

**Webber American, Inc. and International Association  
of Machinists and Aerospace Workers, AFL-CIO.**  
Case 31-CA-2194

April 2, 1973

**SUPPLEMENTAL DECISION AND  
ORDER**

BY MEMBERS FANNING, KENNEDY, AND  
PENELLO

On December 22, 1971, the National Labor Relations Board issued its Decision and Order in the above-entitled proceeding,<sup>1</sup> finding, *inter alia*, that Respondent had discriminated with regard to the tenure of employment of Robert Farrington, Robert Wilcox, Burt Quackenbush, and Dean Saunden in violation of Section 8(a)(3) and (1) of the National Labor Relations Act.

Pursuant to a backpay specification and appropriate notice issued by the Regional Director for Region 31, a hearing was held before Administrative Law Judge Martin L. Bennett on January 9, 1973, for the purpose of determining the amount of backpay due Farrington, Wilcox, Quackenbush, and Saunden.

On January 31, 1973, the Administrative Law Judge issued the attached Supplemental Decision in which he awarded backpay to Farrington, Wilcox, Quackenbush, and Saunden. Thereafter, the General Counsel filed a limited exception.

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 Decision in light of the exception and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge as modified herein.

The Administrative Law Judge awards interest on Respondent's unpaid backpay liability only for the period during which backpay accrued for each of the discriminatees. The General Counsel contends that under the Board's Order interest liability continues until compliance with the Order is achieved. We agree. The Board's Order in the unfair labor practice proceeding provided that interest was to be calculated at the rate of 6 percent per annum as provided in *Isis Plumbing & Heating Co.*, 138 NLRB 716. Under the formula set forth in *Isis Plumbing & Heating Co.*, *supra*, at 720-721, such interest is to accrue commencing with the last day of each quarter of the backpay period on the amount due and owing for each quarterly period and continuing until compliance with the Order is achieved. The finding of the Administrative Law Judge that interest was payable

only for the period during which backpay accrued appears to be an inadvertent error. In any event, we shall order backpay in accordance with the formula set forth in *Isis Plumbing & Heating Co.*, *supra*, as provided in our Order in the unfair labor practice proceeding.

**ORDER**

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Webber American Inc., Lawndale, California, its officers, agents, successors, and assigns, shall pay to Robert Farrington the sum of \$89.17, to Robert Wilcox the sum of \$85.75, to Burt Quackenbush the sum of \$191.91, and to Dean Saunden the sum of \$131.29, and that in addition the Respondent shall pay to each of the above interest accrued to the date of payment in accordance with the formula set forth in *Isis Plumbing & Heating Co.*, 138 NLRB 716, less deductions for applicable taxes.

<sup>1</sup> 194 NLRB 692

**SUPPLEMENTAL DECISION**

**STATEMENT OF THE CASE**

MARTIN S. BENNETT, Administrative Law Judge: This matter was heard at Los Angeles, California, on January 9, 1973. It stems from a backpay specification issued on November 1, 1972, by the Regional Director for Region 31 to determine the amounts of backpay owed to Robert Farrington, Robert Wilcox, Burt Quackenbush, and Dean Saunden, by Respondent, Webber American, Inc., due to their unlawful discharge. The Order of the Board is reported at 194 NLRB No. 109 and the Judgment of the United States Court of Appeals for the Ninth Circuit was handed down August 24, 1972, according to the backpay specification.<sup>1</sup>

There is no dispute as to the amounts owed the first three complainants and the General Counsel's motion for summary judgment, on which ruling was reserved at the hearing, is granted as to them in the amounts set forth below. Respondent contends that a portion of the sum owed to Saunden was sent to him through the mails, that this tender should be credited to it and a memorandum in support of this claim has been submitted.

Upon the entire record in the case, and from my observation of witnesses, I make the following:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

I find that Respondent owes the following sums with interest at 6 percent from December 15, 1970, until the

<sup>1</sup> The Board's Order directed that the four complainants be offered reinstatement and made whole. Reinstatement has been duly offered and only the amount of backpay is in issue. The General Counsel concedes that some of the backpay has been remitted with appropriate interest.

respective cutoff dates as specified. See *Isis Plumbing & Heating Co, Inc*, 138 NLRB 716.

<u>Name</u>	<u>Amount</u>	<u>Cutoff Date</u>
Robert Farrington	\$ 89.17	12/31/70
Robert Wilcox	85.75	11/11/71
Burt Quackenbush	191.91	11/11/71

As for Dean Saunden, his backpay owing was \$1,131.26 with interest at 6 percent from December 15, 1970, through January 12, 1972. The testimony of Saunden rapidly disposes of the claim that an offset is due. The simple fact is that he never received or cashed a check for a portion of the total owed him. And Respondent's records disclose that the check had been mailed many months before and was never cashed.

That Saunden moved during this period and that the

check perhaps was lost in the mails is no defense. The fact is that Saunden left a forwarding address, as he testified, and Respondent was on notice that the check was outstanding because it had never been cashed.

I find that Respondent owes the sum as set forth in the specification to Saunden. Needless to say Saunden is not to be paid twice. Respondent can readily stop payment on the earlier check and remit the full sum due.

#### RECOMMENDED ORDER

On the basis of the foregoing findings and conclusions, it is ordered that Respondent, Webber American, Inc., Lawndale, California, its officers, agents, successors, and assigns, forthwith make the respective payments described and specified above, less any taxes required to be withheld under Federal and state law.