

A & T Manufacturing Company and United Steelworkers of America, AFL-CIO-CLC. Cases 9-CA-15756, 9-CA-15898, and 9-CA-16029

24 June 1986

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS DENNIS, BABSON, AND JOHANSEN

On 13 November 1985 Administrative Law Judge James T. Youngblood issued the attached supplemental decision. The Respondent filed 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 brief and has decided to affirm the judge's rulings, findings,¹ and conclusions² and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, A & T Manufacturing Company, Jeff, Kentucky, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

¹ The Respondent has 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), enf'd 188 F.2d 362 (3d Cir 1951). We have carefully examined the record and find no basis for reversing the findings.

² In the underlying unfair labor practice proceeding, the Board found that the Respondent discriminatorily laid off employees on 22 August 1980. The Respondent claims there was an economic layoff 24 October 1980 affecting its backpay liability. Based on the backpay specification it would appear there was a layoff 24 October 1980. However, the Respondent has not met its burden of establishing, through testimony or record evidence, what effect, if any, this layoff has on its backpay obligation.

In discussing Rudolph Honeycutt's backpay, the judge stated that, based on President Charles Browder's testimony, he was not satisfied that the inventory control department was eliminated. Browder testified that Charlie Pigman, Honeycutt's immediate supervisor, left within 2 weeks of the August layoff. The record shows, however, Pigman left approximately 2 months after the layoff and Honeycutt's former duties are now performed by the shop leadman. We find that the inventory control department was, in fact, eliminated. We also find, in agreement with the judge, that the Respondent was obliged to offer Honeycutt reinstatement to a laborer job, for the record shows such jobs were available and Honeycutt was qualified for such a job, inasmuch as no special skills or experience were needed to qualify for a laborer's job.

We find it unnecessary to rely on *Abilities & Goodwill*, 241 NLRB 27 (1979), in finding that the Respondent's backpay liability to Wayne Adams is not tolled by the economic strike.

David L. Ness, Esq., for the General Counsel.

280 NLRB No. 106

Blake Page, Esq., of Winchester, Kentucky, for the Respondent.

SUPPLEMENTAL DECISION

STATEMENT OF THE CASE

JAMES T. YOUNGBLOOD, Administrative Law Judge. On 16 December 1982 the National Labor Relations Board issued its Decision and Order in Cases 9-CA-15756, 9-CA-15898, and 9-CA-16029,¹ directing A & T Manufacturing Company (Respondent or A & T) to offer immediate and full reinstatement to 25 employees who were unlawfully laid off on 22 August 1980,² and to make them whole for any loss of earnings they may have suffered by reason of Respondent's discrimination. On 29 June 1984 the United States Court of Appeals for the Sixth Circuit³ enforced the Board's Order requiring Respondent to reinstate and make whole the 25 named employees which the Board found were unlawfully laid off on 22 August 1980, in violation of Section 8(a)(1) and (3) of the National Labor Relations Act.⁴

A controversy arose over the reinstatement of certain employees and the amount of backpay due certain of the unlawfully laid-off employees under the terms of the Board's Order. Whereupon, the Regional Director for Region 9 issued a backpay specification and notice of hearing on 2 April 1985, setting forth the amount of backpay due each of the 25 employees under the Board's order. Thereafter, Respondent filed an answer and amended answer to the backpay specification, admitting the backpay amounts due certain of the employees, but denying the amounts of backpay due certain other employees, and denying any backpay for other employees. Respondent did not contest the Regional Director's backpay formula or the manner in which the backpay was computed. A hearing was held in this matter on 19 June 1985 in Hazard, Kentucky. All parties were represented at the hearing and the General Counsel and Respondent filed briefs which have been duly considered.

On the entire record and on my observations of the witnesses and their demeanor while testifying, and the arguments made during the trial and the briefs filed by the General Counsel and Respondent, I make the following

FINDINGS AND CONCLUSIONS⁵

From my examination of the backpay specification, the answer and amended answer, preliminary motions, stipu-

¹ 265 NLRB 1560

² One other employee, Jimmy Popp, was also found by the Board to have been unlawfully discharged on 23 September 1980

³ *NLRB v. A & T Mfg Co*, 738 F.2d 148 (6th Cir 1984)

⁴ The court of appeals remanded to the Board the discharge of Jimmy Popp for further findings of fact.

⁵ The facts found herein are a compilation of the credited testimony, the exhibits, and stipulations of fact, viewed in light of logical consistency and inherent probability. Although these findings may not contain or refer to all the evidence, all has been weighed and considered. To the extent that any testimony or other evidence not mentioned in this decision may appear to contradict my findings of fact, I have not disregarded that evidence but have rejected it as incredible, lacking in probative weight, surplusage, or irrelevant. Credibility resolutions have been made

Continued

lations, and admissions presented at the hearing, it appears that Respondent admits its backpay liability for 17 of the discriminatees.⁶ However, Respondent denies that any backpay is due Rudolph Honeycutt, Jerome Swalec, and Taylor Whitehead. Respondent further contends that its backpay liability should be limited with respect to Wayne Adams, Darrell Boggs, James Combs, Michael Combs, and Johnny Everidge. Respondent's contentions about each of these employees will be discussed herein-after.

In backpay proceedings, it is well settled that the sole burden of the General Counsel is to show the gross amounts of backpay due. See *Mastell Trailer Corp.*, 273 NLRB 1190 (1984); *Kansas Refined Helium*, 252 NLRB 1156, 1157 (1980). The burden of proving any mitigation of damages is on Respondent herein, and any uncertainty is resolved against the wrongdoer whose conduct made certainty impossible. Respondent has raised certain affirmative defenses to the backpay of certain of these employees and the burden of proving these defenses rests with Respondent.

With regard to all eight employees Respondent argues that even if the discriminatees had not been laid off on 22 August 1980, they would have been laid off prior to the economic strike of 13 April 1981 and therefore no backpay is due them beyond 13 April 1981.⁷

In the initial decision in this matter, the administrative law judge indicated that during the week following the layoff of 22 August 1980, Respondent began calling back some of the shop employees. He pointed out, however, that no records were introduced from which he could determine how many employees were called back to work, but certain employees testified that about five men were called back in the week immediately following the layoff and that they worked 12 hours a day. Respondent introduced no records to show how many employees were recalled nor did it introduce any records to indicate that these employees were laid off again. There is also nothing in this record to indicate how many employees were on the payroll as of 13 April 1981, and nothing in this record to indicate that there was, in fact, any economic layoffs during the period 22 August 1980 through 13 April 1981. Respondent merely reiterated testimony which it had presented in the original proceeding and failed to present any probative evidence to show that any of these employees would have been legitimately laid off at any point before or after 13 April 1981.

The only testimony in the current record to indicate what happened during the period 22 August 1980 to 13

April 1981, other than what I have already described, was that of Charles Browder, Respondent's president and general manager, who testified that following the 22 August 1980 layoff they recalled some of the employees who had been discriminated against back to work, but that they were laid off again at some point down the road prior to 13 April 1981. He also testified that Respondent employed only a few employees on 13 April 1981. No records were introduced or offered to establish the status of Respondent's payroll during these periods, except those payroll records that were attached to the backpay specification. The payroll journal for the check date period ending 31 August 1980 shows that Respondent had 33 employees on its payroll at that time. The payroll journal for the check date period ending 7 September 1980 shows a total of 44 employees on Respondent's payroll at that time. The payroll journal for the check date period ending 14 September 1980 shows that there were 39 employees on Respondent's payroll at that time. These figures certainly indicate that following the layoff of 22 August 1980 there were jobs available at Respondent's facility.⁸

The general statements made by Charles Browder at the hearing tending to indicate the lack of available work for the discriminatees and tending to indicate that the discriminatees in any case would have been laid off for lack of work by 13 April 1981 are not credited. This testimony, at best, is in generalities and certainly covers material that was presented at the prior hearing which also failed to establish that Respondent's 22 August 1980 layoff was for economic reasons.

Accordingly, any defense raised by Respondent that there was no work available for these discriminatees either prior to or after 13 April 1981 is rejected as Respondent has failed to establish any probative evidence to support this proposition.⁹ I shall not refer to this defense any further in this proceeding.

Wayne Adams

The backpay specification as amended at the hearing alleges that Respondent owes Wayne Adams net backpay in the amount of \$23,916 through the first calendar quarter of 1985. It is the General Counsel's position that as Adams has never been offered valid reinstatement, Respondent's backpay liability for Adams continues to date. Respondent admits owing Adams \$5868, which is the net backpay due Adams as of the time of the commencement of the economic strike of 13 April 1981.¹⁰ Respondent asserts that its backpay liability for Adams should be tolled on that date because it would have been futile to attempt to recall Adams as he would have refused an offer of reinstatement. Additionally, Respondent con-

on the basis of the whole record, including the inherent probabilities of the testimony and the demeanor of the witnesses. When it may be required I will set forth specific credibility findings.

⁶ The parties agree and Respondent admits its liability to 17 employees and, other than setting forth their names and the backpay due them, they will not be mentioned further in this proceeding.

⁷ Respondent has not specified any date on which these eight employees would have been laid off prior to 13 April 1981, but has agreed that it will pay backpay to 13 April 1981 and therefore it is unnecessary to determine at what point they would have been laid off prior to that time. Respondent is arguing that even though it discriminated against these employees in their initial layoff, they would have ultimately been laid off for economic reasons prior to 13 April 1981, and therefore its backpay should be limited to that date.

⁸ Whether these employees were shop employees or onsite installers, I cannot determine. But it is certain that you do not need installers if you are not producing in the shop. It was Respondent's burden to clarify this ambiguity or uncertainty.

⁹ I have taken into account the discontinuance of the relationship between Respondent and its customer USACO but, absent some probative evidence on how this affected Respondent's payroll and employee complement, it adds very little to this proceeding.

¹⁰ Actually this figure represents a net backpay only through 31 March 1981. Respondent did not include the 13 days in April.

tends that Adams was sent a valid offer of reinstatement on 6 August 1981 and that Respondent's backpay liability to Adams should be tolled on this date because Adams failed to accept the offer of reinstatement.

Adams admittedly picketed Respondent during the approximate 7 months' period of the economic strike. At the time the economic strike began on 13 April 1981, Adams was a discriminatorily laid-off employee and Respondent's backpay obligation does not automatically cease on the date of the strike. In situations, such as this one, in which the employer's unlawful discrimination has made it impossible to ascertain whether an employee would have gone on strike absent such discrimination, the Board cases hold that any uncertainty in this area must be resolved against the wrongdoer. In *Abilities & Goodwill*, 241 NLRB 27 (1979), the Board concluded that as the employer acted unlawfully in discriminating against the employee, the burden is on the employer to undo its unfair labor practice by offering immediate reinstatement to the employee, and the striking employee was under no obligation to make an application for reinstatement. Therefore, as it is clear, that Respondent made no offer of reinstatement to Adams, Respondent's backpay obligation was not tolled by the economic strike on 13 April 1981.

The evidence shows that on Thursday, 6 August 1981, Respondent sent, by certified mail, a letter to Wayne Adams signed by Charles Browder stating as follows:

Due to a slight increase to our workload, it is necessary to recall a few employees which are on layoff.

Report to A & T Manufacturing Co., Inc., 7:00 a.m., Monday, August 10, 1981.

Adams did not receive this letter until approximately 11 a.m. on Monday, 10 April 1981. Adams did not attempt to respond to Browder's letter. It is also clear that Respondent did not make any subsequent efforts to recall Adams to work. Adams testified that he did not respond to the letter because he felt it would have been futile to do so as the offer had already expired by its terms. He also testified that he was suspicious of Browder's intentions because of Browder's earlier statement that because of the union activities, he was going to see to it that the employees did not get a job in the surrounding counties and that he did not think that Browder meant what he said in the letter. Adams testified that if he were assured of job security, he would have crossed the picket line. The Board cases clearly recognize that a discriminatee has a fundamental right to a reasonable time to consider whether to return to work after receiving an offer of reinstatement. And when, as here, the offer had expired before it was received by Adams, this most certainly did not give Adams a reasonable time to consider the offer, and therefore was not a valid offer of reinstatement, and I so find. See *Seminole Asphalt Refining*, 225 NLRB 1202 (1976).

Therefore, it is my conclusion that Wayne Adams is entitled to net backpay in the amount of \$23,916 through the first quarter of 1985, as set forth in the backpay specification, as amended at the hearing, and that Respond-

ent's backpay liability for Wayne Adams is continuing to date.¹¹

Michael Combs

The backpay specification, as amended at the hearing, alleges that Respondent owes Michael Combs net backpay in the amount of \$21,745 through the first quarter of 1985. Respondent admits owing Combs \$6220 to the date of the economic strike of 13 April 1981.¹² Respondent argues also, as it did with regard to Wayne Adams, that its backpay liability to Michael Combs ceased at the time of the economic strike on 13 April 1981 because it would have been futile to recall Combs because of the strike. Respondent further contends that Combs declined its offer of reinstatement in July 1981.

Combs, as the other employees involved in this proceeding, was discriminatorily laid off on 22 August 1980. At no time prior to 13 April 1981, the date of the economic strike, did Respondent make a valid offer of reinstatement to Combs. Therefore it is clear, as indicated earlier, that Respondent's backpay liability is not tolled on the date of the economic strike.

On 9 July 1981 Respondent mailed a letter dated 7 July 1981 to Michael Combs which stated as follows:

Due to a slight increase to our workload, it is necessary to recall a few employees which are on layoff.

Report to A & T Manufacturing 7:00 a.m., Monday, July 13, 1981.

Combs was in Wellington, North Carolina, for the 2-week period prior to 19 July 1981 when he returned home. He said that during that period he was mostly looking for work. In the morning of 20 July 1981, he received a card in the mail indicating that he had a certified piece of mail at the post office. He picked it up and it was the offer of reinstatement from Respondent. Combs promptly called Charles Browder that day and explained that he had just received the letter recalling him to work. He was informed by Browder that there was no work available at the present time. Combs advised Browder that he was kind of glad because he did not want to cross the picket line. Combs credibly testified that had Browder offered him employment on 20 July 1981, he would have returned to work because he was unable to find employment and was in a desperate situation. Charles Browder testified that he, too, was out of town and, to the best of his recollection, Combs called him on 28 July 1981, and advised that he did not get the letter or reinstatement timely because he was out of town and wanted to know if the job was still open. According to Browder, he said, "We can use you, come on back," and gave him a reporting date. According to Browder, Combs called him back and explained that he

¹¹ The gross backpay for Wayne Adams is \$2990 per quarter but, as I do not know the interim earnings beyond the first quarter of 1985, I will not assume to make a net backpay computation for the period from the end of the first quarter 1985 to date. I will leave that for further compliance proceedings in this matter.

¹² This figure also does not reflect the 13 days in April 1981

needed a job desperately, but he just could not bring himself to cross the picket line and that he would not come back to work as long as the strike was in progress. Michael Combs did not remember having these telephone calls with Charles Browder.

Charles Browder's testimony to me was not straightforward and certainly did not have a ring of truth. His testimony seemed to be well prepared and he had an answer for every contingency and had all the angles covered. Much of his testimony, if true, such as the unavailability of work for the discriminatees and the termination of other employees and departments, could easily have been substantiated by some form of company records. However, no records were produced. Respondent's entire case rested on the testimony of Charles Browder. Accordingly, I accept the testimony of Michael Combs over that of Charles Browder and conclude that on 20 July 1981, when Combs called Browder, he was informed that there was no work available.

The question remains whether Respondent's offer of reinstatement dated 7 July 1981 is a valid offer of reinstatement or was it so limited in time that it was not a valid offer of reinstatement in that it did not give Combs a reasonable time in which to respond even if he were available.

In *Thermoid Co.*, 90 NLRB 614 (1950), the Board concluded that an offer conditioned on the employee's returning within 4 days was unreasonable and did not constitute a valid offer of reinstatement. Here, Respondent's offer was not mailed until 9 July 1981 and required Combs' reporting to work at 7 a.m., Monday, 13 July 1981. At best, assuming receipt of this letter on 10 July 1981, Combs would have had Friday, Saturday, and Sunday to consider the offer before returning to work at 7 a.m., Monday, 13 July 1981, which is only 3 days. In my view, this certainly would be an unreasonable time, particularly when, as here, there was an intervening weekend at which time Combs would have been unable to discuss the situation with Respondent.

Therefore, it is my conclusion that even had Combs been in the area, the offer of reinstatement would have been invalid because of its unreasonable short period of time.

Moreover, when Combs returned and obtained the letter from the Post Office, he immediately called Browder and was informed by Browder that there was no work available. It is my conclusion that Respondent had no intention of reinstating Combs and when he accepted Respondent's offer of reinstatement, Respondent had no recourse but to indicate that there was no work available.

It is my conclusion that Michael Combs is entitled to net backpay in the amount of \$21,745 through the first quarter of 1985. As Respondent has never made a valid offer of reinstatement to Michael Combs, that backpay liability continues to run to date. As I have indicated earlier, the amounts of accumulating backpay can be determined in further compliance proceedings in this matter.

Darrell Boggs, James Combs, and Johnny Everidge

The backpay specification, as amended at the hearing, alleges that through the first quarter of 1985 Darrell Boggs, James Combs, and Johnny Everidge are entitled to backpay in the amounts of \$49,634, \$43,805, and \$38,818, respectively. It is further alleged that as Respondent has never made an offer of reinstatement to these three individuals, Respondent's backpay liability to these individuals is continuing to date.

Respondent admits owing backpay to each of these employees through 13 April 1981 in the following amounts: Darrell Boggs, \$7268; James Combs, \$6720; and Johnny Everidge, \$6916. Respondent contends that these employees were discharged for strike misconduct and that its backpay liability was tolled because of such misconduct. Respondent also contends that there was no work available for these employees at the time of the strike and that it would have been useless to recall them because they would have declined such an offer. These latter arguments are dismissed.

As Respondent cites the same incidents of misconduct by Boggs, Combs, and Everidge, the backpay claims and Respondent's position concerning these claims will be treated together.

Respondent contends that Boggs, James Combs, and Everidge were discharged for placing roofing nails at the roadway entrance to its facility and along the highway median during the strike which commenced on 13 April 1981.

Charles Browder testified that Johnny Everidge, Darrell Boggs, and James Combs were charged in criminal proceedings in the Kentucky State Court with placing roofing nails in the roadway as set forth above. Browder testified that he observed employees placing these nails in the roadway. Browder testified that he watched these individuals through binoculars and a telescope at a distance of approximately 200 feet. He said he watched the men walk back and forth and they would pull tacks out of their pockets and drop them to the ground. He said the men knew they were being watched, and they tried to be secretive about it, and would put their hands in their pockets and when they pulled their hands out of their pockets they would dribble the tacks or nails along the ground. He said that one of the employees was very good at setting the nails up when they would fall over, by using his toes to balance the nails so they would stick straight up in the roadway. Browder testified that his brother Fred initiated the criminal proceedings. He testified that the hearing never concluded because the matter was settled when it was agreed that the matter would be dropped if there would be no further incidents on the picket line, including tacking. Browder testified that he told the Steelworkers attorney, who apparently was representing the individuals charged, that he did not want them on his property after that. Respondent contends that this was tantamount to a discharge of the three employees and that its backpay liability ceased at that point.

Combs, Boggs, and Everidge each denied throwing or placing roofing nails on the highway entrance or highway median strip adjacent to Respondent's facility. Boggs testified that on one occasion when he did see

roofing nails on the ground, he removed them from the highway median. Both Boggs and Combs testified that when the criminal proceedings were dismissed, they were merely told by the attorney that the matter had been dropped and that they were to go on home. They were not told anything further. Everidge, on the other hand, testified that the lawyer just said that the charges will be dropped and no more violence or anything like that will be committed. None of the three employees indicated that they were told that they were discharged or that their employment was terminated.

An employer may discipline or refuse to reinstate strikers and may defend its action by showing that it had an honest belief that the employee was guilty of strike misconduct of a severe nature. Nail strewing is such serious misconduct that it may justify the discharge of such strikers who engage in such conduct. The fact that there are tacks on the employer's property with no evidence of responsibility on the part of the pickets does not constitute serious misconduct.

Charles Browder was the only witness who testified to the fact that striking employees threw nails on the ground at the picket line.

Browder testified that he observed these three employees placing roofing nails along the highway near the picket line. He also testified that this was observed by his wife and his brother who obtained the criminal summons against these employees. Neither Browder's wife nor his brother testified at these proceedings. Moreover, we have only Browder's testimony why the criminal complaints were not pursued. We also have Everidge's testimony that the Steelworkers' lawyer told him that the charges would be dropped and no more violence or anything would be committed. This, in no way, indicates that these three individuals were responsible for the tacking and, certainly, there is nothing in this testimony of Everidge which would indicate that the three employees were told that they were not to go on Respondent's premises again and that they were terminated.

I do not know why these three individuals were selected and charged with throwing tacks at the picket lines, but I do know that the fact that they were charged does not make them guilty. The three individuals involved deny throwing any tacks and, in fact, Boggs testified that when he saw tacks or nails, he removed them from the picket line. In view of my overall credibility resolutions, I accept the denials of these three individuals over the testimony of Browder and conclude that these individuals did not engage in any misconduct and, certainly, Respondent did not discharge them for engaging in such misconduct. Accordingly, Respondent cannot toll its backpay obligation on this defense. Therefore, as Respondent never made an offer of reinstatement to these employees, its backpay liability is continuing to date.

Therefore, it is my conclusion that Darrell Boggs, James Combs, and Johnny Everidge are entitled to the net backpay, as set forth above, and that Respondent's backpay liability is continuing to date. As indicated earlier, any backpay amounts accruing after the first quarter of 1985 can be disposed of in the compliance steps of this proceeding.

Jerome Swalec and Taylor Whitehead

The backpay specification alleges that the net backpay due Jerome Swalec and Taylor Whitehead is \$1840 each covering the period from their unlawful layoff on 22 August 1980 to 24 October 1980 when other probationary employees were laid off.

Respondent contends that these two employees are not due any backpay because they were probationary employees and that its rules permit it to discharge probationary employees at any time without cause. Additionally, it appears that Respondent is contending that it did not have sufficient work available to justify recalling these two employees after the 22 August 1980 layoff. As with its overall defense of unavailability of work, Respondent has failed to present any probative evidence that these individuals would have legitimately been laid off at any point of time during the period 22 August to 24 October 1980. Therefore, it is my conclusion that absent the unlawful layoff of 22 August 1980, these two employees would have continued working until 24 October 1980 at the time when all other probationary employees were laid off.

Respondent's reliance on its rules to justify its layoff of Swalec and Whitehead because of their probationary status is misplaced in this proceeding. Whatever merit this contention may have had during the Board proceedings and the court proceedings, this certainly cannot be litigated at this time. At this point in time, both the Board and the court have held that Respondent unlawfully laid off these two employees. It is well settled that probationary employees are protected under the Act and under the Board Order, Respondent is required to make them whole for its unlawful discrimination. Therefore, absent any legitimate defense to its backpay obligation, it is my conclusion that each of these employees is entitled to net backpay in the amount of \$1840.

Rudolph Honeycutt

The backpay specification, as amended at the hearing, alleges that Rudolph Honeycutt is entitled to net backpay in the amount of \$44,526 covering the period from 22 August 1980 through the first calendar quarter of 1985. The General Counsel further contends that as Respondent has never made a valid offer of reinstatement to Honeycutt, his backpay is continuing to date. Respondent denies that it owes Honeycutt any backpay on the grounds that he was not employed in the bargaining unit and also because the inventory control department where he was employed was eliminated and that Honeycutt was not suitable for other employment.

Honeycutt was employed in inventory control for approximately 3 years prior to his unlawful layoff on 22 August 1980. He worked in the stockroom where he issued tools and parts to shop employees. He also maintained records of the tools and parts that were given to the employees and had frequent contact with employees when they came to the toolcrib to ask for tools and parts. In support of its proposition that the control department was permanently eliminated shortly after the 22 August 1980 layoff, Charles Browder testified that the inventory control department was eliminated within 2

weeks after Honeycutt's layoff, and that since that time, the leadman took over this function and issued parts and tools to employees. The record reflects that Charlie Pigman, Honeycutt's immediate supervisor, did not leave Respondent's employment until 26 October 1980, more than 2 months after the unlawful layoff. Thus, it is clear that the inventory control department was not eliminated within 2 weeks after the 22 August 1980 layoff. Moreover, if we assume, as testified to by Charles Browder that the inventory control department was eliminated, the General Counsel contends that Honeycutt was qualified to perform laborer jobs and that it was Respondent's duty to offer Honeycutt reinstatement to laborer jobs. Browder testified that Respondent hired laborer employees who had no prior experience performing that type of work. Additionally, Browder admitted that Respondent hired new employees in the laborer jobs after the 22 August 1980 layoff.

Because I am not satisfied that the inventory control department was permanently eliminated, based on Browder's testimony, and because Honeycutt was qualified to perform laborer jobs, it is my conclusion that Respondent was under an obligation to offer reinstatement to Honeycutt and that absent such an offer of reinstatement, Respondent's backpay obligation has not ceased. Thus, it is clear that new employees with no prior experience were hired after Honeycutt's unlawful layoff to perform laborer's work which I am satisfied could have been performed by Honeycutt. Accordingly, it is my conclusion that Rudolph Honeycutt is entitled to net backpay through the first quarter of 1985 in the amount of \$44,526. It is further my conclusion that his backpay is continuing and that the further amounts of backpay due beginning with the second calendar quarter of 1985 to date can be handled in the compliance stage of this proceeding.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹³

¹³ 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

ORDER

The Respondent, A & T Manufacturing Company, Jeff, Kentucky, its officers, agents, successors, and assigns, shall make whole the discriminatees involved herein and the backpay claimants by payment to them of the amounts of net backpay set forth opposite their names, and any accruing additional amounts hereinafter determined, plus interest thereon accrued to the date of payment, less¹⁴ tax withholdings required by Federal and state law.

Curt Brock	\$120
Ernest Brock	270
Curtis Brown	6,320
Carl Campbell	6,004
Rollin Campbell	342
Lloyd Eversole	270
Ezekial Feltner	252
Rosco Johnson	96
Billy Joe Leavey	204
Beecher Morris	352
Curt Morris	126
Danny Osborne	126
Delmore Scott	132
Melvin Sebastian	240
Jerry Sexton	240
Jimmy Sizemore	120
Daniel Watkins	240
Jerome Swalec	1,840
Taylor Whitehead	1,840
Wayne Adams	1423,916
Darrell Boggs	1449,634
James Combs	1443,805
Michael Combs	1421,745
Johnny Everidge	1438,818
Rudolph Honeycutt	1444,526

¹⁴ The amounts set forth in this supplemental decision are the net backpay amounts due these employees through the end of the first calendar quarter of 1985. As their backpay is continuing to date and until Respondent makes these employees a valid offer of reinstatement, their backpay will continue to accrue. I have not made a determination of the additional amounts due beginning with the second calendar quarter of 1985 to date, but will leave that for further compliance proceedings.