Art's Way Vessels, Inc. *and* International Association of Machinists and Aerospace Workers, AFL–CIO. Case 33–CA–015771

September 26, 2012

SUPPLEMENTAL DECISION AND ORDER, REMANDING IN PART

BY CHAIRMAN PEARCE AND MEMBERS GRIFFIN AND BLOCK

On February 10, 2012, Administrative Law Judge Earl E. Shamwell, Jr., issued the attached supplemental decision. The Acting General Counsel filed exceptions and a supporting brief, the Respondent filed an answering brief, and the Acting General Counsel filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the judge's supplemental decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions as modified below and to adopt the recommended Order as modified and set forth in full below.[2]

We agree with the judge, for the reasons he states, that the vacation benefits granted to several employees under the "bridge" agreement between the Respondent and the Union properly offset the vacation backpay amounts due those employees under the compliance specification.[3] In affirming the judge's finding, we also rely on *Mining Specialists, Inc.*, 330 NLRB 99, 103 (1999), in which the Board explained that:

> [i]n determining whether a respondent should be allowed a credit or setoff against backpay claims, the Board examines the nature and purpose of the payments in question. The basic rule is that a respondent is entitled to a setoff only if the additional compensation paid the employees is equivalent to the element of backpay claimed in the specification.

Here, the additional vacation benefits that the Respondent granted employees under the bridge agreement were identical in nature and purpose to the vacation benefits provided in the repudiated collective-bargaining agreement. Accordingly, the bridge agreement's vacation benefits properly offset the vacation backpay amounts set forth in the compliance specification.[4]

ORDER

The National Labor Relations Board orders that the Respondent, Art's Way Vessels, Inc., Dubuque, Iowa, its officers, agents, successors, and assigns, shall make whole the individuals named below by paying them the amounts set forth opposite their names, plus interest computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), minus tax withholdings required by Federal and State law:

Dustin DeMoss	$ 0
Robert Dolter	0
Jeff Henry	822.42
Travis Jongsma	56.69
Eric Kammerude	1.77
Jeffrey Kemp	0
Jason Koeller	360.47
Dustin Kopp	1,588.71
Jonathan Krantz	305.37

[1] We adopt the judge's finding that former employees Robert Dolter and Jesse Maas are owed no backpay due to the Respondent's payments to both individuals pursuant to private settlement agreements that the employees executed, with the Union's participation.

Although the judge did not explicitly analyze the settlement agreements under the factors set forth in *Independent Stave Co*., 287 NLRB 740, 743 (1987), his analysis is consistent with those factors. Further, no party excepted to the judge's failure to expressly undertake an *Independent Stave* analysis.

[2] The parties stipulated that the compliance specification accurately sets forth the backpay amounts owed to employees, subject to certain offsets and credits claimed by the Respondent. However, as the Acting General Counsel correctly asserts on exception, the summary backpay amounts the judge lists erroneously reflect the Respondent's calculations in its answer to the compliance specification. The attached Order correctly sets forth the backpay amounts to be paid to employees and remands the proceeding to the Regional Director to recompute the backpay owed to four employees, as set forth in fn. 4 below.

[3] *Art's Way Vessels, Inc*., 355 NLRB 1142 (2012). The Board found that the Respondent violated Sec. 8(a)(5) in several respects, including by repudiating its collective-bargaining agreement with the Union and making unilateral changes to vacation benefits provided in the agreement.

[4] Under the rule of *Mining Specialists*, however, the Respondent is not entitled to offset its holiday, overtime, or wage rate backpay liability with the vacation benefits granted under the bridge agreement, as vacation benefits are not equivalent to those other backpay components. The bridge agreement specifically covers only vacation benefits.

Although the Respondent presented evidence that 10 employees were granted vacation benefits under the bridge agreement, the compliance specification indicates that only 4 of these employees, Aaron Decker, Toby Hicks, Jesse Mumm, and Steven Noggles, are owed vacation backpay. We shall remand this proceeding to the Regional Director to recompute the net backpay owed these four employees, by subtracting the amounts of the vacation benefits granted to them under the bridge agreement.

The record shows that Brandon Yutzy was not granted vacation benefits pursuant to the bridge agreement. Therefore, he is owed $137.76 in vacation backpay, as set out in the compliance specification.

Bob Lehnhardt	2,339.10
Jason Lenstra	0
Brandon Loken	438.64
Jesse Maas	0
Kenny Mills	407.65
Timothy Riley	973.39
David Tigges	2,059.54
Cody Walen	0
Brian Wepking	245.44
Richard White	184.00
Brandon Yutzy	474.43
Total	10,257.62

IT IS FURTHER ORDERED that the portion of this proceeding pertaining to Aaron Decker, Toby Hicks, Jesse Mumm, and Steven Noggles is remanded to the Regional Director for Subregion 33 for the purpose of recalculating the net backpay owed to them.

Dated, Washington, D.C. September 26, 2012

Mark Gaston Pearce, Chairman

Richard F. Griffin, Jr., Member

Sharon Block, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Nathaniel E. Strickler, Esq. and *Debra L. Stefanik, Esq.,* for the Acting General Counsel.

Kevin J. Visser, Esq. (Simmons Perrine Moyer Bergman PLC), of Cedar Rapids, Iowa, for the Respondent.

SUPPLEMENTAL DECISION

STATEMENT OF THE CASE

EARL E. SHAMWELL JR., Administrative Law Judge. This case was tried in Peoria, Illinois, on October 12, 2011, based on a compliance (backpay) specification and notice of hearing issued by the Regional Director of Subregion 33 of the National Labor Relations Board (the Board) on July 29, 2011.

On September 22, 2010, the Board issued its Decision and Order in Art's Way Vessels, 355 NLRB 1156; this Decision and Order was enforced by the Eighth Circuit Court of Appeals on April 15, 2011.[1]

The underlying Board proceeding and the Board's remedial order stemmed from the Respondent's unlawful withdrawal of recognition of the Union, its repudiation of the extant collective-bargaining agreement with the Union, and its making of unilateral changes to the wages, hours, and terms or conditions of employment of the bargaining unit employees.

The Board's Order, as enforced by the Court of Appeals, required the Respondent, inter alia, and in pertinent part to:

1. Cease and desist from

(a) Refusing to recognize and bargain with the International Association of Machinists and Aerospace Workers, Local Lodge 1238, District 6, AFL–CIO, as the collective-bargaining representative of the Respondent's employees in the following appropriate unit concerning terms and conditions of employment:

> All regular full-time and regular part-time production and maintenance employees, excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) Repudiating or refusing to adhere to the collective-bargaining agreement that the Respondent entered into with the Union on September 18, 2006.

(c) Making unilateral changes to employees' terms and conditions of employment during the term of a collective-bargaining agreement without the consent of the Union.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Upon request of the Union, adhere to the collective-bargaining agreement that went into effect on August 16, 2006, and continue those terms and conditions until such time as the parties complete a new agreement, good-faith bargaining leads to a valid impasse, or the Union consents to changes.

(b) Upon request of the Union, rescind any unilateral changes to the terms and conditions of employment of unit employees that were made without the consent of the Union during the term of the collective-bargaining agreement when such terms and conditions were subjects covered by the collective-bargaining agreement.

(c) Recognize the Union as the exclusive representative of employees in the bargaining unit.

(d) Make whole employees and former employees, with interest, for any and all losses of wages and benefits suffered since September 5, 2008, as a result of the Respondent's repudiation of, and refusal to adhere to, the collective-bargaining agreement reached with the Union on September 18, 2006.

(e) Reimburse the Union, with interest, for any dues that, under the collective-bargaining agreement, the Respondent was required, but failed, to remit to the Union since September 5, 2008.

The issue for resolution in this matter relates solely to the amount of backpay that may be due individual members of the unit of employees covered by the aforesaid order.

It is undisputed that the following named employees (or former unit employees as the case may be) comprise the entire universe of the Respondent's employees covered by the Specification and who may be entitled to backpay awards under the make-whole provisions of said order:

[1] The Respondent and the Board entered into a consent judgment enforcing the Board's Order.

1. Aaron Decker	*13. Jason Lenstra*
2. Dustin DeMoss	*14. Brandon Loken*
3. Robert Dolter	*15. Jesse Maas*
4. Jeff Henry	*16. Kenny Mills*
5. Toby Hicks	*17. Jesse Mumm*
6. Travis Jongsma	*18. Steven Noggles*
7. Eric Kammerude	*19. Timothy Riley*
8. Jeffrey Kemp	*20. David Tigges*
9. Jason Koeller	*21. Cody Walen*
10. Dustin Kopp	*22. Brian Wepking*
11. Jonathan Krantz	*23. Richard White*
12. Bob Lehnhardt	*24. Brandon Yutzy*

I. THE PARTIES' STIPULATION REGARDING THE SPECIFICATION

At the hearing,[2] the parties stipulated and agreed:

1. Bargaining unit employees are entitled to be made whole, with interest, for the loss of wages and benefits suffered since September 5, 2008, as a result of the Respondent's repudiation of, and refusal to adhere to, the Agreement reached with the Union on September 18, 2006 (the 2006 Agreement).

2. The 2006 Agreement (in Art. 15) requires the Respondent to pay specific minimum starting wage rates for new hires by job classification; an automatic wage increase of 50 cents per hour after successful completion of his/her probationary period which, under Article 6 of the Agreement, is not to exceed 90 calendar days; and thereafter 25-cents-per-hour wage increases effective on the payroll period after each calendar quarter until the maximum of the classification rate is reached for all classifications.[3]

3. An appropriate method for calculating the amount of "wage rate backpay" due to each bargaining unit employee is to subtract the hourly wage rate he/she was actually paid from the applicable contractual hourly wage rate he/she should have been paid, which results in the amount of wage rate shortage. Then, multiply the amount of wage rate shortage by the number of regular hours worked. Next, add to the resulting figure the product of multiplying the amount of wage rate shortage by one and one-half (1.5) and by the number of overtime hours worked. The final number is the "wage rate backpay."

4. The 2006 Agreement in (Art. 10) provides that overtime be compensated at the rate of time and one-half for all hours worked in excess of 40, or all hours worked over 8 hours in a day, and all hours worked on Sunday be paid double time.

5. The Respondent paid time and one-half overtime rates only for worktime exceeding 40 hours in 1 week, rather than for worktime exceeding 8 hours in 1 day and double time for all hours worked on Sunday.

6. An appropriate method for calculating the amount of overtime backpay due to each bargaining unit employee is to subtract the number of hours he/she was actually paid time and one-half from the number of hours he/she should have been paid time and one half and/or double time pursuant to Article 10 of the 2006 Agreement which results in the amount of underpaid overtime hours. Then, multiply the amount of underpaid overtime hours by one half (.5) and by the applicable contractual hourly wage rate he/she should have been receiving.

7. The differentials the Respondent owes employees as a result of its unilateral changes regarding overtime are set forth under Overtime Backpay in the Backpay Calculation in Appendix B-1 through B-24. The total amount of overtime pay owed is $1,476.65 as set forth in the Backpay Calculation Summary in Appendix B-25.[4]

8. The 2006 Agreement (in Article 11) provides for 8 fixed holidays and 3 floating holidays, for a total of 11 paid holidays annually for regular full-time employees who have completed their probationary period, to be paid at 8 hours at the employee's current rate of pay.

9. The 2006 Agreement (in Art. 12) provides for specific amounts of annual paid time off; i.e., paid vacation based upon years of continued service as set forth below:

Length of Service	Number of Days Vacation
During year 1	5 days prorated
After 1 year	5 days
At 2 years	6 days
At 3 years	7 days
At 4 years	8 days
At 5 years	10 Days
At 6 years	11 days
At 7 years	12 days
At 8 years	13 days
At 9 years	14 days
At 10 years	15 days

(Maximum of 3 weeks paid vacation.)

10. The backpay period begins on September 5, 2008, and continues until the Respondent fully rescinds all unilateral changes and fully adheres to all terms of the collective-bargaining agreement.

II. CONTENTIONS OF THE PARTIES

It should be noted that the parties are not in disagreement regarding the proprietary of the formula, computation, and methodology employed in the Specification. Where the parties disagree essentially lies in the Respondent's claim that it should be allowed certain deductions in the backpay amounts claimed to be due the covered employees because of certain releases granted by three of the listed employees; and certain collectively bargained-for adjustments or offsets to claimed backpay associated with paid time off (or other successful bargained-for terms). The Respondent also contests any claim that certain employees' wage rates continue to be in arrears. Accordingly, the Respondent has generally stipulated and agreed that the

[2] The Respondent also made a number of admissions in its Answer to Compliance Specification that correlate to the stipulations and agreements made by it at the hearing.

[3] Appendix A of the Specification lists five job description/classifications covered by the 2006 Agreement along with the wages per classification by contract year for each, to include the minimum starting wages and the maximum wage.

[4] The Respondent also asserts that it has already paid the covered employees the amount stated as due in the Specification. The Specification in paragraph 17 thereof states that the Respondent has paid $12,706.58, including $1476.65 for overtime backpay.

Specification reflects a rational and reasonable approach to arriving at the backpay that is owed to the employees in question. The Respondent's stipulation and agreement as set out hereinbefore reflects that fact. The Respondent's disagreement with the bottom line backpay figures associated with the Specification essentially concerns the failure of the Specification to give it credit for the aforesaid releases and the adjustments which, if given, reduce the amount lawfully owed to the employees to make them whole. The gross backpay figure is not disputed by the Respondent.

The General Counsel asserts simply that the Respondent is not entitled to the claimed deductions or adjustments and that since the Specification's formula and computation of gross backpay are not disputed, the Respondent owes the full amounts as calculated by the Compliance Officer.[5] The General Counsel also argues that the wage rates for four of the listed employees are still incorrect as of the May 7, 2011 payroll date, and therefore, the obligation to pay backpay to them continues to run. The General Counsel asserts that otherwise the full amounts (plus interest) as set forth in Appendix B-25 of the Specification are due the listed employees.

These matters will be more fully discovered later in this decision.

III. APPLICABLE LEGAL PRINCIPLES

While in this case, the Specification is not really contested, there is some usefulness to set out the legal principles enunciated by the Board that govern backpay cases.

With respect to compliance proceedings, the Board has established well-settled principles governing the resolution of backpay disputes through its own and Court proceedings.

Generally, where an unfair labor practice has been found, some backpay is presumptively owed by the offending employer in a backpay proceeding. *La Favorita, Inc.*, 313 NLRB 902 (1994), enfd. 48 F.3d 1232 (10th Cir. 1995).

The objective in compliance proceedings is to restore, to the extent feasible, the status quo ante by restoring the circumstances that would have existed had there been no unfair labor practices. *Hubert Distributors, Inc.*, 344 NLRB 339 (2005); *Alaska Pulp Corp.*, 326 NLRB 522, 523 (1998), citing *Phelps-Dodge Corp. v. NLRB*, 313 U.S. 177, 194 (1941).

The General Counsel's burden is to demonstrate the gross amount of backpay due, that is, what amount the employee would have received but for the employer's illegal conduct. The General Counsel, in demonstrating gross amounts owed, need not show an exact amount, an approximate amount is sufficient. *Laborers Local 158 (Worthy Bros.)*, 301 NLRB 35 (1991). Thus, it is well established that any formula which approximates what the discriminatee would have earned absent the discrimination is acceptable if it is not unreasonable or arbitrary under the circumstances. *Am Del Co., Inc.*, 234 NLRB 1040 (1978), *Frank Mascali Construction*, 289 NLRB 1155 (1988).

Once the gross backpay amounts are established, the burden shifts to the employer to establish facts that would negate or mitigate its liability. NLRB v. *Maestro Plastics*, 354 F.2d 170 (2d Cir. 1965), cert. denied 384 U.S. 972 (1966). In short, the burden is on the employer to show through a preponderance of credible evidence (*Browning Industries*, 221 NLRB 949, 951 (1975)) that no backpay is owed or that what is alleged to be owed should be diminished because the discriminatee was unavailable for work or neglected to make reasonable efforts to find interim work. *Inland Empire Meat Co.*, 255 NLRB 1306, 1308 (1981), enfd. mem. 692 F.2d 764 (9th Cir. 1982).

In seeking objectively to reconstruct backpay amounts as accurately as possible, the General Counsel may properly adopt elements from the suggested formulas of the parties. *Performance Friction Corp.*, 335 NLRB 1117 (2001), citing *Hill Transportation Co.*, 102 NLRB 1015, 1020 (1953).

Arriving at a proper backpay determination is often not an exact science or a precise exercise. In *Alaska Pulp Corp.*, supra, the Board stated that:

> Determining what would have happened absent a respondent's unfair labor practices . . . is often problematic and inexact. Several equally valid theories may be available, each one yielding a somewhat different result. Accordingly, the General Counsel is allowed a wide discretion in picking a formula.

It is practically axiomatic in Board law that in the case of unlawful unilateral changes in wages, hours, or other terms or conditions of employment, the Board will order that the status quo ante be restored and that employees be made whole for any benefits the employer unilaterally discontinued. *Beacon Journal Publisher's Co. v. NLRB*, 401 F.2d 366 (6th Cir. 1968); *Dorsey Trailers, Inc.*, 327 NLRB 835 (1999).

On the other hand, if the change involved the granting of a benefit, the Board will order rescission of the beneficial change only if the union seeks such rescission. *Fresno Bee*, 339 NLRB 1214 fn. 6 (2003); *KX TV*, 139 NLRB 93 (1962). *Innovative Communications Corp.*, 333 NLRB 665, 668–669 (2001).

Accordingly, in situations where the changes contain both a detriment and a benefit to the affected employees, a status quo ante restoration order is conditioned upon the affirmative desires of the employees as expressed through their bargaining representative. *Children's Hospital of San Francisco*, 312 NLRB 920, 931 (1993).

Finally, any uncertainties or ambiguities must be resolved against the wrongdoer whose conduct made such doubts possible. *Teamsters Local 469 (Costal Tank Lines)*, 323 NLRB 210 (1997).

[5] It should be noted that the General Counsel contends specifically that the adjustments and credits sought by the Respondent are not cognizable defenses for backpay cases.

IV. DISCUSSION OF THE RESPONDENT'S CLAIMS FOR CREDIT AND ADJUSTMENT OF THE SPECIFICATION

A. The Respondent's Claim for a Backpay Offset Due to Successfully Bargained-For Terms Regarding Paid Time Off, Vacation, and Holidays

The Respondent asserts that prior to the Board's Order[6] it unilaterally changed the unit employees' terms and conditions of employment to include granting to them the more generous vacation time—2 weeks—enjoyed by its unrepresented employees. However, when the Board Order issued, the Union requested on October 1, 2010, that this change be rescinded and this was done. However, as a consequence of the rescission, many unit employees received a negative vacation benefit balance. As part of its compliance with the Board Order, the Respondent submits that it entered into negotiations with the Union and, as a result, the parties agreed to award various affected members of the bargaining unit "bridge" paid time off (vacation days)—an extra contractual benefit—to put them in a position as good as or better than they were, specifically by eliminating the negative balances and giving them needed time off.

The Respondent contends that the Union and the Company in effect bargained over the Union's claim to paid time off, and this "settlement" reached through collective-bargaining should be encouraged and honored as opposed to resorting to the Board's backpay resolution (compliance) processes.

The Respondent argues that given this background, the Specification's calculation determining that the Company owes certain unit members a total of $2891.76 for holiday backpay and $1136.25 for vacation pay, a total of $4028.01 should be adjusted to reflect the parties negotiated settlements for each employee. Accordingly, the Respondent submits that this backpay amount as applied to the individuals should be reduced by the value of bridge pay it provided them in excess of the contract amounts, as well as the amounts it provided these employees in holiday and vacation backpay, that is $2862.74 for the former and $2909.16 for the latter, a total of $5771.90.

The General Counsel contends that the Respondent in effect rescinded a beneficial unilateral change in the vacation benefits and then "pocketed" the effect of its unlawful conduct with the result employees were placed in negative vacation balances. This action caused the Union to file a charge with the Board (in Case 33–CA–16196). The General Counsel submits that while the Respondent did grant employees additional vacation time as per the "bridge time" arrangement, there is no evidence showing that the Union ever agreed to this as an offset to the employees' backpay claims and entitlements. Accordingly, the General Counsel asserts that this unilaterally granted benefit should not be considered an offset to the backpay calculations of the Specification which rightly totals holiday and vacation backpay in the gross amount of $4028.01.

The issue for me in resolving this aspect of the controversy presents as a conflict between important but in context countervailing principles. On the one hand, the Board ordered the Respondent as wrongdoer to bargain with the Union in good faith, to honor the extant collective-bargaining agreement, and make the affected employees whole. On the other hand, the Board states that employees are only entitled to those terms and conditions of their employment in existence before the unlawful conduct took place; they cannot receive more but they should not be awarded less than that to which they are due.

Here, as was its right, the Union requested by letter[7] on October 1, 2010, that the Respondent, inter alia, rescind any unilateral changes to the terms and conditions of employment of unit employees as set out in the collective-bargaining agreement effective as of August 16, 2006. It seems clear that at least in terms of vacation and paid time off, the unit employees received less by way of benefits than the unrepresented employees. In the end, it seems equally clear that some bargaining between the parties took place and in 2011, around April 15, and, as a result, certain employees by agreement of the parties were given vacation days (and in the case of one, paid time off) by way of the bridge approach to address the transition from off-contract to contract-based vacation.[8] The idea at least from the Respondent's point of view was to give each affected employee a decent amount of time off (at their current rate of pay) until his next anniversary, in addition to his paid time off (PTO) and floating time he accrued each pay period.

The Respondent asserts that by striking this agreement with the Union—giving the affected employees vacation days—these employees have been made whole and are owed nothing more for vacation, holidays, and paid time off. Accordingly, the Respondent contends that the net backpay each employee purportedly is due under the Specification should be reduced by the amount the Company provided them as per the Backpay Calculation submitted with the Respondent's brief.

The General Counsel for his part evidently asserts that there is no evidence to show that the Union agreed that the Company's bridge time approach was to serve as a payment (partial or otherwise) for the backpay required under the make-whole provisions of the Board's Order.

However, it is abundantly clear to me that the Union agreed through contract negotiations to the bridge arrangement that benefitted the employees. It is also clear to me that in the aftermath of the Board's Order, especially when the Union requested rescission of all of the unilateral changes, some of the unit employees were placed in a quandary of sorts in that the Union's request resulted in the loss of an important benefit, and even put some employees in a negative balance regarding vacations, et al.

Patrick O'Neil, the Company's general manager who was charged with negotiating the new collective-bargaining agree-

[6] While the Eighth Circuit affirmed the Board's Order, I will refer to the ultimate decision here as the Board's Order.

[7] See GC Exh. 4, a copy of the letter from the Union's business representative, Gary Papenheim, dated October 1, 2010. See also R. Exh. 6, a letter from Steven Nickel, Grand Lodge Representative of the International Association of Machinists and Aerospace Workers, confirming the Union's request for rescission in the October 1 letter.

[8] R. Exh. 10, a copy of a letter dated April 15, 2011, from the Respondent's counsel (and chief negotiator) to Gary Papenheim of the Union and in which, inter alia, bargaining is mentioned, especially with regard to the paid time off/vacation issue over the past 2 months. The letter includes the names of 11 unit employees and the vacation days proposed to be accorded them.

ment,[9] testified that during the collective-bargaining sessions that began in early 2011 and concluded in April 2011, there was a "lot of confusion" surrounding the vacation issue.

According to O'Neil, certain employees were going to have to wait a substantial period before they would be entitled to paid time off when they were returned to the 2006 Agreement's vacation and paid time-off provisions; employees would have to wait until their anniversary date to get these benefits. O'Neil said that some but not all of the affected employees were relatively new hires, but all were considered good employees by management and deserving of some time off. According to O'Neil, it was in this context that the Company suggested the bridge approach—a bridge to get the employees some time off—until they reached their anniversary date and then the new contract provisions would be applicable. O'Neil went on to say that the amount of bridge time was "weighted" to give each affected employee the number of days it was believed was appropriate for the employee's classification, current rate of pay and the time needed to get him to his respective anniversary date. O'Neil stated that the Union agreed to the bridge approach as evidenced by the April 15, 2011 letter to Papenheim.

O'Neil further testified that by negotiating and providing these employees bridge benefits, the Company in his view does not owe them the amounts listed in the Specification; that this was the deal struck with the Union in the bargaining sessions. O'Neil noted that all unit employees are now covered by a contract-based paid time-off plan.

s I view the position of the Respondent, the Company is requesting that it be given an "adjustment" or credit for the amounts it provided the affected employees through the bridge program. Contrary to the General Counsel, I do not interpret its position to be that the Union and the Respondent specifically agreed that the bridge program would serve as an offset to any amounts claimed through the compliance proceeding. The Respondent's request, being more equitable than legal, viewed in this light raises the conflict of principles that I alluded to earlier.

In resolving this matter, I believe that primacy be given to the Board policies, practices, and authorities undergirding collective bargaining, that is the parties coming together, meeting, discussing and coming to a fair resolution of a labor relations problem, here dealing with the issue of fairly providing vacation benefits to unit employees. Also, there is the matter of the Respondent's compliance with the Board's Order which should be considered in the context of the instant proceeding. Clearly, the Respondent was the wrongdoer and should not be rewarded for its unlawful behavior. However, on the record before me, it appears that the Respondent essentially did the right thing and took the necessary steps to put itself right with the commands of the Board and the circuit court by recognizing the Union, bargaining with it, rescinding unilateral changes and making payments in advance for certain items later included in the Specification. It seems clear that the Respondent was concerned about the vacation issue for valued employees and took steps to address the matter. The Union evidently agreed during negotiations to the bridge program and the employees received the benefits of the plan.[10]

So the issue on balance for me is whether an award to these employees of the additional vacation/holiday pay amounts called for by the Specification would run afoul of the unjust enrichment principle. I would find and conclude that agreement between the Union and the Respondent regarding the bridge program more than fairly compensated, but certainly made whole the affected employees. I would grant the Respondent its requested adjustment/credit for the amount the employees were paid under the bridge program and reduce the net amounts associated with the vacation, holiday, et al. contained in the Specification for the affected employees to the amounts as calculated by the Respondent in its proposed backpay classification submitted with its brief. The employees in question are as follows:

Aaron Decker	Kenny Mills
Toby Hicks	Jesse Mumm
Jeffrey Kemp	Steven Noggles
Jason Koeller	Brian Wepking
Dustin Kopp	Brandon Yutzy
Bob Lehnhardt	

B. The Respondent's Claim for a Reduction Due to the Employee Settlement Agreements

The Specification includes Robert Dolter, Jesse Maas, and Cody Walen as appropriate claimants for consideration for backpay awards. The Specification concludes that Walen, having been already paid $1961.07 by the Respondent, is owed nothing additional. The Respondent concurs with this determination. The Specification states, however, that Maas and

[9] The parties negotiated a new collective-bargaining agreement around April 30, 2011, covering April 30, 2011, through April 30, 2014.

[10] The General Counsel contends that the Respondent failed to comply with its subpoena requesting bargaining notes and payroll records. (See GC Exh. 15, a copy of the subpoena duces tecum returnable on October 12, 2011, and the Respondent's Response to Subpoena dated October 11, 2011.) The General Counsel asserts this subpoena request was issued in anticipation of the Respondent's defense that the Union and the Respondent agreed to reduce the amount of backpay owed the affected employees in their contract negotiations. During the hearing, O'Neil testified that he possessed collective-bargaining notes, but these were not produced as per the subpoena.

The General Counsel asserts that its ability to prepare for this defense and cross-examine was adversely affected by the Respondent's unexplained failure to comply with the subpoena. Accordingly, the General Counsel requests that the Respondent should be sanctioned by me, to include a finding that the parties did not agree to reduce vacation backpay in the compliance proceedings.

Because I have concluded that the parties did not in their negotiations specifically agree to use the bridge program as an offset in the compliance proceeding, that this was not the thrust of its "defense" to the Specification, there is no basis to sanction the Respondent for any possible noncompliance with the subpoena in question. I note further that the matter of compliance (or noncompliance) with subpoenas should be raised timely. This was not done in this case. In fact, I had no idea that a subpoena duces tecum had even been issued by the General Counsel for the hearing, let alone that there was a compliance issue, until much into the hearing.

Dolter are owed $514.80 and $5422.72 in backpay, respectively.

It is undisputed that Dolter and Maas, along with Walen, executed certain agreements with the Respondent on June 10, 2011, purporting to resolve any and all disputes between themselves and the Respondent. The Respondent contends that on the strength of Dolter's and Maas' unambiguous and binding releases, it owes them nothing and that the amounts for the two in the Specification in this particular should not be credited.

The General Counsel counters, arguing that the Respondent is merely trying to double count the settlement agreements; that is, to apply these release agreements both to the backpay specification amounts and a non-Board agreement involving other unrelated unfair labor practice charges filed by the Union.

By way of background, the Union on January 31, 2011, filed an unfair labor practice charge against the Respondent alleging essentially that the Company violated the Act by failing and refusing to bargain in good faith by unilaterally revoking the (unit) employees' vacation benefits and refusing to meet and bargain with the Union to achieve a new collective-bargaining agreement.[11]

Also, on March 11, 2011, the Union filed another charge against the Respondent alleging that on that day the Company unlawfully discharged employee Jesse Maas.[12] The two charges were later consolidated, a complaint was issued by the Region, and the cases were scheduled for hearing. However, shortly before the hearing was to commence, the Union and the Respondent agreed to settle the two cases. As part of the settlement, the Respondent's counsel (and chief negotiator) prepared four agreements for signature by the Company, the Union, and employees, Dolter, Maas, and Walen, all of which was accomplished by June 10, 2011. The General Counsel did not directly participate in these agreements, but did not object to the parties' informal settlement of the two cases or the agreements that resulted.

Turning to its claim that the three employees had compromised their claim to backpay in the instant case, the Respondent first points to the agreements themselves, all of which were signed and executed by the three employees, and submits that the releases are unambiguous and therefore binding on the parties and the General Counsel in this compliance proceeding.

The Respondent contends that the following pertinent provisions of the agreement demonstrate not only the clarity of the parties' intentions, but also the unambiguously inclusive nature of the parties' obligations and their coverage of and for any and all claims the employees had and may have had against the Company.[13]

> WHEREAS, the Parties wish to fully and finally resolve any and all claims that [employee] may have including, but not limited to, those claims alleged in the Grievances, without the cost and expense of a hearing and without any admission of liability, on the terms and conditions set forth herein.
>
> [Employee] hereby acknowledges that he is executing this agreement solely in reliance upon his own knowledge, belief, and judgment and not upon any representations made by Art's Way or others on its be half. Moreover, [employee] acknowledges that he has read this Agreement, that [employee] has had the opportunity to consult with competent counsel, and that he understands and acknowledges the significance and consequence of it and executes it voluntarily with full understanding of its consequences.
>
> [Employee] for himself and on behalf of any person claiming under or through him, his beneficiaries, heirs, agents, successors, and assigns hereby fully, finally, and forever acquits, releases and discharges Art's Way, its past, present, and future affiliates, parent corporations, subsidiaries, predecessors, successors, and assigns, and each of their respective past, present, and future officers, directors, employees, agents, personal representatives, attorneys, and accountants from any and all manner of claims, counterclaims, demands, cases of action, obligations, setoffs, defenses, suits, sums of money, injuries, damages, or liabilities whatsoever, known or unknown, alleged or unalleged, vested or contingent, whether based on statute or at common law or otherwise, at law or in equity, which he now has or heretofore had since the beginning of time through the date hereof, including without limitation (1) any claims asserted or which could have been asserted in the Grievances; (2) any claims arising out of or relating to the negotiations of this Agreement; and (3) any claims arising out of or relating to Mr. Walen's employment at Art's Way. This Release extends to all officer, directors, employees, agents, and personal representatives of Art's Way in their individual capacities.

Gary Schmidt, called as a witness by the Respondent, testified at the hearing. Schmidt stated that he has served as the Grand Lodge Representative for the Union since April 2009, and in this capacity he was involved in negotiating the settlement agreements and releases of Dolter, Maas, Walen, and the Union. Schmidt noted that he worked with the Respondent's counsel in getting the agreements executed.

[11] See GC Exh. 9(a), a copy of this charge, designated 33–CA–16196. This charge was amended on March 2 (see GC Exh.9(b)), and March 11, 2011 (GC Exh. 9(c)). Notably, these charges revolved around the Respondent's chosen way of dealing with the transition from off-contract to contract-based vacation, and paid time-off benefits previously discussed.

[12] See GC Exh. 8(a), a copy of this charge, designated 33–CA–16196. On March 22, 2011, this charge was amended to include a charge that essentially the Respondent had unlawfully unilaterally changed/eliminated a past practice of allowing bargaining unit employees to work on their personal projects at the plant utilizing the Respondent's equipment, implemented a new policy implementing the change and terminating Jesse Maas under and pursuant to or as a result of the implementation of the unlawful change. (See GC 8(b), a copy of the amended charge.)

[13] The agreements of Dolter, Maas, and Walen are essentially identical in the verbiage employed. They only differ in terms of the number of grievances filed by each employee and the monetary amounts to be paid to each man. I have omitted the employees' names in setting out the provisions the Respondent contends are pertinent and operative. The agreements of the three employees are contained in R. Exh. 1.

Schmidt stated that the final release agreements were subject to serious negotiations, with he and the Respondent's counsel going back and forth over the terms, but ultimately on June 10, 2011, coming to agreement; this was about 3 days before the commencement of the June 13 hearing on two unfair labor practice charges, 33–CA–16196 and 33–CA–16220. Schmidt recalled circulating a draft of the proposed agreements to the Board (Region) along with a proposed withdrawal of these charges; Schmidt said that he could not be positive that he provided copies to the General Counsel.[14]

Regarding the agreements, Schmidt said that the Respondent's counsel drafted them but it was his intention to have them serve as settlements only for the employee grievances associated with the two unfair labor practice charges; that he never considered the agreements to have a "global" reach to encompass the Board Order. According to Schmidt, it was his view that the issues associated with the underlying case here were already decided and he certainly was not going to negotiate matters already decided (by the Board) and include these in the proposed settlement of the two unfair labor charges.

Schmidt acknowledged that the settlement agreements for Dolter, Maas, and Walen did not include any language limiting or restricting their coverage to the unfair labor practice charges as drafted and which, on his instruction, were given to the three men for their signatures.[15] Schmidt insisted that while there was no limiting language in the settlement agreements, it was never his intention to include in their coverage the backpay that was owed the three by virtue of the Board Order.[16]

Testifying on the subject, Papenheim recalled that he was instructed by Schmidt to go to Dubuque and meet with the three employees at the Local's office to obtain their signatures on the releases, which were then to be faxed to the Respondent's counsel.

Papenheim noted that he had no part in the negotiation of the employee releases although he knew that there were charges (regarding wages) leveled against the Company during the contract negotiations then ongoing. According to Papenheim, the collective-bargaining agreement between the Union and the Respondent was signed on June 10, 2011 (the same day the employees signed the releases); however, the unfair labor charges in question were not a part of the negotiations he handled and, in fact, he was not really familiar enough with them to negotiate about them.

Papenheim recalled that at the time the Company wanted to get everything wrapped up—everything meaning the inclusion of the unfair labor charges. However, Papenheim said that his job was to negotiate a new agreement and he had no authority to act on behalf of the Union regarding the charges, or anything that may have occurred prior to December 2010. According to Papenheim, he never negotiated or had any role in the drafting of the employee releases.

However, Papenheim stated that on behalf of the Union, he did sign the settlement agreement between the Company and the Union; that he was in this instance directed by Schmidt to sign this agreement with which he had no part in negotiating.[17]

I have perused the copies of the employee release agreements for each of the employees and first would note that each appears to be authentic and bona fide. There is no dispute that each employee signed the agreement and that each man received the money to be given in consideration of the signed release; that is, Dolter received $9500, Maas $10,000, and Walen $500. There is also no dispute that the parties agreed that the settlement agreements and releases were to be interpreted under the laws of the State of Iowa.

Both the Respondent and the General Counsel on balance agree that in Iowa a contract is to be interpreted as a whole and all terms that are not ambiguous must be given effect. The Respondent's counsel, the primary drafter of the agreements, contends that it was the Company's intention to resolve all claims, including backpay that could derive from the Board Order that the three employees may have had or could expect that stemmed from their employment with the Company. Accordingly, the comprehensive language employed by the Company was chosen to achieve that end.

Notably, the three employees did not testify at the hearing. Therefore, their intentions, aside from the plain meaning of the words which they adopted by their signatures, cannot be ascertained.

In my view, the "Whereas" provisions of the settlement agreements clearly and unambiguously state the intentions of the parties, especially that part that says:

> WHEREAS, the Parties wish to fully and finally resolve any and all claims that [employee] may have including, but not limited to, those claims alleged in the Grievances, without the cost and expense of a hearing and without any admission of liability, on the terms and conditions set forth herein.

I would note that on April 15, 2011, the Eighth Circuit had by consent judgment enforced the Board's Order. Therefore, as I see it, the employees knew or should have known that they could expect something by way of an award or compensation because of the unlawful conduct of their employer. So, in June 2011, three employees (at least Dolter and Maas) who received the benefit of the assistance of the Union certainly could decide that instead of waiting for a possible compliance hearing or other proceeding that may delay their evident interest in leaving the Company—Maas and Dolter are no longer employed by the Respondent—they could take a settlement and get on with their lives.

There is nothing on this record to suggest that the three employees were taken advantage of, were subject to duress or

[14] Schmidt identified copies of a series of emails between himself and the Respondent's counsel regarding the agreements covering June 8–9, 2011. (See R. Exh. 11). Notably, there is a handwritten reference to the General Counsel on the exhibit.

[15] Schmidt stated that he received the three settlement agreements from the Respondent's counsel by email. He, in turn, instructed Papenheim to present them to the three for their signatures.

[16] Schmidt identified a Settlement Agreement and Release (also a part of R. Exh. 1) that the Union and the Respondent negotiated and also executed on June 10, 2011. Notably, this agreement, in my reading, seems to deal with and relate solely and exclusively to the resolution of the employee grievances and the two related unfair labor practice charges.

[17] Papenheim identified his signature on this agreement.

other undue influence in the execution of the settlement agreements and releases, which in my view are clearly unambiguous in terms of language, coverage, and intent. That the Union (Schmidt) did not contemplate and, in fact, did not want a "global" settlement of the employee claims is of no moment. The subject employees were certainly free to work their own deals, as was the Union—a fact acknowledged in the Union's settlement agreement. I would find and conclude that having released the Respondent for all possible claims, including those associated with the Specification, having reached an accord and satisfaction with the Respondent on June 10, 2011, (former) employees Dolter and Maas are not entitled to a backpay award in this proceeding. There being no dispute between the parties regarding employee Walen and the net backpay amount to which he is entitled under the Specification, he shall receive the amount as calculated under the aforesaid Specification.[18]

Accordingly, I would recommend that the net backpay calculated as due and owing Dolter and Maas under the Specification shall be reduced by the amount paid to each person by virtue of the releases signed by each.

C. The Respondent's Claim that Contrary to the Specification Four Employees Are Not Owed Backpay, Their Having Been Paid According to the 2006 Agreement

The Respondent submits that four employees listed in the Specification—Brandon Yutzy, Jesse Mumm, Dustin Kopp, and Toby Hicks—were paid their correct contract rate and therefore should not be further compensated. The General Counsel has disagreed with this assessment.

The General Counsel called Board compliance officer, Gregory A. Ramsay, to explain his treatment for backpay purposes of the four employees in question. Ramsay testified that he drafted the Specification and, in particular, with regard to Hicks, Kopp, Mumm, and Yutzy, he could not state that each man was (at the time of the hearing) receiving the correct contract rate because the Respondent had not provided him any payroll records beyond those covering the last pay to them; that is May 7, 2011.

Using Hicks as an example of how he calculated the backpay for each of the listed employees, Ramsay explained his methodology.

According to Ramsay, he examined the 2006 Agreement wage rates for each classification—starting with the minimum starting wage rate. Ramsay noted that the 2006 contract specified a 50-cent wage increase to the minimum starting wage after the employee served his 90-day probation period. Employees, like Hicks, also received under the contract a 25-cent increase in the first pay period in the first quarter after the probationary period. According to the 2006 Agreement, an employee like Hicks also was entitled to receive a 25-cent increase in each quarter until the maximum contract wage rate was reached for the particular job description/classification.

Ramsay said that using this approach, he computed the correct contract wage rate for each employee listed in the Specification and then compared this to the payroll records provided by the Respondent to arrive at the correct amount. Ramsay noted where the contract rate was higher than the wage rate received by the employee, he computed the difference, designating this the "wage rate shortage" in the Specification.

Ramsay noted while he took this approach with all of the employees, that with respect to the four employees he simply could not state that they were receiving the proper contract rate to date.

For its part, the Respondent called Patrick O'Neil who testified that Union Representative Papenheim, former employee Maas, and the Respondent's counsel met for purposes of negotiating the new contract early in 2011, and specifically to make sure the pay rates were correct. According to O'Neil, they all agreed to canvass the employees to see if they were being paid correctly. O'Neil stated that the word he received from the Union was that there were no objections raised by the employees. Accordingly, O'Neil said that he believed the issue was resolved and every employee was being paid properly.

Papenheim testified that he first met with O'Neil and Maas around February 17, 2011, at the plant and that negotiations for a new contract began sometime between March and April and he attended all bargaining sessions.

According to Papenheim, he was not really sure whether the issue of the correct wage came up in the negotiations, but he did recall speaking with O'Neil and Maas about actually going on the shop floor and asking the employees if they believed their paychecks were correct. Papenheim stated that he could not recall any employee saying that his pay was incorrect.[19]

The General Counsel notes that he subpoenaed the Respondent and specifically requested that it provide updated payroll records for the four employees' records, specifically covering the period December 1, 2010, to date; the subpoena duces tecum called for production of the payroll records by October 12, 2011, the date of the hearing.[20]

The General Counsel contends that the Respondent did not object to or file a petition to revoke the subpoena. Rather, the Respondent elected to respond to the request for payroll records of the four by saying:

> Respondent objects to the request to the extent it seeks documents that are not relevant. Subject to and without waiving said objections, please see payroll records previously produced to Gregory Ramsay on January 27, 2011, February 16, 2011, February 17, 2011, May 16, 2011 and July 28, 2011.[21]

[18] I should note that irrespective of the parties' position regarding Walen, I would also find and conclude that his release was also valid and would stand as a bar to any award under the Specification.

[19] Papenheim was shown R. Exh. 4, a document entitled "Art's Way Survey," which purports to be a questionnaire directed to the unit employees soliciting various information relevant to the Board Order, to include the employees' name, classification starting and current wages. Papenheim said that he had no role in the possible distribution of the survey and, in fact, had never seen it before testifying at the hearing.

[20] See GC Exh. 16, a copy of the subpoena duces tecum in question.

[21] See GC Exh. 16, which also includes a copy of the subpoena and the Respondent's Response to Subpoena in question. The General Counsel notes that the payroll records provided by the Respondent for July 28, 2011, showed the amounts paid to employees for overtime which has been accounted for in the Specification as a deduction for payment of overtime by the Respondent.

The General Counsel asserts that the best evidence of whether employees were indeed being paid the correct contractual wage rate is the payroll records from December 2010 to date, which he submits should reflect the correct wage rates as defined by the 2006 Agreement. The General Counsel also contends that the Respondent's failure to provide payroll records beyond May 7, 2011, that is to date of the hearing, also impedes the Board's attempt to ensure that the four employees have been paid wage rates consistent with the 2006 Agreement.

The General Counsel requests that because of the Respondent's failure to provide updated payroll records for the four employees from December 2010 to the present, I draw an inference that the four continued to work from May 7, 2011, to the present, the average number of hours they were working prior to May 7, 2011, as specified in the payroll records.

Accordingly, the General Counsel submits that based on the backpay period applicable to each employee as set out in the Specification, and considering the average number of regular hours each employee worked during a specific quarter and dividing a quarter by 13 (the number of weeks in a calendar quarter), one can determine the average number of hours the employee worked or would have worked weekly. This figure can then be used to determine what the employee earned or would have earned in quarters for which there were no payroll records provided by the Respondent. In this fashion, the amounts owed to the employees could be determined in lieu of the relevant up-to-date payroll records, specifically the payroll records for the third and fourth quarters of 2011. The General Counsel would add these amounts to the net backpay figures for each as per the Specification.

Accordingly, employing the above hypothesis and methodology, the General Counsel submits that Hicks would have worked an average of 36.92 hours per week for the third and fourth quarters of 2011—based on a first quarter total of 480.08 hours actually worked—multiplied by the Specification's wage rate shortage of 62 cents per hour for the second quarter of 2011, his net backpay would be increased from $440.23 to $1083.74. Notably, the amount would be reduced to allow for the Respondent's providing holiday/vacation pay and the value of the bridge pay as per my previous ruling to $667.39.

As to the remaining three employees, using the same approach and methodology for each, the General Counsel submits that Kopp would have averaged 39.84 per week for the third and fourth quarters of 2011—based on a first quarter total of 518 hours actually worked—multiplied by the Specification's wage rate shortage of 31 cents for the second quarter of 2011, his net backpay would be increased from $1,267.60 to $1588.71. However, I note that this amount would be reduced to allow for the Respondent's providing holiday/vacation pay and the value of the bridge pay as per my previous rulings to $938.77.

For Mumm, he would have averaged 39 hours per week for the third and fourth quarters of 2011—based on a first quarter total of 512 hours actually worked—multiplied by the Specification's wage rate shortage of 37 cents per hour for the second quarter of 2011, his net backpay would be increased from $640.30 to $1016.44. This amount would be reduced by $156.02 to allow for holiday pay paid to him; that is $860.42.

Finally, for Yutzy, he would have averaged 38.67 hours per week for the third and fourth quarters of 2011—based on a first quarter total of 508 hours actually worked—multiplied by the Specification's wage rate shortage of 1 cent per hour for the second quarter of 2011, his net backpay would be increased from $307.65 to $317.81. However, Yutzy's backpay would be reduced by $125.26 for vacation pay received from the Respondent.

The Respondent, using its own calculations, contends that Hicks is owed net backpay totaling $95.18; Kopp $717.36, Mumm $521.79, and Yutzy $474.43.

As I have stated, arriving at a perfect solution to backpay in this cases is highly unlikely. Clearly, this could not be more evident than here when the Respondent's net backpay calculation—at least in one instance, Yutzy—exceeds that of the General Counsel.

However, in my view, it is most important in this make-whole endeavor for the offending party, here the Respondent, to cooperate as fully as possible in providing correct, full, and accurate data so that injured employees can be made as whole as is humanly possible, as the Board and the Court require.

With regard to the General Counsel's subpoena, it appears to me that the Respondent did not fulfill that obligation. First, the request by the General Counsel for the payroll records covering December 2010 to the present—then October 12, 2011—was not unreasonable or overbroad on its face and certainly was relevant and material to the determination of what these four employees may be entitled to—to be made whole as per the Specification to which the Respondent did not object. Moreover, it seems these records would have been readily available, being a commonly made, kept, and maintained business record of a for-profit business even if not in time for the hearing, but certainly posthearing.

As pointed out by the General Counsel, the Respondent never objected by way of a revocation petition, nor otherwise to the subpoena's request for the payroll documents in question. The Respondent instead rested its production of these documents on other payroll documents it had already produced. In my view, as is evident, this response was not helpful and, in fact, seemed rather cavalier. Accordingly, the compliance officer (and the General Counsel) was compelled to come up with a formula to bring the backpay amounts into reasonable currency. Thus, in my view, the Respondent's failure to provide the requested payroll records necessitated this exercise so that accuracy and finality could be reached in a rational and reasonable way.

I would find and conclude that the Respondent did not provide the subpoenaed payroll records for legal cause or excuse. Accordingly, I will accept the General Counsel's hypothesis and methodology for three of the four employees—namely, Hicks, Mumm, and Kopp. As to Yutzy, I will accept the Respondent's calculations as to the net backpay owed him.[22]

[22] I recognize that this finding may seem inconsistent. However, as the Board has indicated, the wrongdoer should not be allowed to profit from its wrongful act. I believe in not providing the subpoenaed payroll records, the Respondent acted "wrongfully" and should not profit from this behavior.

Based on the foregoing, I would conclude that the following persons are entitled to the net backpay awards set out below, plus applicable interest:

Aaron Decker	$ 0
Dustin DeMoss`	0
Robert Dolter	0
Jeff Henry	753.94
Toby Hicks	667.39
Travis Jongsma	62.48
Eric Kammerude	2.97
Jeffrey Kemp	0
Jason Koeller	0
Dustin Kopp	938.77
Jonathan Krantz	152.37
Bob Lehnhardt	1548.76
Jason Lenstra	2.54
Brandon Loken	260.85
Jesse Maas	0
Kenny Mills	122.60
Jesse Mumm	860.42
Steven Noggles	295.56
Timothy Riley	228.81
David Tigges	1951.74
Cody Walen	0
Brian Wepking	0
Richard White	13.72
Brandon Yutzy	474.43
Total	$8337.35

CONCLUSION

I find and conclude that the calculations as set forth in the Specification were properly made and approximate the amounts the listed employees would have earned absent the Respondent's unlawful conduct, and that the calculations are not unreasonable or arbitrary under the circumstances. I would also find and conclude that the Respondent is entitled to certain credits and adjustments or offsets to the net backpay calculations of the Specification and that the net backpay awarded by me reflects these settlements. Based on the above, I make the following recommended[23]

ORDER

The Respondent, Art's Way Vessels, Inc., Dubuque, Iowa, shall make the aforementioned persons whole by paying them the sums, if any, set forth above, consistent with my findings and conclusions herein and the Backpay Specification in question, plus interest computed in accordance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), minus tax withholdings required by Federal and State Laws.

Dated, Washington, D.C. February 10, 2012

[23] 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.