Allegheny Graphics, Inc., a Division of Package Service Company, Inc. and/or Package Service Company, Inc. *and* United Steelworkers of America, AFL–CIO–CLC. Cases 6–CA–22647 and 6–CA–22670

April 15, 1996

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS COHEN AND FOX

On October 18, 1995, Administrative Law Judge Judith A. Dowd issued the attached supplemental decision. Respondents filed exceptions and a supporting brief, and the General Counsel filed cross-exceptions and a supporting 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,[1] and conclusions and to adopt the recommended Order as modified.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Allegheny Graphics, Inc., a Division of Package Service Company, Inc. and/or Package Service Company, Inc., Cheswick, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the Order. The total amount Respondents are required to pay is $318,287.

[1] The Respondents have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

Contrary to the judge's statement in fn. 2 of her decision, the compliance officer fully explained why 4 of the 13 individuals identified as discriminatees in the underlying case were not entitled to backpay.

The judge inadvertently found that the backpay period of discriminatee Ronald Sikora ends on March 18, 1991. It ends on March 18, 1992.

Sandra Beck Levine, Esq., for the General Counsel.
James A. Prozzi, Esq., of Pittsburgh, Pennsylvania, for the Respondent.

SUPPLEMENTAL DECISION

JUDITH A DOWD, Administrative Law Judge. A hearing was held in this matter on February 14, 15, and 16, 1995, in Pittsburgh, Pennsylvania. The case involves the amount of backpay due to certain discriminatees as a result of the Board's finding in the underlying case that Allegheny Graphics, a Division of Package Service Company, Inc. (Graphics) had committed certain unfair labor practices. The Board's Decision and Order in the underlying case, which is reported at 307 NLRB 984 (1992), was enforced in full by the United States Court of Appeals for the Third Circuit, 993 F.2d 878 (1993). Since a controversy arose over the amounts due under the Board's Order as enforced in the underlying case, the General Counsel filed a compliance specification setting forth these amounts. The specification also alleged that Graphics has been controlled, managed, and operated by Package Service Company (PSC), that PSC is a single employer with Graphics and that the backpay due is the responsibility of PSC. Graphics and PSC (sometimes jointly referred to as Respondents) filed a joint answer to the specification. The parties were represented by counsel at the hearing and had the opportunity to examine and cross-examine witnesses and to offer documentary evidence. Following the hearing, the parties filed briefs which I have read and considered. Based on the entire record, including my observation of the witnesses and their demeanor, I make the following findings of fact and conclusions of law.

A. *Background*

On June 29, 1992, the Board issued its decision in the underlying case finding, in pertinent part, that Graphics violated Section 8(a)(3) and (1) of the National Labor Relations Act (the Act) by discriminatorily refusing to hire 13 named employees, after it purchased the business of its predecessor, Allegheny Label (Label), located at Cheswick, Pennsylvania.[1] The Board's remedial order directed that Graphics offer immediate and full reinstatement to, and to make whole, these discriminatees with interest, for their losses resulting from Graphics' discrimination against them. The backpay specification calculates the amount of backpay allegedly due 9 of the 13 discriminatees.[2]

At the unfair labor practice hearing, Graphics conceded that when it purchased Label, it retained a majority of its predecessor's work force and that it was a successor employer of Label. The Board found, however, that Graphics was not entitled to set initial terms and conditions of employment without consulting with the Union, because it discriminatorily refused to hire 13 bargaining unit employees, based on their union membership. Accordingly, the Board found that Graphics violated Section 8(a)(5) and (1) of the Act by changing its employees' terms and conditions of employment without affording the Union prior notice and an opportunity to bargain. To remedy the bargaining violation, the Board ordered Graphics to ''cancel, on request by the Union, changes in rates of pay and benefits unilaterally effectuated'' and to ''make the bargaining-unit employees whole by remit-

[1] The 13-named discriminatees are as follows: Leonard Bortz, Harland Chuba, Don Cowen, Jules Delenne, James Farneth, George Frederick, Ted Gaworski, Larry McNeil, John Matichko, Edward Palchinski, Thomas Perdeus, Jonathan Reynolds, and Ronald Sikora.

[2] The nine discriminatees whose backpay is calculated in the specification are Leonard Bortz, Harland Chuba, Don Cowen, Jules Delenne, James Farneth, George Frederick, Ted Gaworski, Edward Palchinski, and Ronald Sikora. There is nothing in the record to explain why no calculations with respect to the remaining four discriminatees were included in the specification.

ting all wages and benefits that would have been paid in the absence of the changes from April 2, 1990, until the Respondent negotiates in good faith with the Union.'' 1992 WL 453283, *12 (NLRB). The backpay specification alleges that during the period from April 2, 1990, when Graphics commenced operations at Cheswick, to March 18, 1992, when it ceased operations, Graphics was obligated to pay unit employees the wages and benefits specified in the collective-bargaining agreement between Label and the Union. The backpay specification lists 14 unit employees and sets out the contractual wages and benefits to which these employees were allegedly entitled during the backpay period.[3]

In their answer to the backpay specification, Respondents allege, inter alia, that Graphics and PSC are not a single employer, that the proper measure of backpay should be the wages and benefits actually paid by Graphics and not those specified in the collective-bargaining agreement between Label and the Union, and that backpay should be reduced or eliminated with respect to certain discriminatees because of their failure to make a good-faith effort to obtain equivalent employment and/or because of their alleged fraudulent concealment of interim earnings.

B. *The Single Employer Issue*[4]

''[I]t is well established that derivative liability may be imposed upon a party to a supplemental proceeding even if that party had not been a party to the underlying unfair labor practice proceeding if it is 'sufficiently closely related' to the party which was found in the original proceeding to have committed the unfair labor practices.'' *Teckwal Corp*., 263 NLRB 892, 894 (1982), quoting from *Coast Delivery Service*, 198 NLRB 1026 (1972). Derivative liability may be imposed on nominally separate businesses which the Board finds are so closely related that they comprise a single-integrated enterprise. *Iron Workers Local 15*, 306 NLRB 309, 310–311 (1992); *Emsing's Supermarket*, 284 NLRB 302 (1987). In determining whether two or more companies constitute a single employer the controlling criteria are (1) common ownership, (2) integration of operations, (3) common management, and (4) centralized control of labor relations. *Radio & Television Broadcast Technicians Local 1264 v. Broadcast Service of Mobile*, 380 U.S. 255 (1965). ''Not all of these criteria need be present to establish single-employer status.'' *Denart Coal Co*., 315 NLRB 850, 851 (1994). ''Single-employer status ultimately depends on 'all the circumstances of the case' and is characterized by the absence of the 'arm's length relationship found among unintegrated companies.''' *Emsing's Supermarket*, supra at 302, quoting from *Blumenfeld Theatres Circuit*, 240 NLRB 206, 215 (1979), affd. 626 F.2d 865 (9th Cir. 1980).

1. Common ownership

In their brief, Respondents concede that Graphics and PSC have common ownership. Thus, PSC is a family business that is substantially owned by Wesley Nedblake and his son, Jeffrey Nedblake, who together hold 92.3 percent of the stock of PSC. Graphics stock, in turn, is owned by PSC (80 percent) and Wesley and Jeffrey Nedblake (10 percent each).

2. Interrelation of operations

Wesley and Jeffrey Nedblake own approximately 18 corporations, including labeling companies and real estate holdings. Both PSC and Graphics produced packaging labels, but each of them used different printing techniques. Wesley and Jeffrey Nedblake purchased Label as individuals and subsequently added it to their corporate holdings. The acquisition of Label and renaming it as Allegheny Graphics, Inc. was announced in the July 1990 edition of the PSC corporate newsletter. The article in the PSC newsletter emphasizes the benefits to PSC of the acquisition of Graphics. The article states that the purchase of Graphics added ''significant capacity to Package Service Company's capabilities in wide-web gravure printing for our large volume customers.'' The article further states that as a result of the Graphics acquisition, PSC acquired a ''high profile'' customer base that included J. M. Smucker Company among others, as well as ''several new products to provide to the market place.''

PSC assumed the loan that was used by the Nedblakes to purchase Graphics and consolidated it with some of the other obligations of PSC and its subsidiaries. The consolidated loan was financed through Marine Midland Business Credit, which is a part of Marine Midland Bank. As part of its loan arrangements with Midland, PSC required all of its subsidiaries, including Graphics, to maintain their bank accounts at Midland Bank. All of the payments Graphics received from customers went directly to Midland Bank, where they were retained in a lockbox to pay down its revolving line of credit. Monthly loan payments due on the consolidated loan were automatically disbursed by PSC, through checks drawn on Graphics' account.

PSC headquarters, which is located in Kansas City, Missouri, housed the main corporate computer which was used to process numerous types of financial transactions for Graphics. PSC charged Graphics a $20,000 monthly fee for providing a wide range of support services. PSC headquarters processed Graphics' payroll, produced Graphics employees' paychecks and W-2 forms, prepared Graphics' quarterly tax reports and made tax payments for Graphics, and produced financial statements and other reports concerning Graphics for management to use. Although Graphics was located in Cheswick, Pennsylvania, employees' W-2 forms listed Graphics' address as 10525 NW Ambassador Drive #208, Kansas City, Missouri, the address of PSC corporate headquarters.

Although Graphics was geographically separated from PSC headquarters, employees at both facilities frequently worked cooperatively to perform various interrelated functions. For example, clerical employees at Graphics would prepare accounts payable voucher packages—matching up the bill with the receiving information in the purchase order—and forward them to PSC corporate headquarters, where they were processed and paid. Similarly, a clerical em-

[3] The unit employees named in the backpay specification are as follows: Carl W. Binner, Edward R. Maytan, James Christman, William L. Mitchell, Ramon Rodriguez, James E. Houston, James R. Bryner Jr., Albert Corradene, Ludwig D. Prasnikar, Robert L. Squires, Gordon G. Mitchell, Deak Remaley, Daniel R. Cavitt, and Robert M. Simmen.

[4] Although the backpay specification alleged that derivative liability was based on either a joint employer or single-employer theory, on brief counsel for the General Counsel argued only that PSC and Graphics had a single-employer relationship. My findings are therefore limited to the single-employer issue.

ployee at Graphics gathered the employees' timecards, figured their hours, and faxed that information to the PSC corporate office. The information was then used at PSC to produce Graphics' payroll and Graphics employees' paychecks, which were inserted in PSC envelopes and then sent by courier to the Graphics facility.

Other examples of interaction between PSC and Graphics employees include the following: (1) a Graphics clerical employee regularly prepared a current list of employees and sent it to PSC headquarters which then made insurance payments for Graphics employees' health benefits; (2) several Graphics employees were authorized to pay for small purchases and C.O.D. charges from a petty cash account. When the balance in this account became too low, Graphics employees would call PSC corporate headquarters and additional money would be added to the account; and (3) Graphics employees regularly called PSC headquarters several times a day on such matters as obtaining authorizations or requesting assistance in dealing with vendors, who were reluctant to supply Graphics because of the recent bankruptcy of its predecessor, Label.

3. Common management

Graphics was primarily managed by Jeffrey Nedblake, who is also a vice president and director of PSC. All of the other officers and directors of Graphics held equivalent positions with PSC. Thus, Wesley Nedblake was the president and chairman of both PSC and Graphics, Jeffrey Nedblake was a vice president of both companies, William Toyne was a vice president of Graphics and PSC's vice president for finance, and Marilyn Constable was assistant secretary for both companies. William and Jeffrey Nedblake, who were the sole directors of Graphics, were also directors of PSC.

When Graphics first started its Cheswick operations, Jeffrey Nedblake came to the facility about three times per week. Larry Johnson, another PSC vice president, was also frequently at Graphics during this early period. As time went on, Nedblake and Johnson came less often to Graphics. Nedblake and Johnson chose Susan Tonks, a Graphics' floor supervisor, to provide on-site management of the Cheswick facility. The announcement of Tonks' promotion was written on PSC letterhead and stated that ''Sue Tonks has been appointed Vice President of Operations for our Allegheny Graphics division of Package Service Company, Inc.''[5] Tonks reported directly to Jeffrey Nedblake, who continued to come quite often to the Graphics facility. When Nedblake was not there, Tonks called the PSC corporate offices at least once a day, or more often, particularly when she encountered financial problems.

When Graphics did not produce satisfactory profits, the decision to close the facility was made by the officers of PSC at a series of meetings that were conducted at its Kansas City corporate headquarters. Neither Tonks nor anyone else from the Cheswick facility attended the meetings at which the decision was made to close Graphics.

4. Centralized control of labor relations

Jeffrey Nedblake and Larry Johnson took a particularly active role in labor relations at Graphics. Nedblake and Johnson interviewed a number of job applicants, hired employees, and set initial wage rates, in conjunction with Label's former president. After Graphics had hired its employee complement, Nedblake and Johnson continued to answer employees' inquiries about pay and benefits. Johnson also arranged for someone to come to Graphics to explain the full range of benefits to the employees. The PSC Employee Handbook was distributed to Graphics employees as a written explanation of their leave and other benefits.

With respect to union negotiations, the record reflects that 8 days prior to the commencement of the hearing in the underlying unfair labor practice case, Graphics agreed to recognize and bargain with the Union. Several weeks later, on April 5, 1991, Graphics' attorney wrote to a union representative and suggested that the parties exchange written proposals, since ''the Company people are in Kansas City.'' As far as the record shows, only two negotiating sessions took place thereafter and at both of them, Graphics was represented by its attorney and Jeffrey Nedblake. No one from the Cheswick facility appears to have had any role in negotiating with the Union on behalf of Graphics.

After Graphics was first acquired, it continued to provide the same health insurance coverage to employees that Label had provided. Subsequently, a question was raised at PSC headquarters concerning the cost of health insurance for Graphics employees. When the financial vice president of PSC learned that Graphics would be paying more for employees' health insurance than PSC did, he recommended that Graphics switch to PSC's insurance carrier, Principal Insurance Company. This suggestion was implemented and the employees of Graphics were eventually covered under the Principal plan at somewhat higher cost to the employee. Life insurance coverage for both PSC and Graphics employees was also provided by Principal. A PSC handbook covering employees' group insurance benefits was distributed to Graphics employees.

5. Conclusion

Regardless of Graphics' separate incorporation, Graphics and PSC have common ownership and common top level management. The geographical separation of the Graphics and PSC facilities is diminished in importance in view of the frequent communication and regular interaction between PSC and Graphics employees. Although Graphics paid a $20,000 monthly fee to PSC for providing numerous support services to Graphics, the evidence shows that this arrangement was based on an oral agreement and there was no written service contract. There is also no evidence showing that the service agreement was reached through arm's-length negotiations or that Graphics made any effort to obtain competitive estimates from any other service providers. In any event, the Board has not given any special weight to the fact that one company paid the other for management services, where the totality of the other circumstances indicated the existence of a single-employer relationship. See *Penco Enterprises*, 201 NLRB 29 (1973). Labor relations for Graphics was essentially controlled by Jeffrey Nedblake. Nedblake interviewed and hired a number of employees, he alone participated in the few union negotiating sessions that took place, and he hand-picked Susan Tonks to exercise on-site supervision of Graphics. The evidence also shows that when Nedblake was not actually at the Cheswick facility, Tonks was in frequent tele-

[5] After Graphics closed, Tonks became employed by PSC at its corporate headquarters.

phone communication with him. Considering all of the circumstances of this case, I find that Graphics and PSC constitute a single employer. I therefore conclude that PSC is liable for the backpay due and owing to employees as a result of the unfair labor practices committed by Graphics.

C. *The Contractual Wage Rate Issue*

In the underlying unfair labor practice case, the Board found that Graphics was not free to set new initial terms and conditions of employment under *NLRB v. Burns Security Services*, 406 U.S. 272 (1972), because it had discriminatorily refused to hire employees who were represented by the Union. Respondent's unilateral reduction of the wages and benefits of the unit employees who were hired by Graphics therefore violated Section 8(a)(5) and (1) of the Act. In order to remedy this bargaining violation, the Board directed Graphics, upon request by the Union, to restore the employees' contractual wages and benefits and to make them whole by remitting all wages and benefits that would have been paid in the absence of the changes, plus interest.

Respondents contend that the Union never requested restoration of contractual wages and benefits and therefore the measure of backpay with respect to all of the discriminatees should be the actual wages and benefits Graphics paid its employees. Respondents' contention is without merit. Such a measure of backpay is totally contrary to the import of the Board's finding that Graphics violated the Act by unilaterally reducing the employees' contractually agreed-on wages and benefits. Respondents' suggested method of computing backpay is based on the very amounts of the wages and benefits that the Board found to have been improperly unilaterally imposed by Graphics, and would essentially reward Respondents for Graphics' unlawful act.

The backpay specification properly measures backpay based on contractual wages and benefits that were in effect when Graphics became a successor employer. The language in the Board's order requiring Graphics to restore contractual wages and benefits ''at the request of the Union'' is not a condition precedent to the award of backpay. This language only relates to the parties' prospective bargaining positions. Since it was possible at the time that the Board entered its remedial order that the employees could be making higher than contractual wages when the order was implemented, the Board inserted the language ''at the request of the Union'' to insure that the Union would not be bound to the contractual wages and benefits, in that event. In fact, however, Graphics closed at a time when it was still maintaining lower wages and benefits than those set out in the union contract. Under these circumstances, the only proper measure of backpay is the contractual wages and benefits, regardless of whether the Union formally requested restoration of the terms of the contract.

In any event, the Union effectively requested restoration of contractual wages and benefits. The record reflects that when the Union first met with Jeffrey Nedblake in 1991, it proposed that Graphics adopt the Label contract with a few minor changes, including a slight increase in wages. The parties met again in February 1992, after the Board's decision in the underlying case had issued. It is uncontested that at this meeting, representatives of the Union requested that Graphics implement the contract it had previously proposed—the Label agreement with a slight wage increase—and comply with the Board's remedial order. The Union's request that Graphics implement its contract proposal, which essentially consisted of the terms of the Label contract, coupled with its request that Graphics comply with the Board's remedial order, is tantamount to a request to restore the status quo ante.

D. *Individual Backpay Issues*

In their brief, Respondents contend that their backpay liability should be reduced with respect to five discriminatees because of alleged willful losses of earnings and/or fraudulent concealment of interim employment. It is well settled that ''in a backpay proceeding the burden is upon the General Counsel to show the gross amounts of backpay due. When that has been done, however, the burden is upon the employer to establish facts which would negative the existence of liability to a given employee or which would mitigate that liability.'' *NLRB v. Brown & Root, Inc*., 311 F.2d 447, 454 (8th Cir. 1963). An employer may mitigate his backpay liability by showing that a discriminatee ''willfully incurred'' loss by a ''clearly unjustifiable refusal to take desirable new employment.'' *Phelps Dodge Corp. v. NLRB*, 313 U.S. 177, 198–200 (1941). This is an affirmative defense and the burden is on the employer to prove the necessary facts. *NLRB v. Mooney Aircraft, Inc*., 366 F.2d 809, 813 (5th Cir. 1966). The employer does not meet that burden by presenting evidence of lack of employee success in obtaining interim employment or of low interim earnings; rather, the employer must affirmatively demonstrate that the employee ''neglected to make reasonable efforts to find interim work.'' *NLRB v. Miami Coca-Cola Bottling Co*., 360 F.2d 569, 575–576 (5th Cir. 1966).

A discriminatee is not held to the highest standard of diligence but is only required to make reasonable efforts to mitigate his loss of income. *NLRB v. Arduini Mfg. Corp*., 394 F.2d 420, 422–423 (1st Cir. 1968). What constitutes a good-faith effort depends on the facts and circumstances of each case but the following summary is instructive (*Mastro Plastics Corp*., 136 NLRB 1342, 1359 (1962)):

> [I]t can be said that in broad terms a good-faith effort requires conduct consistent with an inclination to work and to be self-supporting and that such inclination is best evidenced not by a purely mechanical examination of the number or kind of applications for work which have been made, but rather by the sincerity and reasonableness of the efforts made by an individual in his circumstances to relieve his unemployment. Circumstances include the economic climate in which the individual operates, his skill and qualifications, his age and his personal limitations.

In determining whether a good-faith effort was made, ''[t]he entire backpay period must be scrutinized,'' *Cornwell Co*., 171 NLRB 342, 342 (1968). Accord: *Nickey Chevrolet Sales*, 195 NLRB 395, 398 (1972). Thus, a discriminatee need not instantly seek new employment (*Saginaw Aggregates, Inc*., 198 NLRB 598 (1972)), and a backpay claimant will not necessarily be found to have incurred a willful loss of earnings because his search for employment was not made in each and every quarter of the backpay period. *Cornwell Co*., supra. Any uncertainty in the evidence is resolved

against the employer as the wrongdoer. *Southern Household Products Co*., 203 NLRB 881 (1973), and *NLRB v. Miami Coca-Cola Co*., supra at 572–573.

1. Jules Delenne[6]

The backpay period for this discriminatee begins on April 2, 1990, and continues until March 18, 1992. Respondents contend that discriminatee Delenne failed to make a good-faith effort to obtain interim employment during the backpay period.

The evidence shows that when Delenne was denied employment with Graphics, he was approximately 51 years old. Delenne sought employment in 1990 by reading newspaper advertisements and applying for work with various employers. Delenne focused his efforts in 1990 on state and county government agencies, where he thought he had a better chance of being hired because he believed that he would not be discriminated against on the basis of age. He applied to various state and county employers and also filed at least one application with a private employer, Allegheny Lumber. Delenne also registered at the state unemployment office. However, Delenne obtained no work during the remainder of 1990.

In 1991, Delenne obtained work at Matthews Excavating, but the job only lasted a few months. Delenne again applied for, and began receiving, unemployment compensation. Delenne also recalled that he filed job applications at a packaging company and the Allegheny Valley School District. In September, Delenne began working for Laidlaw Transit, Inc. as a part-time schoolbus driver, a job he continued to hold until the end of the backpay period. Delenne also worked as a delivery truckdriver over the school holidays during the Christmas season in 1991, until his regular employment as a schoolbus driver resumed at Laidlaw.

Respondents maintain that Delenne's limited employment over the 2-year backpay period shows lack of a good-faith effort to obtain interim employment. In particular, Respondents point to the fact that Delenne admittedly did not apply for work at Laidlaw until 1991, even though his wife was already employed there as a schoolbus driver. Delenne credibly testified that he did not immediately apply for a job at Laidlaw because when he was first laid off in 1990, he believed that he would be able to obtain a better job than part-time work as a schoolbus driver. Even though Delennne failed to find employment in 1990, the standard of good-faith effort must be applied over the backpay period as a whole. See *Cornwell Co*., supra, and *Nickey Chevrolet Sales*, supra. Viewing the approximately 2-year backpay period as a whole, Delenne's efforts to obtain employment were reasonable considering his age and previous work experience. In addition to his private job search efforts, Delenne registered with the state unemployment office, which is prima facie evidence of a reasonable search for employment. *United Aircraft Corp*., 204 NLRB 1068, 1071 (1973). See also *Golay & Co. v. NLRB*, 447 F.2d 290, 295 (7th Cir. 1971), cert. denied 404 U.S. 1058 (1972). It was also established at the backpay hearing that during the period of time when he received extended benefits, Delenne applied for two jobs per week. Furthermore, Respondents presented no evidence showing that jobs were available during the backpay period for which Delenne would have qualified.

Respondents also contend that Delenne's backpay should be reduced because of his failure to keep adequate records of his job search efforts. Delenne's memory of his efforts to obtain interim employment was quite poor and he admittedly failed to keep concurrent records of his job search. Nevertheless, the Board has held that employees are not automatically disqualified from backpay because of their poor recordkeeping or uncertainty as to memory. *Pat Izzi Trucking Co*., 162 NLRB 242, 245 (1966), affd. 395 F.2d 241 (1st Cir. 1968). Delenne's testimony was sufficient to show that he made a reasonable effort to mitigate his loss of income over the backpay period as a whole. Any uncertainty concerning the evidence should be resolved against the wrongdoing employer. *Southern Household Products Co*., supra, and *NLRB v. Miami Coca-Cola Co*., supra.

Accordingly, I find that Delenne's backpay should not be reduced. Respondents have failed to meet their burden of showing that Delenne incurred a willful loss of earnings.

2. Edward Palchinski

The backpay period for this discriminatee extends from April 2, 1990, to March 18, 1992. Respondents contend that because Palchinski held only part-time jobs during most of the backpay period, he failed to make a good-faith effort to find equivalent interim employment.

The evidence shows that when Palchinski was denied employment at Graphics, he sought work through newspaper advertisements and applied for unemployment compensation. In the fall of 1990, Palchinski obtained employment with Carol Harris Temporaries, Inc. During his employment with Carol Harris, Palchinski worked at three different companies for about 60 to 90 days each. At each of these companies, Palchinski asked about permanent employment. He filed a job application at the one company which was accepting applications, Double R. Enterprises. In July 1991, he was hired at Double R. Enterprises and he continued to work there during the remainder of the backpay period.

Respondents contend that backpay should be denied Palchinski for the period of time during 1990–1991 when he worked only for a temporary employment service. In support of its contention, Respondents rely on *Continental Insurance Co*., 289 NLRB 579, 587 (1988). In *Continental*, an employee was denied backpay when he failed to apply for unemployment compensation, confined his efforts exclusively to accepting temporary assignments, and only began seeking full-time employment after the backpay period had ended. The facts concerning Palchinski contrast sharply with those in *Continental*. Palchinski applied for unemployment benefits, sought permanent employment, and continued to seek such employment even after he was hired by a temporary agency. Indeed, he was ultimately hired on a permanent basis by one of the companies for which he worked as a temporary employee. Under these circumstances, there are no grounds for reducing the amount of backpay owed to this discriminatee.

[6] As noted above, on brief, Respondents have raised questions as to the propriety of the specification with respect to only five of the named discriminatees. I shall confine my discussion accordingly.

3. James Farneth

The backpay period for this discriminatee begins on April 2, 1990, and extends until March 18, 1992. Respondents contend that Farneth failed to make a reasonable effort to obtain employment during the periods from April 1990 to the end of 1990 and from July 1991 to March 1992. Respondents further contend that Farneth's testimony concerning his job search and interim employment should not be credited because he concealed certain interim earnings from the Board.

Immediately after Farneth was refused employment at Graphics, he registered with the unemployment office. In June 1990, he found a job at Wise Nurseries, Inc. The job at Wise was seasonal and when it ended, Farneth began working for a construction company. He was laid off from his construction job in about November 1990, and he was not recalled to work there.

The only job Farneth obtained in 1991 was during the third quarter, at a company called Genesis Machine and Fabricating. Genesis was phasing out after a bankruptcy proceeding and Farneth's job only lasted about 3 months. During the rest of 1991 and until March 1992, Farneth unsuccessfully sought work at various companies, a number of which he recorded in his notes and others whose names he could not recall. Over the course of the backpay period, Farneth twice received extended unemployment benefits for 6 months at a time. During those periods, Farneth applied for work at two places per week.

Looking at the backpay period as a whole, Respondents failed to show that Farneth incurred a willful loss of earnings. Farneth produced a substantial list of employers with whom he sought work. Furthermore, Farneth applied for two jobs per week during the total of 12 months that he received extended unemployment benefits. Moreover, Respondents have merely shown that Farneth did not obtain employment during a substantial portion of the backpay period. Respondents have failed to produce any evidence showing that employment was available for which this discriminatee was qualified.

Respondents' remaining contention, that Farneth concealed from the Board his earnings from Genesis Machine and Fabricating, is not supported by the evidence. Farneth credibly testified that he was paid in cash at Genesis and that he earned a total of about $2100 for approximately 3 months' work. Farneth admittedly failed to report this income on his tax return, but undisputed evidence shows that he did report it to the Board agent who prepared the backpay specification. Farneth so testified and his testimony was corroborated by that of the Board's compliance officer, who prepared the backpay specification. The Board agent confirmed that Farneth had told him about this income when he met with all of the discriminatees in the late summer of 1994. The Board agent explained that he forgot to check back later with Farneth, who was attempting to reconstruct how much he earned on this job. Farneth reported the amount of his earnings to the Board agent sometime prior to the hearing and the backpay specification was amended to reflect this additional income. The fact that Farneth failed to report this income on his 1991 tax return does not compel a finding that his testimony should be discredited. I found Farneth to be a credible witness when he testified during the backpay hearing and, as noted above, his testimony was corroborated in part by the Board's compliance officer. Accordingly, I find that there are no grounds for reducing Farneth's backpay. See *Cumberland Farms Dairy of New York*, 266 NLRB 855, 855–856 (1983), and cases cited.

4. Ronald Sikora

The backpay period for this discriminatee extends from April 2, 1990, to March 18, 1991. Sikora was employed full time during all but two quarters of the backpay period. Respondents' sole contention with respect to Sikora is that he should be denied backpay because he failed to report his employment at Northside Packing Company.

Contrary to Respondents' contention, uncontradicted testimony by Sikora, which was corroborated by the Board's compliance officer, shows that Sikora reported his employment at Northside Packing Company to the Board. The Board agent did not include this income in the backpay specification because Northside was a second job, in addition to Sikora's full-time employment with Orbital Engineering, Inc. At the time that he worked for Northside, Sikora was working 40 hours per week at Orbital. Sikora's income from his second job at Northside was therefore properly excluded from the backpay calculation. See *Henry Colder Co.*, 186 NLRB 1088 (1970), and cases cited. Accord: *Manhattan Graphic Productions*, 282 NLRB 277, 283 (1986), and *S.E. Nichols of Ohio*, 258 NLRB 1, 15 (1981).

5. Ted Gaworski

The backpay period for this discriminatee is between April 2, 1990, and May 27, 1991, when he was offered and accepted employment with Graphics. The backpay specification shows no interim earnings for this employee. Respondents contend that Gaworski's testimony about his failure to find interim employment should be discredited because he admittedly failed to timely file tax returns for this period, and only did so after he was interviewed by the Board's compliance officer concerning his backpay claim.

Discriminatee Gaworski testified that his only income during the backpay period was from unemployment compensation. Gaworski had been employed as a pressman at Label for 18 years prior to his layoff and he was approximately 49 years old at the time that he was originally refused employment by Graphics. Gaworski credibly testified that after he was laid off at Label, he looked for work at all of the local printing businesses and then tried to find employment in the printing department of local newspapers. He also read the help wanted ads. During the period when Gaworski received extended unemployment benefits, he filed two job applications per week.

Respondents offered no evidence to support their contention that Gaworski fraudulently concealed interim income from the Board. Gaworski's late-filed tax returns showed nothing but unemployment compensation income during the backpay period. Respondents presented no evidence showing that Gaworski either was employed or refused to accept employment during the backpay period. There is also no inherent reason to doubt that Gaworski was unable to find interim employment in light of his age at the commencement of the backpay period and his employment history of 18 years working exclusively as a pressman. As the administrative law judge found in the underlying unfair labor practice case, the job market was depressed in the Cheswick area at the time

that Graphics began operations, particularly with respect to printing industry jobs. In addition to the employees laid off by Label, ''hundreds of former employees from the large, nearby Papercrafters gravure printing plant that had recently closed were applying for work.'' *Allegheny Graphics*, 1992 WL 4523283, *11 (NLRB). At most, the evidence produced at the backpay hearing shows that Gaworski filed his 1990 and 1991 income tax returns out of time. This evidence, standing alone, does not impact adversely on Gaworski's credibility, since, as far as the record shows, Gaworski never denied to the Board agent his failure to file tax returns, and he readily admitted his omission at the backpay hearing. Under these circumstances, I find that there are no grounds for reducing Gaworski's backpay.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[7]

ORDER

The Respondents, Allegheny Graphics, Inc., a Division of Package Service Company, Inc., and Package Service Company, Inc., Pittsburgh, Pennsylvania, their officers, agents, successors, and assigns, shall pay to the discriminatees named in the backpay specification the amount of backpay listed there and in the amendment to backpay specification, together with interest on those sums in the manner provided in *F. W. Woolworth Co*., 90 NLRB 289 (1950), and *Florida Steel Corp*., 231 NLRB 651 (1977). Respondents shall pay net backpay to each named discriminatee, less tax withholdings required by Federal and state law as set forth below:

Don Cowen	$27,053
Edward Palchinski	33,588
James Farneth	42,091
Ronald Sikora	28,619
Leonard Bortz	23,980
Ted Gaworski	19,875
George Frederick	8,659
Harland Chuba	1,238
Carl W. Binner	6,793
Albert Corradene	1,546
Edward R. Maytan	2,747
Jules Delenne	43,506
Ludwig D. Prasnikar	12,397
James Christman	8,245
Robert L. Squires	12,119
William L. Mitchell	11,793
Gordon G. Mitchell	18,376
Ramon Rodriquez	16,368
Deak Remaley	17,843
James E. Houston	9,475
Daniel R. Cavitt	8,544
James R. Bryner Jr.	4,315
Robert M. Simmen	598

Respondents shall also pay to each of the discriminatees named below the amount of medical expense/insurance reimbursement set out opposite his name, plus interest accrued thereon to the date of payment:

Don Cowen	$1,819
George Frederick	617
Harland Chuba	750
Carl W. Binner	2,930
Leonard Bortz	1,009
Albert Corradene	325
Edward R. Maytan	1,446
Ludwig D. Prasnikar	2,879
Robert L. Squires	3,668
William L. Mitchell	3,094
Gordon G. Mitchell	714
Ramon Rodriquez	371
Deak Remaley	354
James E. Houston	1,446
James R. Bryner Jr.	97

[7] 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.