring that seniority dictate order of layoff and recall only when ability "is approximately equal."

The answer alleges that the appropriate wage rates at all times, not only following the withdrawal of recognition, are those paid the replacements. The answer also takes issue with the claimants' entitlement to a vacation-allowance credit, contending that it "is nothing more than an attempt . . . to inflate the backpay computations." The answer does not deny, however, that the employees received such a credit under the expired agreement, and thus presumably until the strike.

b. Conclusion

I conclude, absent convincing presentation of an objective alternative approach, that the use of seniority as a determinant of the claimants' respective priorities was well within the broad discretion accorded the General Counsel in reconstructing what would have happened but for the discrimination.

I further conclude, given the General Counsel's broad discretion in compliance matters and that the wrongdoer must bear the brunt of uncertainties created its misconduct, that the specification properly factors in the claimants' prestrike wage and vacation-allowance levels for that portion of the backpay periods preceding the withdrawal of recognition.

I base this latter conclusion on the reasonable supposition that, had Respondent recalled the strikers as the law requires, it would have maintained their preexisting wage and vacation-allowance levels at least until the withdrawal of recognition. While an employer permissibly can pay striker-replacements below preexisting rates without bargaining,¹¹ I reject Respondent's contention that the lesser rates are the appropriate standard for determining the prewithdrawal entitlements of those improperly denied recall.

I conclude, as well, that the averaging methods used by the General Counsel to arrive at the wage and hour multipliers underlying the gross backpay calculations not only are appropriate in the circumstances, but more conducive to fairness than Respondent's alternatives.

3. Gross backpay findings

Having adopted the backpay periods as advanced by the specification, together with the formula therein for computing the several entitlements and, with one exception, having no reason to question the underlying calculations, I perforce also adopt the specification's gross backpay figures—with the one exception.¹² I thus find the claimants' gross backpay, by quarters, to be as set forth in Appendix A, attached.¹³

¹¹ *Service Electric Co.*, 281 NLRB 633, 642 (1986).

¹² The exception concerns Thomas Browning's gross backpay for the third quarter of 1984. The specification inexplicably contains two sets of entries. One states that Browning's gross backpay for that quarter is \$1339 and that he had no interim earnings. The other gives his gross backpay as \$8125, and his interim earnings as \$6434. In my recommended Supplemental Order below, I direct the General Counsel to recompute Browning's entitlement for the quarter, resolving the ambiguities concerning gross backpay and interim earnings.

¹³ I find below that Hubert Woodruff was unavailable for work for 2 weeks during the second quarter of 1984, consequently concluding

B. Fringe Benefit Contributions

1. The positions of the parties

Alleging once more that Respondent was obligated to maintain levels consistent with the expired agreement until the September 1984 withdrawal of recognition, the specification demands that Respondent make contributions to the Pension and Health and Welfare Trusts on behalf of each claimant for each hour that claimant would have worked to that time but for the unlawful failure to recall.

The answer alleges that Respondent has no obligation to the Pension or Health and Welfare Trusts beyond November 1, 1983, when its contributions ceased. The answer claims in support of this position that the parties reached a bargaining impasse on November 1 which legitimized the cessation of contributions.

2. Conclusion

Again mindful of the broad discretion enjoyed by the General Counsel and that uncertainties are to work against the wrongdoer, I conclude that the demand for contributions accruing until September 24, 1984, is appropriate.

I base this conclusion, as I did that concerning wage and vacation-allowance levels, on the reasonable supposition that Respondent would have maintained preexisting benefit levels until the withdrawal of recognition had it recalled the strikers in September 1983 as the law requires, and on my rejection of Respondent's contention that the reduced benefits accorded the replacements are an appropriate prewithdrawal standard.¹⁴

C. Medical Expenses

1. The positions of the parties

The specification alleges that certain of the claimants incurred out-of-pocket medical expenses between the onset of their backpay periods and Respondent's withdrawal of recognition that would have been reimbursed by the Health and Welfare Trust, and that they thereafter incurred medical expenses that would have been reimbursed by Respondent's medical plan for the replacements.

The answer alleges lack of knowledge to admit or deny this allegation, and denies that the medical expense amounts alleged in the specification are correct.

2. Evidence

As earlier indicated, the expired agreement incorporated a health and welfare plan, which Respondent funded through October 1983. Respondent then adopted a new plan in January 1984. Neither plan is in evidence.

that his gross backpay for that quarter should be reduced by two-thirteenths.

¹⁴ I do not mean to imply by this conclusion that Respondent acted improperly when it stopped making contributions. As just noted in connection with wage rates, an employer can unilaterally alter striker-replacements' terms and conditions without violating the Act. Moreover, Respondent's stoppage of payments to the trusts was never litigated and cannot be found unlawful at this late date, regardless. *Machinists Lodge 1424 (Bryan Mfg. Co.) v. NLRB*, 362 U.S. 411 (1960). Respondent's impasse argument thus misses the point.

In support of the specification, the General Counsel introduced a packet of materials for each claimant. I received the first of the packets, that pertaining to Richard Desmond, over the hearsay objection of Respondent's counsel. Counsel agreed to the admission of the remaining packets without foundation, but with the recurrently stated understanding that he did not thereby concede the truthfulness of their entries.

Each packet includes forms containing the General Counsel's quarterly backpay computations and forms captioned "Claimant's Backpay Data Form." The claimants ostensibly submitted the backpay data forms to the General Counsel's compliance officer from time to time during the backpay periods. Many are unsigned.

The backpay data forms contain this item:

C. List any medical expenses or health insurance expenses which you would not have had if you were still working for your former employer: \$ _____ (attach a separate sheet)

The packet for one of the claimants, Gerald Gomes, also includes a one-page document entitled "Hansen Brothers Medical Expenses Questionnaire."

The General Counsel did not question any of the claimants about their item C entries, ask Gomes about the entries on his questionnaire, or otherwise attempt to verify the entries. The claimants for the most part simply entered a dollar figure, without explanation, in response to item C; and in several instances that figure does not correspond with the amount claimed in the specification. Thus:

(a) While the specification demands medical-expenses reimbursement for William Browning for the last quarter of 1984 and the first three quarters of 1985, he made no item C entries for those quarters.

(b) George Horner's item C entries differ wildly from the specification amounts. To cite a few of many instances, he claimed that he had \$5000 in medical expenses in the fourth quarter of 1983, whereas the specification demands nothing; he claimed \$300 for the second quarter of 1984, and the specification \$374; and he claimed \$4000 for each of the last two quarters of 1984, and the specification \$54 and \$121.

(c) William Locatelli made no item C entries for the last quarter of 1983 or the first quarter of 1984, yet the specification demands \$330 for each quarter.¹⁵

(d) Thomas Resetar entered that he incurred \$187 in item C expenses in the first quarter of 1986; the specification makes no demand for that quarter.

Apart from the demonstrable unreliability of the backpay data forms, the specification demands medical-expenses reimbursement for Larry McConnell for the last quarter of 1983, all of 1984, and the third quarter of 1985. McConnell's packet contains no backpay data forms for any of those quarters, nor any other documents from which a basis for the specification figures might be gleaned.

The record contains no probative evidence of the coverages under the two plans in question. The expired agreement is in evidence, but it incorporated the union plan only

¹⁵Locatelli entered on his forms, in the section calling for job search and extra job expenses, that he had paid \$110 per month for "insurance." He did not indicate what kind of insurance.

by reference.¹⁶ The General Counsel elicited no testimony about the plan. She did not offer Respondent's plan, either, or call anyone to testify about it.¹⁷

3. Conclusion

The General Counsel proffered no reliable evidence in support of the medical-expenses claims made by the specification.¹⁸ Not only are the alleged expenses devoid of reliable, nonhearsay verification, but the record leaves to speculation the coverages of the plans in question. I conclude, therefore, that the General Counsel has not met her burden in this regard, and so disallow all medical-expense claims.¹⁹

D. Expenses Deductible from Interim Earnings

1. Positions of the parties

The specification alleges that 12 claimants incurred specified expenses, to be deducted from their interim earnings, in seeking or retaining interim employment. The answer alleges lack of knowledge to admit or deny this allegation, yet asserts that the amounts alleged "represent the maximum amounts of deductible expenses." Appendices incorporated in the answer contain stated figures for the 12 claimants, which are designated "Maximum Deductible Expenses." Each of those entries is accompanied by a footnote stating in part:

The Respondent reserves its right to present evidence . . . showing that the actual deductible expenses . . . are less than the amounts stated . . . in the Amended Compliance Specification or set forth herein.

¹⁶The agreement stated that the employer shall make specified contributions for "hospital, medical, surgical, dental care, visual care, prescription drug and such other welfare benefits as the Board of Trustees deem advisable," and that the trustees "shall determine . . . the nature, extent, and cost of such benefits."

¹⁷The only evidence of the coverages under Respondent's plan appears in a letter dated November 11, 1987, from Respondent's attorney to his union counterpart. It states without elaboration that Respondent "provides health insurance which includes medical, dental and vision coverage with an option for spouse and child coverage of which the employer will pay 30% of the cost." The General Counsel argues in effect that I should draw an inference adverse to Respondent—thereby crediting the specification with regard to postwithdrawal medical expenses—because Respondent failed to "give complete and detailed information" about the plan when the specification was being prepared. The General Counsel made no effort to develop that information during the hearing, however, and Board Agent Karen Thompson, who participated in the preparation of the specification, testified that she "was provided with a copy" of Respondent's plan.

¹⁸Without more, neither the General Counsel's quarterly backpay computations nor claimant entries on backpay data forms carry probative value. Cf. *Woodline Motor Freight*, 305 NLRB 6 (1991). See also NLRB Casehandling Manual, Part 3, Compliance Proceedings, Sec. 10740.1 and .3 (1989).

¹⁹*Best Glass Co.*, supra; *Famet, Inc.*, 222 NLRB 1180, 1183 (1976). When Respondent makes the Health and Welfare Trust whole as directed herein, the Trust presumably will extend retroactive coverage to the claimants, thereby providing relief to September 24, 1984.

The deductible-expense amounts thus set forth, rounded to the nearest dollar, are:

<i>Claimant</i>	<i>Specification</i>	<i>Answer</i>
Ronald Baker	\$1,067	\$1,003
Thomas Browning	34,358	²⁰ 31,802
William Browning	3,290	²¹ 2,908
Gerald Gomes	13,380	11,720
George Horner	1,109	1,049
William Locatelli	9,422	8,565
Larry McConnell	18,487	²² 17,323
Thomas Osborne	7,092	²³ 6,046
Thomas Resetar	8,555	6,314
Keith Sonke	2,388	²⁴ 2,105
Gerald Tennell	5,705	5,005
Hubert Woodruff	19,389	²⁵ 17,183

2. Evidence

The evidence in support of this portion of the specification consists of the packets described above in the medical-expenses section. Respondent did not present any substantial evidence modifying the amounts stated in the appendices to its answer.

3. Conclusion

The General Counsel's evidence suffers the same infirmities as that supporting the claimants' alleged medical expenses. I therefore assign it no probative value. In light of the admissions implicit in the appendices to Respondent's answer, however, and absent contradicting evidence, I find that the several claimants' expenses are as there stated.²⁶

The claimants' quarterly expenses, to be deducted from interim earnings, are set forth in Appendix B, attached.

V. RESPONDENT'S BURDEN

A. *The Positions of the Parties*

While not the General Counsel's burden, the specification admits that each of the claimants realized stated interim earnings and that interim employers made stated contributions to the Pension and Health and Welfare Trusts on behalf of some of them.

Respondent alleges in its answer that the claimants realized, at a minimum, the interim earnings stated in the specification. The answer also alleges, among other things, that

²⁰ Respondent's bottom-line figure for Thomas Browning is \$29,451. It neglected to include \$2353 for the second quarter of 1984—a figure contained in the specification which the answer incorporates by reference.

²¹ Respondent's bottom-line figure is \$2906. My totaling of the constituent entries, rounded off, comes to \$2908.

²² Respondent's bottom-line figure, \$16,582, reflects an error in addition. I have substituted the correct total.

²³ Respondent's bottom-line figure is \$6,045. My totaling of the constituent entries, rounded off, comes to \$6046.

²⁴ Respondent's bottom-line figure, \$4,208, reflects an error in addition. I have substituted the correct total.

²⁵ Respondent's bottom-line figure, \$14,633, reflects an error in addition. I have substituted the correct total.

²⁶ Cf., *Garsart Construction Corp.*, 282 NLRB 1331, 1332 (1987).

interim employers made contributions to the Pension and Health and Welfare Trusts beyond those admitted in the specification and that "some or all" of the claimants failed to "mitigate their damages," "made themselves unavailable for work," and engaged in "serious acts of misconduct" disqualifying them from backpay.

Respondent makes sundry additional contentions in its brief—that so-called strike benefits received by the claimants should be treated as interim earnings, that various of the claimants forfeited their entitlements in whole or part by deliberately concealing interim earnings or because of subpoena noncompliance, etc.

B. *Strike Benefits as Interim Earnings*

1. Evidence

The Union paid some of the claimants so-called strike benefits from time to time during the backpay periods. The specification does not treat these payments as interim earnings.

Michael Tobin, a business representative for the Union, testified that, as dictated by the constitution of the parent International, strikers are paid \$45 weekly from the second through the fifth weeks of a strike, and \$55 per week thereafter. Tobin recalled that the Union's membership and executive board eventually raised the claimants' weekly payments to \$155. Neither Tobin nor any of the claimants could testify definitively when this last increase occurred. The yearly amounts paid some of the claimants indicate that it probably occurred in early 1984.

Tobin termed these payments "an out-of-work benefit." He explained that strikers are "not necessarily" required to picket to qualify; that it "has nothing to do with" time on the picket line. Similarly, claimant Thomas Browning testified: "It wasn't for picketing. This was for being on strike. That was the strike benefit."

Tobin had no duties in connection with the strike in question. The business representative who did, one Lomoscolla, did not testify. Asked if a striker would continue receiving payment if he/she "did not show up and picket for several weeks," Tobin testified:

[T]hat's the responsibility of the administrator or business representative dealing with that particular unit on strike or lockout. . . . They would have to make that determination. Clearly, if the person did go back to work, in . . . another local union jurisdiction, then he wouldn't be receiving his strike benefits.

Tobin and Browning to the contrary, various of the claimants testified unequivocally that the payments were contingent upon their picketing. Thus:

(a) Ronald Baker testified that his payments were "compensation for [his] engaging in the picketing."

(b) George Horner testified that he was paid "for picket-line activity."

(c) William Locatelli testified that certain moneys he received were "compensation for [his] picket-line activities."

(d) Thomas Resetar testified that he "received compensation . . . if [he] was on the picket line," and that he did not if he did not picket.

(e) Keith Sonke testified that he received payments "only when [he] was on picket duty."

(f) Edward Tellam testified, when asked if all the strikers received money from the Union, "If they picketed, they were compensated."

(g) Hubert Woodruff testified that the Union paid him "whenever he picketed."

Respondent established that 11 of the claimants accordingly received payments as follows during the backpay periods:

(a) Ronald Baker: Weekly payments totaling \$145 (two of \$45, one of \$55) in the third quarter of 1983 after September 7; weekly payments totaling \$715 (13 of \$55) in the fourth quarter of 1983; weekly payments totaling \$5790 in 1984 and \$8060 in 1985;²⁷ and an unknown number of \$155 weekly payments in the first and second quarters on 1986.²⁸

(b) Thomas Browning: Weekly payments of \$45 for an uncertain period in 1983, and of \$155 for an uncertain later period.

(c) William Browning: Weekly payments totaling \$145 (two of \$45, one of \$55) in the third quarter of 1983 after September 7; weekly payments totaling \$715 (13 of \$55) in the fourth quarter of 1983; and weekly payments totaling \$2345 in the first 4 months of 1984.²⁹

(d) Gerald Gomes: Weekly payments totaling \$785 in the fourth quarter of 1983, \$1040 in 1984, \$3100 in 1985, and \$625 in 1986.

(e) George Horner: Weekly payments totaling \$2255 in 1984, \$3830 in 1985, \$3975 in 1986, and \$6975 (45 of \$155) in 1987 to the November 13 end of his backpay period.

(f) William Locatelli: Weekly payments totaling \$1705 in 1984 and \$3455 in 1985.

(g) Thomas Resetar: Weekly payments totaling \$3875 in 1984.

(h) Keith Sonke: Weekly payments totaling \$140 in 1984 and \$1495 in 1986.

(i) Edward Tellam: Weekly payments totaling \$860 in 1983, \$7150 in 1984, \$7750 in 1985, and \$4860 in the first 8 months of 1986.³⁰

(j) Gerald Tennell: Weekly payments totaling \$805 in 1983 and \$4050 in 1984.³¹

²⁷The record fails to reconcile Baker's receiving \$8060 in 1985 with the fact that \$155 x 52 equals \$7960. Perhaps the \$8060 includes payment for 1984 picketing.

²⁸Baker testified that he received weekly payments of \$45 from the August 18 strike onset through December 31, 1983, and that his 1986 weekly payments were \$145. I find, based on Tobin's testimony, that Baker's 1983 payments began with the strike's second week and increased to \$55 after the fifth week—which is to say, the week beginning September 22—and that his 1986 weekly payments were \$155. I credit Tobin in all instances where the claimants' recollections of their weekly payments differ from his testimony.

²⁹Browning testified that he received payments of \$45, then \$55, from the start of the strike. I find, based on Tobin's testimony, that payments began with the strike's second week.

³⁰Tellam testified that he received payments totaling \$950 in 1983. I assume, absent a more precise breakdown, that \$90 of that (2 x \$45) derived from his picketing before the September 7 onset of his backpay period—that is, during the strike's second and third weeks.

³¹Tennell testified that he received payments totaling \$895 in 1983. I assume, absent a more precise breakdown, that \$90 of that (2 x \$45) derived from his picketing before the September 7 onset of his backpay period—that is, during the strike's second and third weeks.

(k) Hubert Woodruff: An unknown number of weekly payments at \$55 per week in 1983, an unknown number of weekly payments in 1984, and weekly payments totaling \$2470 in 1985.³²

2. Conclusion

The weight of evidence compels the conclusion that the so-called strike benefits in reality were payment for and contingent upon picketing. I agree with Respondent, therefore, that these payments should be treated as interim earnings, to be deducted from the claimants' quarterly net backpay entitlements, to the extent that a nonspeculative determination of dollar amounts can be made.³³

Where the record does not enable a quarterly breakdown, I will assume payments were received proportionately throughout the defined larger period. In the case Ronald Baker's \$5790 in 1984, for instance, I will divide that amount by 4 to arrive at a quarterly allocation (\$1447). Where the record affords no basis for dividing the total received in a given period, as in the case of Baker's receiving an unknown number of \$155 payments in the first and second quarters of 1986, I will assume that he received only one such payment in each quarter. Similarly, since Hubert Woodruff received an unknown number of \$55 payments in the fourth quarter of 1983 and payments in an unknown amount in 1984, I will assume that he received two \$55 payments—one in each year.

Finally, where the record leaves to speculation whether payments were received within a given backpay period, as in the case of the weekly payments of \$45 received by Thomas Browning for an uncertain period in 1983 and of \$155 for an uncertain later period, I conclude that Respondent has not met its burden.³⁴

Applying these guidelines, I find that the claimants realized additional interim income, in the form of payment for picketing, as follows:

(a) Ronald Baker: \$145 in the third quarter of 1983; \$715 in the fourth quarter of 1983; \$1447 in each quarter of 1984; \$2015 in each quarter of 1985; and \$155 in each of the first two quarters of 1986.

(b) William Browning: \$145 in the third quarter of 1983; \$715 in the fourth quarter of 1983; \$1759 in the first quarter of 1984; and \$586 in the second quarter of 1984.

(c) Gerald Gomes: \$785 in the fourth quarter of 1983; \$260 in each quarter of 1984; \$775 in each quarter of 1985; and \$156 in each quarter of 1986.

(d) George Horner: \$564 in each quarter of 1984; \$957 in each quarter of 1985; \$994 in each quarter of 1986; \$2015 in each of the first three quarters of 1987; and \$930 in the fourth quarter of 1987.

(e) William Locatelli: \$426 in each quarter of 1984; and \$864 in each quarter of 1985.

(f) Thomas Resetar: \$969 in each quarter of 1984.

³²Woodruff testified that he also received an unknown number of \$45 payments in 1983. Since he could have received two such payments before the onset of his backpay period, the record does not support a finding that he received such payments during the backpay period.

³³*Tubari Ltd.*, 303 NLRB 529 (1991); *Superior Warehouse Grocers*, 282 NLRB 802, 803-804 (1987).

³⁴I note in this regard that picketing took place after, as well as before, at least some of the backpay periods.

(g) Keith Sonke: \$35 in each quarter of 1984; and \$374 in each quarter of 1986.

(h) Edward Tellam: \$161 in the third quarter of 1983; \$699 in the fourth quarter of 1983; \$1787 in each quarter of 1984; \$1937 in each quarter of 1985; \$1822 in each of the first two quarters of 1986; and \$1216 in the third quarter of 1986.

(i) Gerald Tennell: \$151 in the third quarter of 1983; \$654 in the fourth quarter of 1983; and \$1012 in each quarter of 1984.

(j) Hubert Woodruff: \$9 in the third quarter of 1983; \$46 in the fourth quarter of 1983; \$14 in each quarter of 1984; and \$617 in each quarter of 1985.

C. Total Interim Earnings

I find, adding the claimants' proven picketing incomes to their other interim earnings, admitted by the specification, that their quarterly interim earnings are as set forth in Appendix C, attached.

D. The Alleged Failure to Mitigate

1. Ronald Baker

a. Respondent's position

Respondent states in its brief that Baker "should not be entitled to any backpay" because he "willfully failed to mitigate his damages." In support of this assertion, Respondent cites Baker's testimony that he could have worked for Jordan Logging at \$50 per load whenever he wanted to from the third quarter 1983 through 1987.

b. Evidence

Baker testified that Jordan Logging offered him a job in 1983, and that he turned it down because he already was working. Baker then testified that he could have worked for Jordan Logging whenever he wanted from the third quarter of 1983 through the end of 1987. He later credibly testified that Jordan Logging offered only seasonal employment; that operations ceased when the ground was snowy or wet. Baker did work for Jordan Logging in 1986 and 1987.

The specification admits that Baker had \$41,013 in interim earnings during his backpay period, and that he realized portions thereof in all but four scattered quarters during his backpay period. And, as earlier found, he received picketing pay, to be treated as interim earnings, from 1983 into 1986.

c. Conclusion

I reject Respondent's contention. First, a claimant is not deprived of his entire claim by unjustifiably quitting or refusing employment, "but only so much as he would have earned had he retained or obtained the interim job."³⁵ Second, Respondent has not proved that Baker unjustifiably refused employment. Not only has it failed to establish that he declined opportunities with Jordan Logging when unemployed, but it has not shown what he would have earned had he worked for Jordan Logging other than when he did.³⁶ Third, Respondent overlooks that Baker's working as a paid

³⁵ *Mastro Plastics Corp.*, supra, 136 NLRB at 1350.

³⁶ *North Slope Mechanical*, 286 NLRB 633, 640 (1987); *Carter's Rental*, 250 NLRB 344, 348 (1980).

picketer was interim employment, the suitability of which must be assumed absent a contrary showing by Respondent.³⁷

2. Gerald Gomes

a. Respondent's position

Respondent states in its brief that Gomes should be denied backpay because he quit his interim employment at Flowers Transportation without cause in 1983.

b. Evidence

Gomes testified that he obtained an interim job with Flowers Transportation in 1983, which he then quit. He quit, he testified, because "they were running too many hours" and he "couldn't handle it." He added: "I would have had to run two logbooks, and that was illegal, and I didn't want to do that."

The specification admits that Gomes had interim earnings of \$101,459, including approximately \$18,000 spread over the four quarters of 1984. And, as earlier found, he received picketing pay, to be treated as interim earnings, from 1983 to 1986.

c. Conclusion

I reject Respondent's contention. Gomes' stated reasons for quitting were credible and justified his doing so. Extracting from *Mastro Plastics Corp.*:³⁸

[A] claimant who obtains a job but then leaves it for a justifiable reason is not deprived of all further claim; the assumption is that the reason for his quitting the job would not have been present at Respondent's plant and therefore the job is not substantially equivalent. . . . Only if the evidence supports a finding that the claimant would have left Respondent's plant for the same reason that he left the interim job or in order to obtain this particular new job is his claim from that time disallowed.³⁹

Moreover, Respondent has failed to demonstrate that Gomes' quitting entailed any diminution of interim income.⁴⁰

3. William Locatelli

a. Respondent's position

Respondent states in its brief that Locatelli's claim should be denied based on his admission that he never looked for work during his backpay period.

b. Evidence

Respondent's counsel asked Locatelli at one point: "Was there ever a point in time from August 1983 . . . until December 1987 when you actually started looking for work?" Locatelli answered: "I don't think I was looking for work. I know they came, a couple guys asked me to go to work

³⁷ *Tubari Ltd.*, supra, 303 NLRB at 529.

³⁸ 136 NLRB at 1349-1350.

³⁹ See also *United Aircraft Corp.*, 204 NLRB 1068, 1077-1078 (1973).

⁴⁰ *North Slope Mechanical*, supra, 286 NLRB at 640.

for them.” Counsel then asked: “So you were not actively looking for work during any of that time period, or a portion of it?” Locatelli answered: “No.” Counsel pressed on in that vein, and Locatelli, as if suddenly grasping the thrust of the inquiry, testified: “Oh, I see. Yes, I looked for a job. Yes.”

Locatelli later named four firms he sought employment with, adding that he also went to “a few others” he could not recall by name. Locatelli testified, as well, that his name was placed on the Union’s out-of-work list shortly after the strike, and that he checked with the Union “about once a week” about job possibilities when not employed.

The specification admits that Locatelli had interim earnings of \$46,294. And, as earlier found, he received picketing pay, to be treated as interim earnings, in 1984 and 1985.

c. Conclusion

I reject Respondent’s contention. True, Locatelli seemed to admit that he never sought interim employment. I am persuaded from observing his performance during that exchange and throughout his recital, however, that he either is hard of hearing or has some other cognitive difficulty, and that he truly misunderstood the sense of counsel’s questions. I am further persuaded that, once focused, Locatelli credibly described his job search, and that it was sufficiently diligent to preclude an adverse finding. His considerable interim earnings indicate as much.⁴¹

4. Edward Tellam

a. Respondent’s position

Respondent states in its brief that Tellam described himself as retired on his 1984 Federal tax return, and that he is not entitled to backpay while he so considered himself.

b. Evidence

Tellam conceded that he listed himself as retired on his 1984 return. He testified that he did this as “a survival move,” explaining that, without income from Respondent, he was forced to take early retirement from the Union to obtain pension income. Tellam also testified that he signed the Union’s out-of-work list soon after the strike’s onset; that he sought employment with R. J. Miles Company, for whom he worked “off and on” starting in 1985; and that he became a business agent for the Union in October 1986.

The specification admits that Tellam had \$25,388 in interim earnings, none of which he realized before the third quarter of 1985. And, as earlier found, he received picketing pay, to be treated as interim earnings, from 1983 to 1986.

c. Conclusion

I reject Respondent’s contention. As it did in the case of Ronald Baker, Respondent overlooks that Tellam’s working as a picketer—for which he received \$7150 in 1984, \$7750 in 1985, and \$4860 in the first 8 months of 1986—was interim employment, the suitability of which must be assumed absent a contrary showing.⁴² At \$155 per week, this signifies full-time employment during that period, and Tellam’s admit-

ted interim earnings thereafter hardly bespeak retirement or a lack of diligence. A claimant, after all, is not held to “the highest standard of diligence” in seeking interim employment.⁴³

E. The Alleged Subpoena Noncompliance and Concealment of Interim Earnings

1. Thomas Browning

a. Respondent’s position

Respondent argues in its brief that Thomas Browning failed to produce subpoenaed documents, including tax returns for 1983 to 1985, that this prevented it from proving interim earnings beyond those admitted in the specification, and that his entitlement should be reduced accordingly.

b. Evidence

Respondent directed a subpoena to Browning demanding that he produce a broad range of documents, records, and other papers, including Federal and state tax returns for 1983 through 1987. Browning produced his 1986 and 1987 tax returns, but not those for the prior years. He testified: “I don’t have any of the others. . . . What you have is what I have. I don’t have any others.” Citing their nonexistence, Browning also failed to produce certain other subpoenaed materials.

c. Conclusion

I reject Respondent’s contention. I do not doubt Browning’s testimony that the unproduced materials do not exist. A claimant’s entitlement is not compromised because of his failure to produce the nonexistent.⁴⁴

2. Richard Desmond

a. Respondent’s position

Respondent states in its brief that, although it served a subpoena on one Katherine Moffett at Desmond’s last known address, neither she nor anyone else complied on behalf of Desmond or his estate. Respondent argues that it thus was precluded from proving the offsets to which it is entitled, and that the Desmond claim consequently should be disallowed in toto.

b. Evidence

On October 13, 1988, Respondent directed a subpoena duces tecum to the “Estate of Richard Desmond.” The affidavit of service states that it was personally served on Katherine Moffett, whom it describes as Desmond’s “housemate for eight years.” On August 23, 1991, Respondent’s counsel mailed a copy of the subpoena to “Estate of Richard Desmond c/o Katherine Moffett,” together with a letter stating that the hearing herein would convene at 11 a.m. on October 7 at a site to be determined. On October 2, counsel sent a letter to “Estate of Richard Desmond c/o Katherine Moffett” setting forth the site, as well as time and date, of the hearing.

⁴¹ See generally *Brown Co.*, 305 NLRB 62 (1991).

⁴² *Tubari Ltd.*, supra.

⁴³ *North Slope Mechanical*, supra at 641; *Lundy Packing Co.*, 286 NLRB 141, 142 (1987).

⁴⁴ *Carter’s Rental*, supra, 250 NLRB at 350, 352.

The record does not disclose Moffett's status, if any, vis-a-vis the Desmond estate.

c. Conclusion

I reject Respondent's contention. The circumstances described do not warrant an inference adverse to the Desmond estate, thereby relieving Respondent of its burden as to diminution of gross backpay.⁴⁵

3. George Horner

a. Respondent's position

Respondent argues in its brief that Horner failed to produce subpoenaed documents and "sought to conceal interim earnings" until "confronted with specific evidence of employment," and that his claim therefore should be disallowed.

b. Evidence

Respondent directed a subpoena to Horner demanding that he produce a broad range of documents, records, and other papers, including Federal and state tax returns and W-2 forms for 1984 through 1987. He produced his 1984 and 1985 Federal returns, but no others. He testified that he did not file for 1986 or 1987 because he "didn't make any money." He did not produce any W-2 forms either, indicating ("They wasn't in there.") that none exist. Nor did he produce any of the other materials called for by the subpoena. Respondent's counsel did not develop through Horner whether any of those materials exist.

Examined by Respondent's counsel, Horner testified at one point that he had worked for Tim Smith Construction in 1985. He earlier had testified that he had worked for no one in 1985 "other than what we've identified," which did not include Tim Smith Construction. Horner recounted that his work for Tim Smith consisted of "cement work and fencing and stuff like that"; that he "didn't get paid in cash, per se," but worked off a loan from Smith of about \$300 "to get a car repaired." Horner presently recalled that Smith also "might have bought [him] a case of beer or something now and then," and "slipped [him] some cash or something once in a while."

Horner "imagine[d]" that the Tim Smith job lasted a "couple weeks." Later, refreshed by tickets he had signed evidencing the receipt of cement from Respondent, Horner recalled that he worked for Tim Smith on May 22 and 31, June 27, and September 17.

Horner testified, as well, that he worked for Ron Langley in 1986. Again refreshed by a delivery ticket he had signed, he recalled that this occurred on September 22, and was "probably" a 2-1/2 or 3-hour job. He testified that no money "changed hands in that deal"; that he was repaying Langley in kind for helping him build a fence.

c. Conclusion

I reject Respondent's contention. The record contains no intimation that Horner withheld existing subpoenaed materials, or that he failed to make a reasonable effort to locate such materials. As earlier noted, a claimant's entitlement is

⁴⁵ Cf., *Mastro Plastics Corp.*, supra, 136 NLRB at 1347-1348.

not compromised because of his failure to produce that which does not exist or cannot be found.⁴⁶ Further, I fail to see that Horner's inability to recall aspects of his brief stints with Tim Smith and Ron Langley until refreshed betrayed an intent to conceal.⁴⁷

4. William Locatelli

a. Respondent's position

Respondent argues in its brief that Locatelli's claim should be disallowed not only because he failed to seek interim employment,⁴⁸ but because he was "less than forthcoming" concerning interim income from painting cars, thereby preventing Respondent from proving the offsets to which it is entitled.

b. Evidence

Locatelli testified that he painted perhaps two cars a year during his backpay period, that he also painted cars before the strike, and that, aspiring to become "an expert painter," he took no compensation other than reimbursement for materials.

c. Conclusion

I reject Respondent's contention. Locatelli's car-painting activities seemingly were a "moonlighting" variant, of substantially the same character before and after the strike. Income from them consequently is not deductible from gross backpay.⁴⁹ Whether Locatelli was "less than forthcoming" about his income in this regard thus is irrelevant.

5. Larry McConnell

a. Respondent's position

Respondent argues in its brief that McConnell's entitlement should be reduced because he "intentionally tried to conceal [interim] earnings" and failed to produce certain subpoenaed materials.

b. Evidence

Respondent directed a subpoena to McConnell demanding that he produce a broad range of documents, records, and other papers, including Federal and state tax returns for 1983 through 1987 and loan applications and bank statements for those years.

McConnell did not produce his state tax returns, loan applications, or bank statements. He testified that he "must have left" the state returns "at home," and that he did not produce the loan applications because he "didn't even think them necessary." Respondent's counsel asked him if he could provide the documents before the close of the hearing, and I directed him to do so. He said he would, and that he would be available to testify about them the following Friday.

⁴⁶ *Carter's Rental*, supra, 250 NLRB at 350, 352.

⁴⁷ Given the difficulty in assessing the return to Horner, in monetary terms, of his work for Tim Smith Construction, and its plainly minimal nature, I see no warrant to alter Horner's entitlement because of it. *Laredo Packing Co.*, 264 NLRB 245, 249 (1982).

⁴⁸ Discussed earlier.

⁴⁹ *United Aircraft Corp.*, supra, 204 NLRB at 1073-1074.

Respondent's counsel later represented that he had received the subject documents, that the tender was "acceptable," and that he saw no need for McConnell to testify further.

Examining McConnell, Respondent's counsel established that he had certain 1983 earnings—from Citron and from R. W. Mickel, Inc.—that he did not report on any of the backpay data forms he submitted to the General Counsel. Asked why he did not report the Citron earnings, McConnell testified: "That's a good question. I don't have an answer." Asked the same question concerning R. W. Mickel, he answered: "I didn't know the exact amount when I filled this out."

Having obtained an itemized statement of McConnell's 1983-1987 earnings from the Social Security Administration, the General Counsel knew of the earnings in question before preparing the backpay specification.

c. Conclusion

I reject Respondent's contention. McConnell complied with the subpoena to Respondent's satisfaction before the close of the hearing, and I am unable to conclude that his isolated and long-ago failure to report certain earnings to the General Counsel bespoke willful deception.⁵⁰ Further, his failure to report did not compromise the integrity of the specification.

6. Thomas Osborne

a. Respondent's Position

Respondent argues in its brief that Osborne's entitlement should be reduced because he "intentionally tried to conceal [interim] earnings" and failed to produce certain subpoenaed materials.

b. Evidence

Respondent directed a subpoena to Osborne demanding that he produce a broad range of documents, records, and other papers, including Federal and state tax returns and W-2 forms for 1983 through 1987, bank statements for those years, and records showing the mileage he drove to and from work from 1983 through 1985.

Osborne produced his 1983 and 1984 Federal tax returns, but no others. Nor did he produce W-2 forms for 1985-1987, bank statements, or mileage records. He testified that he could not find the materials he failed to produce.

Examining Osborne, Respondent's counsel established that he had earnings of \$35.80 from Granite Construction Company in the last quarter of 1983 that he did not report on any of the backpay data forms he submitted to the General Counsel. Having obtained an itemized statement of Osborne's 1983-1987 earnings from the Social Security Administration, the General Counsel knew of those earnings before preparing the backpay specification.

c. Conclusion

I reject Respondent's contention. I credit Osborne that he could not locate the unproduced materials, and have no reason to suppose that he exerted less than a reasonable effort

to find them. Again, a claimant's entitlement is not impaired because of his inability, after reasonable effort, to find subpoenaed materials.⁵¹

I am unable to conclude, moreover, that Osborne's single failure to report interim earnings of \$35.80 signified an intent to conceal; and, as in the case of McConnell, that failure did not compromise the integrity of the specification.

7. Keith Sonke

a. Respondent's position

Respondent argues in its brief that Sonke's entitlement should be reduced because he "intentionally tried to conceal [interim] earnings."

b. Evidence

Respondent directed a subpoena to Sonke demanding that he produce a broad range of documents, records, and other papers, including loan applications for 1984 through 1987 and all records of income received in those years but not reported as such to the Federal or state governments.

Sonke produced neither loan applications, nor records of unreported income. He testified that he could not find the former, and that he had no unreported income.

c. Conclusion

I reject Respondent's contention. Crediting Sonke's testimony, I see no evidence of intentional concealment.

8. David Vaars

a. Respondent's position

Respondent argues in its brief that Vaars' entitlement should be extinguished or reduced because he "intentionally tried to conceal [interim] earnings."

b. Evidence

Respondent directed a subpoena to Vaars demanding that he produce a broad range of documents, records, and other papers, including Federal and state tax returns and W-2 forms for 1983 through 1987, loan applications and bank statements for those years, etc.

When first examined by Respondent's counsel, Vaars disclosed that he had brought none of the subpoenaed documents. He testified that he previously had provided the General Counsel with his tax returns, and "understood"—"I do not understand why they're not here"—that she would bring them to the hearing. He added that he had records of "every dime [he'd] ever made," and pledged to bring them to the hearing the next day.

The next day, Vaars brought tax returns, bank statements, and a list of some 18 logging firms for which he hauled while self-employed during his backpay period. Questioned by Respondent's counsel about income from this or that logger, Vaars testified that, while his tax returns accurately set forth his aggregate income and that it was "all provable,"⁵² he could not say what he had received from a specific logger "without going clear back through the

⁵⁰ *Original Oyster House*, 281 NLRB 1153, 1155 (1986).

⁵¹ *Carter's Rental*, supra, 250 NLRB at 350, 352.

⁵² Vaars testified: "I don't play with the IRS."

spreadsheets and stuff.” Counsel did not state an interest in seeing the spreadsheets, nor did he express dissatisfaction on this second day with the extent of Vaars’ subpoena compliance.

c. Conclusion

I reject Respondent’s contention. Vaars’ initial failure to comply with the subpoena apparently derived in large part from his mistaken assumption that the General Counsel would bring the materials he previously had given her, and the record indicates that he cured that failure to Respondent’s satisfaction the next day.

F. *The Matter of Hubert Woodruff’s 1984 Disability*

1. Respondent’s position

Respondent notes in its brief that Woodruff “admitted missing ‘two to three’ weeks of employment in 1984 due to being hospitalized,” the implication being that his entitlement should be reduced accordingly.

2. Evidence

Woodruff testified:

I believe I was off for two to three weeks—I can’t remember the month, I believe it was in May. . . . I believe it was—I’m not too sure on this—’84. . . . I had a cyst on my hand removed.

The specification makes no allowance for this disability.

3. Conclusion

I find, based on Woodruff’s commendably forthright admission, that the disability occasioned by removal of the cyst rendered him unavailable for work for 2 weeks in the second quarter of 1984. I therefore conclude that his gross backpay for that quarter, as set forth in the specification, should be reduced by two-thirteenths—from \$5879 to \$4975.

G. *Alleged Claimant Misconduct*

1. Evidence

Orson Hansen, Respondent’s president, testified that all but one of Respondent’s trucks was damaged on September 23, 1983. He elaborated that brake hoses and hydraulic lines were cut, that radiators were damaged, that nuts and bolts were placed inside the valve covers of several engines, that dirt was put in fuel tanks, etc.; and that the damage was “in the vicinity of \$100,000.”

Hansen testified that he believed the picketers to have been the culprits. Asked the basis for this belief, he testified:

Their general attitude, which was abusive and abrasive to everyone who entered or exited either our plant or our La Barr Meadows yard. The continuous nails, spikes, that were being placed in the entrances . . . to our Greenhorn plant, and the nails that were continuously being placed at the entrance to our La Barr Meadows yard.

Hansen testified, in addition, that he found “a type of cigar that was smoked by” Larry McConnell in the area of the damaged trucks.

Ronald Foster, whose trucking company has had a business relationship with Respondent for about 20 years, testified that, early in the strike, someone twice left messages on his answering machine that he would “be dead” if he crossed the picket line. Asked if he had any idea who made the calls, Foster testified: “It’s hard to say, but I believe it was Tom Resetar.”

Foster also testified that, as he exited Respondent’s yard on La Barr Meadows Road early in the strike, Resetar stood in front of his truck, forcing him to stop briefly, whereupon George Horner spit tobacco on the truck.⁵³

Foster testified, as well, that he had an “altercation” with Richard Desmond on September 12, 1983. Foster elaborated that Desmond “confronted” him on the street in Grass Valley, “hit [him] in the jaw, and knocked [his] glasses off.” Foster was not performing work for Respondent at the time. He testified that he presently reported the incident both to the Grass Valley police and to Respondent.⁵⁴

Foster testified, finally, that he suffered “two or three” flat tires, “probably” in October, November, or December 1983, because of nails placed in his path by unidentified picketers.

2. Conclusion

I reject Respondent’s misconduct argument. First, and most fundamentally, it is untimely. All of the cited conduct occurred well before the underlying trial on the merits.⁵⁵ Respondent consequently bore the burden of demonstrating in that proceeding, as an affirmative defense, that it denied recall to the claimants because of “an honest belief” that they had engaged in strike misconduct.⁵⁶ It therefore is estopped from now raising this defense.⁵⁷

Estoppel aside, except for Horner’s alleged spitting and the Desmond-Foster altercation, Respondent failed to link the alleged misconduct to any of the claimants with requisite particularity. Moreover, a single instance of spitting on a truck is not of disqualifying seriousness; and, remembering that Desmond was not picketing at the time of his alleged altercation with Foster, that the incident occurred away from Respondent’s premises, and that Foster was not then on a mission for Respondent, Foster’s depiction of their encounter was insufficient in context and circumstances to warrant disqualification.

VI. SUMMARY

To summarize:

(a) Gross backpay, with one exception, is as set forth in the specification and in Appendix A. The exception concerns

⁵³ Foster identified the spitter as “Crazy George,” adding, “I’m not sure what his last name was.” Horner testified that he goes by that sobriquet.

⁵⁴ Desmond was exonerated in an ensuing criminal prosecution, Foster testified, reportedly because of testimony that Foster “had started the confrontation.”

⁵⁵ Judge Heilbrun’s trial took place on April 3, 1984.

⁵⁶ *Axelson, Inc.*, 285 NLRB 862, 863–864 (1987).

⁵⁷ Cf., *Petoskey Geriatric Village*, 295 NLRB 800, 802 fn. 8 (1989).

the uncertainty about Thomas Browning's gross backpay for the third quarter of 1984, which I cannot resolve. In addition, I have reduced Hubert Woodruff's gross backpay for the second quarter of 1984 by two-thirteenths from the amount in the specification.

(b) Expenses deductible from interim earnings are as admitted by Respondent in its answer. They appear in Appendix B.

(c) The so-called strike benefits, to the extent proven, are includable as interim earnings. Interim earnings are as set forth in Appendix C.

(d) The claimants' entitlements do not include reimbursement for medical expenses.

(e) Synthesizing the foregoing, quarterly net backpay is as set forth in Appendix D.

(f) Respondent's obligations to the Pension and Health and Welfare Trusts are as set forth in the specification.

[Recommended Order omitted from publication.]

APPENDICES

A. Claimants' Quarterly Gross Backpay¹

Yr.	1st	2d	3d	4th
Ronald Baker				
1983			\$1,116	\$5,968
1984		\$4,136	7,855	4,645
1985	\$909	4,608	5,863	6,383
1986	4,620	6,005	6,869	7,373
1987	4,169	6,267	6,883	2,620
Thomas Browning²				
1983			\$2,350	\$6,031
1984	\$4,781	6,057	?	6,654
1985	4,967	7,084	6,902	8,733
1986	5,352	8,133	9,078	9,616
1987	4,844	7,951	8,846	7,153
William Browning				
1983			\$2,279	\$5,850
1984	\$4,637	\$5,875	7,708	4,645
1985	3,495	5,008	5,863	6,383
1986	4,620	6,005	6,869	7,373
1987	4,169	6,267	6,883	3,974
Richard Desmond				
1984			\$1,198	\$325
1985		\$1,152	3,576	
Gerald Gomes				
1983			\$2,282	\$5,857
1984	\$4,643	\$5,882	7,604	4,645
1985	3,495	5,008	5,863	6,383
1986	4,620	6,005	6,869	7,373
1987	4,169	6,267	6,883	4,198
George Horner				
1984			\$4,986	\$4,645
1985		\$3,055	5,863	6,383
1986	\$1,201	6,005	6,869	7,373
1987	1,459	6,267	6,883	2,799
William Locatelli				
1983			\$2,305	\$5,916
1984	\$4,690	\$5,942	7,791	4,645
1985	3,498	5,008	5,863	6,389
1986	4,620	6,005	6,869	7,373

APPENDICES—Continued

A. Claimants' Quarterly Gross Backpay¹

Yr.	1st	2d	3d	4th
1987	4,169	6,267	6,883	4,366
Larry McConnell				
1983			\$1,900	\$5,875
1984	\$3,912	\$5,901	7,686	4,645
1985	3,495	5,008	5,863	6,383
1986	4,620	6,005	6,869	7,373
1987	4,787	6,267	6,853	4,086
Thomas Osborne				
1983			\$2,326	\$5,542
1984	\$4,731	\$5,994	7,855	4,645
1985	3,495	5,008	5,863	6,383
1986	4,620	6,005	6,869	7,373
1987	4,169	6,267	6,883	5,598
Thomas Resetar				
1984		\$1,926	\$7,735	\$4,645
1985	\$524	3,456	5,863	6,383
1986	3,373	6,005	6,869	7,373
1987	4,169	6,267	6,883	2,799
Keith Sonke				
1984			\$5,003	\$1,765
1985		\$1,903	5,863	5,617
1986	\$508	2,762	6,869	6,488
1987	459	4,074	6,883	3,415
Edward Tellam				
1983			\$2,279	\$5,850
1984	\$4,637	\$5,875	7,708	4,645
1985	3,495	5,008	5,863	6,383
1986	4,620	450	6,869	7,373
1987	4,169	6,267	6,883	4,198
Gerald Tennell				
1983			\$1,808	\$5,950
1984	\$2,877	\$4,123	7,832	4,645
1985	3,495	5,008	5,863	6,383
1986	4,620	6,005	6,869	7,373
1987	4,169	6,267	6,883	3,974
David Vaars				
1983			\$2,083	\$5,994
1984	\$4,751	\$6,020	7,887	4,645
1985	3,495	5,008	5,863	6,383
1986	4,620	6,005	6,869	7,373
1987	4,169	6,267	6,883	4,422
Hubert Woodruff³				
1983			\$2,281	\$5,853
1984	\$4,640	\$5,879	7,712	4,645
1985	3,495	5,008	5,863	6,383
1986	4,620	6,005	6,869	7,373
1987	4,169	6,267	6,883	4,086

B. Claimants' Quarterly Expenses⁴
(To be deducted from interim earnings)

Yr.	1st	2d	3d	4th
Ronald Baker				
1984			\$202	\$287
1987		\$298	144	72
Thomas Browning				
1984	\$1,162	\$2,353	\$2,697	\$2,557
1985	1,501	2,747	3,532	2,111
1986	1,095	2,256	2,136	2,304
1987	823	1,495	1,638	1,395
William Browning				
1984		\$181	\$189	
1985	\$79	205	202	\$176
1986	172	269	269	269
1987	143	269	269	216
Richard Desmond				
None				
Gerald Gomes				
1984	\$491	\$694	\$1,013	\$574
1985	332	743	939	688
1986	382	853	941	987
1987	630	967	967	518
George Horner				
1985			\$1,049	
William Locatelli				
1984		\$72	\$192	\$60
1985		630	756	582
1986		1,110	1,210	930
1987	\$930	756	776	562
Larry McConnell				
1983				\$1,280
1984	\$1,387	\$1,161	\$1,161	1,165
1985	1,189	1,041	124	882
1986	1,528	534	1,090	1,031
1987	821	1,110	1,128	691
Thomas Osborne				
1983				\$250
1984		\$164	\$1,147	
1985	\$504	1,706	1,537	680
Thomas Resetar				
1984		\$286		
1985	\$70	257	\$349	\$628
1986	802	908	668	
1987	967	273	1,002	104
Keith Sonke				
1984			\$341	\$180
1985		\$311	672	601
Edward Tellam				
None				
Gerald Tennell				
1984			\$302	\$354
1985	\$264	\$417	401	379
1986	228	444	429	474

B. Claimants' Quarterly Expenses⁴
(To be deducted from interim earnings)

Yr.	1st	2d	3d	4th
1987	222	418	453	220
David Vaars				
None				
Hubert Woodruff				
1984	\$1,245	\$526	\$1,120	\$578
1985		1,320	1,275	1,265
1986	1,275	1,275	1,275	1,275
1987	1,274	1,275	1,275	931

C. Claimants' Quarterly Interim Earnings⁵

Yr.	1st	2d	3d	4th
Ronald Baker				
1983			\$145	\$3,404
1984		\$1,672	2,529	1,765
1985	\$2,015	5,010	8,002	6,455
1986	2,573	4,688	6,308	1,982
1987		2,250	4,410	1,376
Thomas Browning⁶				
1984	\$785	\$4,232	?	\$4,155
1985	4,730	7,610	\$8,397	12,533
1986	4,028	9,552	13,508	8,987
1987	242	2,045	4,948	5,022
William Browning				
1983			\$145	\$715
1984	\$1,759	\$4,534	4,380	5,138
1985	2,703	5,473	6,171	5,856
1986	3,923	6,594	7,573	8,038
1987	3,753	6,899	7,617	4,374
Richard Desmond				
1984			\$656	\$64
Gerald Gomes				
1983				\$2,064
1984	\$2,687	\$6,103	\$8,107	3,845
1985	1,634	5,053	9,002	9,209
1986	3,647	8,367	9,372	9,638
1987	5,400	8,497	9,273	5,108
George Horner				
1984	\$564	\$564	\$564	\$564
1985	957	957	3,953	957
1986	994	994	994	994
1987	2,015	2,015	2,015	930
William Locatelli				
1983				\$522
1984	\$536	\$1,699	\$5,080	1,191
1985	864	3,426	3,426	7,098
1986		3,697	4,170	4,391
1987	3,036	4,837	4,607	2,874
Larry McConnell				
1983				\$3,390
1984	\$2,449	\$3,637	\$3,055	4,009

C. Claimants' Quarterly Interim Earnings⁵

<i>Yr.</i>	<i>1st</i>	<i>2d</i>	<i>3d</i>	<i>4th</i>
1985	3,422	4,887	5,613	6,050
1986	4,343	5,757	9,432	10,138
1987	8,087	9,734	9,733	3,706
Thomas Osborne				
1983			\$1,125	\$1,125
1984		\$3,206	7,989	3,065
1985	\$2,658	7,215	8,262	3,708
1986	270	5,518	7,244	7,919
1987	4,443	6,822	7,533	6,073
Thomas Resetar				
1984	\$969	\$2,159	\$2,967	\$2,967
1985	668	1,141	4,552	5,979
1986	3,901	1,648	3,577	
1987	4,398	4,398	4,398	2,199
Keith Sonke				
1984	\$35	\$35	\$1,826	\$934
1985	1,403	4,211	4,023	
1986	374	2,442	4,352	5,082
1987	3,809	6,217	1,224	
Edward Tellam				
1983			\$161	\$699
1984	\$1,787	\$1,787	1,787	1,787
1985	1,937	1,937	2,935	2,028
1986	1,893	1,965	1,216	6,025
1987	188	747	9,855	7,269
Gerald Tennell				
1983			\$151	\$654
1984	\$1,012	\$1,012	5,196	6,274
1985	3,543	5,647	6,217	6,363
1986	3,357	6,494	7,177	7,919
1987	3,111	6,694	7,509	3,358
David Vaars				
1984	\$525		\$7,233	\$144
1985		\$2,781	4,133	5,727
1986		5,615	10,878	
1987		5,315	10,540	
Hubert Woodruff				
1983			\$9	\$46
1984	\$2,086	\$3,342	7,862	4,268
1985	1,887	7,458	8,788	5,948
1986	4,257	8,183	8,987	8,946
1987	5,734	8,466	4,686	5,461

D. Claimants' Quarterly Net Backpay⁷

<i>Yr.</i>	<i>1st</i>	<i>2d</i>	<i>3d</i>	<i>4th</i>
Thomas Browning⁸				
1983			\$2,350	\$6,031
1984	\$4,781	4,178	?	5,056
1985	1,738	2,221	2,037	
1986	2,419	837		2,933
1987	4,844	7,401	5,536	3,526
<i>Total</i>	*\$55,888			
William Browning				
1983			\$2,134	\$5,135
1984	\$2,878	\$1,522	3,517	
1985	871			703
1986	869			
1987	559			
<i>Total</i>	\$18,188			
Richard Desmond				
1984			\$542	\$261
1985		\$1,152	3,576	
<i>Total</i>	\$5,531			
Gerald Gomes				
1984	\$2,447	\$473	\$510	\$1,374
1985	2,193	698		
1986	1,355			
<i>Total</i>	\$9,050			
George Horner				
1984			\$4,422	\$4,081
1985		\$2,098	2,959	5,426
1986	\$207	5,011	5,875	6,379
1987		4,252	4,868	1,869
<i>Total</i>	\$47,447			
William Locatelli				
1983				\$5,394
1984	\$4,154	\$4,315	\$2,903	3,514
1985	2,634	2,212	3,193	
1986	4,620	3,418	3,909	3,912
1987	2,063	2,186	3,052	2,054
<i>Total</i>	\$53,533			
Larry McConnell				
1983			\$1,900	\$3,765
1984	\$2,850	\$3,425	5,792	1,801
1985	1,262	1,162	374	1,215
1986	1,805	782		
1987				1,071
<i>Total</i>	\$27,204			
Thomas Osborne				
1983			\$1,201	\$4,667
1984	\$4,731	\$2,952	1,013	1,580
1985	1,341			3,315
1986	4,350	487		
<i>Total</i>	\$25,637			

D. Claimants' Quarterly Net Backpay⁷

<i>Yr.</i>	<i>1st</i>	<i>2d</i>	<i>3d</i>	<i>4th</i>
Ronald Baker				
1983			\$975	\$2,564
1984		\$2,465	5,528	3,167
1986	\$2,047	1,317	560	5,391
1987	4,169	4,315	2,617	1,316
<i>Total</i>	\$36,431			

Thomas Resetar				
1984		\$53	\$4,768	\$1,678
1985		2,572	1,660	1,032
1986	\$274	5,265	6,869	4,464
1987	738	2,142	3,487	704
<i>Total</i>	\$40,474			

D. Claimants' Quarterly Net Backpay⁷

Yr.	1st	2d	3d	4th
Keith Sonke				
1984			\$3,518	\$1,011
1985		\$811	1,924	2,195
1986	\$134	320	2,517	1,406
1987	459	265	666	2,191
<i>Total</i>	\$17,417			
Edward Tellam				
1983			\$2,118	\$5,151
1984	\$2,850	\$4,088	5,921	2,858
1985	1,558	3,071	2,928	4,355
1986	2,727		5,653	5,520
<i>Total</i>	\$54,127			
Gerald Tennell				
1983			\$1,657	\$5,296
1984	\$1,865	\$3,111	2,938	
1985	\$216		47	399
1986	1,491		121	
1987	1,280			836
<i>Total</i>	\$19,257			
David Vaars				
1983			\$2,083	\$5,994
1984	\$4,226	\$6,020	654	4,501
1985	3,495	2,227	1,730	656
1986	4,620	390		7,373
1987	4,169	952		4,422

D. Claimants' Quarterly Net Backpay⁷

Yr.	1st	2d	3d	4th
<i>Total</i>	\$53,512			
Hubert Woodruff				
1983			\$2,272	\$5,807
1984	\$3,799	\$2,159	970	955
1985	\$1,608			1,700
1986	1,638			
1987			3,472	
<i>Total</i>	\$24,380			

* Plus amounts attributable to the third quarter of 1984 as recomputed.

¹ Only quarters in which gross backpay is attributable to a claimant are included.

² Regarding Thomas Browning's gross backpay for the third quarter of 1984, see fn. 12 in the body of the decision.

³ I later reduce Woodruff's gross backpay for the second quarter of 1984 by two-thirteenths. See text under "F. The Matter of Hubert Woodruff's Disability in 1984."

⁴ Rounded off to the nearest dollar. Only quarters in which the claimant had deductible expenses are included.

⁵ Only quarters in which the claimant had interim earnings are included.

⁶ Regarding Thomas Browning's interim earnings for the third quarter of 1984, see fn. 12 in the body of the decision.

⁷ Only quarters in which the claimant has an entitlement are included.

⁸ In my Supplemental Order, I direct the General Counsel to recompute Thomas Browning's entitlement for the third quarter of 1984.