

American Casting Service, Inc. and International Molders' and Allied Workers' Union of North America, AFL-CIO. Cases 25-CA-1877 and 25-CA-1878

June 26, 1969

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN McCULLOCH AND MEMBERS
JENKINS AND ZAGORIA

On February 18, 1965, the National Labor Relations Board issued a Decision, Order, and Direction of Second Elections, finding *inter alia* that Respondent had discriminated against Thomas Mason, Jewell Stafford, George W. Bryant, Jr., Joe Jackson, Wayne Johnson, Ralph Nelson, Theron Carter, Isaiah Young, and Joe McGarrah in violation of 8(a)(3) and (1) of the National Labor Relations Act, as amended, and directing Respondent to make whole these individuals for any pay losses they may have suffered thereby.¹ Thereafter, on August 8, 1966, the Board's Order was enforced by the United States Court of Appeals for the Seventh Circuit.²

On September 3, 1968, the Regional Director for Region 25 issued and served on the parties a backpay specification and notice of hearing, and Respondent filed an answer to the backpay specification. Pursuant to notice, a hearing was held before Trial Examiner Benjamin B. Lipton from October 28 to 30, 1968, for the purpose of determining Respondent's backpay obligation to Joseph H. McGarrah, Ralph E. Nelson, Thomas E. Mason, Jewell T. Stafford, George W. Bryant, Jr., Wayne T. Johnson, Theron Carter, and Isaiah Young.

On March 18, 1969, the Trial Examiner issued the attached Supplemental Decision, in which he found the discriminatees herein to be entitled to backpay in the amounts specified. Thereafter, Respondent filed exceptions to the Trial Examiner's Supplemental Decision and a supporting brief, and the General Counsel filed limited cross-exceptions, and a brief in support of the Trial Examiner's Supplemental Decision.

Pursuant to the provisions of Section 3(b) of the Act, as amended, the Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings made by the Trial Examiner at the supplemental hearing and finds no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the entire record in this case, including the Supplemental Decision and the exceptions and

briefs, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the limited modification below.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts as its Order the recommended order of the Trial Examiner, and hereby orders that Respondent, American Casting Service, Inc., its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommendations, as herein modified:

Delete from the indented paragraph of the Trial Examiner's Conclusions and Recommendations the name Joseph H. McGarrah and the amount of \$924.47 opposite said name.³

¹The Board reserves Decision as to the amount of backpay due Joseph H. McGarrah, pending receipt of evidence and a further Supplemental Trial Examiner's Decision pertaining to his interim earnings, as required by order reopening record and remanding proceeding To Regional Director dated May 29, 1969

TRIAL EXAMINER'S SUPPLEMENTAL DECISION

BENJAMIN B. LIPTON, Trial Examiner: This supplemental proceeding was instituted, pursuant to the Board's Rules and Regulations, for the purpose of deciding the amounts of backpay due certain employees under a prior Board Decision and Order¹ which was enforced by the Court of Appeals for the Seventh Circuit.² From October 28 to 30, 1968, hearing was held before me in Princeton, Indiana, at which all parties participated and were afforded full opportunity to present relevant evidence and to argue orally on the record. After the close, briefs were filed by General Counsel for the Board and by Respondent, and certain additional data were submitted as provided for at the hearing. The briefs have been accorded careful consideration, and the posthearing data, to the extent they constitute stipulations or admissions, are hereby included in the record.³

Upon the entire record in the cases, and from my observation of the witnesses on the stand, I make the following findings and conclusions:

A. Gross Backpay Formula

To determine the gross backpay for each of the eight claimants involved,⁴ the General Counsel's backpay specification asserts and utilizes the following formula: The average hours actually worked during the appropriate backpay period by certain "representative employees," holding substantially the same job classification as the particular claimant, multiplied by the wage rate the claimant would have received during such period, computed on a quarterly basis. Stipulations were reached at the hearing in which Respondent does not dispute the

¹151 NLRB 172.

²*N L R B v. American Casting Service, Inc.*, 365 F.2d 168.

³General Counsel's statement and attachments are marked and admitted as TX Exh. 1, and Respondent's statement, TX Exh. 2.

⁴Joseph H. McGarrah, Ralph E. Nelson, Thomas E. Mason, Jewell T. Stafford, George W. Bryant, Jr., Wayne T. Johnson, Theron Carter, and Isaiah Young

¹151 NLRB 172

²*N L R B v. American Casting Service, Inc.*, 365 F.2d 168.

"representative employees" and the wage rates set forth in the specification. However, Respondent does not accept the "appropriate measure of hours" described in this specification. It proceeds on the theory that only a fixed amount of work was available during the period following the termination of the eight claimants. In substance, Respondent proposes that the number of hours for each claimant during the backpay period be computed by taking all the hours actually worked in the backpay period and prorating equally this total amount of hours (or work) among all the employees, including the claimants, according to job classification and calendar quarters.⁴

In effect, Respondent disputes the established Decision and Order in the unfair labor practice proceeding. There, it was found that, although a general reduction of employees was economically justified, Respondent had discriminatorily selected the claimants in the layoff. Further, the findings were, *inter alia*, that Respondent failed to recall these laid off employees when numerous job openings occurred in the 6 months following their separation; that it retained employees junior in status; and that it hired about 25 new employees and terminated 20 employees at the Owensboro plant alone between February and August 1964. In that case, as in the present, it is evidenced that Respondent's general practice was to apply the seniority rule when all other factors were equal. Therefore, it is futile for Respondent now to argue upon the same facts that the backpay should be computed by an equal distribution of the available work among all the employees, without the elimination of the discriminatory conditions affecting the claimants.⁵

It is fairly settled that in computing gross backpay, the sole requirement upon the Board is that it select a method which "cannot be declared to be arbitrary or unreasonable in the circumstances involved."⁶ Applying this broad test, I find the method used in the Specification for computing the quarterly adjusted average hours for each claimant is clearly appropriate.

B. Nature of Remaining Issues

In this type of proceeding, the general backpay liability of Respondent is already established, and the questions relate only to a determination of the specific backpay to be awarded the claimants. With the essential responsibility of General Counsel diligently to assist in assembling the evidence and to show the gross amounts of backpay due, the burden rests upon Respondent to prove "facts which

⁴However, Respondent's brief makes no mention of any question concerning the backpay formula.

⁵While it would in no event alter the ultimate findings, the record does not bear out Respondent's claim that it had a fixed amount of work during the general backpay period beginning November 11, 1963. *Inter alia*, President Jack Davis testified that he received an order for pipe fittings in January 1964 which created a need for additional employees, and that he instructed his foremen to contact laid off employees to return to work. He also admitted that he could have expanded his production, for which he had ample capacity, and hire even more employees had he received profitable orders during such period.

⁶E.g., *NLRB v Brown & Root, Inc.*, 311 F.2d 447, 452 (CA 8) In the same context, the court stated "In solving the problems which arise in backpay 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 backpay which should be awarded to an employee. In such circumstances the Board may use as close approximations as possible and may adopt formulas reasonably designed to produce such approximations." And compare in the same opinion the court's rejection of the "lump sum formula" there advanced by the respondent *Id.* at 453.

would negative the existence of liability to a given employee or which would mitigate that liability."⁷ For example, the allegation that a claimant engaged in willful loss of earnings is an affirmative defense to be carried by Respondent.⁸ The investigatory evidence of General Counsel, which include social security reports, standard Board backpay questionnaires filled out by the claimants, and data obtained from interim employers, was made available to Respondent before and during the hearing,¹⁰ and certain further evidence was allowed to be admitted by agreement following the hearing. In pretrial discussions on the record, stipulations were taken and the issues were defined. Apart from Respondent's position concerning the gross backpay formula, *supra*, it indicated that no specific issues were raised as to Stafford, Bryant, and Nelson, subject to its inspection of social security records. As to McGarrah and Johnson, it disputed the interim earnings for certain calendar quarters stated in the specification. It reasserted the contentions in its Answer that Carter and Young were validly offered reinstatement on dates prior to those indicated in the specification. And it alleged that no work was available for Mason as of the date of his termination because his grinding operations were transferred to another plant. The mathematical computations in the specification are not contested, and are set forth in Appendix A hereto. However, revisions will be made in the text of this decision to conform with the findings *infra*.

I. McGarrah

This claimant's backpay period runs from November 11, 1963 to November 20, 1964, at the hourly rate of \$1.30. He was employed with Tobe A. Field & Co. Inc., from sometime in the second quarter of 1964 until the end of the backpay period, and his interim earnings on this job were sufficient to offset all backpay concurrently due from Respondent. McGarrah testified that from mid-November 1963 until mid-April 1964, he performed work intermittently for William White and received compensation solely in the form of salvage materials, as described below. During this entire period until he obtained regular employment with Field, I find on the evidence that McGarrah engaged in a continuous search for work.¹¹

The Specification lists interim earnings from White Construction Co., appearing only in the fourth quarter of 1963, in the amount of \$200. The testimony of McGarrah may be summarized, *viz.*: On unspecified dates in the fourth quarter of 1963, he helped White on a job at the Ohio Street bridge, and in payment he received salvage lumber, which White told him was worth \$200. Subsequently, McGarrah sold most of the lumber in small quantities and realized about \$200, as he broadly estimated. McGarrah had no receipts, was unable to provide more specific information, and did not indicate the disposition or value of the lumber which was not sold. He also worked, without pay, for 2 or 3 days helping John Vickers in overhauling one of White's trucks in a garage owned by Mr. Barrett. Between February 18 and March

⁷E.g., *US Air Conditioning Corp.*, 141 NLRB 1278, 1280, and court cases cited.

⁸*Florence Printing Company v NLRB*, 376 F.2d 216 (CA 4)

⁹Such material, contained in the exhibit files, were utilized by Respondent in examining the claimants on the witness stand.

¹⁰On six occasions beginning in 1963, he visited the Indiana Employment Security Division, and he also applied for jobs with employers in the local area, among whom he specified six company names.

18, 1964, he assisted White in wrecking on old building at the site of the present Gibson County Bank. He was given no wages, but was permitted to take salvage materials which White was going to destroy. He sold some of it and received "a very small amount" of money. Between April 1 and mid-month, he and Vickers assisted White in leveling land for an orchard at the farm of one Churchman. He received no remuneration. The social security information filed by White (who did not testify) shows that in the period from November 15, 1963 to June 1, 1964, McGarrah received salvage from razed property valued at \$300.

In its brief, Respondent contends that the foregoing periods of work by McGarrah constitute a total of 2 months' employment for White, and that these 2 months should be deducted as interim earnings from the gross backpay due McGarrah.¹² McGarrah's testimony concerning these interim earnings is at best vague and less than persuasive as to the value of the salvage materials. Those which were unsold, and the small quantity he sold from the Gibson Bank job, represent emoluments of value and valid interim earnings not reflected in the specification. In the circumstances, I accept, as covering all the disputed items, the amount of \$300 reported by White in the social security record, and will accordingly deduct an additional \$100 representing the difference. Therefore, the total net backpay due McGarrah is reduced to \$924.47.

2. Nelson

The backpay period begins November 11, 1963, and ends November 20, 1964, at the hourly rate of \$1.40. The considerable testimony and argument concerning Nelson may be substantially curtailed.

By reason of his full employment with the City of Princeton, the net backpay from Respondent computed in the specification consists of \$42.18 in the first quarter of 1964, and none thereafter. During a 2-week period in February, Nelson was employed "on and off" at Ray's Auto Repair "working out" a debt to this firm of \$50 for a previous repair bill on his own car. The fact that he was not paid in cash for such work does not eliminate or reduce the indicated value of his employment as interim earnings to be applied in mitigation of Respondent's backpay liability. Thus, the earnings of \$50 erase all net backpay for the entire year of 1964.

For the fourth quarter of 1963, the specification lists net backpay of \$261.03, and expenses in the amount of \$605. The expenses were purportedly incurred on extended trips by Nelson in search for employment in Chicago, Illinois, Louisville, Kentucky, and Evansville, Indiana. As there were no interim earnings during this period, these expenses were not actually computed in the net backpay.¹³ It is clear in the specification that Respondent's liability was in no way increased by these expenses.

As the expenses are not a factor, the evidence that Nelson undertook the trips to Chicago and Louisville before seeking employment in Princeton or Evansville scarcely serves to establish, as Respondent contends, that he made no reasonable effort to find work during the partial quarterly period in question. While Nelson's

general credibility may be subject to challenge, his testimony and reports submitted to the Board concerning his quest for work cannot entirely be discarded, absent any countervailing evidence. The numerous specified employers and places at which he sought employment locally and in the various cities he visited, and consideration of his early success in obtaining permanent employment with the City of Princeton, are sufficient in my opinion to hold that Nelson's efforts were reasonable during the fourth quarter of 1963. Accordingly, the total net backpay of \$261.03 is awarded.

3. Mason

Mason's backpay period extends from December 9, 1963, until August 14, 1964. He had been employed at Owensboro as a grinder at the minimum rate of \$1.25 an hour. Respondent's position here is that Mason was the only grinder at the Owensboro plant; that on December 9, 1963, it transferred all its grinding operations to the Princeton plant, 65 miles distant; and that consequently there was no available work for Mason beginning on such date. The agreed "representative employees" in the specification are laborers. Mason was reinstated on August 14, 1964, as a laborer.¹⁴ It is also noted, as reported in the prior Board decision, that Respondent there contended Mason, among several others, was a "casual laborer," and that he was temporarily laid off and would be called back. Nor does it appear that Respondent raised the discontinuance of grinding operations at Owensboro as a defense in the unfair labor practice case. The record amply shows that many of the lower or minimum paid classifications, e.g., grinders, apprentice molders, and laborers, performed mixed or interchangeable functions, which included common laborer work. This position of Respondent is rejected.

Respondent contests the expenses for bus fare totalling \$17.50 for the approximate year that Mason worked at Martin's Barber Shop, located about a mile from his home. While employed with Respondent, Mason regularly drove to and from work in the car of another employee. I find this expense is clearly permissible. There appears no dispute by Respondent as to Mason's search for employment - which I find was adequate. Accordingly, Mason is awarded \$852.82.

4. Stafford

In Respondent's brief, detailed as to the other claimants, no specific questions are posed as to Stafford. At the hearing, the parties agreed that his backpay period ended 4 days prior to the date originally indicated in the Specification. Appropriate adjustment was made by General Counsel in his brief by a deduction of \$28.38. Stafford's ultimate net backpay is therefore reduced to \$299.12.

5. Bryant

His backpay period runs from November 18, 1963, to August 14, 1964, when he was offered reinstatement at the

¹²It is certainly not clear, and I would doubt from the evidence, that as much as 2 months full time work was involved.

¹³Such expenses may be allowed only to the extent of interim earnings during the quarterly period. E.g., *Mastro Plastic Corporation, etc.*, 136 NLRB 1342, 1348.

¹⁴He worked for approximately 2 weeks. The testimony is conflicting as to whether he quit or was sent home. General Counsel makes no claim for backpay following August 14. Mason testified he did some grinding work upon his reemployment. I do not accept Respondent's uncorroborated assertion that Mason voluntarily left because he was unable to perform the duties of a laborer.

prior Board hearing. Bryant was a molder at Owensboro, paid \$1.25 an hour. Respondent contends that he had interim earnings at Peters Brothers for 2 weeks, which are not allowed in the specification. It cites Bryant's testimony on August 11 at the previous hearing in which he stated that he worked "last week" at "Peeler Brothers" for a period of 2 weeks. It is plain, and not disputed, that the intended reference was to "Peters Brothers," an Owensboro company. At the instant hearing, Bryant could not remember and was not sure whether such employment occurred in July and August 1964. However, he was specific in describing the locations and nature of such work for Peters. A posthearing stipulation and affidavit indicate that the records of this firm do not reflect the employment of Bryant at any time in 1963 or 1964. The evidence by Respondent at least presumptively establishes that Bryant worked for Peters Brothers in July and August, 1964. It is sufficient, I find, to shift the burden of going forward to General Counsel, to show that such employment occurred before or after the backpay period, or otherwise to justify the exclusion of the interim earnings from the Specification. By inadvertence, Bryant was not asked to submit reports of his interim employment on the standard backpay questionnaire of the Regional Office. Therefore, on the record as it stands, I must conclude that Respondent is entitled to the deduction of 2 weeks as interim earnings at \$1.25. The adjusted average hours, taken from Appendix C of the specification, for the penultimate 2 weeks in the third quarter of 1964 affecting Bryant are 73.83 hours. This figure multiplied by \$1.25, or \$92.29, is deducted from the final net backpay, leaving the total award \$1,292.48.

6. Johnson

Johnson's backpay period runs from November 15, 1963 to July 17, 1964. He was employed at Owensboro as a molder at the hourly rate of \$1.50. After his termination, Johnson's activities may be described, as follows: About November 17, he left Owensboro, Ky., to stay with his parents at Lawrenceville, Ill. (a distance of 30 miles) while he searched for employment, as he specified. About "a week or so" before Thanksgiving, he came back to Princeton, Ind. where he stayed with his brother-in-law. On November 23, he registered with the Indiana Employment Security Division at Vincennes. Subsequently, he went back to Illinois. From November 27 to 29, he was incarcerated in Lawrenceville. On the latter date, he was convicted of theft and placed on probation for 1 year, on condition, *inter alia*, that he will not depart from the State of Illinois during his probation without the consent of the court, and that he will regularly support his wife and children. For a week, he was employed with Craig D X Service. Sometime after Christmas, or about a month after his conviction, he received permission from the court probation officer to leave Illinois, because he could not find work there, and return to Princeton. Thereafter, he reported to the probation officer in Illinois once a month. At Princeton, he stayed on the farm of his father-in-law, Earl Lyles, where Johnson's wife and two children had been residing. In January on the farm, he performed occasional light maintenance work, or "odds and ends." Beginning with the warm weather in March, he assisted in actual farm work for 2 months and was paid by Lyles in cash for 4 weeks at \$30 per week. The degree that Lyles' daughter and grandchildren were housed and fed as a family gratuity is unclear. Johnson stated that his work on the

farm also represented room and board for himself, wife, and children, but that he did not get along too well with Lyles. Between May 2 and 6, Johnson was arrested and jailed in Princeton. Johnson repeatedly admitted that during his entire stay at the Lyles' farm, from January to July,¹⁵ he considered himself "already at work" and made no attempt to search for other employment. I am convinced that Johnson endeavored to be as accurate as he could in his testimony, perhaps resolving doubts against his own interest. He could not remember specific dates and details 5 years back. For the period subsequent to his stay with Lyles until he was reinstated by Respondent on July 17, the testimony shows that Johnson made extensive efforts to obtain employment. "Right after spring," he applied at the Oldsmobile dealer in Princeton, then at City Motors, Ford Motors, Montgomery Ward, Goodyear, and Brown Shoe. He visited the Indiana Employment Security Division at Vincennes 2 or 3 times, and also at Princeton.¹⁶ There is an ambiguity in the evidence as to whether he worked for Lyles until July or just for 2 months after he started the farm work in March. As a reasonable accommodation on the state of the evidence, I find that Johnson failed to maintain with Indiana Employment Security his active registration initially made November 23, 1963, and that he effectively removed himself from the labor market from January 1 to June 17, 1964; i.e., until 4 weeks prior to his reinstatement by Respondent.

Respondent's argument is plainly lacking in merit that, under the court order, Johnson was forbidden to leave the State of Illinois, and that he was therefore "unavailable for employment . . . from the beginning of December till the time he received permission from his probation officer" to leave the State.¹⁷ Johnson was not restricted from looking for work in Illinois; indeed he was in effect ordered to do so by the court. He did make reasonable search, and in fact found some employment during this time with Craig

General Counsel, in his brief, computes the appropriate adjustments in the specification to deduct from net backpay the period of incarceration from November 27 to 29, amounting to \$24. Accordingly, Johnson's net backpay for the fourth quarter of 1963 is reduced to \$252.80. For the remainder of the backpay period, he is entitled to only 4 weeks until his reinstatement on July 17, 1964. Under Appendix C of the specification, the adjusted average hours for these 4 weeks in the second and third quarter of 1964 are 153.08. At \$1.50 per hour, this amounts to \$229.62. Added to the reduced \$252.80 in the fourth quarter of 1963, his total net backpay is \$482.42

7 Carter

The specification carries the backpay period from November 11, 1963, to June 5, 1964, when Carter was reinstated. He was a molder at Princeton and paid \$1.40 an hour. The sole issue, involving an alleged prior offer of

¹⁵This period of time is also specified in Johnson's backpay questionnaire

¹⁶Johnson drew unemployment insurance checks consecutively for 7 weeks ending January 11, 1964

¹⁷This reflects a change in Respondent's position, at the hearing it apparently contended that only the court, and not the probation officer, could give such permission

reemployment, presents a direct credibility conflict.¹⁸

Betty Barrett, a secretary, testified in substance, that sometime before March 6, 1964, someone telephoned on Carter's behalf inquiring for work and was told to send him in. Carter appeared about noon that day, a timecard was made out for him, and he was sent back to work for Foreman Perry. Shortly thereafter, Perry indicated Carter had been drinking and he did not want him to work in such condition. President Davis came in and told Carter to come back in the morning when he was in a little better shape. Carter said he would; but he failed to return. He actually did no work that day, and his timecard was "probably destroyed." Davis gave testimony as to two visits by Carter to the plant, in both of which he allegedly offered Carter employment. Concerning the second visit, Davis substantially corroborated Barrett. Carter at first insistently denied in effect that he had been to the plant at any time from his termination until his reinstatement in June, and that he had ever been sent home for being intoxicated. On rebuttal, he recalled that once during the backpay period he had been to the Owensboro plant when it was being remodeled. Carter was greatly confused as to dates, and his testimony indicates that his memory is unreliable. He admitted that he was a heavy drinker at one time, but he is no more. The general account given by Barrett and Davis as to this incident is accepted. However, both were uncertain and unconvincing as to their recollection of the precise date. Barrett said it must have been before she entered the hospital on March 6. No records were produced. Respondent's formal answer to the Specification alleges that the offer was made approximately the beginning of March 1964. In the circumstances, I find that the backpay period was cut off March 1, 1964.

Based upon the representative data shown in Appendix B to the Specification, and eliminating 4 weeks in March, the adjusted average hours for the first quarter of 1964 affecting Carter are revised to 243.47. This figure multiplied by \$1.40 results in the amount of \$340.86.

Additionally, I find that Carter worked for a farmer, Robert Key, for only 1 day, in February 1964, during the backpay period. General Counsel's brief makes the appropriate adjustment by deducting \$9 from the backpay. Accordingly, the net backpay for the first quarter of 1964 is \$331.86, and the grand total awarded is \$592.89.

8. Young

The backpay period alleged in the specification begins December 16, 1963, and ends June 5, 1964, when Young was reemployed. He worked at Princeton as a grinder at \$1.55. The issue concerns an alleged prior offer of reinstatement.

¹⁸There is sufficient evidence that he made reasonable effort to find work, and Respondent makes no contention in its brief to the contrary

Young had occasion to visit the plant in January 1964 to pick up an insurance compensation check. Barrett testified that Davis then asked Young if he was employed, and Young said he was not, but he had two good prospects, one at Whirlpool. Davis inquired "would he like to come back to work," as they were shorthanded in the machine shop. Barrett did not hear Young's answer. Davis testified he used the occasion "as a ruse" to ask Young back to work. When he requested that Young be at work the next morning, Young said he had two other offers which were better, and mentioned Whirlpool. Young firmly fixed the date of his visit as February 26. He testified that only Barrett and Mrs. Jack Davis¹⁹ were there. Mrs. Davis asked him what he was doing, and he said he had a couple of good prospects, one of which was at Whirlpool. No one from Respondent offered him his former job back at this time or at any time prior to June 5. He actually started work at Whirlpool in December 1964. On cross-examination, he denied that his brother, Paul Young, a foreman at Respondent, had contacted him to come back to work in January or February or at any time. As noted *supra*, Davis testified elsewhere that he had instructed his foremen to recall laid off employees in the early part of 1964. No foreman testified. No records of any kind were offered. Isaiah Young impressed me as a forthright witness. On the total picture, I credit him. There is apparently no contention relating to his search for work, which I find on the record was sufficient. His total net backpay, as computed in the Specification, is \$1,390.67, which will be awarded.

CONCLUSIONS AND RECOMMENDATIONS

Upon the basis of the foregoing findings, and the entire record in the cases, it is concluded that the employees named below are entitled to backpay in the amounts listed opposite their names, with interest at 6 percent per annum on each of the quarterly sums found due herein from the end of each calendar quarter,²⁰ less the tax withholding required by Federal and State Laws.

Joseph H. McGarrah	\$ 924.47
Ralph E. Nelson	261.03
Thomas E. Mason	852.82
Jewell T. Stafford	299.12
George W. Bryant, Jr.	1,292.48
Wayne T. Johnson	482.42
Theron Carter	592.89
Isaiah Young	1,390.67

It is recommended that the Board adopt these findings and conclusions, and order the Respondent, its officers, agents, successors, and assigns, to pay the sums indicated.

¹⁹Mrs. Davis was present in the hearing room, but did not testify

²⁰*Isis Plumbing & Heating Co.*, 138 NLRB 716, *Local 138, International Union of Operating Engineers, AFL-CIO*, et al., 151 NLRB 972

APPENDIX A

Calendar Quarter	Remarks	Interim Earnings	Expenses	Hours and Pay Rates	Gross Backpay	Net Interim Earnings	Net Backpay
I. Joseph H. McGarrah							
1963-IV	Employed at: White Construction Co.	\$200.00	None	222.62 at \$1.30	\$289.41	\$200.00	\$89.41
1964-I	Unemployed	None	None	439.89 at \$1.30	\$571.86	--	\$571.86
1964-II	Employed at: Tobe A. Field & Co. Inc.	\$354.73	None	552.25 at \$1.30	\$717.93	\$354.73	\$363.20
1964-III	Employed at: Tobe A. Field & Co. Inc.	\$823.87	None	529.32 at \$1.30	\$688.87	\$823.87	--
1964-IV	Offered reinstatement effective November 23, 1964 Employed at: Tobe A. Field & Co. Inc.	\$645.84	None	328.06 at \$1.30	\$426.48	\$645.84	-- \$1024.47
II. Ralph E. Nelson							
1963-IV	Unemployed: Travel and other expenses seeking employment	None	\$605.00	186.45 at \$1.40	\$261.03	--	\$261.03
1964-I	Employed at: City of Princeton	\$481.70	None	374.20 at \$1.40	\$523.88	\$481.70	\$42.18
1964-II	Employed at: City of Princeton	\$925.65	None	483.20 at \$1.40	\$675.48	\$925.65	--
1964-III	Employed at: City of Princeton	\$887.70	None	467.10 at \$1.40	\$653.81	\$887.70	--
1964-IV	Employed at: City of Princeton Offered reinstatement effective November 23, 1964	\$448.40	None	298.01 at \$1.40	\$417.21	\$448.40	-- \$303.21
III. Thomas E. Mason							
1964-I	Employed at: Martin's Barber Shop Elite Cigar Store (Robert F. Grady) Bus fare to and from work	\$40.00 \$14.50	\$1.00	105.02 at \$1.25	\$131.28	\$53.50	\$77.78
1963-IV	Employed at: Martin's Barber Shop Bus fare to and from work	\$260.00	\$6.50	400.80 at \$1.25	\$401.00	\$253.50	\$247.50
1964-II	Employed at: Martin's Barber Shop Bus fare to and from work	\$260.00	\$6.50	475.47 at \$1.25	\$594.34	\$253.50	\$340.84
1964-III	Employed at: Martin's Barber Shop Bus fare to and from work Offered reinstatement effective on August 17, 1964	\$140.00	\$3.50	258.56 at \$1.25	\$323.20	\$136.50	\$186.70 \$852.82

Calendar Quarter	Remarks	Interim Earnings	Expenses	Hours and Pay Rates	Gross Backpay	Net Interim Earnings	Net Backpay
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IV. Jewell T. Stafford

1963-IV	Employed at: Robert Motor Co. Evansville Country Club	\$210.29 \$11.50	None	196.59 at \$1.25	\$245.74	\$221.79	\$23.95
1963-I	Employed at: Owensboro Block Co. Field Packing Co. Wright Motor Co. Offered reinstatement effective March 27, 1964	\$188.13 \$9.75	None	407.14 at \$1.25	\$508.93	\$205.38	<u>\$303.55</u> \$327.50

V. George W. Bryant, Jr.

1963-IV	Unemployed	None	None	196.59 at \$1.25	\$245.74	--	\$245.74
1964-I	Unemployed	None	None	407.14 at \$1.25	\$508.93	--	\$508.93
1964-II	Employed at: Vogue Cleaners A & P Tea Co.	\$102.25 \$131.67	None	471.41 at \$1.25	\$589.26	\$234.92	\$354.34
1964-III	Employed at: Poland Realty Co. Offered reinstatement effective on August 17, 1964	\$50.00	None	260.61 at \$1.25	\$325.76	\$50.00	<u>\$275.76</u> \$1384.77

VI. Wayne T. Johnson

1963-IV	Employed at: Craig D X Service	\$30.00	None	204.53 at \$1.50	\$306.80	\$30.00	\$276.80
1964-I	Unemployed	None	None	407.12 at \$1.50	\$610.71	--	\$610.71
1964-II	Employed by: Earl Lyles	\$120.00	None	471.41 at \$1.50	\$707.11	\$120.00	\$587.11
1964-III	Unemployed Offered reinstatement effective July 20, 1946	None	None	114.33 at \$1.50	\$171.50	--	<u>\$171.50</u> \$1646.12

VII. Theron Carter

1963-IV	Unemployed	None	None	186.45 at \$1.40	\$261.03	--	\$261.03
1964-I	Unemployed	None	None	374.20 at \$1.40	\$523.88	--	\$523.88
1964-II	Unemployed offered reinstatement effective June 8, 1964	None	None	375.90 at \$1.40	\$526.26	--	<u>\$526.26</u> \$1311.17

