Banknote Corporation of America, Inc. *and* Graphic Communications International Union, Local 119-B-43-B, New York *and* New York Lithographers & Photoengravers Union, #1-P, G.C.I.U. *and* District 15, International Association of Machinists & Aerospace Workers. Cases 2–CA–24304, 2–CA–24371, and 2–CA–24500

February 16, 1999

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND BRAME

On April 13, 1998, Administrative Law Judge Raymond P. Green issued the attached decision. The Respondent and the General Counsel filed exceptions, supporting briefs, and answering briefs, and the Respondent filed a reply brief.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions[1] as modified below and to adopt the recommended Order as modified.

1. We agree with the temporal limitation the judge placed on the Respondent's obligation to make contributions to the Unions' welfare funds. Under the judge's rationale, payments are not required for Francis Kelly and Raymond Wilk because these employees were not employed until 1992 when the Respondent was no longer obligated to contribute to the union funds. In computing the total amounts due the welfare funds, however, the judge inadvertently included contributions on behalf of these two employees. We shall modify the judge's recommended Order accordingly.[2]

2. We agree with the judge's finding that the Respondent must make the union pension funds whole without offset. In adopting this finding, we emphasize that "an employer has the burden of establishing that a particular payment qualifies as a deduction from gross backpay due." *Regional Import & Export Trucking Co.,* 318 NLRB 816, 824 (1995), decision supplemented by 323 NLRB 1206 (1997). Therefore, the burden was on the Respondent to show that "the status of a discriminatee, as a result of contribution to [substitute] pension [plans] made on his behalf during his backpay period, was at least as good as it would have been under the [Union] fund." Id. For the reasons stated by the judge, we agree with him that the substitute pension plans implemented by the Respondent were not equivalent to the union pension plans. Therefore, the judge properly concluded that the Respondent is required to make the union pension funds whole for the entire amount claimed without any offset.[3]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Banknote Corporation of America, Inc., New York, New York, shall make whole the individuals and entities named below by paying them the amounts following their names, plus interest on the backpay due the employees[4] and any additional amounts due the funds,[5] minus tax witholdings on the backpay due the employees required by Federal and state laws:

Nora Howard	$2,711.74
Charles Parlick	5,296.68
Daisy Long	4,888.41
Virginia Harris	4,953.07
Emil Neir	2,247.54
Angela Robb	524.90
Charles Ballard	4,095.33
Chang Barrett	4,170.67
Luz M. Ruiz	5,100.09
Gerard Lindsey	16,623.20
Robert Whelan	18,576.40
Gerald Sullivan	15,113.40
Raymond Wilk	450.71
Harry Webster (estate)	207.30
Jaroslaw Sawaryn	4,870.24
Augustine Leone	4,797.35
Francis J. Kelly	2,451.60
Total Backpay Due Employees:	**$97,078.63**
Welfare Fund of Graphic Communications International Union, Local 119-B-43B, New York	$2,583.00

[1] In determining backpay due on account of holidays and personal days that the employees received under collective-bargaining agreements but that were not subsequently provided by the Respondent, the judge did not permit a set-off for the 5 sick days that the Respondent provided annually to employees. Contrary to the judge, Member Brame would allow the sick days taken to be counted against the personal days that the employees should have received, in that personal days may be used when an employee is ill, and the employees did not receive sick days apart from personal days under the collective-bargaining agreements.

[2] In view of the fact that the Respondent provided alternative health coverage to the employees after it ceased contribution to the union welfare funds, Member Brame finds that requiring the Respondent to make contributions to the union welfare funds serves only to provide an improper windfall to the funds. Accordingly, Member Brame would not require the Respondent to make such contributions. See *Grondorf, Field, Black & Co. v. NLRB,* 107 F.3d 882 (D.C. Cir. 1997), denying enf. in pertinent part to 318 NLRB 996 (1995).

[3] In adopting the judge's decision in this respect, Member Brame observes that the Respondent has failed to show what amount of credit it should be entitled to receive. He does not, however, suggest that the Respondent is not entitled to transfer to the union pension funds any contributions it made to its own defined contribution plan on behalf of the employees, assuming the plan permits it to make such transfers.

[4] See *New Horizons for the Retarded,* 283 NLRB 1173 (1987).

[5] See *Merryweather Optical Co.,* 240 NLRB 1213, 1216 fn. 7 (1979).

Pension Fund of Graphic Communications International Union, Local 119-B-43B, New York	100,729.00
Annuity Fund of Graphic Communications International Union, Local 119-B-43B, New York	100,729.00
Welfare Fund of New York Lithographers & Photoengravers Union #1-P G.C.I.U.	2635.00
Pension Fund of New York Lithographers & Photoengravers Union #1-P G.C.I.U.:	14,637.00
S.R.D. Fund of New York Lithographers & Photoengravers Union #1-P G.C.I.U.	55,602.00
Welfare Fund of District 15, International Asssociation of Machinists & Aerospace Workers	1,064.00
Total Due Funds	**$277,979.00**
Grand Total	**$375,057.63**

Christine Mann, Esq., for the General Counsel.

J. Richard Hammett, Esq. and *Laurence E. Stuart Esq.,* for the Respondent.

Corinne E. Karlin Esq., for Graphic Communications International Union, Local 119-B-43B, New York.

SUPPLEMENTAL DECISION

STATEMENT OF THE CASE

RAYMOND P. GREEN, Administrative Law Judge. This case was tried before me in New York City on July 16 and 17 and November 12 and 13, 1997.

This is a backpay proceeding based on a prior decision by the Board in 315 NLRB 1041 (1994). The Order in that case was enforced by the Second Circuit Court of Appeals on May 29, 1996.

In essence, the Board found that the Respondent, Banknote Corporation of America (BCA), was a successor to American Banknote (ABN), having an obligation to recognize and bargain with the three Unions listed above. In addition, the Board found that the Respondent hired all of the predecessor's employees and therefore the Respondent, in the absence of prior notification, could not alter, modify or change the existing terms and conditions of employment without first bargaining in good faith with the unions representing the predecessor's employees. The Board's Order required, inter alia, that the Respondent, on request of the Unions, rescind the unilateral changes instituted on April 30, 1990, to the extent that they had not been announced previous to the takeover. The Board also ordered that the Respondent make the affected employees whole for any losses incurred by virtue of the unilateral changes.

The original backpay specification was issued on December 11, 1996, and was amended on July 11, 1997. The General Counsel issued a further notice of intention to amend on August 20, 1997. As finally amended, the specification claims certain amounts as lost wages and benefits to a total of 17 employees, as the difference between what is claimed that they should have received under the predecessor's terms and conditions of employment and what they actually received after the successor took over operations. The specification, as amended, also claims certain amounts due to various trust funds of the three Unions. As to the Graphic Communications International Union, Local 119-B-43B, the specification claims amounts due on behalf of nine employees to a Welfare Fund, a Pension Fund, and an Annuity Fund. As to the New York Lithographers & Photoengravers Union, #1-P, G.C.I.U. (the Union), the specification claims certain amounts due on behalf of five employees to a Welfare Fund, to a Pension Fund, and to an S.R.D. Fund. As to District 15, International Association of Machinists and Aerospace Workers, the specification claims certain amounts due to a Welfare Fund on behalf of three employees.[1]

The Board's remedy in the underlying unfair labor practice case required the Respondent to restore the status quo ante with respect to the terms and conditions of employment as they existed as of April 23, 1990 (as manifested by the collective-bargaining agreements between the three Unions and the predecessor company), *except* as to those terms and conditions that the Respondent had announced would be in effect, upon its takeover of the predecessor's operations. The decision in the underlying case stated:[2]

> Ferenczi also told the Unions that health benefits presently in effect would continue for the period of 60 days. Ferenczi did not discuss any other terms and conditions of employment during the April 11 meeting with the Unions.

At footnote 9, the Board further noted:

> The record shows that among the changes unilaterally implemented on April 23, was the institution of a new health and welfare benefits program for all employees. Thus, the Respondent did not act consistently with its pre-April 19 announcement to employees that the predecessor' health benefits would continue in effect for 60 days. Accordingly, we find that the Respondent's April 23 changes in health benefits also were unlawful.

The Board's Decision and Order in the underlying case, as I read it, is that the Respondent was *not* a "perfectly clear" successor having an obligation to abide by the terms of the prede-

[1] For purposes of this decision, the Graphic Communication International Union, Local 119-B-43B will be referred to as Local 119-B; the New York Lithographers & Photoengravers Union, #1-P, G.C.I.U., will be referred to as Local 1-P, and District 15, International Association of Machinists and Aerospace Workers will be referred to as District 15.

[2] It should be noted that the General Counsel does not allege that the Respondent would in any way be bound to be a party to the contract between the predecessor and the unions. What the General Counsel alleges is that the Respondent is obligated to maintain, until bargaining has resulted in an agreement or until impasse, the existing wages, hours, and terms and conditions of employment of the employees, which happen to be described by the preexisting contract. Thus, although the predecessor's labor contracts may have certain duration's, the Respondent, after bargaining and impasse, could have changed the terms and conditions of employment at a point far short of the contracts' termination dates. (In the event of a new contract, the existing terms would have been changed by consent of the parties. In the event of a valid impasse, the Respondent could have changed the existing conditions unilaterally.) Therefore, to this extent, the holding in *H. K. Porter Co. v. NLRB*, 397 U.S. 99 (1970), is not relevant as there is nothing in the General Counsel's theory that would require the Respondent to agree to any particular contractual terms or require it to abide by someone else's contract.

cessor's collective-bargaining agreement without first bargaining. Accordingly, the Board held that the Respondent could have changed any and all initial terms and conditions of employment had it announced that intention at the right time. Nevertheless, the bottom line is that although it *could have* changed initial terms and conditions, to the extent that it failed to do so in a timely fashion, it was stuck with the terms and conditions that the predecessor's employees enjoyed until such later time as it bargained to impasse about them or agreed with the Union to modify them. Whatever anyone may think of this conclusion, it is the law of the case.

II. THE BACKPAY ISSUES AND FINDINGS

A. The Backpay Period

All agree that the backpay period should start on April 23, 1990. That, however, is where agreement ends. The General Counsel contends that the backpay period should only end when the plant closed in July 1995. The Respondent takes two alternative positions; (1) that backpay should terminate approximately one year after it took over operations, or (2) that the backpay period should end upon the expiration dates of ABN's contracts with the three Unions.

The Respondent contends that a 1-year period for backpay would be appropriate because that would be a reasonable amount of time in which the parties would have reached either agreements or impasses. In this respect, Respondent cites *Armco Inc. v. NLRB,* 832 F.2d 357 (6th Cir. 1987), cert. denied 486 U.S. 1042 (1988); and *Kallman v. NLRB*, 640 F.2d 194 (9th Cir. 1981). Notwithstanding that the Board accepted the Sixth Circuit's opinion only as being the law of the case, the Board, on remand, put the burden of proof on the employer to establish when an agreement would have been reached or when an impasse would have occurred. *Armco Inc*., 298 NLRB 416, 417 (1990).

The fact of the matter is that there is no way that the Respondent, in the present case, can meet any burden of showing that an agreement or an impasse would probably have been reached by 1 year after the takeover. This is because the Respondent has failed to bargain with the Unions which are the charging parties in this case and any conclusions or conjectures as to what bargaining would have looked like are mere speculation, at best.

The Respondent also argues that the backpay periods should terminate upon the expiration dates of the contracts that ABN had with each of the three Unions.

It seems to me that the Respondent wants it both ways. On one hand, it argues that it should not be bound to pay the difference between the terms it put into effect at the takeover and the terms of the predecessor's contracts with the three Unions as this would be tantamount to requiring it to assume or be bound by the predecessor's contracts. On the other hand, it argues that to the extent that it is required to make whole employees for any differences, the Unions and the bargaining unit employees should be bound by the contracts at least insofar as their expiration dates.

The issue in the present case does not involve a claimed breach of contract and to the extent that the contracts are relevant, they are relevant only in a secondary way. The Respondent's violation is that upon taking over the operations of ABN, and hiring the predecessor's work force, the Respondent was obligated to recognize and bargain with the existing unions. As such, it stood in the shoes of its predecessor, in terms of its obligation to bargain. And although it had absolutely no obligation to assume or honor ABN's labor contracts, the Respondent could not unilaterally change, without bargaining, any of the then existing wages or other conditions of employment *except* to the extent that it had announced such changes before the takeover.

Under the Board's Order (enforced by the court of appeals), the Respondent was never obliged to adopt or assume the contracts that ABN had with the Unions; it was only required to restore those conditions and benefits *as they existed at the time of the takeover* and maintain them in effect only until after it bargained in good faith about any changes. The contracts simply defined what the terms and conditions of employment were at the time of the takeover and as already noted, there is nothing in the underlying order which would have prevented the Respondent, had it bargained, from changing the terms and conditions of employment (including wages and hours), once an impasse had been reached, to the extent that such changes were consistent with what had been offered at the bargaining table.

Having an obligation to bargain before making any unilateral changes, and the conditions of employment being the same as what was contained in the predecessor's contracts with the three Unions, it is my opinion that the terms and conditions of employment as they existed at the time of the takeover should be the basis of the backpay award, throughout a backpay period which did not end until the plant closed, except where a compelling reason calls for a different result and as explicitly provided herein. Accordingly, I conclude that the terms and conditions of employment as they existed at the time of the takeover, should continue after the expiration dates of the contracts. Cf. *Armco Inc*., 298 NLRB 416 (1990); *King Manor Care Center*, 313 NLRB 986, 987 fn. 7 (1994).

B. The Welfare Fund Claims

The predecessor made contributions to Local 1-P's Welfare fund which provided health insurance benefits to the employees covered by the agreement. The amount of the contribution was set at $77 per week, per employee. The plan is a "preferred provider" plan wherein employee participants pay nothing if a doctor within the network is chosen. There are five employees who were affected by this issue.

ABN paid to a welfare fund of Local 119-B-43B 8.5 percent of each employees gross earnings.[3] The fund provided a similar type of preferred provider health insurance plan as described above with respect to Local 1-P. During the backpay there were nine employees represented by Local 119-B-43B.

ABN paid into District 15's welfare fund $266.46 per month per employee. There were three employees represented by District 15 during the backpay period.

As noted in the underlying case, the Respondent, put into effect a new health insurance program for the employees covered in all of the bargaining units. This new plan was put into effect on April 23, 1990. Under the new plan, the employer made contributions to cover health insurance costs but also required the employees to make a contribution of their own to the plan. It is not entirely clear to me whether the employer's new plan offered the same, fewer or better benefits than offered by each of the three union welfare plans. But the likelihood is that the

[3] The amounts claimed are set forth on appendices A-3 through A-11 of the final amended specification. As should be obvious, the calculations of these amounts depend on other calculations and assumptions regarding wage rates, overtime pay, vacations, holidays, etc.

coverage and benefit levels were comparable. In any event, there is no contention that any employee suffered any actual loss as a result of any injury or illness by virtue of being covered by the new plan as opposed to the old union plans. There is also no evidence to suggest that any employee failed to have any treatment that was not available because the Respondent's substitute health insurance plan did not cover a treatment that would have been available under the union health care plans.

The General Counsel seeks to compel BCA to contribute the amounts that it would have contributed to each of the three Welfare plans on behalf of the employees in each unit *during the entire backpay period*, irrespective of any alternative health insurance provided to these employees and without giving the Respondent any offset for any moneys that the Respondent paid for such alternative insurance. (During the backpay period, the Respondent paid $213,788.44 for health insurance on behalf of the unit employees.)

The Respondent, on April 11, 1990, announced to the prospective employees that it would retain their present health benefits for a period of 60 days. In my opinion, any reasonable person would and should have interpreted this to mean that the existing health benefits would be continued *only* until July 10, 1990, at which time they would end. Therefore, under the theory of the underlying case, had BCA simply terminated, without bargaining, the predecessor health insurance benefits on July 10, 1990, BCA would have incurred no liability whatsoever. Similarly, had Respondent waited until July 10, 1990, to terminate payments to the unions' Welfare plans and put into effect its own new health insurance plan, it would have incurred absolutely no backpay liability even if did not first bargain about instituting the new insurance. (Although it probably would be required to bargain about the terms and conditions of any new health insurance, it would not have incurred any backpay liability since a new insurance plan would have been a benefit granted rather than a benefit withdrawn.)

In my opinion, it would be an anomaly for the Respondent to be held to incur a backpay liability for a period of 5 years because it jumped the gun and introduced its new health insurance plan a little earlier than it could have done anyway. That is, the Respondent, if it had simply ceased making payments into the Union Welfare funds after 60 days, would have avoided any monetary liability but under the General Counsel's theory it acquired such a liability because it did what it didn't have to do, to wit; providing a substitute health insurance plan for its newly acquired employees as soon as possible after their employment with BCA.

Based on the above, I conclude that the Respondent is liable only for health insurance contributions to the three union funds only for the period from April 23 until July 10, 1990. I also conclude that since the employee contributions to the new plan did not start until the third quarter of 1990, and were a part of the new medical plan, the Respondent need not reimburse employees to the extent that it required them to contribute to the new insurance plan.

C. Pension Fund Claims

Unlike the situation with the Welfare funds, the Respondent did not announce, ahead of time, its intention to change the various pension fund programs that ABN had contracted with the three Unions. This raises a number of difficult legal questions discussed below.

ABN's contract with the Local 1-P required the predecessor employer to make payments to the New York Local Pension Fund and the Supplemental Retirement and Disability Fund. At the time of the hearing, all of the employees, except for Raymond Wilk, who were represented by this Union were vested in both plans and were either collecting pensions or were eligible to do so. Harry Webster, however, died shortly after he started collecting his pension. As for Wilk, he had transferred to the company from New Jersey shortly before the takeover and had attained vesting rights in a pension plan operated by a sister union which had a contract with his employer. Under the terms of the Local 1-P pension plan, as it then existed, Wilk never would have vested in this plan because the contributing employer (BCA) closed in July 1995 and Wilk would not have worked the requisite 10 years for vesting purposes.

Local 1-P's Pension Fund is a defined benefit plan which means that participants, if vested, are guaranteed a fixed retirement income for their own life and the life of a spouse; the amount of which is determined by the age of the employee when he or she retires and the amount of credited years that the employee has at the time of retirement. (This is, of course, premised on the assumption that there is enough money in the fund to pay for the employees when they retire.) Under the predecessor's contract, ABN was obligated to make payments into the Pension Fund of $17 per employee per week. As of the time of the hearing, the Pension Fund was fully funded and apparently had no anticipated problems in meeting its prospective pension liabilities.[4]

Local 1-P's Supplemental Retirement and Disability Fund (SRD) is also a defined benefit plan that gives supplemental retirement benefits to employees who have vested in this plan. Under its contract, ABN was required to make a contribution of 7 percent of the shift scale for each employee. Shift scale for each covered employee consisted of each employee's earnings per week except for overtime. (The SRD contribution would be the actual weekly earnings per employee, exclusive of overtime, multiplied by .07.)

Both the Local 1-P Pension plan and its SRD fund are multiemployer plans which means that many different employers in the printing industry make contributions on behalf of their employees to two common funds, and from which retirement benefits are made. It should be noted that pursuant to ERISA, a Federal law governing pension plans, an employer who withdraws from such a fund, may incur withdrawal liability for certain unfunded liabilities. The purpose of this aspect of the law, apparently is to prevent the potential loss of assets counted on by the trustees to pay for the promised benefits which were calculated by taking into account the total demographic nature of the pool of participants.

ABN's contract with Local 119-B required it to make contributions on behalf of unit employees to a Pension Fund and to an Annuity Fund. Both of these funds are defined benefit funds similar in nature to the Local 1-P plans. Both require the employer to make contributions to each in the amount of 9 percent of each employee's gross earnings.

[4] Defined benefit plans use the services of actuaries who use statistical methods in an attempt to predict the level of contributions needed in order to pay for the prospective payments to foreseeable retirees. Although I don't know the details, an actuary must take into account such things as a reasonable expected rate of return for money received, the demographics of the employee pool, including their current ages and life expectancies.

The pension plans described above, provide benefits which are based on years of credited service. Accordingly, had the Respondent continued to contribute to them, the amounts of the monthly pension benefits for each of the covered employees would have been increased at the time of retirement.[5] Further, that monthly benefit would have been paid for the lifetime of the participant and upon death, the lifetime of his or her spouse.

ABN's contract with District 15 did not contain a pension type of plan and therefore no claim is made in that regard.

The Respondent, after the takeover, offered to employees a 401(k) plan, a profit-sharing plan, and a pension plan. All of these as explained below are defined contribution plans.

The 401(k) plan is elective in that employees can choose to have up to 10 percent of their earnings deducted before taxes and put that amount into a number of different funds administered by an outside company. (Ranging from a money market fund to a stock fund.) If an employee elected to participate in this plan, BCA put into the employee's account, $.25 for each $1 put in by the employee up a maximum of 1 percent of an employee's salary.

Under the pension plan, BCA contributed 3 percent of an employee's annual salary into an account in which the employee designates the type of investment he or she wants. (If an employee elected to put at least 4 percent of his salary into the 401(k) plan, she then would obtain an employer contribution to her account of 3 percent—(pension-plus 1 percent to 401(k) or a total of 4 percent of her annual salary). The ultimate economic benefit that the employee would receive upon retirement would be determined by the amount of money he put in himself, the amount of the vested contribution made by the employer to his account, and the return on that amount by way of interest, dividends and/or asset appreciation. As noted above, the maximum guaranteed contribution made by the employer to any given employee would be 4 percent of the employee's yearly income, if the employee elected to contribute at least 4 percent of his income to the plans.

Finally, BCA established a profit-sharing plan wherein the employer contributed moneys to the employees' accounts if it was profitable or if it felt like it. Profits have not been that great and the corresponding profit-sharing contribution by BCA has not been all that significant. In any event, contributions to employee accounts were contingent.

To the extent that an employee elected to withhold part of his pay and contributed that amount to the 401(k) plan, that money belonged to him no matter what. On the other hand, moneys contributed by the employer to the 401(k) plan, to the pension plan and to the profit-sharing plan are retrievable by the employee only if the employee vests. In the case of the three plans, they all had a 5-year vesting period, which ordinarily means that an employee had to have been the recipient of employer contributions for 5 years in order to have a "right" to this money, which otherwise would forfeit back to the employer. However, as a matter of law, because the plant closed in July 1995, less than 5 years after the date that the plans went into effect on August 20, 1990, there was automatic vesting upon plan termination for any employee who was employed as of the time that the plant closed, irrespective of how long that person worked. The only employees who never did vest for purposes of those moneys that constituted employer contributions were people who left the company before the plant closing.

The Respondent takes the position that it put into place equivalent pension benefits for the bargaining unit employees and therefore it should not be liable for contributions to the union's pension plans. Alternatively, it takes the position that to the extent that there might be liability to the pension funds, it should be credited with an offset in the amount of its contributions on behalf of the employees for pension type benefits. The General Counsel takes the position that the Respondent should be liable for the full amount of contributions it would have made to the funds absent the unfair labor practice; irrespective of any moneys the Respondent spent for alternative benefits. The General Counsel argues that this position is consistent with Board law and that even under any interpretation of the remedial provisions of the Act, the Respondent's alternative benefits were not equivalent to those that were unilaterally stopped.

In *Stone Boat Yard v. NLRB*, 715 F.2d 441 (9th Cir. 1983), cert. denied 466 U.S. 937 (1984), the employer, after the existing contract had expired, unilaterally ceased making payments to the union's pension and welfare funds and implemented its own plans for those benefits. This was found to be a violation of Section 8(a)(5) of the Act. With respect to the remedy, the Employer argued that the Board's remedy calling for full repayments to the union funds was punitive because it did not reflect employee loss and did not provide an offset for the alternative benefits paid by the employer. The employer also argued that the remedy would be tantamount to imposing a contractual term on one of the parties. The Court stated:

> Stone's first contention, that the order is punitive rather than remedial, conflicts with existing Ninth Circuit precedent. In *NLRB v. Carilli*, 648 F.2d 1206 (9th Cir. 1981), we held that an employer cannot complain of the extra cost of improperly created, substitute fringe benefits. Id at 1217. The company is merely required to repay what it has unlawfully withheld. As in *Carilli*, it was the company that unlawfully chose to incur the additional expense of a private insurance program. Even if Stone's substitute fringe benefit program met the present needs of its employees, the diversion of contributions from the union funds undercut the ability of those funds to provide for future needs.
>
> The company's second claim, that the remedy amounts to the imposition of a contract term, might have more force if the order referred to fringe benefit levels set in the master agreement. However, the remedy requires back payment at the old level of fringe benefits, not at the level negotiated in the new 1981 master agreement.

In another case decided by the Ninth Circuit almost concurrently with *Stone Boat Yard,* supra, the Court in *American Distributing Co. v. NLRB,* supra, 715 F.2d at 447, the court enforced a similar remedy. In that case, the court rejected the employer's argument that fund contributions could not be ordered because that would conflict with Section 302 of the Labor Management Relations Act.[6] See also *Starco Farmers Mar-*

[5] Each pension plan has various eligibility provision including early retirement provisions. These, however, are not relevant to the instant case and are not discussed.

[6] This provision makes it illegal for an employer to make certain payments to a union or its representatives except under certain specified conditions, included among which are payments to a trust fund providing certain types of benefits (such as pension and health insurance), provided that there exists a collective-bargaining agreement between

ket, 237 NLRB 373, 376 (1987); and *Imperial House Condominium, Inc*., 279 NLRB 1225, 1239 (1986), holding that a successor employer may not seek to use Section 302(c)(5)(B) to avoid its bargaining obligation regarding unilateral changes to existing conditions at the time of a successor's takeover, including the requirement to make payments to union funds.

Such was the state of the law until *Manhattan Eye Ear & Throat Hospital v. NLRB*, 942 F.2d 151 (2d Cir. 1991). In that case, the Board at 260 NLRB 1211 (1982), held that an employer who unilaterally substituted medical insurance plans (and incurred the cost of a new plan), nevertheless, was required to make whole the old welfare fund for those contributions that it unlawfully withheld. The Board stated:

> In the case of unilateral changes in negotiated benefits in connection with an unlawful withdrawal of recognition, the Act's purpose of protecting the collective bargaining process is, in our view, best served by requiring respondents to restore the status quo ante through the mechanism of adherence to the terms of the agreements they have negotiated.
>
> Viewing the remedy recommended by the judge in purely monetary terms, we still reject the Respondent's arguments that ordering it to reimburse the funds requires it to "make whole" the funds and the employees where no losses have occurred. There can be no doubt that employees have, in addition to a stake in receiving benefits negotiated on their behalf by their chosen representatives, a clear economic stake in the viability of funds to which part of their compensation is remitted. (Citing *Stone Boat Yard v. NLRB,* 715 F.2d 441, 446 (9th Cir. 1983); and *Roman Iron Works,* 292 NLRB 1292, 1293 fn. 15 (1989).)

The Board's opinion in *Manhattan Eye,* supra*,* was not enforced insofar as it required the company to make the funds whole. Nevertheless, it seemed at the time that the reason the Court refused to enforce that portion of the Order was that in the interim, the Union had disclaimed any interest in representing the affected employees and therefore had effectively abrogated the employer's obligation to bargain. The court stated:

> By refusing to enforce the Board's decision in this case we do not hold that in the exercise of its broad remedial power, it is not empowered to order imposition of the *status quo ante* in other cases where an employer unilaterally discontinues payments to union-sponsored benefit funds. . . . We simply rule that in the matter at hand, where the employees—who were compensated during the relevant period by substitute benefit plans and who prior to the Board's decision disclaimed any present or future interest in being covered by the Joint Funds—have little economic stake in the future financial stability of those funds, imposition of the status quo ante does not serve the remedial purposes of the Act because it fails to benefit the employees, is unduly harsh on the employer and results in a windfall for the union funds.

The conclusion that the court's opinion in *Manhattan Eye* was confined to the particular (and peculiar), situation of that case, was set out by the Board in *Virginia Concrete Co*., 316 NLRB 261 fn. 1 (1995), and *Central Management Co*., 314 NLRB 763, 773 fn. 28 (1994), and by the Seventh Circuit Court of Appeals in *NLRB v. Transport Service Co*., 973 F.2d 562 (7th Cir. 1992). In the latter case, the court rejected the employer's argument regarding its requirement to make whole union funds and stated at footnote 3:

> As supplemental authority for its position, Transport referred us to *Manhattan Eye, Ear & Throat Hosp. v. NLRB* . . . where the Second Circuit refused to enforce the NLRB's order directing the employer to repay contributions withheld from the Union's fringe benefit fund and directed the NLRB to make specific findings as to the actual loss to the employees. In *Manhattan Eye Ear Throat Hosp*., however, "there [was] little or no evidence to support the Board's conclusion that the [employees] retained any future interest in the health, welfare and pension funds." Id. at 157. The employees at issue were not even represented by the union at the time of the hearing and the union had disclaimed any future interest in representing them. Without any concrete evidence of the employees' economic interest in the future of the fringe benefit fund, any harm to the employees was purely speculative. Transport has not argued that McCormack, Taylor and O'Connor lack any economic interest in the future stability of the Union's health, welfare and pension funds.[7]

Subsequently, an opinion by a three-member panel of the Second Circuit, seems to indicate that the limitations that some thought were applicable to the decision in *Manhattan Eye*, supra, were not intended by this court. In *NLRB v. Katz's Delicatessen*, 151 LRRM 3013, 3014 (1996), the court remanded for compliance proceedings, the make-whole remedy portion of the Board's order, which required inter, alia, that the Respondent make payments to the Union's pension and welfare funds. In that case, the company had illegally withdrawn recognition from an incumbent union and had ceased making payments to its funds while illegally contracting with another union to whose funds it made contributions. The first union clearly was not disclaiming any interest in representing the employees and was, in fact, vigorously seeking to enforce its rights. Notwithstanding that the first union did not disclaim, and therefore making the facts of the case distinguishable from those in *Manhattan Eye*, the court refused to enforce the Board's repayment order as it stood. Instead, the court remanded the matter with instructions which indicated that it considered *Manhattan Eye* to control this situation as well. The court stated:

> With regard to the two unions' welfare funds, we are unable to determine how the plans compare and to what extent employees may have been denied benefits under the Local 131 plan that they would have received under the Local 100 plan. Similarly, on the current record, we have no way of knowing (1) how Local 100's pension fund compares to Local 131's annuity fund; (2) whether and to what extent Katz's employees had individual pension ac-

the employer and union and provided that certain trust requirements are fulfilled.

[7] In this latter respect that Seventh Circuit seems to have adopted the idea set out in *Stone Boat Yard*, supra, that for fringe benefit funds which provide future benefits to employees, the benefit to which employees may ultimately be entitled is inextricably tied to the financial viability of the fund which is dependent on the contracting employers making continuing payments into the funds. There is, of course, no point in making an employee whole for benefits, if there is no fund left to pay the benefits, or if a fund, because of defaults, can no longer make the level of payments that it had promised.

> counts with Local 100 that suffered losses or whether they otherwise lost their pension contributions when Katz's shifted its employees to Local 131's plan; and (3) whether the contributions paid by Katz's on behalf of its employees into Local 131's annuity fund since April 1991 can be transferred into Local 100's pension fund.
>
> Only after such determinations have been made can we evaluate whether the Board's remedial order is consistent with *Manhattan Eye*—ordering retroactive benefit payments only to the extent necessary to restore Katz's employees to the position they would have been in had Katz's not withdrawn recognition from Local 100 and recognized Local 131. The NLRB should be given the opportunity, in the first instance, to apply *Manhattan Eye* to this case.
>
> We therefore remand this case to the NLRB with instructions to initiate formal compliance proceedings. . . . In so doing, we emphasize that the compliance proceedings should aid to restore Katz's individual employees to the position they would have occupied had Katz's not violated the Act, without creating a *windfall* for Local 100.

Notwithstanding the Court's opinions in *Manhattan Eye* and *NLRB v Katz's Delicatessen*, the existing Board precedent on this issue is contrary to the Second Circuit's opinion. Moreover, the Second Circuit appears to be at odds with decisions by the Seventh and Ninth Circuits. In any event, I am bound to follow the Board's view of the law and I do so in this case.

Moreover, that even under the Second Circuit's standards in *NLRB v Katz's Delicatessen*, it would be my conclusion that the substitute pension plans implemented by the Respondent were not equivalent to the pension plans of Local 114-B and Local 1-P. In this regard, the pension plans established by the Respondent after the unilateral changes were of a different nature, being defined payment as opposed to defined benefit plans. More significantly, the level of the employer's contributions to the new plans was variable and with the exception of the completely discretionary profit sharing plan, at a maximum of 4 percent of any employee's annual salary. Thus, the new plans guaranteed only that the employer would, at a minimum, make a contribution equal to 3 percent of an employee's annual salary and guaranteed, at maximum, a contribution of 4 percent of an employees annual salary *if* that employee agreed to deduct at least 4 percent of his or her salary and contribute that amount to the fund. The employer contribution under the new plans were far lower than what it would have made to the old plans. It therefore is reasonable to conclude that the ultimate employee benefit would be corresponding lower, if as in the case herein, the money was invested conservatively.[8]

Had the employer continued to contribute to the two Union's pension funds, this would have increased the benefits that each employee and his or her spouse would have received upon retirement. Therefore, unlike the situation in *Manhattan Eye*, the employees here, almost all of whom were vested, have a direct stake in any payments that the Respondent may be required to make into the pension funds. This is because their individual benefits will be directly affected by any additional contributions made on their behalf.

The employer has not shown and I think probably could not show that the investments made into its substitute pension-type plans would have yielded a benefit which would have equaled or exceeded the benefits provided by the union pension plans. Moreover, under a defined contribution plan, the total benefit equals the amount of money put into a fund plus any return on investment, and nothing more. When an employee uses up that money, there is no more. This is different from a defined benefit plan where the benefit continues for the life of the participant and his spouse, irrespective of the amount put into the fund on his behalf. This obviously is more beneficial to those employees and spouses who are long lived and this "benefit" is offset or paid for by the probability that some of the other participants will have shorter lives. (This is what actuaries get paid for.)

Accordingly, in light of the above, I agree with the General Counsel's contention that the Respondent is required to make the union pension funds whole for the entire amount without any offset. As the actual amounts will be dependent on my conclusions regarding wage rates, etc. this will be dealt with below.

D. Wage Rates and Overtime

ABN's contract with Local 119-B provided that employees be paid overtime (at time and one half) for any hours worked over 35.75 per week.

ABN's contract with Local 1-P provided that employees be paid at overtime rates after 35 hours per week.

ABN's contract with District 15 provided that overtime rates be paid after 36.25 hours per week.

When the Respondent took over it kept the wage rates the same. However, it increased the standard workweek for all employees to 37.5 hours per week and paid employees overtime only for time worked in excess of this number of hours. Therefore, if an employee represented by 119-B worked 37.5 hours per week, he or she should have been paid for 1.75 hours per week at the overtime rate. Similarly, an employee represented by Local 1-P should have obtained 2.5 hours of overtime if he or she worked the 37.5-hour week. Finally, an employee represented by District 15 should have obtained 1.25 hours of overtime if he or she worked the 37.5-hour week. Since the respondent has already paid all employees at their pretakeover rates for 37.5 hours, the overtime rate "owed" would be one-half of the straight-time rate.

In calculating overtime, the General Counsel's intention was to count the number of weeks during each quarter that any of the employees in question worked 37.5 hours; calculating their straight time pay based on the 37.5 hour week and calculating overtime by taking the difference between 37.5 and their preceding standard workweek and then multiplying the difference by one-half of their regular pay rate. To take an example one could use Virginia Harris for the third quarter of 1990. Under the preexisting terms, her workweek was 35.75 hours which was changed to 37.5 hours. Accordingly, she normally worked, after the takeover, 1.75 hours of overtime per week. (37.5–35.75). Her rate of pay before and immediately after the takeover was $12.52 per hour. Therefore, to determine overtime owed in any given quarter, the formula is (12.52/2 * 1.75 hours) * the number of weeks during the quarter that Harris worked 37.5 hours. During the third quarter of 1991, Harris

[8] Under the new plans, the bargaining unit employees tended to elect the most conservative investment options for their money and avoided common stocks. While in hindsight, this may have been a mistake, it was, at the time, a reasonable position for people who apparently wanted to minimize any risk to their money.

worked 12 weeks at 37.5 hours and using the formula gives a figure of #131.46.[9]

The General Counsel asserts that although this is not an 8(a)(3) case, the wage rates used for backpay and for the calculation of various benefits such as pension and welfare contributions, should reflect any raises given during the backpay period and that I should not freeze the wage rates as of the date of the takeover. As to overtime, the General Counsel contends that I should nevertheless use the formulas as they existed in the contracts between ABN and the Unions since this was the formula in effect at the time of the succession of the Respondent.

The Respondent takes the opposite position, arguing that inasmuch as the violation alleged is a unilateral change, the backpay should be measured by whatever the terms were as of April 23, 1990 (including the actual wage rates then in effect), and comparing that to whatever difference there is between those numbers and what employees actually earned after that date. Therefore, in the Respondent's view, if the pay rate in the contract was $12.52 per hour (as in the case of Virginia Harris), then that is the rate that should be used as the basic measure of backpay for her account throughout the entire backpay period.

A difference in calculating the proper wage rate makes a lot of difference. If one uses the wage rate as it existed on April 23, 1990, and assume that this is the proper wage for all backpay computations throughout the entire backpay period, this results in significantly lower amounts because overtime, vacation pay, holiday pay, and pension and annuity fund contributions are calculated on the base wage. Thus for example, if the wage rate for Harris is frozen at $12.52 for the entire backpay period, rather than going to $12.89 in quarter two of 1991; $13.28 in quarter two of 1992, and $13.68 in quarter two of 1993, then the amount of money owed to the various funds would be significantly lower.

Once again, although arguing that the Board is not authorized to bind the Respondent to the predecessor's contract, the Respondent argues that the contract wage rates should nevertheless be binding on the unions and the employees to the extent that they limit backpay.

The purpose of a backpay remedy is to restore, to the extent possible, the losses suffered by employees as a consequence of a Respondent's unfair labor practices. The Board has "broad discretion" to shape or choose a formula designed to best approximate what the discriminatees would have earned but for the illegal action against them. *Bagel Bakers Council of Greater New York* v. *NLRB,* 555 F.2d 304, 305 (2d Cir. l977); *NLRB* v. *Brown & Root, Inc.,* 311 F.2d 447, 452 (8th Cir. l963). In *Brown & Root,* the court stated, inter alia:

> Prefatory to a discussion of respondents' attack on the formula employed by the Board in calculating the amounts of the back pay awards, it is well to note that the purpose of a back pay award is to make whole the employee who has been discriminated against as the result of an unfair labor practice. The employee is entitled to receive what he would have earned normally during the period of the discrimination against him, less what he actually earned in other employment during that period. Of course, an employee must use reasonable diligence to find employment during the period of discrimination. He is not entitle to back pay for periods during which he voluntarily remained in idleness . . . .
>
> In solving the problems which arise in back pay cases the Board is vested with a wide discretion in devising procedures and methods which will effectuate the purposes of the Act . . . .
>
> Obviously, in many cases it is difficult for the Board to determine precisely the amount of back pay which should be awarded to an employee. In such circumstances the Board may use as close approximations as possible, and may adopt formulas reasonable designed to produce such approximations. . . . We have held that with respect to the formula for arriving at back pay rates or amounts which the Board may deem necessary to devise in a particular situation, "our inquiry may ordinarily go no further than to be satisfied that the method selected cannot be declared to be arbitrary or unreasonable in the circumstances involved." [Case citations omitted.]

In the present case, the starting point for calculating the wage rates for backpay purposes is the actual wage rates of the employees as of the time of the takeover. Also, the starting point for calculating overtime pay, was the then existing formulas used for each category of employee. This does not mean, however, that the wage rates, as they existed as of the time of the takeover, should be imbedded in stone. This is not a contract breach case and those rates were not fixed by virtue of any contract vis a vis the successor. As such, it is my opinion that the employees in each category could reasonably have expected to receive the wage increases that were actually given and no doubt given to other nonrepresented employees of the Respondent.

If we froze, for the entire backpay period, the wage rates to those that existed in the ABN contracts, this would not work to restore losses to the bargaining unit employees. The fact is that from the period from 1990 through 1995, the effective economic impact of maintaining a fixed pay rate would result in a diminution of employee remuneration in terms of what they could have purchased from their pay. Thus, the inflation rates as measured by Consumer Price Index of the Bureau of Labor Statistics show that if the nominal wage rate had remained the same, the real wage rate would have decreased by 2.1 to 3 percent during the years of the backpay period. And interestingly enough, the wage rate increases that the Respondent gave to the employees over the backpay period, essentially matched the CPI index increases for each year except the last.

If we assume that the remedy, in order to restore the "real" status quo ante, must take into account the wage increases given to the employees as being compensation for the loss of purchasing power due to inflation, then we must make all subsequent calculations with this in mind.

[9] It should be noted that although the General Counsel's proposed formula for calculating overtime counts the number of weeks that each employee actually worked 37.5 hours per week, the Respondent pointed out in its brief a number of instances where the General Counsel miscounted. In this respect, the Respondent points to the payroll records of Howard, Ballard, Barrett, Harris, Long, Lindsey, Sullivan, Leone, and Whelan. In some of the cases, the miscalculation can be accounted for by the fact that although a payroll record may list that an employee was credited with 37.5 hours, that week turned out to be a vacation week, or contained a holiday where no overtime was actually worked. In any event, to the extent that the payroll records supported the Respondent's assertions, I have taken that it into account in recalculating the overtime owed figures.

E. Vacations, Holidays, and Personal Days

1. Vacation pay

Under the terms that existed at the time of the takeover, the employees in all three units were entitled to 20 days per year as vacation pay. For the first year after the takeover, the General Counsel prorated the vacation entitlement to 13 days, as the predecessor (ABN), was responsible for paying for the first quarter of the year. For 1992 to 1995, the General Counsel assumed that each employee in each unit was entitled to 20 vacation days per year except that for those employees who did not work all quarters in 1995 before plant closing, she conceded that no vacation pay was due for the final year.

When the Respondent took over operations and hired the former ABN employees, the wage and benefit package it put into effect included 15 vacation days per year. Thus, a diminution of 5 days. It is noted that under the Respondent's package, employees could carry unused vacation days over from 1 year to another. This is reflected in the indexes to the amended specification where some employees during particular years were paid for more than 15 vacation days. (See for example, Gerard Lindsey, Robert Whelan, Gerald Sullivan, and Jaraslow Sawaryn.)

I have read and considered the arguments of both sides and my conclusions regarding the vacation pay issue is as follows:

In arriving at the amount due to an employee in any given year one would therefore, multiply 20 times the daily rate (the normal work week divided by 5, times the hourly rate of pay at any given time).[10] When that is done, I then will subtract, the amount of vacation pay entitlement of each employee in accordance with the Respondent's new wage and benefit package. For the first year (1990), I will prorate both the employee entitlement under the predecessor's terms which = 13 days, and I will prorate the employee entitlement under the Respondent's terms which = 11 days. I will accept the General Counsel's concession that employees who did not work all quarters in 1995 before plant closing, are not due any vacation pay.

In the case of employees represented by Local 119-B, for the years 1991 through 1995 (except as described above), the formula will be (hourly wage rate * pretakeover daily hours (7.15)[11] * 20 *minus* (hourly wage rate * posttakeover daily hours (7.5) * 15.[12]

In the case of employees represented by Local 1-P, for the same period, the formula will be (hourly wage rate * daily number of pretakeover daily hours (35/5) * 20 *minus* (wage rate * daily number of pre-takeover hours 37.5/5 * 15.

In the case of employees represented by District 15, for the same period, the formula will be (hourly rate * pretakeover daily hours (36.25/5) * 20 *minus* (hourly wage rate * posttakeover daily hours (7.5) * 15.

2. Holidays and personnel days

The employees represented by Local 119-B were entitled, at the time of the takeover, to 11 holidays plus 1 personnel day per year.

The employees represented by Local 1-P were entitled, at the time of the takeover, to 11 holidays plus 7 personnel days per year.

The employees represented by District 15 were entitled, at the time of the takeover, to 12 holidays per year.

Upon taking over operations, the Respondent provided for 9 holidays and 2 personnel days per year. It also provided for 5 sick days a year but as this is more in the nature of a health benefit, it is my opinion that the 5 sick days are not the equivalent of holidays and personnel days for set-off purposes.[13]

For 1990, the General Counsel has subtracted the holidays in the first quarter of the year, as these were paid for by the predecessor. Also, she concedes, for the same reasons applicable to vacation pay, that employees who did not work in all quarters of 1995 prior to plant closing, should not receive holiday or vacation backpay for that year.

Based on the record as a whole, the following is the formula that I shall use to determine this aspect of the backpay award.

In the case of employees represented by Local 119-B, for the years 1991 through 1995, I will first determine the pretakeover daily rate which is 35.75 * hourly wage rate divided by 5. Next I shall determine the posttakeover daily rate which is 37.5 * hourly wage rate divided by 5. Based on these calculations, the formula (except for 1990 and 1995 would be (the pretakeover daily rate * 12) minus (the posttakeover daily rate * 11).)

In the case of employees represented by Local 1-P, for the same period, the procedure would be the same except that in this case, the employees had 18 holiday and personnel days. Accordingly, the formula will be (the pretakeover daily rate * 18) minus (the posttakeover daily rate * 11). As in the case of Local 119-B, the same principals apply for 1990 and 1995.

In the case of employees represented by District 15, for the same period, the formula will be (the pretakeover daily rate * 12) minus (the posttakeover daily rate * 11). As in the case of Local 119-B, the same principals apply for 1990 and 1995.

F. Formulas for Pension and Welfare Funds

Lets start with the easiest. At the time of the takeover, the employees represented by District 15 were covered by a health insurance fund that received $266.46 per month for each employee. Since I have concluded that the Respondent had an obligation to continue these payments for 60 days, this equals $524.18 per employee.[14]

At the time of the takeover, the employees represented by Local 1-P were the beneficiaries of three funds; a Welfare

[10] In determining the applicable rate of pay, I am not freezing the rate at the respective contract rates that each Union had with the predecessor, for the same reasons I have already discussed. In short, freezing the wage rate at 1990 levels, would in my opinion, amount to a real reduction in wage rates for each succeeding year.

[11] As the normal workweek for employees represented by Local 119-B was 35.75 hours per week, I have divided that number by 5 to arrive at the normal day. For vacation and holiday pay purposes I have then used that number and multiplied it by the unfrozen hourly rate applicable during the appropriate year.

[12] I recognize that some employees during the period from 1991 to 1995 may not have taken the full 15 days of vacation pay that they were entitled to. Nevertheless, that is the number of vacation days they were entitled to take during any given year and if they didn't take that number they could carry unused time over to the following year. Thus, over the course of 4 years, everything should even out and for purposes of calculation ease, I have simply used the 15 days per year as the offset in order to determine the amount of vacation pay owed.

[13] Sick days are presumably designed to recompense employees only when they are sick.

[14] $266.46 per month equals $8.736 per day, on that assumption that one month has 30 days and the succeeding month has 31 days. 8.736 x 60 days = 524.18.

Fund, a Pension Fund, and an SRD Fund which also provided a pension type of benefit.

The predecessor's contribution to Local 1-P's Welfare Fund was $77 per week per employee. As there is 60 days of liability to this fund or 8.5714 weeks, the total per employee would be $660, plus interest.

The predecessor's contribution to Local 1-P's Pension Fund was $17 per week per employee and the calculations for this amount is set forth in the attached spreadsheet (Sheet1).

The predecessor's contribution to Local 1-P's SRD Fund was 7 percent of each employee's shift scale. The shift scale is defined as the weekly salary received by each represented employee without calculating any overtime. In order to calculate what the contributions would have been under the conditions before the takeover, I assumed that each employee under the old terms would have worked 35 hours per week at the appropriate unfrozen wage rate applicable during any particular quarter. Therefore, I have calculated the amounts owed per employee per quarter as being (.07 * (35 hours per week * unfrozen hourly wage rate)) * 13 weeks. The actual calculations are contained in the attached spreadsheets.

For the Welfare Fund of Local 119-B, the contribution was 8.5 percent of each employee's gross earnings. For the Pension Fund, it was 9 percent of each employee's gross earnings. And for the Annuity Fund it was 9 percent of each employee's gross earnings.

Under the pretakeover terms, gross earnings were defined as the employee's straight and overtime earnings. Instead of attempting to reconstitute the amount of earnings each employee would have earned per quarter under the old terms, using the adjusted wage rates, and recalculating overtime pay, the General Counsel has simply taken the actual quarterly earnings for each employee and multiplied that by the respective percentage.[15] This seems to me to be eminently reasonable and it sufficiently approximates what the employer would have had to contribute to the funds in the absence of the unilateral changes. However, in the case of the Welfare Fund, the contributions would only be for 60 days or 8.5714 weeks.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[16]

ORDER

The Respondent, Banknote Corporation of America, Inc., New York, New York, its officers, agents, successors, and assigns, shall make payments in the manner described below, with interest.

The backpay for employees is as follows:

Nora Howard	$2,711.74, plus interest
Charles Parlick	5,296.68, plus interest
Daisy Long	4,888.41, plus interest
Virginia Harris	4,953.07, plus interest
Emil Neir	2,247.54, plus interest
Angela Robb	524.90, plus interest
Charles Ballard	4,095.33, plus interest
Chang Barrett	4,170.67, plus interest
Luz M. Ruiz	5,100.09, plus interest
Gerard Lindsey	16,623.20, plus interest
Robert Whelan	18,576.40, plus interest
Gerald Sullivan	15,113.40, plus interest
Raymond Wilk	450.71, plus interest
Harry Webster (estate)	207.30, plus interest
Jaroslaw Sawaryn	4,870.24, plus interest
Augustine Leone	4,797.35, plus interest
Francis J. Kelly	2,451.60, plus interest

The amount owed the Welfare Fund of Graphic Communications International Union, Local 119-B-43B, New York is $2,583, plus interest.

The amount owed the Pension Fund of Graphic Communications International Union, Local 119-B-43B, New York is $100,729, plus interest.

The amount owed the Annuity Fund of Graphic Communications International Union, Local 119-B-43B, New York is $100,729, plus interest.

The amount owed the Welfare Fund of New York Lithographers & Photoengravers Union # 1-P. G.C.I.U. is $3,295, plus interest.

The amount owed the Pension Fund of New York Lithographers & Photoengravers Union # 1-P. G.C.I.U. is $14,637, plus interest.

The amount owed the S.R.D. Fund of New York Lithographers & Photoengravers Union # 1-P. G.C.I.U. is $55,602, plus interest.

The amount owed the Welfare Fund of District 15, International Association of Machinists & Aerospace Workers is $1,596, plus interest.

[15] In preparing this decision, I attempted with limited success to try to recalculate one employee's gross earnings in order to use that as the basis of computing the contributions to the three Local 119-B-43B funds. Although I think this is possible, it was a fairly complicated procedure and did not yield a result that was significantly different from the method used by the General Counsel. What I did for the Pension and Annuity Funds was to multiply (.09 * (37.5 hours * the hourly rate) + (1.75 * the overtime rate) * 13 weeks. For the Welfare fund, I multiplied (.085 x (37.5 hours * hourly rate) + (1.75 * overtime rate) * 8.5714 weeks.

[16] 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.