

Acme Wire Works, Inc. and Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO and Local 810, Steel, Metal, Alloys and Hardware Fabricators and Warehousemen, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Party in Interest. Case 29-CA-4866

August 27, 1980

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS JENKINS, PENELLO, AND TRUESDALE

On June 13, 1980, Administrative Law Judge Raymond P. Green issued the attached Supplemental Decision in this proceeding.¹ Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Supplemental Decision in light of the exceptions and brief and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Acme Wire Works, Inc., Brooklyn, New York, its officers, agents, successors, and assigns, shall pay the partial amounts set forth therein, plus additional amounts to be determined, with interest thereon accrued at the rate of 6 percent per annum,² until payment of all sums due is made as provided for in *F. W. Woolworth Company*, 90 NLRB 289 (1950), less tax withholdings required by Federal and state law.

¹ The Board's original decision is reported at 229 NLRB 333 (1977). Thereafter, the United States Court of Appeals for the Second Circuit entered its judgment enforcing the Board's Order. See 582 F.2d 153 (1978).

² Inasmuch as the court of appeals enforced the Board's Order providing for interest to be paid at the rate of 6 percent, that rate shall be used in computing the interest on amounts due. See *Florida Steel Corporation*, 234 NLRB 1089 (1978), and *Pierre Pellaton Enterprises, Inc., et al.*, 239 NLRB 1211 (1979).

SUPPLEMENTAL DECISION

RAYMOND P. GREEN, Administrative Law Judge: This case was heard before me in Brooklyn, New York, on December 17, 1979, and April 23, 1980, pursuant to a backpay specification and notice of hearing, which was issued by the Regional Director for Region 29 on May 31, 1979. At the hearing, all parties were afforded a full opportunity to be heard and to present relevant evidence on the issues.¹ Upon consideration of the entire record in this supplemental proceeding, including consideration of the briefs filed by the parties, the prior Decision of the Board, and my observation of the demeanor of the witnesses, I make the following:

FINDINGS AND CONCLUSIONS

I. BACKGROUND

On April 28, 1977, the Board issued its Decision and Order, at 233 NLRB 333, in the original proceeding. In pertinent part, it was concluded that Acme Wire Works, Inc., herein called Respondent, had violated Section 8(a)(1) and (5) of the National Labor Relations Act, as amended, by refusing, on or after January 19, 1976, to execute a collective-bargaining agreement reached between a multiemployer association to which Respondent belonged and Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, herein called Local 455; had violated Section 8(a)(1), (2), and (3) of the Act by entering into and maintaining a collective-bargaining agreement with Local 810 containing a union-security provision at a time when Respondent was obligated to bargain with Local 455; had caused a strike by Local 455 to be converted into an unfair labor practice strike after January 19, 1976; and had violated Section 8(a)(1) and (3) of the Act by refusing, after March 29, 1976, to reinstate certain employees, including Frank Paradise, who had made unconditional offers to return to work.

In relation to the above violations, the Board adopted the recommended remedy of Administrative Law Judge Robert A. Giannasi, which required, *inter alia*, Respondent to:

- (a) Withhold and withdraw all recognition from Local 810.
- (b) Reimburse all present and former employees, except those who joined Local 810 prior to the execution of the contract with Local 810 on January 1, 1976, for all initiation fees, dues, and other moneys, if any, paid by them pursuant to the union-security provisions of that agreement.
- (c) Forthwith sign and implement the collective-bargaining agreement reached on January 19, 1976, between

¹ Local 810, Steel, Metal, Alloys and Hardware Fabricators and Warehousemen, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called Local 810, was a Party in Interest in the original proceeding and was not required to affirmatively remedy any of the violations found in that proceeding. Although served with a copy of the backpay specification herein, Local 810 did not file an answer and did not appear at the backpay hearing.

the Association² and Local 455 insofar as it applies to the employees of Respondent in the appropriate unit;³

(d) Upon execution of the aforesaid agreement, give retroactive effect to the agreement and make whole the employees for any losses that they suffered by Respondent's failure to sign the agreement.⁴

(e) Offer Manuel Diaz, Martin Hammel, and Frank Paradise reinstatement to their former jobs or, if such jobs are not available, to substantially equivalent jobs without prejudice to their seniority or other rights and privileges and make them whole for any loss of pay from March 29, 1976.

The United States Court of Appeals for the Second Circuit enforced in full the above-described Order on October 3, 1978.

II. THE ISSUES

Although the backpay specification potentially would have given rise to a multitude of litigable issues, the pre-trial conference and cooperation of the attorneys successfully served to narrow the issues in dispute. Thus, at the hearing the parties agreed on numerous items set forth in the backpay specification while defining clearly what disagreements still existed.

A. Frank Paradise

It was agreed that the backpay period for Paradise commenced on March 29, 1976. However, Respondent takes the position that no backpay should be accorded to Frank Paradise for the third and fourth quarters of 1978 even though there is no dispute that Respondent did not offer reinstatement to him until November 11, 1978, which offer was declined at that time. In support of its claim, Respondent argues that because the collective-bargaining agreement expired on June 30, 1978, there was therefore no fixed rate of pay beyond that date upon which to base or calculate Paradise's backpay.

The parties nevertheless agreed that the figures set forth in Appendix A of the backpay specification are correct relative to the adjusted hours that Paradise would have worked but for the discrimination, the contract rate of pay on which the backpay should be calculated and the total gross wages exclusive of other benefits, that are owed to Paradise. Moreover, Respondent concedes that, if its argument that backpay for Paradise should not go beyond the second quarter of 1978 is rejected, the figures and calculations set forth in Appendix A would be correct for the third and fourth quarters of 1978.

Respondent also does not dispute the correctness of the computation of vacation pay for Paradise which is set forth in Appendix B of the backpay specification and

there is no dispute regarding the computations made to adjust Paradise's gross wages because of vacations he would have taken if employed by Respondent during the backpay period and the amounts of money he would have received from a vacation fund during that period. These latter figures are set forth in Appendix C of the backpay specification.

Respondent does dispute the concept that Paradise should be reimbursed for the amount of money which it would have contributed to an annuity fund on Paradise's behalf apparently on the theory, which was not substantiated by the evidence, that Paradise would not necessarily have been eligible for the benefit. Respondent does not dispute, however, the figures and computations on this matter and therefore concedes that, if it is concluded that the payments to the annuity fund are a proper element of backpay, the figures and computations as set forth in Appendix D of the backpay specification are correct.⁵

Appendix E of the backpay specification sets forth an adjustment to Paradise's gross backpay by adding sick leave benefits which he would have been entitled to under the collective-bargaining agreement. Respondent does not dispute the figures and computations set forth in Appendix F of the backpay specification. This Appendix sets forth for each quarter, from the second quarter of 1976 to the fourth quarter of 1978, Paradise's gross wages (with vacation adjustments), the annuity amounts as per the formula in Appendix D, the sick leave amounts as per the formula in Appendix E, and the total gross wages which is the sum of the foregoing items. However, as noted above, Respondent does dispute the inclusion of the amounts for the annuity and also disputes the inclusion of backpay beyond the second quarter of 1978.

The backpay specification, at Appendix G, sets forth the General Counsel's contentions as to the amounts of money Respondent owes to Local 455's pension fund on behalf of Frank Paradise for the backpay period.⁶ Respondent, although not disputing the figures and computations on Appendix G of the specification, presents a number of arguments relating to this item. First, Respondent contends that it does not know if Paradise would have met the eligibility or vesting requirements of the pension plan even if the contributions had been made

⁵ Pursuant to the collective-bargaining agreement, Respondent was required to contribute on behalf of employees an amount equal to 2 percent of their gross earnings per calendar year. The evidence established that this money is due and collectible by an employee as a matter of right upon retirement or after being out of the industry for a period of 24 months, irrespective of the years of service with a contributing employer. Also, an employee is entitled to borrow money against his account at 3-percent interest, at any time for good cause.

⁶ Pursuant to the collective-bargaining agreement, Respondent was required to make payments to the pension fund in the following manner. As of July 1, 1975, the rate was 10 percent of an employee's gross earnings plus 4-1/2 cents per hour. As of July 1, 1976, the rate was 10 percent of gross earnings plus 20 cents per hour. As of July 1, 1977, the rate was 10 percent of gross earnings plus 30 cents per hour. As of July 1, 1980, the rate was 10 percent of gross earnings plus 68 cents per hour. The chart in Appendix G, of the backpay specification, which is not disputed, applies the above formula to Paradise's gross earnings and hours worked in order to arrive at the total pension payments due from the second quarter of 1976 to the fourth quarter of 1978.

² The Association involved is the Wire Works Manufacturers Association, Inc.

³ The appropriate unit includes all production and maintenance employees, including plant clericals employed by the member-employers of the Wire Works Manufacturers Association, exclusive of all clerical employees, superintendents, guards and all supervisors as defined in Sec. 2(11) of the Act. It appears, however, that at the time of the instant hearing Respondent and Local 455 had agreed to bargain on a separate basis.

⁴ The Administrative Law Judge, in his Decision adopted by the Board, set the interest rate at 6 percent per annum.

during the backpay period. Thus, Respondent argues that if Paradise, who no longer is employed by a contributing employer, would not have been eligible to receive a pension benefit because he lacked the necessary vesting requirements, then Respondent's contribution to the fund would not be backpay to Paradise but a windfall to the pension fund not inurable to the benefit of the discriminatee. Respondent also argues that, even if pension contributions are, in this case, a proper element of backpay, it should not be required to make such payments after the contract expired on June 30, 1978. Finally, Respondent asserts that, even if the preceding two arguments are rejected, then the contributions owed should be at the minimum level necessary to enable an employee such as Paradise to accrue the years of service credit he would have achieved if he had been employed by Respondent and not the contractual amount due which would be excessive in terms of providing Paradise with the pension credits he otherwise would have obtained.⁷

The actual interim earnings of Frank Paradise, which are set forth in Appendix H of the backpay specification, are not in dispute. This Appendix sets forth, for each relevant quarter, the earnings made by Paradise at Paradise Home Improvements, a company owned by his uncle. The second column on this table sets forth an adjustment to Paradise's interim earnings and in this regard the General Counsel has reduced the actual earnings for the third quarter of each year by five-thirteenths. In justifying this reduction, the General Counsel argues that, if Paradise had not been discriminated against, he would have been entitled to a 5-week vacation in each year's third quarter under the contract and therefore would not have had to work the entire 13 weeks to earn what he did earn. Although the facts in this respect are not in dispute, Respondent argues that the General Counsel is not entitled, as a matter of law, to reduce a discriminatee's actual interim earnings because of vacation considerations. Additionally, Respondent, as noted previously, contends that no backpay should be awarded to Paradise after the second quarter of 1978, and therefore the figures on the table for the third and fourth quarters of 1978, although concededly accurate, are irrelevant. I note here that, during his time of employment at Para-

⁷ To achieve an additional year of credited service, upon which the pension benefit is ultimately based, the fund requires an employee to earn only \$2,400 per year. It therefore would make no immediate difference to an employee, in terms of his pension benefit, if he were to work the minimum hours needed with contributions made on that basis or if he were to work far in excess of the minimum hours needed with contributions by the Employer made on this basis. However, the fund is a pooled fund with contributions made for some employees who work a great deal and therefore have high earnings and contributions from employees who work substantially fewer hours and have lower earnings. To meet the fund's obligations, an actuarial calculation must therefore be made which takes into account the differences in contributions. Therefore, on an actuarial basis if employers, in the aggregate, were only to contribute the minimum amounts necessary to provide employees with yearly service credits and not the amounts required by the collective-bargaining agreement based on actual earnings and hours, it is obvious that the fund would soon be depleted and employees would either receive reduced retirement benefits or no benefits at all. Therefore, in considering Respondent's argument, I must not only consider that an employee has a right to the pension benefits as established by the pension plan, but that he also has a right to a viable fund which will not be depleted and render his ability to obtain benefits illusory.

dise Home Improvements, Paradise did not take a vacation.

Finally, Appendix I of the backpay specification is a summary of the preceding appendixes and therefore is dependent upon my findings with respect thereto. It is noted that, at the hearing, the General Counsel amended this appendix to delete the net backpay of \$3.95 in the fourth quarter of 1977 because she discovered that Paradise was not available for work for some part of that quarter due to illness.

B. Payments Due Because of the Failure To Execute and Implement the Collective-Bargaining Agreement

Appendixes J-P of the backpay specification and Appendixes J-1-P-1 of the amended backpay specification are all related to the General Counsel's computation of moneys owed by virtue of Respondent's failure to execute and implement the collective-bargaining agreement.⁸ The employees involved are Manuel Diaz, Rogers Beddard, Magin Rifas, Issac Chatto, Daniel Dougherty, Jorge Gonzalez, and Luis Gonzalez. The period covered in the original backpay specification ran from January 19, 1976, to June 30, 1978, which is when the contract expired by its terms. The amended backpay specification covers the period from July 1, 1978, to December 31, 1979, a period in which no contract was extant as the parties have been unable to reach a new collective-bargaining agreement. The moneys claimed relate to wages and benefits which are the differential between what the above-named employees actually earned when working for Respondent and what they should have earned during their respective periods of employment had Respondent executed and implemented the collective-bargaining agreement. It is further noted that the General Counsel does not concede that the backpay period stops at December 31, 1979, but asserts that there is a continuing liability beyond that date until such time as Respondent implements the agreement or any new agreement, or is legally discharged from its obligation to bargain with Local 455.

Respondent does not dispute the figures and calculations contained in Appendixes J-P of the backpay specification, or Appendixes J-1 through P-1 of the amendment which General Counsel asserts are owing to the above-named employees and to Local 455's pension

⁸ At the hearing on December 17, 1979, the General Counsel announced her intention to amend the Backpay Specification for the purpose of making more current the alleged backpay liability. The parties agreed that, subsequent to the close of the hearing, the Respondent would furnish payroll records to the General Counsel and that based on such records a stipulation would be reached allowing the General Counsel to update her computations to December 31, 1979. After the hearing closed on December 17, Respondent did furnish its payroll records to the General Counsel, but for one reason or another no stipulation was made. Accordingly, the General Counsel moved to reopen the record for the purpose of amending the backpay specification which motion was granted. On April 23, the hearing was reopened where it was agreed by the parties that the figures and calculations set forth in Appendixes J-1 through P-1 of the amended backpay specification were accurate. Respondent did, however, set forth an additional defense which will be discussed below.

plan.⁹ It does contend, however, that if Respondent had been required to pay, during the life of the agreement, the differential between what it did pay to its employees and what it was contractually obligated to pay, it would not have been able to do so and would have been forced to go out of business. As to this issue, the General Counsel made a motion to strike this contention from Respondent's answer, which motion was granted after an offer of proof was made by Respondent. My reasons for granting the motion are set forth below in the Discussion section entitled "Decision and concluding Findings."

C. Reimbursement of Dues and Initiation Fees

Respondent's answer does not deny, and therefore admits, that portion of the backpay specification relating to the amounts of money to be reimbursed to employees which they had paid to Local 810 as dues and initiation fees.

III. DISCUSSION AND CONCLUDING FINDINGS

A. Frank Paradise

As noted above, Respondent contends that it has no obligation to make restitution to Frank Paradise beyond the second quarter of 1978 because of the expiration of the contract which establishes the applicable rates for ascertaining backpay. I find this argument to be without merit.

It is conceded that Respondent did not offer reinstatement to Paradise until November 11, 1978, which therefore defines the backpay period. Therefore, under any circumstances, backpay is due and owing to Paradise until that date. Further, it is clear that the utilization of the rates contained in the expired contract is entirely proper for determining the backpay amounts owed from the period when the contract expired until the offer of reinstatement was made. It is well established that the provisions of a collective-bargaining agreement, exclusive of items such as checkoff and union-security provisions, survive the expiration of an agreement until a new agreement is made, or until an impasse in bargaining is reached allowing unilateral changes, or until an employer is legally discharged in some other manner from its obligation to bargain with a labor organization. *Sioux Falls Stock Yards Co.*, 236 NLRB 543 (1978). I therefore conclude that Respondent is obligated for backpay to Frank Paradise for the period from March 29, 1976, to November 11, 1978, and that for the third and fourth quarters of 1978, the determination of backpay should be

⁹ On April 23, 1980, a few arithmetical errors in the original backpay specification were corrected. Thus, at Appendix K of the specification, the General Counsel amended that appendix to show that there were no overtime earnings due Rifas for the third quarter of 1976 rather than the \$4.75 shown. Also, the General Counsel corrected Appendix O to show that for the third and fourth quarters of 1977 and the first and second quarters of 1978, the sick pay owed to Mr. Dougherty was \$156.59 rather than \$256.70. I have also corrected some arithmetical errors on Appendix C of the original backpay specification. I further note that the original backpay specification at Appendixes M, N, O, and P do not break down their respective computations on a quarterly basis. Inasmuch as backpay is supposed to be computed on a quarterly basis, I have converted these figures as shown in Appendix C to this Decision [omitted from publication].

calculated in accordance with the provisions of the collective-bargaining agreement which expired on June 30, 1978.

I also reject Respondent's contention that it is not liable for so much of Paradise's backpay as represented by the contributions it was required to make to the annuity fund. In this regard, the evidence established that, had Paradise been employed by Respondent during the period of his discrimination, the Employer, pursuant to the collective-bargaining agreement, would have been required to pay moneys to that fund in the amounts asserted by the General Counsel and that such moneys would be credited to his account, regardless of any eligibility requirement other than his being employed during the period the contributions were made. It also was established that an employee, on whose behalf the annuity contribution is made, is entitled to withdraw the entire amount upon retirement or upon being out of the industry for a period of 24 months. Accordingly, it is concluded that the annuity contribution should be paid directly to Frank Paradise and not to the annuity fund as it is established that he now would be entitled to the money.

Regarding the questions relating to the pension fund contributions on behalf of Paradise, I shall deal with Respondent's contentions *seriatim*. Firstly, Respondent argues that it was not aware if Paradise would have met the vesting requirements of the fund and that, if he did not meet such requirements, the additional contributions required on his behalf would not inure to his benefit and therefore should not be included as backpay. Apart from any other considerations, the facts establish that Paradise, until the time of his discrimination, was credited with 21 continuous years of coverage and therefore had a vested pension benefit in accordance with the pension plan. Moreover, the evidence established that the amount of his pension benefit will be increased upon retirement if the additional 3 years of contributions are made by Respondent on his behalf.

Respondent also contends that it should not be ordered to make the pension contributions on behalf of Paradise after June 30, 1978, because the contract, which requires the contributions, expired on that date. For the same reasons set forth above, and in accordance with the Board's Decision in *Sioux Falls Stock Yards, supra*, I reject this contention.¹⁰

The most difficult argument made by Respondent in connection with the pension contributions on behalf of Paradise is the contention that, under the pension plan provisions, it would make no difference to Paradise if the pension fund received the amounts required by the contract or the substantially lower amounts which would serve to give Paradise the 3 additional years of credited service. In this regard, I note that this argument is made

¹⁰ Respondent also argues that, by the terms of the trust indenture, the pension fund is precluded from accepting pension contributions from an Employer which does not have a collective-bargaining agreement with Local 455. Nevertheless, it is clear to me that this language was intended to incorporate the requirements of Sec. 302 of the Act which does not preclude payments to a fund by an employer during the hiatus period after its contract with a union has expired and before a new contract is executed. See *Wayne's Olive Knoll Farms, Inc., d/b/a Wayne's Dairy*, 223 NLRB 260, 264, -265 (1976).

only in the context of the backpay owed to Paradise as a discriminatee under Section 8(a)(3) of the Act and that Respondent acknowledges that this argument would not apply to the pension contributions owed to the other employees by virtue of its failure to implement the collective-bargaining agreement found by the Board to constitute a violation of Section 8(a)(5) of the Act.

It is my conclusion that the above argument lacks merit. In this respect, had Paradise been employed by Respondent during the backpay period, Respondent would have been contractually required to pay to the fund, on his behalf, the full amount of the contribution as determined by his total earnings and his total hours worked. To allow the Respondent to avoid payment of the full amount because Paradise was discriminated against would result in a windfall to Respondent and allow it to benefit from its own wrong. *Finishline Industries Inc.*, 181 NLRB 756, 760 (1970); *Rice Lake Creamery Company*, 151 NLRB 1113, 1129 (1965). Moreover, the right of an employee to a pension benefit also implies, of necessity, the right to a viable pension fund. As the fund is maintained on certain actuarial considerations which include an estimate of the average contributions made on behalf of employees who are high and low earners, it seems clear that the fund would soon be depleted if employers were permitted to contribute the minimum amounts required to enable employees to obtain an additional year of credited service and not the amounts required in the collective-bargaining agreement. While it is no doubt true that the pension fund would not likely be jeopardized by the failure to make the full contributions on behalf of this one employee, it could reasonably be surmised that, in the aggregate, if employers who contribute to the fund could avoid full liability by discriminating against employees, this would serve, to some extent, as an inducement to violate the law. *Finishline Industries, Inc.*, *supra*. It also might lead, in the aggregate, to an unwarranted depletion of the Fund's assets which would affect not only Paradise's ability to collect his pension benefits but also every other covered employee's ability to obtain such benefits. Finally, it is my opinion that even though the backpay owed to Paradise arises from the Board's finding that he had unlawfully been denied employment in violation of Section 8(a)(3) of the Act, the pension contributions on his behalf would also be cognizable based on the Board's 8(a)(5) finding.

Regarding Paradise's backpay, Respondent finally contends that the reduction made by the General Counsel to Paradise's interim earnings, resulting from the vacation adjustment, is unwarranted and contrary to law. Nevertheless, it appears that the General Counsel's formula in this respect is consistent with the Board's holding in *Heinrich Motors, Inc.*, 166 NLRB 783 (1967). See also *United Aircraft Corporation*, 204 NLRB 1068, 1073, 1074 (1973). I therefore conclude that this contention by Respondent is also without merit.

Based on the above, I find and conclude that the backpay owed directly to Frank Paradise is \$3,856.51¹¹ and

that the amount owed to the Local 455 pension fund on his behalf is \$4,124.96.¹²

B. *The Remedy for the Failure To Implement the Collective-Bargaining Agreement*

The General Counsel contends, in accordance with the Board's Order in the original proceeding, that Respondent make whole its employees from January 19, 1976, for the amounts of wages and benefits lost, including pension contributions, as a result of its failure to execute and implement the collective-bargaining agreement. Respondent has no dispute with the figures or calculations of the backpay specification in this regard, but argues that, if it had been required to pay these obligations during the life of the agreement, it would have been forced to go out of business. As noted above, I rejected this argument as a matter of law and granted the General Counsel's motion to strike this assertion from Respondent's answer.¹³

It is my opinion that, despite the detailed nature of Respondent's offer of proof, it nevertheless is speculative as to whether Respondent could not have survived as a business entity if it had fulfilled its contractual obligations as required by the Board's Order and the court's decree. More significantly, it is my opinion that this argument does not rise to the level of a legal defense under the Act. Indeed, it appears to me that this argument is tantamount to a request to the Board that the collective-bargaining agreement which the Board has found to be binding on Respondent be rendered nugatory. It seems to me that neither I nor the Board would have the power to cancel the obligations of collective-bargaining agreements which are legally executed and which do not contain prohibited provision. To the extent that a forum might be available to relieve the burdens of a valid collective-bargaining agreement from an employer in severe financial difficulty, that forum would be before a bankruptcy judge in a bankruptcy proceeding. *Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO v. Kevin Steel Products, Inc.*, 519 F.2d 698 (2d Cir. 1975); *Local Joint Executive Board, AFL-CIO v. Hotel Circle, Inc.*, 613 F.2d 210 (9th Cir. 1980).

I also reject the contention that Respondent should not be liable for fund payments after the contract's expiration date, on June 30, 1978, for the reasons described above in footnote 10.

Inasmuch as I have rejected Respondent's contentions, and as the parties are in agreement as to the figures representing the difference between what the Employer did in fact pay to its employees and what the contract required it to pay, I find that the amounts owed to the employees listed below are as follows:¹⁴

¹² See Appendix B of this Decision [omitted from publication]

¹³ Respondent asserted at the hearing that this argument was also applicable to the backpay claimed for Paradise. For the same reasons, that I have rejected this contention as it relates to the make-whole remedy for employees who were not paid in accordance with the contract's obligation, I also reject this contention as a defense to the backpay owed Paradise.

¹⁴ For a detailed breakdown of the figures on which these sums are based, see Appendix C to this Decision [omitted from publication].

¹¹ See Appendix A of this Decision [omitted from publication]

Name of Employee	Amount Due
Manuel Diaz	\$ 555.34
Rogers Beddard	1,448.66
Magin Rifas	3,708.96
Isaac Chattoo	2,756.27
Daniel Dougherty	9,663.43
Jorge Gonzalez	7,773.85
Luis Gonzalez	2,164.08

I further find that the amount of the dues and initiation fees to be reimbursed to the employees is as follows:

Name of Employee	Amount Due
Manuel Diaz	\$ 33.00
Rogers Beddard	194.00
Magin Rifas	138.00
Isaac Chattoo	313.00
Daniel Dougherty	320.00
Jorge Gonzalez	376.00

I also conclude that the amount of money due and owing to the pension fund on behalf of Respondent's employees is as follows:¹⁵

Name of Employees	Amount Due
Manuel Diaz	\$ 202.57
Rogers Beddard	1,026.13
Magin Rifas	1,988.38
Isaac Chattoo	2,110.12
Daniel Dougherty	7,817.16
Jorge Gonzalez	6,943.26
Luis Gonzalez	1,192.73

I finally conclude that the liability of Respondent as set forth above will not serve to limit any further liability because Respondent has still not implemented the collective-bargaining agreement in question and no new collective-bargaining agreement has been entered into by the parties. Accordingly, I conclude that the backpay period with respect to the employees listed above is still running and I therefore recommend that the General Counsel be permitted to conduct further compliance proceedings as may be deemed appropriate.

Upon the entire record, and in accordance with the foregoing findings, I conclude and recommend the following:

ORDER¹⁶

1. The discriminatee, Frank Paradise is entitled to the payment of \$3,856.51 by Respondent.

¹⁵ For a detailed breakdown of the figures on which these sums are based see Appendix D to this Decision [omitted from publication].

¹⁶ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and

2. Respondent is required to pay to Local 455's Pension Fund the amount of \$4,124.96 on behalf of Frank Paradise.

3. Respondent is required to make whole the following named employees in the amounts set forth in their respective names as the differential between their actual earnings and what they would have earned but for Respondent's refusal to execute and implement the collective-bargaining agreement.

Luis Gonzalez	\$2,164.08
Manuel Diaz	555.34
Rogers Beddard	1,448.66
Magin Rifas	3,708.96
Isaac Chattoo	2,756.27
Daniel Dougherty	9,663.43
Jorge Gonzalez	7,773.85

4. Respondent is required to reimburse the following named employees in the amounts set forth opposite their respective names for dues and initiation fees paid to Local 810:

Manuel Diaz	\$ 33.00
Rogers Beddard	194.00
Magin Rifas	138.00
Isaac Chattoo	313.00
Daniel Dougherty	320.00
Jorge Gonzalez	376.00

5. Respondent is required to pay to Local 455's pension fund the amount of \$21,280.35 on behalf of the employees listed above in paragraph 3. It further is recommended that Respondent pay interest on the above amounts at the rate of 6 percent per annum,¹⁷ such interest to accrue commencing with the last day of each calendar quarter of the backpay period on the amounts due and owing for each quarterly period as set forth in the Appendixes, and continuing until the date this Decision is complied with, minus the withholdings required by Federal and State laws.

IT IS FURTHER RECOMMENDED that the Board adopt the foregoing findings and conclusions and issue an appropriate remedy, including a reservation of any further backpay rights of the individuals named above in paragraph 3 or any other employee in a bargaining unit classification who may hereinafter be employed by Respondent.

become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

¹⁷ Interest is set at 6 percent as the Order in the original proceeding was made and enforced prior to the Board's Decision in *Florida Steel Corporation*, 231 NLRB 651 (1977). See *Pierre Pellaton Enterprises, Inc.*, et al., 239 NLRB 1211 (1979).