

U.S. Department of Labor

Office of Administrative Law Judges
800 K Street, NW, Suite 400-N
Washington, DC 20001-8002

(202) 693-7300
(202) 693-7365 (FAX)



Issue Date: 05 June 2012

Case No.: 2009-SCA-00009

In the Matter of:

**ADMINISTRATOR, WAGE & HOUR DIVISION,
UNITED STATES DEPARTMENT OF LABOR,**

Complainant,

v.

**J.N. MOSER ENTERPRISES, INC.,
f/k/a MOSER ENTERPRISES, INC., and
KRISTY S. SCHLEINING, and
DONALD H. SCHLEINING,**

Respondents.

Appearances: Linda Ringstad, Esq.
Wage and Hour Division, U. S. Department of Labor
For Complainant

Donald Mulack, Esq.
Meltzer, Purtil & Stelle, LLC
For Respondent

Before: PAUL C. JOHNSON, JR.
Associate Chief Administrative Law Judge

DECISION AND ORDER

This case arises under the provisions of the McNamara-O'Hara Service Contract Act of 1965, as amended ("SCA" or "Act"), 41 U.S.C. §§ 351, *et seq.* and the Contract Work Hours and Safety Standards Act ("CWHSSA"), 40 U.S.C. § 327, *et seq.*, and the federal regulations found at 29 C.F.R. Parts 4, 6, and 18. The Administrator, Wage and Hour Division, United States Department of Labor ("Administrator") filed a Complaint against J.N. Moser Enterprises, Inc., f/k/a Moser Enterprises, Inc., Kristy S. Schleining, and Donald H. Schleining ("Respondents") on May 19, 2009 alleging violations of the Act.

The findings of fact and conclusions of law contained herein are based upon my analysis of the entire record, the arguments of the parties, the applicable regulations, statutes, and case law, and my observation of the demeanor of the witnesses who testified at the hearing. Because this case originally arose in the State of Illinois and was filed by the U.S. Department of Labor in Chicago, Illinois, Seventh Circuit law applies to this claim.

Procedural History

On May 19, 2009, Administrator filed a Complaint against the above-named Respondents alleging violations of the Act. On June 5, 2009, Administrator filed a Summary of Unpaid Wages. A Notice of Docketing was issued on June 5, 2009, requiring Respondents to file an Answer within thirty (30) days after service of the Complaint. On July 31, 2009, Respondents filed an Appearance and Answer to Complaint. On September 24, 2010, Administrator moved to amend the Complaint, updating the numbers of the contracts in dispute. On October 6, 2010 an Order Granting Motion to Amend Complaint was issued, requiring Respondents to file an Answer to the Amended Complaint within thirty days. On February 1, 2011, Administrator filed a Motion for Default Judgment and Declaration in Support because Respondent did not timely file an answer to the Order Granting Motion to Amend Complaint. On February 9, 2011, an Order to Show Cause was issued, requiring Respondents to file an Answer within thirty days or risk dismissal of the case. Respondent filed an answer on March 10, 2011. Administrator filed a Motion to Dismiss Respondents' Untimely Answer and for Judgment by Default on March 28, 2011. On May 13, 2011, the motion was denied.

On June 24, 2011, the undersigned administrative law judge issued a Notice of Hearing and Pre-Hearing Order, scheduling a hearing to be held at the NLRB Rookery Building in Chicago, Illinois on August 29, 2011. Both prehearing statements were timely filed. On August 26, 2011, Respondent filed a Motion *in Limine* to Bar Vacation Pay Evidence due to the unreliability of the documentation. Administrator filed a timely response on September 12, 2011 in support of the documentation. On October 5, 2011, an Amended Notice of Hearing rescheduled the formal hearing to November 7, 2011 at the United States Bankruptcy Court in Chicago, Illinois.

A formal hearing was held on the merits on November 7, 2011 in Chicago, Illinois. All parties were afforded a full opportunity to adduce testimony, offer documentary evidence, submit oral arguments, and file post-hearing briefs. Respondents and counsel for both parties attended the hearing. Three witnesses testified live, including Respondent Kristy Schleining, Judith M. Meek, and Tammi Schleining. At the hearing, Claimant's Exhibits ("CX") 1 to 23 and 25, Respondents' Exhibits ("RX") 1 Amended, 2A Amended, 2C, and 2D, and Joint Exhibit ("JX") 1, were all admitted into evidence. The Motion in Limine was denied at the hearing without prejudice. The record closed at the hearing. Briefs were due on January 14, 2012, a time that was extended by joint motion to February 17, 2012. Both briefs were timely received. The case is now ready for decision.

Issues and Stipulations

As modified at the hearing and in closing briefs, the following issues are formally in dispute:

1. Whether Respondents failed to pay the prevailing wages and fringe benefits to their service employees?
2. If yes, the amount of prevailing wages and fringe benefits due to Respondents' service employees under the Act.
3. Whether Respondents Kristy and Donald Schleining are individually responsible under Section 3(a) of the Act.
4. Whether Respondents have established "unusual circumstances" to warrant relief from debarment from entering contracts with the United States government for three (3) years as a result of the violations of the Act and regulations.

As modified at the hearing and in closing briefs, the parties have formally stipulated to the following issues (JX 1):

1. Respondent J.N. Moser entered into eighteen (18) contracts with the United States Postal Service for mail hauling services, each of which was to be performed by "service employees" under the Act.
2. Each of the contracts was in excess of \$2,500 and otherwise met the conditions as required by the Act.
3. Each of the contracts contained a proper wage determination that included a prevailing wage and fringe benefits for service employees for the period between January 1, 2009 and February 1, 2009.
4. The United States Postal Service seized Respondents' paychecks, paystubs, timesheets, and truck logs, and withheld \$110,464.09 on the contracts identified in the Complaint.
5. Parties stipulated to the authenticity of CX 1 to 18, 20, 23, and 25.
6. A number of other facts, as listed in JX 1.

Besides these formal stipulations, the closing briefs of the parties greatly narrow the set of issues in dispute. The Administrator seeks a total of \$310,176.35 in wages, benefits, and vacation payments from Respondents to 112 employees, as well as a three-year bar on future contracts with the United States (Administrator's Post Trial Brief at 12-15). Respondents argue that

deductions of \$58,715.29 should be made from the total amount, based on adjustments to wage calculations, reductions in vacation pay and benefits, erroneous wages calculated for part-time employees, and ineligible holiday compensation (Respondent's Brief in Support of Final Arguments at 1, 11). While all outstanding issues will be addressed in this decision, these deductions are the crux of the dispute in this case.

More specifically, Respondents do not contest the Administrator's findings that they failed to pay wages, fringe benefits, and pay for the Martin Luther King Day holiday during the pay period of January 11 to 24, 2009.¹ Respondents dispute the entitlement of seven employees to holiday pay, contending that their employment ended before the holiday. For the following pay period, January 25 through February 1, 2009, pay period, Respondents do not contest that they generally failed to pay wages and fringe benefits, but dispute many of the specific amounts of unpaid wages and fringe benefits calculated by the Administrator. They argue that some of the employees identified by the Administrator were not service employees for the purpose of the contracts at issue here, and that others were only part-time service employees and therefore are entitled to lesser payments than those calculated by the Administrator. In addition, with respect to vacation pay, Respondents argue that some of the employees who claimed they did not receive vacation pay had in fact received it and others were not entitled to it (Respondent's Brief in Support of Final Arguments, Feb. 17, 2012).

FINDING OF FACTS AND CONCLUSIONS OF LAW

Factual Background

According to Administrator's Complaint, Respondent J.N. Moser Enterprises, formerly known as Moser Enterprises, Inc. ("Moser"), is a Delaware corporation having its principal office and place of business in Montgomery, Illinois. Respondent Kristy Schleining was president of Moser, and Respondent Donald Schleining was vice-president. Moser entered into a number of contracts with the United States Postal Service ("USPS" or "Postal Service") under which Moser would provide mail-hauling services to USPS. Each contract specified the prevailing hourly wage and hourly rate for fringe benefits that J.N. Moser was required to pay its drivers who performed services under that contract. Each contract also required Moser to provide ten paid holidays per year to its drivers, and provided vacation time to the drivers in varying amounts, depending on their years of service. Sixteen of the contracts are at issue in this case, numbered 60543, 607L8, 60542, 60532, 60534, 63213, 602L3, 55217, 60218, 60133, 601L7, 612BA, 612L7, 60435, 602L7, and 60435.²

Moser abruptly ceased operations on February 1, 2009, after learning that it did not have enough money in its operating account to cover payroll because USPS did not make its regular payment due under the contracts. Its drivers were not paid for their work between January 11, 2009, and February 1, 2009, covering pay periods from January 11 to 24, 2009, and January 25

¹ I take official notice that in 2009 the holiday formally known as the Birthday of Martin Luther King, Jr. fell on January 19, 2009. See http://www.opm.gov/Operating_Status_Schedules/fedhol/2009.asp. It was called "Martin Luther King Day" by the witnesses and will be referred to by that name in this Decision and Order.

² Additional contracts listed in the Complaint, including 60266, 632U0, 60533, 60436, 605L4, and 612CA were dropped when the Complaint was amended on September 24, 2010.

to February 1, 2009.³ Paychecks were created but never issued for the pay period from January 11 to 24, 2009, and there is no dispute between the parties as to the amounts reflected on these paychecks, except that all paychecks are missing holiday pay for drivers that worked the Martin Luther King, Jr. holiday. The amounts in the final pay period are in dispute.

Testimonial Evidence

Kristy Schleining

Kristy Schleining was a credible witness. She testified that she was the president of Moser for three or four years, and was secretary prior to that time (Tr. 17).⁴ As president of the company, she did accounts payable and receivable, payroll, and human resources; she was also the office manager for about six years (Tr. 17-18). She would verify the time sheets and drivers' logs to generate the payroll and made sure all the paychecks were accurate. She testified that Moser was a family owned company that was started by her father in the 1940s (Tr. 18). Moser ceased operations on February 1, 2009 (Tr. 19). At the time Moser closed, it provided services almost exclusively to the Postal Service, but two employees also engaged in moving freight. Her husband, Donald Schleining, was vice president of Moser and in charge of negotiating and signing contracts for mail hauling services with the Postal Service (Tr. 20-21).

Schleining testified that she was familiar with the Postal Service contracts and mail delivery routes. She also testified that each contract contained in CX 1 through CX 16 included applicable wage determinations, minimum wages, fringe benefits, hourly benefit amounts, paid vacation days, and paid holidays (Tr. 21-22). The contracts also listed the vacation pay scale based on years of service: two weeks of paid vacation after one year of employment; three weeks after ten years; and four weeks after fifteen years (Tr. 22). Drivers were generally discouraged from taking leave between Thanksgiving and the end of December because that was the busiest mailing time of the year. Drivers had to use their vacation leave by the end of the year or they would be paid out for it; they could not roll the leave over to the following year (Tr. 23). Vacation time was prorated for part-time employees (Tr. 24). The pay stubs of the employees would show the hours worked and the different base wages of the contracts that they worked on (Tr. 27). Drivers were required to fill in hours as they worked and then submit timesheets at the end of the pay period (Tr. 28-29).

In November 2008, a Wage and Hour investigator contacted the company to conduct an investigation under the Service Contract Act, seeking to review the company's records (Tr. 29-30). Schleining indicated that the office was understaffed and she could not produce the records, so the investigator left a business card. On cross-examination, Schleining elaborated by explaining that she had two office personnel at the time, both of whom were on maternity leave for part of the period (Tr. 41). As a consequence, she could not spend an eight hour day with the investigator. She told the investigator to call her after January 1, 2009, but he did not contact her again (Tr. 42). In spring 2009, after the company had closed, the U.S. Postal Service seized the

³ J.N. Moser paid its drivers every two weeks, and the pay period beginning on January 25, 2009 should have ended on February 7, 2009. However, because the company ceased operations on February 1, 2009, the pay period ended on that day.

⁴ "Tr." followed by a number will refer to the transcript of the hearing held in this case.

company's office records (Tr. 30-31). At the time the company closed, on February 1, 2009, the drivers had no advance notice of the closure and several were operating the mail services contracts as usual on that day (Tr. 31). The drivers continued to record their hours on time sheets and drivers' logs until the business had closed (Tr. 32). Schleining identified CX 17 as copies of the paychecks and payroll stubs that she personally issued, stuffed, and readied for distribution on the Monday morning after Moser closed (Tr. 32, 43). Schleining testified that the checks contain her signature, and she never had any intention of not paying the employees (Tr. 43-44). She testified that the payroll stubs were true and accurate copies of the payroll for the pay period ending on January 24, 2009, with the exception that the payroll numbers did not include holiday pay for the Martin Luther King, Jr. Day holiday, which should have been included (Tr. 34). The paychecks in CX 17 were not distributed to any employees (Tr. 35). They totaled over \$200,000, which was about the average payroll for the business (Tr. 48).

Schleining realized that Moser would not have the financial ability to make the payroll when she called the bank the morning of February 1, 2009, as the Postal Service normally paid the last day of the month. *Id.* The payroll for the period following that ending on January 24, 2009, covering the period from January 25 to February 7, 2009, was never prepared, and drivers were not paid the prevailing wages, fringe benefits, or vacation leave due to them for the period from January 25, 2009 to February 1, 2009 when Moser ceased operations (Tr. 36). Moser had previously been investigated by the Wage and Hour Division for compliance under the Service Contract Act, and in 2004 an administrative law judge found Respondents to be responsible parties in an SCA violation with unpaid wages totaling \$71,482.84 (Tr. 36-37).⁵ None of the Respondents sought a loan to continue business operations at the time it closed (Tr. 37). Moser's accountant directed that the tractor trailers and straight trucks be taken to an auction house and sold, and to Respondent Schleining's knowledge, none of the proceeds were paid to the drivers (Tr. 37-38). She was not told the amount for which the trucks sold (Tr. 38). After the Postal Service police seized documents from Moser's offices in spring 2009, Schleining testified that she did not see any of the documents again until her deposition in August 2011 (Tr. 44). She testified, however, that the records that the Postal Service took may have been incomplete or altered, including the contracts themselves, some of which contain writing that she did not recall seeing before (Tr. 45). Moser did not have a lawyer on retainer at the time the business closed, but they had used various lawyers for different aspects of the business (Tr. 47).

Schleining also testified briefly about how vacation pay was computed. Drivers were able to receive their vacation pay in their paychecks and not in days off (Tr. 48). They were permitted to use it during the calendar year, but they were encouraged to use the entire period at once. Schleining testified that her business partner Tammi Schleining kept track of the vacation days and the drivers out on leave (Tr. 49). Employees were eligible for two weeks of vacation

⁵ This case was *United States Department of Labor v. J.N. Moser Trucking, Inc.*, et al., OALJ No. 1995-SCA-00026 (ALJ December 1, 2000). This case was affirmed in part and reversed in part by *In the Matter of J.N. Moser Trucking, Inc.*, et al., ARB No. 01-047 (ARB May 30, 2003). The decision of the Administrative Review Board was in turn vacated by the United States District Court for the Northern District of Illinois in *J.N. Moser Trucking, Inc. v. United States Department of Labor*, 306 F.Supp.2d 774 (2004). On remand from the Administrative Review Board, the administrative law judge issued a final Decision and Order on Remand in *United States Department of Labor v. J.N. Moser Trucking, Inc.*, et al., OALJ No. 1995-SCA-00026 (ALJ Aug. 5, 2004). On reconsideration, the administrative law judge amended the decision to exclude the payment of interest on the penalty amount. *United States Department of Labor v. J.N. Moser Trucking, Inc.*, et al., OALJ No. 1995-SCA-00026 (ALJ Nov. 5, 2004).

leave after working at Moser for one year, and if they did not use it within that year, they could request the balance in money instead of paid leave (Tr. 50). Moser discouraged employees from accumulating leave from year to year (Tr. 51).

Schleining testified that she was involved in preparing RX 2A Amended, which were Respondents' calculations as to the money owed to each driver (Tr. 193). She testified that she made some of the calculations, and Tammi Schleining made the others (Tr. 194). She provided testimony for the following drivers: Howard Bennett (erroneous addition of hours), Calvin Bowers (proper contract wages), Louie Brock (erroneous addition of hours), James Cook (non-existent employee), James Goodwin (credited for co-driver hours), Thomas Jordan (subtraction non-compensable breaks), James Martin (erroneous addition of hours), Steve Maudlin (erroneous addition of hours), Billy Parker (erroneous addition of hours), Frank Stevens (erroneous addition of hours and benefits), Christopher Tigrett (erroneous addition of hours), William Wade (erroneous addition of hours). She also testified about RX 2B, which was a list of drivers that Respondents dispute were SCA employees, based on their own knowledge and recollection. She calculated the list along with Tammi Schleining (Tr. 203). She testified that James Bailey drove freight and hauled tires, and did not haul mail under the SCA contract. Richard Carlson was a mechanic, which is not compensable under the contract (Tr. 204). Thomas Kryzinski hauled freight and not mail under the contract (Tr. 204-05). Alan May, David Scott, and Trent Whilden were mechanics. In total, \$11,721.14 was erroneously credited to non-SCA employees in CX 21 (Tr. 205).

Schleining testified about the on-call drivers who used their own personal vehicles and only drove when another driver was unavailable. Moser did not receive Postal Service funding to hire these people; the Postal Service paid hourly only when they were in the actual course of mail delivery (Tr. 206). The list at RX 2C was the list of drivers in this category, and was prepared from her and Tammi Schleining's own personal knowledge. CX 21, the Department of Labor calculations, erroneously included some part-time or on-call employees (Tr. 207). Chris Broda was a floater, who worked minimum wage when not on an SCA contract (Tr. 207-08). Edwin Cardona was also a floater, who swept trailers for minimum wage in between drives. Gary Cook took empty trailers to the repair shop, which was not covered under the SCA contract (Tr. 208). Matt Cybulski, Matthew Johnson, and Eric Kidd were floaters as well (Tr. 209-10). The total deductions for these employees would be \$3,217.15 (Tr. 210).⁶

Schleining provided brief testimony as to the driver's logs and timesheets. She indicated that drivers were allowed some flexibility in travel schedule, and made notes on their timesheets for them to note construction, weather conditions, accidents, or other delays (Tr. 212-13). They would add the delayed hours in these circumstances, unless it was overnight in which they would book a hotel (Tr. 213). The driver's logs and the timesheets did not always align. Generally, drivers were paid for their routes unless they indicated delays, and not based on the exact time that they recorded (Tr. 215). Drivers were paid based on the average hours surveyed and not on their exact times, so that the drivers could take breaks and other personal time on the route, unless they indicated special circumstances such as delays on their forms (Tr. 219). According to the SCA, any break of twenty minutes or more is not compensable (Tr. 220). Under the SCA,

⁶ At the hearing, counsel for the Department of Labor indicated that they could stipulate to the deduction of \$459.20 (Tr. 210).

Moser would not be able to recover the money from the Postal Service for a driver who went over the time limitation but did not provide extraordinary circumstances such as delays along the route, which is why Moser did not pay for that extra time (Tr. 229).

Judith Meek

Judith Meek was a credible witness. She testified that she was an investigator for the Wage and Hour Division of the United States Department of Labor in Chicago, Illinois, since June 1975 (Tr. 53-54). As an investigator, she was responsible for enforcement of a number of statutes, including the Service Contract Act (Tr. 54). She received training in all of the acts that she administered, and has prior experience on other Service Contract Act cases (Tr. 54-55). Meek testified that she was assigned to investigate Moser in December 2009; in particular, she was assigned to investigate compliance with any contract entered into by the United States government to procure services for the government by service employees, in this case mail haulers (Tr. 55). She testified the contracts at CX 1 through CX 16 were contracts obtained from the Postal Service for hauling mail (Tr. 56). The service employees are to be paid a prevailing wage rate plus fringe benefits for every hour that they work on those contracts (Tr. 56-57).

Each of the contracts contained a prevailing wage determination for Moser. CX 1 was contract number 60543, which included specific counties in the regions of Chicago, Illinois; Milwaukee, Wisconsin; Minneapolis/St. Paul, Minnesota; Detroit, Michigan; and the Kansas/Missouri border. The specific category of service employees was driver (Tr. 57). According to the wage determination rate, the minimum wage rate was \$17.81 for a tractor-trailer driver, and \$20.15 in the Chicago and Milwaukee areas. For truck drivers, the wage rate was \$19.44 an hour. The applicable fringe benefit was \$3.86 an hour (Tr. 58-59). All of the contracts also specified a minimum of ten paid holidays, one of which was Martin Luther King, Jr. Day. Part-time employees were eligible for vacation pay on a prorated basis (Tr. 60-61). The Wage and Hour Division determined that the mail haulers had not been paid for their last three weeks of work, including the prevailing wage, the fringe benefits, holiday pay, and, for some of them, vacation pay. At least 112 drivers were working for Moser when it went out of business, based on the paycheck stubs, drivers' logs, and time sheets (Tr. 63). The initial investigator assigned to the case worked with former drivers and supervisors to reconstruct records that the Wage and Hour Division did not possess in order to perform calculations for back wages (Tr. 64).

Kristy Schleining was found to be a party responsible as president, office manager, payroll manager, and officer generally responsible for the day-to-day operations (Tr. 65). Donald Schleining was found to be a party responsible as vice president, supervisor of the mail haulers, and negotiator and signatory on the contracts with the Postal Service. The Wage and Hour Division recommended debarment (Tr. 66).⁷ In total, the Wage and Hour Division determined that 112 employees were owed \$310,000 in back wages (Tr. 67). Meeks testified that she performed the calculations herself based on the paycheck stubs and other records, as well as truck logs and time sheets for the final week. The Wage and Hour Division obtained

⁷ I sustained an objection to Meek's testimony as to how Wage and Hour concluded that Moser should be debarred, and what the legal standards were for debarment. In line with my ruling at the hearing, I won't consider the testimony on the second half of page 66 of the transcript (see Tr. 66-67).

these records from the Postal Service (Tr. 68). Meeks also explained that CX 22 was the Wage and Hour transcription sheets, which the Division uses to do calculations of back wages; she also explained that she herself had filled out the forms (Tr. 69). The forms contain boxes for employee name, address, occupation, work week, hours worked, rate of pay, and fringe benefit (Tr. 69-70). It was the regular practice of Wage and Hour to prepare these worksheets, which, in this case, Meek filled out from information on the check stubs, drivers' logs, and time sheets. Vacation time calculations were based on information obtained from the drivers (Tr. 70). Meek explained how she used the pay stubs to calculate the wages and fringe benefits owed, but holiday pay was not reflected on the pay stub (Tr. 71). Meek testified that the wage calculations contained in CX 22 were derived from the pay stubs at CX 17 (Tr. 72).

For the pay period beginning on January 25, 2009, Meek had to reconstruct the amounts owed from truckers' logs and time sheets because no payroll had been created for that period, since the business closed on February 1, 2009. *Id.* Meek testified that CX 18 was a combination of the drivers' logs and time sheets that she used to reconstruct the pay calculations for this period (Tr. 72-73). The drivers' logs contained the name of the company, the date of the run, the contract number, on- and off-duty time, and the number of hours worked (Tr. 73). The pay stubs show when a driver works on multiple contracts at different rates over the course of the pay period (Tr. 75). The fringe benefit rates were also different. Meek testified that she only used the pay stubs in CX 17 to determine the wages owed for the period January 11 through January 24, 2009, but used time sheets and drivers' logs for the period January 24 through January 31, 2009 (Tr. 76). In order to calculate the Martin Luther King, Jr. Day holiday pay owed to each driver, Meek performed a weighted average of the contracts worked in the pay period by the driver to come up with the wages for the holiday, which is a typical procedure of the Wage and Hour Division (Tr. 77-78). She also testified that she learned of unpaid vacation leave from the drivers themselves in a series of phone conversations (Tr. 79-80). However, not all the drivers remembered how much unused vacation time they had, and for those drivers no vacation pay was added (Tr. 81). Meek identified CX 19 as an accurate reflection of the vacation pay information that she learned from the drivers themselves (Tr. 82-83).

Meek also testified that she prepared CX 21, which was a summary of the back wages due to each of the 112 drivers, including addresses, contract codes, and a summary of prevailing wages, fringe benefits, holiday pay, and banked vacation hours where known (Tr. 85-86). Meek testified that after the Postal Service seized documents from Moser, she copied the information pertinent to the investigation from a room full of boxes of information (Tr. 88). On cross-examination, Meek explained that to produce CX 21, which was her reconstruction of the vacation hours log, she did not personally have knowledge of the routes or the hours that were relayed to her by the drivers, and she did not meet the drivers personally (Tr. 90). She stated that she told the drivers that their answers were under penalty of perjury when they told her their vacation hours as they remembered them (Tr. 91). Meek conceded that she would have no way of knowing if the drivers were not being truthful about their time (Tr. 93). She only included the drivers who were certain of the number of hours that they were owed (Tr. 95). She originally included non-service contract employees in her calculations, but corrected the list of covered employees after Kristy Schleining's deposition (Tr. 97). However, she stated that non-service employees who filled in for service employees on a contract would be covered as to that time

(Tr. 101-02). She did not see paystubs from the prior year that would have helped discern the accrued vacation leave for each employee (Tr. 101).

Meek went through a number of different drivers' logs and time sheets and explained how each one includes the contract numbers, start and end points, and start and end times, it was possible to reconstruct the drivers' hours worked (Tr. 104-07). Occasionally someone will be a "floater," and will not have a specific or regular route (Tr. 107).

Tammi Schleining

Tammi Schleining was a credible witness. She testified that she was currently unemployed, but worked at Moser for over ten years, from about 1998 until 2009, as an assistant to Kristy Schleining (Tr. 109-110). Her job duties were to handle human resources and safety, including keeping track of vacation hours, scheduling employees, drug and alcohol programming, and day-to-day office duties (Tr. 110). She interacted with drivers on a regular basis, and also performed driver training (Tr. 111). She often discussed vacation plans with drivers and kept track of vacation leave, including eligibility, procedures for requesting leave, scheduling, and occasionally travel plans. She personally had to approve the vacation leave (Tr. 112). She kept a book with the vacation schedule, and when a driver would request leave in writing, she would cross-reference the request with the employee personnel file to verify eligibility for leave (Tr. 112-13). Notations were made in a vacation folder that she kept, as well as in the driver's personnel file (Tr. 113). When the Postal Service seized documents from Moser, they seized the vacation folder and the personnel files that she had left in the office (Tr. 113-14).

Schleining also explained how she calculated a spreadsheet of vacation pay amounts and pay rates, admitted as RX 1, and how her calculations differ from those of Judith Meek at CX 21 and CX 22 (Tr. 116-17). According to Schleining, she included on the spreadsheet the employee's name, vacation amount listed in CX 21 and CX 22, the benefit amount, and notes of her own recollections (Tr. 117-18). She stated that she calculated different amounts for 26 of the 113 employees in this case (Tr. 118). In particular, she testified that when an employee received cash in lieu of vacation time, that employee was not entitled to fringe benefits on that vacation time (Tr. 119).

She made specific notations about each of the employees listed in RX 1. For Byron Anderson, listed at number one, she stated that he was not entitled to fringe benefits because he was being paid out his entire vacation leave (Tr. 119). For Louie Brock, listed at number 12, she stated that he had not made a declaration on vacation time (Tr. 119-20). She testified that Gerald Bumgarner was not entitled to any vacation pay because he had gaps in his employment due to a prior termination and suspensions, and he had not worked a full continuous year entitling him to vacation pay (Tr. 120-21). She added that Bumgarner made his vacation requests in December and always took his vacation the first weeks in January and in August when he took his son back to school (Tr. 121). The DOL worksheet at CX 21 included Edward Cardona at line 17. Schleining testified that he could not have been entitled to 96 hours of vacation leave, because the company did not permit employees to break the leave up into days. He would only be entitled to 80 hours if he were a full-time employee; however, he was an on-call employee, so

not all of his hours worked were on SCA-covered routes (Tr. 121-22). Carl Churchill was not entitled to a full 40 hours every week because he did not work full-time hours on an SCA-covered route (Tr. 122-23). In total, RX 1 was a list of amounts that should be deducted from the worksheet prepared by the Wage and Hour Division at EX 21 (Tr. 123).

Schleining also testified about other employees. She testified that Gary Cook was not entitled to vacation pay or to benefits because he took a payout in 2008 when he was eligible to pay tax levies. Gary Dedrick was being paid out in the February 2, 2012 pay check that he did not receive for his accrued vacation; as a result, he would not be entitled to fringe benefits for that period (Tr. 124). She testified that the calculation for Edward Fuka, 59.94 hours of vacation leave, is at variance with company policy of forty or eighty hours. She surmised that he was not entitled to the vacation amount or the benefit amount. Gary Gattis is not entitled to vacation because he used his vacation in 2008 (Tr. 125). David Gray took vacation in 2008 for family reasons and for a move to Minnesota (Tr. 126). Tracy Guarascio is not entitled to vacation pay because he always takes the money, which he has set aside for family expenses (Tr. 126-27). Colin Hansen was not entitled to vacation pay because he was not a full-time employee throughout the year and possessed another full-time job (Tr. 127). She did not have a declaration for Rodney Hawkings, and testified that she would have no knowledge as to whether he took vacation without the payroll records (Tr. 127). She also testified that William Koons was probably not a full-time employee since he lived in Florida and worked out of Georgia (Tr. 127-28). Schleining did not have any recollection of Sharon Kubon taking time off without having any payroll documentation. However, if she took the pay in lieu of benefits, she would not be entitled to vacation benefits, according to the SCA contract (Tr. 128). Joshua Lyn was not entitled to vacation pay because he took vacation time for a trip to Jamaica even though he had not been approved for it (Tr. 129). James Martin took time off for his wedding or honeymoon, so he would not be entitled (Tr. 129-30). She could not recollect Steve Mauldin taking off for vacation, so he would not be entitled to benefits. She also could not specifically remember with regard to Robert McDermott (Tr. 130). Jeff Melton would not be entitled to benefits because he was terminated and reinstated after failing a drug test less than a year earlier (Tr. 130-31).

According to Schleining, Paul Page was a part-time employee and then an on-call employee, so he would not have been entitled to full-time benefits (Tr. 131, 165). Sergio Perez took vacation in 2008, so he would not be entitled to vacation benefits (Tr. 131-32). Robert Pleasnick was likewise given his vacation leave in 2008 (Tr. 132). William Wade was not a full-time employee, so he would have been entitled to a prorated amount, but without the documentation, Schleining could not estimate his vacation (Tr. 132-33). She disputed Meek's calculation of 16.38 hours for Wade because it was based on his status as a full-time employee (Tr. 133-34). William Werner is not entitled to vacation pay because he took vacation leave in 2008 even though he was not technically approved for it. Douglas Wilson was a new employee and would not have been eligible for vacation (Tr. 134). On cross-examination, Schleining confirmed that she did not recall exact vacation dates taken by many of the employees (Tr. 156 *et seq.*). She calculated a total of \$38,000 that should be deducted from the Department of Labor's vacation and benefits calculations (Tr. 135). She distinguished drivers for whom she remembered not being eligible for either vacation or benefits; and drivers for whom she could not recall specifically their eligibility but who could not be entitled to both vacation pay and benefits pay under the SCA contract (Tr. 136).

She identified RX 2A Amended as a document that she and Kristy Schleining prepared from their own calculations and noting the differences with the Department of Labor's calculations (Tr. 141). The first columns derived from CX 21, and the wages derived from CX 17 and 18. The final column is the difference between the Department of Labor numbers and Respondents' numbers (Tr. 142). Schleining testified that she made additional adjustments to the amounts owed to employees based on variances in the wages for drivers who worked on multiple contracts, since different contracts had different prevailing wages (Tr. 144). She also made adjustments where the Department of Labor appeared to use the wrong prevailing wage. She reduced the amounts owed to Jesus Cervantes, Edward Fuka, Tracy Guarascio, Colin Hansen, Eric Jones, John Kackert, James Lutz, Jeffrey Melton, Roger Paykert, Johnny Porter, Gary Rains, Ciro Vargas, Douglas Wilson, and Charles Zezulak (Tr. 144 *et seq.*). She did not recalculate the wages for Michael Wilson (Tr. 150). The variances in the prevailing wage calculations, and derivative prorated vacation times, totaled a reduction of \$19,954.68.

Schleining also provided foundation for RX 1A Amended, which she stated that she constructed from her own recollection and knowledge (Tr. 170-71). She also stated that she did not perform all the calculations in RX 2A Amended, and listed which ones she performed (Tr. 171 *et seq.*). She stated this is because she was not familiar with all of their contracts, and did not calculate all of the drivers' times (Tr. 173). Schleining confirmed that the amounts listed on the February 2, 2009 paycheck were correct, including wage calculations where drivers worked more than one contract at different prevailing wages, except for the holiday pay. She did dispute calculations from the January 31 to February 4, 2009 week, from which she went through the time sheet and calculated the prevailing wages listed in the contracts (Tr. 179). She also explained how she calculated hours, in which delays and loading time would count but breaks and off-duty times would not count (Tr. 186-88).

Documentary Evidence

Contracts with the United States Postal Service

The record contains sixteen contracts and associated documents between Moser and the Postal Service. According to the facts as stipulated by the parties at JX 1, the following wage determination at WD 1977-0196, Rev 46 6/20/2007, applies to contract numbers 60543 (CX 1), 60542 (CX 3), 60532 (CX 4), 60534 (CX 5), 60133 (CX 11), 601L7 (CX 12), and 602L7 (CX 16):

Driver/Caser	\$11.80 (wage)	\$3.16 (benefit)
Light Vehicle Driver	\$12.21 (wage)	\$3.16 (benefit)
Tractor Trailer Driver (all locations)	\$17.81 (wage)	\$3.86 (benefit)
Tractor Trailer (Chicago/Milwaukee)	\$20.15 (wage)	\$3.86 (benefit)
Tractor Trailer (Kansas City)	\$19.22 (wage)	\$3.86 (benefit)
Tractor Trailer (Detroit)	\$19.41 (wage)	\$3.86 (benefit)
Tractor Trailer (Minneapolis)	\$19.76 (wage)	\$3.86 (benefit)
Truck Driver (all locations)	\$16.13 (wage)	\$3.86 (benefit)
Truck Driver (Chicago/Milwaukee)	\$19.44 (wage)	\$3.86 (benefit)

Truck Driver (Kansas City)	\$17.85 (wage)	\$3.86 (benefit)
Truck Driver (Detroit)	\$18.87 (wage)	\$3.86 (benefit)
Truck Driver (Minneapolis)	\$18.83 (wage)	\$3.86 (benefit)

As stipulated by the parties, the following wage determination, WD 1977-0196, Rev 49 5/29/2008, applies to contract numbers 60218 (CX 9), 60226 (CX 10), 612BA (CX 13), and 612L7 (CX 14):

Driver/Caser	\$12.00 (wage)	\$3.24 (benefit)
Light Vehicle Driver	\$12.41 (wage)	\$3.24 (benefit)
Tractor Trailer Driver (all locations)	\$18.10 (wage)	\$4.06 (benefit)
Tractor Trailer (Chicago/Milwaukee)	\$20.48 (wage)	\$4.06 (benefit)
Tractor Trailer (Kansas City)	\$19.54 (wage)	\$4.06 (benefit)
Tractor Trailer (Detroit)	\$19.73 (wage)	\$4.06 (benefit)
Tractor Trailer (Minneapolis)	\$20.09 (wage)	\$4.06 (benefit)
Truck Driver (all locations)	\$16.40 (wage)	\$4.06 (benefit)
Truck Driver (Chicago/Milwaukee)	\$19.76 (wage)	\$4.06 (benefit)
Truck Driver (Kansas City)	\$18.14 (wage)	\$4.06 (benefit)
Truck Driver (Detroit)	\$19.18 (wage)	\$4.06 (benefit)
Truck Driver (Minneapolis)	\$19.14 (wage)	\$4.06 (benefit)

As stipulated by the parties, the following wage determination, WD 1977-0196, Rev 48 2/15/2008 applies to contract 607L8 (CX 2):

Driver/Caser	\$12.00 (wage)	\$3.16 (benefit)
Light Vehicle Driver	\$12.41 (wage)	\$3.16 (benefit)
Tractor Trailer Driver (all locations)	\$18.10 (wage)	\$4.06 (benefit)
Tractor Trailer (Chicago/Milwaukee)	\$20.48 (wage)	\$4.06 (benefit)
Tractor Trailer (Kansas City)	\$19.54 (wage)	\$4.06 (benefit)
Tractor Trailer (Detroit)	\$19.73 (wage)	\$4.06 (benefit)
Tractor Trailer (Minneapolis)	\$20.09 (wage)	\$4.06 (benefit)
Truck Driver (all locations)	\$16.40 (wage)	\$4.06 (benefit)
Truck Driver (Chicago/Milwaukee)	\$19.76 (wage)	\$4.06 (benefit)
Truck Driver (Kansas City)	\$18.14 (wage)	\$4.06 (benefit)
Truck Driver (Detroit)	\$19.18 (wage)	\$4.06 (benefit)
Truck Driver (Minneapolis)	\$19.14 (wage)	\$4.06 (benefit)

As stipulated by the parties, the following wage determination, WD 1977-0196, Rev 44, 2/7/2007 applies to contract 55217 (CX 8):

Driver/Caser	\$11.80 (wage)	\$3.01 (benefit)
Light Vehicle Driver	\$12.21 (wage)	\$3.01 (benefit)
Tractor Trailer Driver (all locations)	\$17.81 (wage)	\$3.86 (benefit)
Tractor Trailer (Chicago/Milwaukee)	\$20.15 (wage)	\$3.86 (benefit)
Tractor Trailer (Kansas City)	\$19.22 (wage)	\$3.86 (benefit)
Tractor Trailer (Detroit)	\$19.41 (wage)	\$3.86 (benefit)

Tractor Trailer (Minneapolis)	\$19.76 (wage)	\$3.86 (benefit)
Truck Driver (all locations)	\$16.13 (wage)	\$3.86 (benefit)
Truck Driver (Chicago/Milwaukee)	\$19.44 (wage)	\$3.86 (benefit)
Truck Driver (Kansas City)	\$17.85 (wage)	\$3.86 (benefit)
Truck Driver (Detroit)	\$18.87 (wage)	\$3.86 (benefit)
Truck Driver (Minneapolis)	\$18.83 (wage)	\$3.86 (benefit)

As stipulated by the parties, the following wage determination, WD 1977-0196, Rev 40 5/23/2005 applies to contracts 602L3 (CX 7) and 63213 (CX 6):

Driver/Caser	\$11.54 (wage)	\$2.87 (benefit)
Light Vehicle Driver	\$11.94 (wage)	\$2.87 (benefit)
Tractor Trailer Driver (all locations)	\$17.41 (wage)	\$3.39 (benefit)
Tractor Trailer (Chicago/Milwaukee)	\$19.70 (wage)	\$3.39 (benefit)
Tractor Trailer (Kansas City)	\$18.79 (wage)	\$3.39 (benefit)
Tractor Trailer (Detroit)	\$18.98 (wage)	\$3.39 (benefit)
Tractor Trailer (Minneapolis)	\$19.32 (wage)	\$3.39 (benefit)
Truck Driver (all locations)	\$15.77 (wage)	\$3.39 (benefit)
Truck Driver (Chicago/Milwaukee)	\$19.01 (wage)	\$3.39 (benefit)
Truck Driver (Kansas City)	\$17.45 (wage)	\$3.39 (benefit)
Truck Driver (Detroit)	\$18.45 (wage)	\$3.39 (benefit)
Truck Driver (Minneapolis)	\$18.41 (wage)	\$3.39 (benefit)

Contract Number 60543 (CX 1): The contract at CX 1 contains 278 pages of records, including wage determinations for drivers; liability and insurance information; safety and fuel management protocol; specifications for trucks hauling mail; service orders; and miscellaneous other documents. The contract was for the route beginning at the Fox Valley Processing and Distribution Center of the U.S. Postal Service to Earlville, Illinois. The most recent annual contract rate was \$215,138.41.

Contract Number 607L8 (CX 2): The contract at CX 2 contains 165 pages of records, similar to the above contract, for a route traveling between the Fox Valley Processing and Distribution Center to the Chicago Metro Surface Hub on Busse Road in Elk Grove Village, Illinois. The annual contract rate was \$454,363.63, effective through June 30, 2012.

Contract Number 60542 (CX 3): The contract at CX 3 contains 327 pages of records for a route between the Fox Valley Processing and Distribution Center to Steward, Illinois. The annual contract rate through the scheduled end of the contract term on June 30, 2009 was \$170,886.34.

Contract Number 60532 (CX 4): The contract at CX 4 contains 157 pages of records for a route between Fox Valley Processing and Distribution Center and Aurora, Illinois. The annual contract rate, effective through June 30, 2009, was \$133,845.38.

Contract Number 60534 (CX 5): The contract at CX 5 contains 229 pages of records for a route between Fox Valley Processing and Distribution Center and Clarendon Hills, Illinois. The annual contract rate, effective through June 30, 2009, was \$209,444.67.

Contract Number 63213 (CX 6): The contract at CX 6 contains 199 pages of records for a route between the St. Louis Bulk Mail Center in Hazelwood, Missouri and the Jacksonville Bulk Mail Center in Jacksonville, Florida. The annual contract rate through June 30, 2007 was \$1,026,906.44.⁸

Contract Number 602L3 (CX 7): The contract at CX 7 contains 195 pages of records for a route between the Chicago 2C Metro Facility in Chicago, Illinois to Quincy, Illinois. The annual contract rate through June 30, 2007 was \$236,000.00. The contract contains a notation that the contract was being renewed as a “short-term renewal” after June 30, 2007.

Contract Number 55217 (CX 8): The contract at CX 8 contains 130 pages of records for a route between the Minneapolis/St. Paul Bulk Mail Center in Eagan, Minnesota, to the Atlanta Bulk Mail Center in Atlanta, Georgia. The annual contract rate was \$1,325,626.85, effective through March 1, 2008.

Contract Number 60218 (CX 9): The contract at CX 9 contains 169 pages of records for a route between the Chicago 2C Metro Facility in Chicago, Illinois and the Columbia Processing and Distribution Center in Columbia, South Carolina. The annual contract rate was \$458,899.44, effective through March 31, 2010.

Contract Number 60226 (CX 10): The contract at CX 10 contains 176 pages of records for a route between the Chicago 2C Metro Facility in Chicago, Illinois and the Quad Cities Processing and Distribution Center in Milan, Illinois.⁹

Contract Number 60133 (CX 11): The contract at CX 11 contains 274 pages of records for a route between the Carol Stream Processing and Distribution Center in Carol Stream, Illinois and postal service facilities comprising the Various Carol Stream Automated Post Offices in the area. The total annual value of the contract effective through June 30, 2011 was \$1,473,375.66.

Contract Number 601L7 (CX 12): The contract at CX 12 contains 257 pages of records for a route between Carol Stream Processing and Distribution Center in Carol Stream, Illinois and postal service facilities comprising the Various Carol Stream Automated Post Offices in the area. The total annual value of the contract was \$536,349.73, effective through June 30, 2011.

Contract Number 612BA (CX 13): The contract at CX 13 contains 159 pages of records for a route between the Quad Cities Processing and Distribution Center in Milan, Illinois and Moline, Illinois. The total annual value of the contract, valid through June 30, 2010, was \$130,160.75.

Contract Number 612L7 (CX 14): The contract at CX 14 contains 98 pages of records for a route between the Quad Cities Processing and Distribution Center in Milan, Illinois and Bettendorf, Iowa. The total annual value of the contract, valid through June 30, 2010, was \$70,824.55.

⁸ This exhibit contains several iterations of a contract dating from 1999 through 2007. Because the exhibit does not contain any documentation after June 30, 2007, it is not immediately clear whether this contract was live at the time Moser dissolved in January 2009.

⁹ The total annual contract amount for CX 10 is not immediately obvious in the partial documentation in the exhibit.

Contract Number 60435 (CX 15): The contract at CX 15 contains 270 pages of records for a route between South Suburban Processing and Distribution Center in Bedford Park, Illinois, and Park Forest, Illinois. The total annual value of the contract, valid through June 30, 2009, was \$323,703.52.

Contract Number 602L7 (CX 16): The contract at CX 16 contains 343 pages of records for a route between Chicago 2C Metro Facility in Chicago, Illinois, and Muncie Processing and Distribution Center in Muncie, Indiana. The total annual value of the contract, effective through June 30, 2011, was \$231,547.87.

Payroll Checks

Complainant's Exhibit 17 contains 126 pages, of which each page is a copy of a pay check and a pay stub for each of Moser's drivers for the pay period January 11 through January 24, 2009. The parties have stipulated that the amounts on each of the pay checks are the correct amounts owed, except that wages for the Martin Luther King, Jr. holiday are not reflected in the pay checks of the drivers who worked on that day.

Driver's Logs and Timesheets

Complainant's Exhibit 18 contains 409 pages of driver's logs for the period ending on February 1, 2009 when Moser became insolvent. Several of the drivers' log pages are marked as "Floaters," and consequently those drivers would not be paid at the full SCA rates. The bulk of the driver's logs date from January 25, 2009 through Moser's insolvency on February 1, 2009. The amounts on the timesheets and daily logs do not necessarily align, and where this is the case, a factual finding will be made below.

Employee Declarations

Complainant's Exhibit 19 contains 40 pages of signed affidavits from twenty employees about the amount of vacation time that they were owed at the time Moser went insolvent.

Prior Decision and Order

Complainant's Exhibit 20 is the prior decision and order of Administrative Law Judge Daniel J. Roketenetz, issued on December 1, 2000. The decision is captioned *United States Department of Labor v. J.N. Moser Trucking, Inc., et al.*, 1995-SCA-00026 (ALJ Dec. 1, 2000). In the decision Judge Roketenetz found Respondents in violation of the Service Contract Act.

Department of Labor Worksheets

Complainant's Exhibit 21 includes eight pages of worksheets produced by Judith Meek, an investigator at the Wage and Hour Division in calculating the amount owed to each employee. The worksheets include the driver's name, address, pay period, and gross amounts due, but do not include wage rates.

Investigator Calculation Forms

Complainant's Exhibit 22 includes 112 pages of raw calculations by Judith Meek in calculating the amount owed to each employee. She noted the rate of pay and the amount owed for the final pay period, as well as any differences in rates of pay due to drivers who worked under more than one contract. The bottom of the page indicates her calculated total for each of the employees.

Responses to Requests for Admissions and First Amended Complaint

Respondents' responses to Complainant's requests for admissions are contained at CX 23. In addition, the First Amended Complaint filed in this case is contained at CX 25.

Disputed Vacation List

Respondents' Exhibit 1 Amended is a list of employees created by Tammi Schleining from her own knowledge and recollection, in which she disputes various vacation amounts or benefits amounts from the drivers' declaration forms and from Judith Meek's calculations on the Department of Labor worksheets and Investigator Calculation Forms. The list contains a total of twenty-six names, and a total deduction of \$44,933.05, including both vacation pay deductions and benefits deductions.

Disputed Wage Calculation List

Respondents' Exhibit 2A Amended is a list of employees created by Tammi and Kristy Schleining from their own knowledge and recollection, in which they dispute various wage amounts due to specified drivers. In total, twenty-seven names are listed, and calculations are provided for a total deduction of \$19,954.68.

List of Employees Not Covered by the Service Contract Act

Respondents' Exhibit 2B is a list of employees who are not covered by the Service Contract Act because their duties did not include those specified in the contracts. The list was created by Tammi and Kristy Schleining from their own knowledge and recollection, and includes six names, for a total deduction of \$11,721.14.

List of Employees Who Worked on SCA Contracts on a Part-Time Basis

Respondents' Exhibit 2C is a list of employees who worked only part-time on Service Contract Act-covered services, and consequently the Department of Labor's calculations for these employees was overinclusive of hours. The list was prepared by Tammi and Kristy Schleining from their own knowledge and recollection. The list includes six names for a total deduction of \$3,217.15.

List of Employees Not Eligible for the Dr. Martin Luther King, Jr. Holiday

Respondents' Exhibit 2D is a list of employees who are not eligible for holiday pay on the Martin Luther King, Jr. holiday on January 19, 2009. The list includes seven names for a total deduction of \$459.60. At the hearing, both parties stipulated to this deduction (Tr. 210).

Discussion

Under the Service Contract Act of 1965, as amended, 41 U.S.C. §351 *et seq.*, every contract entered into by the government of the United States over the amount of \$2,500.00, the principal purpose of which is to furnish services in the United States through the use of service employees, shall contain the following: (1) a provision specifying the minimum monetary wages to be paid under the contract; (2) a provision specifying the fringe benefits to be furnished to service employees; (3) a provision prohibiting performance under the contract where occupational health and safety standards are not met; (4) a provision requiring the contractor to deliver notice of compensation; and (5) a statement that certain wage determinations will be made by the Secretary of Labor where applicable. Any violation of required contract stipulations renders the responsible party liable for underpayments of compensation owed to an employee and could result in cancellation of the contract. In the event of a violation, the responsible parties are barred for a period of three years from entering into contracts with the United States, starting from the date of publication of the list of barred parties by the Comptroller-General, unless the Secretary of Labor determines otherwise based on unusual circumstances. *See* 41 U.S.C. §351 *et seq.*

In the present case, the parties have stipulated that Moser entered into sixteen contracts with the U.S. Postal Service (CX 1 to 16).¹⁰ The parties additionally stipulated that each contract was in excess of \$2,500 and was to be performed by "Service employees" as defined by Section 8(b) of the Service Contract Act (JX 1). In addition, there is no dispute among the parties that Moser became insolvent on February 1, 2009 and failed to pay the prevailing wages and fringe benefits to drivers for the period from January 11 to February 1, 2009, as well as vacation pay for the Martin Luther King, Jr. holiday and accrued vacation pay. In addition, it is also undisputed that Moser has a prior history of Service Contract Act violations.

In their closing brief, Respondents argue that the United States Postal Service Police seized Moser's personnel files, including vacation folders and attendance sheets, after the company became insolvent (Respondents' Brief in Support of Final Arguments, Feb. 17, 2012 at 10). The Postal Service has not returned the records to Respondents and never filed charges against Respondents. Respondents therefore request that the court not make adverse inferences from inadequate or inaccurate documentation in this case. In general, I am sympathetic with this request, and I do not believe that incomplete documentation in this case necessarily implicates poor record keeping by Respondents. Because Respondents were credible live witnesses, I will give their testimony due weight when written documentation is conflicting or incomplete. This does not change the burden of proof in the matter, which initially belongs to the Administrator to create the inference of a violation and resulting sanctions, but which shifts to Respondents to

¹⁰ The stipulation at JX 1 actually lists eighteen contracts, but the final two numbers in the list are repeated twice.

prove the actual circumstances of employment if different from this inference, in order to avoid liability or penalties.¹¹

Establishment of a Compensable Violation

The Administrator of the Wage and Hour Division of the United States Department of Labor, as the party that initiated and brought the enforcement case, has the initial burden of proof of establishing that the employees performed work for which they were improperly compensated. *In the Matter of VGA, Inc.*, ARB No. 09-077, 2006-SCA-00009 (ARB Sept. 29, 2011). The Administrator satisfies that burden if she proves that employees have in fact performed work for which they were improperly compensated and if she produces sufficient evidence to show the amount and extent of that work through reasonable inference. The burden then shifts to the employer to show evidence of the precise amount of work performed or with other evidence to negate the inference. If the employer fails to show this, a judge may award damages to the employee, even if the amount of damages is only approximated. *VGA, Inc.*, supra, quoting *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946). According to the U.S. Supreme Court in *Anderson*, the employer has the duty to keep proper record of wages, hours, and other conditions and practices of employment, and is in the best position to know the most probative facts concerning the nature and amount of work performed. *Anderson*, 328 U.S. at 687-88. As a consequence, employees are not penalized by denying back wages simply because the employer's documentation is incomplete or inaccurate. *Id.*, quoted in *Cody Ziegler Inc. v. Administrator, Wage and Hour Division*, ARB No. 01-014 and 01-015, 1997-DBA-00017 (ARB Dec. 19, 2003).¹²

In the present case, the parties stipulated that Moser closed its business and ceased operations on February 1, 2009 (JX 1 at 4). Respondents also admitted not paying Moser employees prevailing wages, fringe benefits, holiday pay, or vacation leave for work performed from January 11, 2009 through February 1, 2009 (CX 23, p. 5; Tr. 36). The failure to pay due compensation to employees is a violation of the SCA, and the Administrator has satisfied her burden that employees actually performed work on these days and were improperly compensated for it. The drivers' logs and timesheets show that drivers continued operating on Moser contracts right up to the time when Moser abruptly closed operations (CX 17, 18; Tr. 36). Because I find that Respondents have violated the SCA, I will consider below the amounts and calculation methods used to determine Moser's total liability. As the party seeking the enforcement action, the Administrator will have the initial burden of showing that an employee performed SCA-covered work for which he or she was improperly compensated, and the burden will shift to

¹¹ I also will not make an adverse inference against Respondents based on the fact that they prevented a Wage and Hour investigator from performing an investigation of the company's pay practices in November 2008. Respondents credibly testified that they did not have the office capacity to assist the investigator with two workers on maternity leave (Tr. 29-30, 41). In addition, there is no allegation here that Moser committed violations of the SCA before January 11, 2009, the beginning of the first pay period in which Moser's drivers were not paid. Administrator does not appear to argue that this refusal to allow an investigator to investigate the company's pay practices was itself a violation of the SCA.

¹² In the current case, I will also consider the fact that some documentation may have become lost, missing, or inaccessible after the seizure of Moser's office records by the U.S. Postal Service Police. Where Respondents' testimony is more specific or more credible than conflicting written documentation, I will weigh the evidence below.

Respondents to show evidence of the precise amount of work performed, if it differs from the Administrator's approximation, or other evidence to negate the inference.

Unusual Circumstances and Three Year Debarment

Unless the Secretary of Labor otherwise recommends because of unusual circumstances, a violation of the Service Contract Act results in the sanction of a three year debarment on the ability of a contractor to enter into a contract with the federal government. 41 U.S.C. §354(a). Upon a finding of a compensable violation under the Service Contract Act and a finding that Respondents are properly named defendants, the burden of proof shifts to Respondents to articulate unusual circumstances such that they should not be subject to the three year bar in contracting with the federal government. *Oneida Building Services, Inc.*, 1983-SCA-00005 (Dep. Sec'y Jan. 8, 1991). Relief from debarment is often a product of a minor or inadvertent violation, or cases in which debarment is a wholly disproportionate penalty for the severity of the offense. *Karawia v. Administrator, Wage and Hour Division*, 627 F.Supp.2d 137 (S.D.N.Y. 2009). The regulations define "culpable conduct" to include "culpable neglect to ascertain whether practices are in violation, culpable disregard of whether they were in violation or not, or culpable failure to comply with recordkeeping requirements." 29 C.F.R. § 4.188(b)(3)(i).

The Department of Labor has promulgated regulations establishing a three-part test to determine the existence of unusual circumstances in a particular case, weighing aggravating and mitigating factors. 29 C.F.R. § 4.188(b)(3)(i)-(ii). First, as a threshold matter, the alleged violation must be free from aggravating factors such as willful or deliberate conduct, culpable neglect, a history of violations, or a serious violation in the instant case. Second, a good compliance history, cooperation with the investigation, and repayment of money owed are generally prerequisites to a finding of unusual circumstances. Third, where the prerequisites exist but aggravating factors do not, a judge may consider a variety of mitigating factors including status as a first-time violator, proper record keeping, existence of a bona fide legal issue of doubtful certainty, efforts at compliance, and the nature and extent of prior violations. *Karawia*, supra, quoting 29 C.F.R. § 4.188(b)(3)(ii). The presence of an aggravating factor generally precludes consideration of the prerequisites and mitigating factors. *Karawia*, supra; see *Charles Igwe, et al.*, ARB No. 07-120, ALJ No. 2006-SCA-020 (ARB Nov. 25, 2009).

In the current case, Respondents will be unable to avoid debarment. Administrator argues that Moser's conduct is culpable, because the company abandoned performance of the contracts and failed to pay 112 employees for more than three weeks (Administrator's Post-Hearing Brief, Feb. 17, 2012, at 14). Respondents made no attempt to obtain a loan to meet the payroll and negligently depended upon prompt payment, in full, by the Postal Service without adequate capitalization to meet payroll obligations. *Id.* In addition, as the Administrator points out, Respondents have not paid any of the money due and have not given sufficient assurances of future compliance. *Id.* at 15. Respondents also admitted that they had been found liable for violations of the SCA in a prior case, the decision of which is admitted here at CX 20 (see also, CX 23, Responses to Requests for Admission at 6-7). Respondents' history of prior violations coupled with their non-innocent conduct in the present case is enough to prevent me from finding unusual circumstances under the debarment provisions of the SCA.

Status of Individual Respondents

The SCA's debarment sanctions apply to “responsible parties” who exercise “control, supervision, or management over the performance of the contract.” 29 C.F.R. §4.187(e). “The failure to perform a statutory public duty under the Service Contract Act is not only a corporate liability, but also a personal liability charged by reason of his or her corporate office while performing that duty.” 29 C.F.R. § 4.187(e)(2). An officer “who actively directs and supervises the contract performance, including employment policies and practices” is individually and jointly liable for violations of the SCA. 29 C.F.R. 4.187(e)(1). Further, responsible parties also include “signatories to the Government contract who are bound by and accept responsibility for compliance with the Act” and “all persons irrespective of proprietary interest, who exercise control, supervision, or management over the performance of the contract.” 29 C.F.R. § 4.187(e)(4). In the present case, two of the officers of Moser, Kristy and Donald Schleining, are listed as Individual Respondents in this claim.

In their Responses to Requests for Admission, Respondents admit that Individual Respondent Kristy S. Schleining was president of Respondent Moser, that Individual Respondent Donald H. Schleining signed contracts for mail hauling services with the Postal Service, and that both Individual Respondents were each a “party responsible” within the meaning of Section 3 of the SCA, which states that parties responsible are liable for any deductions, rebates, refunds, or underpayment of compensation due to any employee (CX 23, p. 3). Respondents denied the allegation that the Individual Respondents were responsible for the decision not to pay wages and fringe benefits for the pay periods ending on January 24, 2009 and February 7, 2009. *Id.* at 6. Nonetheless, there is no dispute that Individual Respondents had actual control over the company and personal responsibility under the contracts. As a consequence, I find both to be parties responsible under the Act.

Adjustments to the Department of Labor Wage and Benefits Calculations

The SCA was enacted for the purpose of providing “wage and safety protection to employees working under service contracts with the United States government, where the contract amount exceeds \$2,500 and the contract is performed within the United States.” *Marlys Bear Medicine v. United States*, 47 F. Supp. 1172 (D. Mon. 1999), *aff’d in pertinent part and rev’d on other grounds*, 241 F.3d 1208 (9th Cir. 2001). Findings of fact under the SCA are held to the preponderance of the evidence standard found at 41 U.S.C. § 39. *Dantran, Inc. v. Dep’t. of Labor*, 171 F.3d 58, 71 (1st Cir. 1999).

The Administrator presents detailed calculations for the prevailing wages, fringe benefits, backed vacation pay, and holiday pay owed to each of the 112 drivers employed by Moser at the time the company closed (CX 21, 22).¹³ The Administrator calculated a total of \$310,176.35 in unpaid wages, benefits, holiday pay, and vacation pay, and submitted detailed testimony by

¹³ For purposes of this analysis, “holiday pay” refers only to the prevailing wages and fringe benefits earned by drivers who worked on the Martin Luther King, Jr. holiday on January 19, 2009 (Tr. 35). “Vacation pay” refers to the two, three, or four weeks of leave that employees accrued and for which they were entitled either to time off from work or to the financial equivalent.

Wage and Hour Investigator Judith Meek, hundreds of pages of worksheets and calculations, and supporting documentation from Moser. The Administrator provides a detailed defense of Meek's calculations and the reliability of the documentation submitted in this case in her closing brief (Administrator's Post-Hearing Brief at 5-8).

Respondents' company records relevant to the pay and employment of service employees were seized by the Postal Service Police in mid-2009 (JX 1). The Wage and Hour Division limited its investigation to the issues of missed payroll and fringe benefits for the period from January 11, 2009 through February 1, 2009 (Administrator's Post-Hearing Brief at 5). The Division acquired copies of contracts, Moser paychecks, pay stubs, driver logs, and timesheets, and investigator Judith Meek copied this information onto worksheets on which she calculated unpaid compensation for each employee (Tr. 69-72). Meek testified that she used a combination of driver's logs and timesheets to reconstruct the pay calculations for the pay period beginning January 25, 2009 (Tr. 72-73). For the Martin Luther King, Jr., holiday, which was improperly omitted from the paychecks for the period January 11 through 24, 2009, Meek multiplied eight hours by the prevailing wage and benefit rates shown on the pay stubs to determine the total amount owed for the holiday (Tr. 77). For employees who worked at more than one wage rate, Meek used the weighted average of the rates to calculate the holiday pay (Tr. 77-78). For unused vacation pay, Meek testified that she learned of unpaid vacation leave from phone conversations with the drivers themselves, but she only calculated an award of vacation pay if the drivers could remember how much unused leave they had (Tr. 81-83). In general, I affirm Meek's detailed calculations. I believe using the weighted average of the driver's wage rates was the correct approach for the Martin Luther King, Jr., holiday pay calculations, and I agree with Meek that the driver's logs and timesheets were the most reliable records of hours worked by drivers for the pay period beginning January 25, 2009.

While I generally affirm Meek's calculations, I accept several of Respondents' modifications. First, Respondents argue that drivers who are cashed out for vacation leave are not also paid out for fringe benefits, because they received fringe benefits when they worked in lieu of taking leave (Tr. 119). I agree that this would lead to a double payment of fringe benefits, and where Meek awards vacation fringe benefits, I have deducted these amounts from the total. Second, where Meek has awarded more than forty hours of fringe benefits for the pay period beginning January 25, 2009, I have reduced the amount to forty hours, which is the maximum full-time rate (see, in relevant part, RX 2A Amended). I have also made a number of slight adjustments to wage rates given the stipulations by the parties at JX 1, and in several cases I have recalculated a driver's hours when the parties disagree about the number of hours worked. Given Respondents' more specific knowledge about certain routes, I generally credited their testimony as to drivers that drove routes that had flat hours or drivers who should be paid at the wage rate for drivers of straight trucks instead of the wage rate for drivers of tractor trailers.

As for vacation hours, I generally credit the employee declarations as to unpaid vacation leave, as they help the Department of Labor create the inference of entitlement to vacation pay. Judith Meek testified that she personally created them and performed the resulting entitlement calculations herself, and I believe her calculations are credible given her experience with the Wage and Hour Division. However, I also credit Respondents' specific testimony as to specific employees, as Tammi Schleining in particular managed drivers' vacation time herself and

maintains very specific recollection as to certain individual employees. Where she did not have a specific recollection, she admitted so. As a consequence, the vacation leave determinations are a heavily fact-bound analysis, and my specific rulings follow.

Below, I make specific rulings for each employee on wage calculations, benefits calculations, vacation pay deductions, ineligible holiday compensation, and exceptions for work that was not performed under SCA contracts. My calculations are based on all the evidence before me, including documentary evidence, testimony at the hearing, and the stipulations as provided by the parties.

Byron J. Anderson

The Department of Labor calculated a total award to Rodney Hawkins of \$4,550.87 (CX 21; CX 22, p. 1). Respondents do not contest Hawkins's entitlement to unused vacation pay of 40 hours at \$19.76 per hour (RX 1 Amended; Tr. 135). Anderson has a vacation leave declaration stating that he was entitled to 40 hours of vacation pay (CX 19, P. 39). Respondents argue that if he takes payment in lieu of vacation leave, Anderson is not entitled to fringe benefits, as he would have been paid fringe benefits when he was working in lieu of taking leave. I agree. As a consequence, I reduce Anderson's award by \$154.40, the Department of Labor's vacation fringe benefits calculation, for a total entitlement of **\$4,396.47**.

Richard A. Anderson

I accept the Department of Labor's uncontested calculations and find that Richard Anderson is entitled to **\$3,527.32** (CX 21).

Jose G. Apantenco

I accept the Department of Labor's uncontested calculations and find that Jose Apantenco is entitled to **\$943.69** (CX 21).

David W. Ashby

I accept the Department of Labor's uncontested calculations and find that David Ashby is entitled to **\$4,451.87** (CX 21).

Glenn F. Bailey

I accept the Department of Labor's uncontested calculations and find that Glenn Bailey is entitled to **\$883.26** (CX 21).

James O. Bailey

James Bailey was not an SCA-covered employee (RX 2B). Respondents testified at trial that he drove freight and hauled tires (Tr. 204). His rate of pay was different from any of the prevailing wages under the SCA contracts, which I find to be circumstantial evidence in support

of Respondents' position (CX 17, p. 7). As a consequence, the Department of Labor calculation of \$776.39 is disallowed, and James Bailey is entitled to nothing.

Charles A. Behnke

I accept the Department of Labor's uncontested calculations and find that Charles Behnke is entitled to **\$761.98** (CX 21).

Christopher Benner

I accept the Department of Labor's uncontested calculations and find that Christopher Benner is entitled to **\$1,736.29** (CX 21).

Howard E. Bennett

The Department of Labor calculated \$3,041.88 for Howard Bennett, including his prior paycheck, holiday pay, and estimated pay for the pay period beginning on January 25, 2009 (CX 21; CX 22, p. 9). However Respondents submit slightly different calculations for Bennett's estimated pay for the January 25, 2009 pay period, indicating that he only worked 40 hours instead of the 42.5 hours calculated by the Department of Labor (RX 2A Amended). Kristy Schleining testified at the hearing that Bennett ran a fixed-time route from Atlanta, Georgia, to Greenwood, Indiana, for which he was permitted ten hours four times per week (Tr. 195). Because his route did not have hard beginning and ending times, he could stop and take breaks, but he would not be compensated for them. *Id.* Elsewhere, Respondents testified that drivers were only compensated for delays, such as weather problems, repairs, or traffic, if they made a notation on their timesheets (Tr. 212-13). Bennett has no such comments on his timesheet. Because Respondents' knowledge of Bennett's route is so specific, I find it credible. As corroboration, I note that Bennett's pay check for the period January 11 through 24, 2009, records exactly 80 hours, presumably indicating four runs per week between Atlanta and Greenwood at ten hours apiece (CX 17, p. 9). As a consequence, I credit Respondents' calculations for Bennett and deduct \$49.40. Howard Bennett is entitled to **\$2,992.48**.

Scott D. Bennett

No calculations were submitted for this employee, and I find that he is entitled to nothing.¹⁴

Gary R. Block

I accept the Department of Labor's uncontested calculations and find that Gary Block is entitled to **\$432.18** (CX 21).

¹⁴ The paychecks at CX 17 include employees who were salaried or who otherwise do not appear to have worked under SCA contracts. The Administrator makes no claim that these are SCA-covered employees and did not include them in the total penalty. They are included here only for completeness and to prevent confusion over the paychecks.

Calvin E. Bowers

The Department of Labor calculated an award of \$2,946.46.80 for Calvin Bowers (CX 21; CX 22, p. 11). The record does not contain Bowers's timesheet or driver's logs for the January 25-February 1 pay period, so it is impossible to verify his times. However, Respondents correctly note that the Department of Labor is using Chicago wages for a Missouri employee under contract 60133 by calculating his hours at \$20.15, the Chicago rate (RX 2A Amended). Because I cannot determine the number of hours that Bowers worked or his wages without his timesheet or driver's logs in the event of a dispute like this, I am unable to accept the Department of Labor calculation. As a consequence, I reduce Bowers's award by \$486.20. He is entitled to **\$2,460.60**, which includes his prior paycheck amount and holiday pay for the Martin Luther King, Jr. holiday.

Louie G. Brock

The Department of Labor calculation for Louie Brock was \$5,030.48 (CX 21; CX 22, p. 12). First, Respondents contest Brock's entitlement to vacation pay and fringe benefits for his unpaid vacation leave, and second, they seek a slight reduction in his hours worked for the pay period beginning January 25, 2009 (RX 1 Amended; RX 2A Amended). As noted above, I accept Respondents' testimony that drivers who take vacation pay in lieu of time off are not entitled to an additional payment for fringe benefits, since they only were entitled to receive benefits for the hours they actually worked. As a consequence, I deduct \$308.80 from Brock's award. Respondents testified that they had no knowledge of his eligibility for vacation pay (Tr. 153). As a consequence, at the hearing, they stated they did not contest the vacation pay, but they did contest it at RX 2A Amended. Brock submitted a declaration stating that he was owed 80 hours of unpaid vacation leave (CX 19, p. 37). Given this declaration and Respondents' lack of specific recollection, I credit Brock with the vacation leave.

Second, Respondents testify that, like Howard Bennett, Brock worked a route with fixed hours totaling 40 per week (Tr. 197). As a result, the calculation that he was entitled to 47.5 hours based on his driver log and timesheet is too high. I agree, and reduce Brock's entitlement by \$148.20, for a total award of **\$4,882.28**.

Chris Broda

The Department of Labor calculated that Chris Broda is entitled to \$3,292.27. This number includes the amount on his pay check at CX 17, p. 14, including his wages and fringe benefits for the pay period January 11-24, 2009, his Martin Luther King, Jr. holiday pay, and estimated wages for the work he performed through January 31, 2009 (CX 22, p. 13). Respondents argue that Chris Broda was a "floater" who worked on both SCA and non-SCA assignments, and consequently is only entitled in this case to wages he earned while working on SCA contracts (RX 2C, Tr. 103-04). Respondents note that Broda's driver's log was labeled "Floater" (CX 18, p. 55). The driver's log shows that Broda worked on Contract 60133 from January 26, 2009 through January 31, 2009. *Id.* at 55-56.

I ultimately reject both the Department of Labor's calculation and Respondents' calculations for Chris Broda. Undoubtedly, the Department of Labor calculation is too high, because it includes time that Broda did not work on the SCA contracts. Respondents' calculations, however, are unclear from the testimony at Tr. 103-04 and 207-08, and I am unable to reproduce their calculations. Respondents' brief did not provide calculations (Respondents' Brief in Support of Final Arguments at 10). According to his driver's log, Broda worked the following hours:

1/26/2009	Floater	12:00 pm	7:20 pm	
1/27/2009	Floater	12:00 pm	4:20 pm	
	60133	4:20 pm	7:20 pm	+ 3:00
1/28/2009	Floater	12:00 pm	4:20 pm	
	60133	4:20 pm	7:20 pm	+ 3:00
	Waiting	7:20 pm	8:00 pm	
	60133	8:00 pm	8:10 pm	+ 0:10
1/29/2009	Floater	12:00 pm	4:20 pm	
	60133	4:20 pm	7:15 pm	+ 2:55
1/30/2009	Floater	12:00 pm	4:20 pm	
	60133	4:20 pm	7:20 pm	+ 3:00
1/31/2009	Floater	12:00 pm	4:20 pm	
	60133	4:20 pm	8:00 pm	+ 3:40

I find that Chris Broda worked on SCA contract 60133 for a total of 15 hours and 45 minutes (15.75 hours) between January 26, 2009 and January 31, 2009. At the rate of \$20.15 per hour, he is entitled to \$317.36 for this period in prevailing wages, as well as prorated fringe benefits in the amount of \$60.80, for a total of \$378.16.

In total, Broda is entitled to \$2,077.84 for the pay period January 11 through January 24, 2009, \$158.32 for the Martin Luther King, Jr. holiday pay, and \$378.16 for the period January 26 through January 31, 2009. In total, he is entitled to **\$2,614.32**, or a deduction of \$677.95 from the Department of Labor calculation.

Gerald L. Bumgarner

The Department of Labor calculated the total amount owed to Gerald Bumgarner as \$4,411.01 based on his paycheck from January 11 through 24, 2009, holiday pay for the Martin Luther King, Jr. holiday, estimated work for the pay period beginning January 25, 2009, and unpaid vacation leave (CX 21). In his declaration dated August 18, 2008, Bumgarner states that he had 160 vacation hours banked with Moser, which he had not taken (CX 19, p. 1). Respondents contest Bumgarner's eligibility to vacation leave, claiming that Bumgarner had gaps in his employment and was not entitled to a full four weeks of vacation (Tr. 120). In addition, Respondents noted that he took vacation leave in 2008 when he took off time in January and again in August to take his son back to school (Tr. 121). Judith Meek, the Wage and Hour investigator, testified that she did not know whether Bumgarner had been fired and rehired, or whether he had suspensions (Tr. 96). I credit Respondents' specific recollection of Bumgarner's vacation eligibility over Meek's less probative testimony and Bumgarner's non-

specific declaration. As a consequence, I deduct \$3,732.80, the amount that the Department of Labor credited Bumgarner for his vacation leave. He is entitled to **\$678.21**.

Steven A. Bunge

Stephen A. Bunge is entitled to **\$194.10** for prevailing wages and fringe benefits for his work from January 11, 2009 to January 17, 2009 (CX 17, p. 16). He did not work after January 17, 2009 and did not work for Respondents on the Martin Luther King, Jr. holiday (RX 2D). As a result, I reduce the Department of Labor calculation of \$213.13 by \$19.20 for the holiday pay.

Edwin Cardona

The Department of Labor calculation for Edwin Cardona was \$5,192.23. This amount includes \$2,350.33 in wages for the period of January 11 through January 24, 2009, and Martin Luther King, Jr. holiday pay in the amount of \$158.16, and I credit him with these amounts.

Respondents seek a deduction in the amount of \$96.20 for time that Cardona spent floating and sweeping the trailer (RX 2C). Because I am unable to reproduce that calculation, I look to Cardona's driver's log (CX 18, p. 60-61). I make the following deductions from Cardona's hours worked for the days January 26 and January 27, 2009:

1/26/2009	Float and Sweep	5:00 am	6:00 am	- 1:00
1/27/2009	Float and Sweep	1:15 am	1:55 am	- 0:40
	Float and Sweep	4:40 am	6:30 am	- 1:50

In total, I deduct 3.5 hours from Cardona's SCA-covered work on January 26 and 27, 2009, or \$71.68 in prevailing wages and \$14.21 in fringe benefits, for a total deduction of \$85.89.

In his declaration dated August 18, 2011, Cardona wrote that he had 96 hours of vacation leave banked with Moser that he had not taken, and for which he was not paid (CX 19, p. 3). Respondents dispute Cardona's eligibility for vacation leave (RX 1 Amended). According to Respondents, Cardona was an on-call employee who performed work under SCA contracts only part of the time; as a consequence, they could not confirm his eligibility for vacation (Tr. 121). In addition, Respondents claim that the Department of Labor's calculation that he was entitled to 96 hours of vacation leave must be wrong, because Moser only paid employees in 40-hour installments of vacation leave (Tr. 121-22). However, Respondents elsewhere testified that part-time or on-call employees under SCA contracts would have their vacation leave prorated (Tr. 133). This testimony is contradictory, because it suggests that Cardona could have been entitled to, for instance 120 hours of vacation leave from Moser (if he worked ten continuous years), but only 96 prorated hours of vacation leave under the SCA contract. As a consequence, I disagree with Respondents' calculation of vacation leave in this case and do not think that they rebutted the calculation by the Department of Labor or Cardona's declaration. As a consequence, I affirm the Department of Labor's vacation pay calculation.

However, I agree with Respondents that if Cardona is entitled to the financial equivalent of his accrued vacation leave, he cannot be entitled to fringe benefits for that period, because he

was paid fringe benefits in the time he worked in lieu of taking vacation leave. As a consequence, I deduct \$370.56 from the Department of Labor's calculation, which is 96 hours of vacation leave times a fringe benefit rate of \$3.86.

In total, I find that the Department of Labor calculation for Edwin Cardona must be reduced in the amount of \$456.45 for time that he spent floating and sweeping in his last week of employment and for the fringe benefit calculation in his vacation leave payout. I ultimately affirm the 96 hours of vacation leave in this case. Cardona is entitled to the amount of **\$4,735.78**.

Richard K. Carlson

Richard Carlson was not an SCA-covered employee (RX 2B). Respondents testified at trial that he was a mechanic (Tr. 204). In addition, his rate of pay is different from the contractual prevailing wages, and he was paid overtime, unlike the other drivers (CX 17, p. 18). As a consequence, the Department of Labor calculation of **\$2,743.32** is disallowed, and he is entitled to nothing.

Jesus Cervantes

The Department of Labor calculated a total award of \$794.82 for Jesus Cervantes (CX 21; CX 22, p. 19). Given the calculations submitted by both sides, the parties appear to agree that Cervantes was actually paid at two different rates because he worked under two different contracts (Tr. 175; RX 2A Amended). However, Respondents seek a downward adjustment of Cervantes's hours. The following are the on-duty hours recorded on Cervantes's timesheets:

1/25/2009	607L8	11:00 am	2:20 pm	+ 3:20
	607L8	5:00 pm	7:30 pm	+ 2:30
1/31/2009	60133	11:00 am	2:50 pm	+ 3:50
	60133	3:40 pm	7:00 pm	+ 3:20
2/1/2009	607L8	11:00 am	12:20 pm	+ 1:20
	607L8	12:50 pm	2:00 pm	+ 1:10

(CX 18, p. 65-68). According to my calculations, Cervantes worked 8:20 on contract 607L8 and 7:10 on contract 60133. At a prevailing wage rate of \$20.48 for contract 607L8 and \$20.15 for contract 60133, I calculate a total of \$170.67 for contract 607L8 and \$144.48 for contract 60133. As a consequence, I reject both the Department of Labor's calculations and Respondents' calculations.¹⁵ With holiday pay and fringe benefits, I calculate the following for Cervantes:

Paycheck (1/11/2009 to 1/24/2009)	\$302.51
Wages under contract 607L8	\$170.67
Wages under contract 60133	\$144.48
Fringe benefits under contract 607L8	\$33.83

¹⁵ I am unable to reproduce any of the parties' calculations for Mr. Cervantes. The Department of Labor clearly used the wrong hours per contract (CX 22, p. 19). Respondent appears to have undercounted the hours for contract 60133, possibly by leaving off the times on the fourth page of Cervantes's timesheet, at CX 18, p. 67.

Fringe benefits under contract 60133	\$27.68
SUBTOTAL	\$679.17

To calculate Cervantes's holiday pay, I use the method Judith Meek used, in which she made a weighted average of the driver's hourly wage in order to calculate the holiday pay for January 19, 2009. Here, I use the following formula to calculate the weighted average:

$$(8.33 \times \$20.48) + (7.17 \times \$20.15) / 15.5 \text{ (total number of hours worked)}$$

Using this formula, I find that Cervantes is entitled to \$20.33 per hour for the Martin Luther King, Jr. holiday, for a total of \$162.66. Cervantes's final award is **\$841.83**.

Carl G. Churchill

Respondents calculated a total of \$4,031.98 for Carl Churchill, based on his prior paycheck, holiday pay for the Martin Luther King, Jr. holiday, estimated work for the pay period beginning on January 25, 2009, and unpaid vacation leave (CX 21). In his declaration dated August 19, 2011, Churchill states that he was entitled to 110 vacation hours that he had not taken (CX 19, p. 5). Respondents contest Churchill's eligibility for the vacation hours, arguing that he was not a full-time employee and he would switch with another driver (Tr. 122-23). As a consequence, he did not work forty hours per week. In addition, Respondents argue that no full-time employee would be entitled to 110 hours, because Moser paid vacation leave in 40-hour increments (RX 1 Amended). As with Edwin Cardona, however, I find that Respondents' testimony that they prorated vacation leave for employees who did not work full time on SCA contracts to explain this discrepancy (see Tr. 133). As a consequence, I disagree with Respondents that Churchill was not entitled to 110 hours of vacation leave. However, I agree with Respondents that Churchill cannot collect both the financial equivalent of vacation leave and vacation fringe benefits. Accordingly, I reduce his total by \$463.20, which is the vacation fringe benefit calculation performed by the Department of Labor (CX 22, p. 21). In total, Carl Churchill is entitled to **\$3,568.78**.

Terry Christ

I accept the Department of Labor's uncontested calculations and find that Terry Christ is entitled to **\$536.34** (CX 21).

George B. Coe

I accept the Department of Labor's uncontested calculations and find that George Coe is entitled to **\$832.29** (CX 21).

Gary L. Cook

The Department of Labor calculated a total of \$5,878.24 for Gary Cook (CX 21; CX 22, p. 23). Respondents seek a deduction of \$141.72 for the six hours that Cook spent taking tractor trailers to the repair shop (RX 2C; see also, driver's log at CX 18, p. 71). According to

Respondents, if a trailer is empty and is not hauling mail, a driver cannot earn wages under an SCA contract, and that was the case with Gary Cook in this case (Tr. 208). I agree. As a consequence, I deduct six hours at \$19.76 in prevailing wages and \$3.86 in fringe benefits for a total deduction of \$141.72.

In addition, Cook submitted a declaration dated August 17, 2011 stating that he was entitled to 80 hours of vacation leave that he had not taken (CX 19, p. 7). However, Respondents testified that they would see Cook on a regular basis and knew from personal knowledge his vacation eligibility (Tr. 124). They further testified that Cook took his vacation in financial compensation in lieu of time off in 2008 for tax reasons. *Id.* This is very specific testimony. I am entitled to credit the more specific testimony over the Department of Labor's calculations and Cook's form declaration. As a consequence, I deduct the Department of Labor's vacation pay calculation of \$1,580.80 and fringe benefit calculation \$308.80.

In addition, I note that Cook received more than forty hours in fringe benefits as a full-time employee. This was error, and as a consequence, I reduce his fringe benefits award to \$154.40. In total, Gary Cook is entitled to the amount of **\$3,774.54**, which is the Department of Labor calculation of \$5,878.24 with deductions for his work on January 25, 2009, his paid vacation, and the vacation fringe benefit, as well as a deduction of \$72.38 for his overcompensated fringe benefits.

James B. Cook

James B. Cook was not an employee of Moser. As explained at trial, the investigator misread a signature and confused Gary Cook and James Goodwin (Tr. 197). As a consequence, the amount of **\$230.90**, contained in the Department of Labor calculations, is disallowed.

Timothy J. Corrigan

I accept the Department of Labor's uncontested calculations and find that Timothy Corrigan is entitled to **\$3,277.94** (CX 21).

Matthew T. Cybulski

The Department of Labor calculated that Matthew Cybulski is entitled to \$3,506.45 (CX 21; CX 22, p. 26). Respondents claim a deduction of \$792.33, arguing that because Cybulski was a floater, he is not entitled to SCA wages for the full period credited to him by the Department of Labor (RX 2C, Tr. 105, 209).

As with Chris Broda, I reject the Department of Labor calculation because it is too high based on this testimony, and I reject the Respondents' calculation because I am unable to reproduce the amount of the deduction that they claim. For the period from January 26, 2009 through January 31, 2009, Cybulski worked the following hours:

1/26/2009	Floater	12:00 am	2:00 am	
	601L7	2:00 am	6:00 am	+ 4:00

1/27/2009	Floater	12:00 am	6:20 am	
	60133	6:20 am	6:30 am	+ 0:10
1/28/2009	Floater	12:00 am	6:00 am	
	60133	6:00 am	8:00 am	+ 2:00
1/29/2009	Floater	12:00 am	5:50 am	
	60133	5:50 am	6:00 am	+ 0:10
1/30/2009	Floater	12:00 am	5:30 am	
	60133	5:30 am	8:00 am	+ 2:30
1/31/2009	Floater	12:00 am	6:20 am	
	60133	6:20 am	6:30 am	+ 0:10

(CX 18 at 82-83). Cybulski worked on SCA contracts for a total of 9 hours, 4 hours under contract 601L7 and 5 hours under contract 60133, which use the same prevailing wage rates (JX 1). At the rate of \$20.15 per hour, Cybulski is entitled to \$181.35 in prevailing wages under SCA contracts and \$34.74 in benefits, for a total of \$216.09.

In total, Cybulski is entitled to \$2,366.86 for the pay period January 11 through January 24, 2009 (CX 17, p. 25),¹⁶ \$159.04 for the Martin Luther King, Jr. holiday, and \$216.09 for the period January 26, 2009 through January 31, 2009, for a total of **\$2,741.99**, a deduction of \$764.46 from the Department of Labor calculation.

Gary Dedrick

The Department of Labor calculated a total of \$2,750.89 for Gary Dedrick, including his prior paycheck, hours worked on the Martin Luther King, Jr. holiday, estimated time for the pay period beginning January 25, 2009, and his unpaid vacation leave (CX 21). Respondents contest Dedrick's entitlement to unpaid vacation leave, arguing that the paycheck he would have received for the period January 11 through 24, 2009, included his vacation payout for the prior year (Tr. 124). Dedrick's paycheck at CX 17, p. 26, does indeed contain his unused vacation leave, and the Department of Labor investigator added the vacation leave twice in her calculations at CX 22, p. 27.

As a consequence, Dedrick's entitlement is **\$1,818.89**, which is the total amount he is owed without the double-counted vacation leave and fringe benefits.

Dennis L. Edwards

I accept the Department of Labor's uncontested calculations and find that Dennis Edwards is entitled to **\$2,299.62** (CX 21).

Stanley D. Fiedor

Stanley D. Fiedor is entitled to **\$884.09** for prevailing wages and fringe benefits for the period January 11, 2009 through January 16, 2009 (CX 17, p. 28). He did not work after this

¹⁶ I note that this pay stub reflects a complicated hourly rate calculation. Respondents submitted no evidence that some of this work was not SCA-related.

date, and did not work for Respondents on the Martin Luther King, Jr. holiday (RX 2D). Consequently, the Department of Labor calculation of \$974.60 must be reduced by \$83.50.

David L. Fields

No calculations were submitted for this employee, and he is entitled to nothing.

Mark A. Fletcher

I accept the Department of Labor's uncontested calculations and find that Mark Fletcher is entitled to **\$723.77** (CX 21).

Edward L. Fuka

The Department of Labor calculated \$4,493.40 for Edward Fuka, including his prior paycheck, holiday pay for the Martin Luther King, Jr. holiday, estimated pay for the pay period beginning January 25, 2009, and unused vacation leave and fringe benefits (CX 21; CX 22, p. 31). Respondents contest his vacation pay eligibility and the rate of pay used by the Department of Labor in calculating his wages for the period after January 25, 2009 (RX1 Amended; RX 2A Amended). In his declaration dated August 17, 2011, Fuka states that he had 59.94 vacation hours banked with Moser that he had not taken (CX 19, p. 12).

Respondents credibly argue that the company paid vacation leave in 40-hour installments, and required employees to take all of the vacation leave at one time (Tr. 121, 125). I agree, and note that Fuka is the only employee to have declared his vacation was an amount in decimal form. While I have found above that Edwin Cardona was entitled to a prorated amount of vacation leave because he worked part time as a floater, which would not be compensated under the SCA contract, there is no testimony here that Fuka was not a full-time SCA-covered employee. As a consequence, I have to choose Respondents' more detailed explanation as to why he could not be entitled to 54.94 hours of vacation leave over Fuka's inert declaration. However, Respondents provided no testimony to state that Fuka was not entitled to a vacation leave payout, unlike many of the other employees listed in RX 1 Amended. As a consequence, I reduce Fuka's vacation pay from 59.94 hours to 40.0 hours, which is the amount to which he would be entitled after working at Moser for one year. Because he asserts that he was entitled to some vacation leave, and Respondents have not presented evidence otherwise, I credit him with 40.0 hours, the minimum that Moser would have provided. At a rate of \$20.15 per hour, this amounts to \$806.00. However, the Department of Labor's calculation of \$231.37 is disallowed for vacation fringe benefits. As I determined above, employees cannot be entitled both to a vacation payout and fringe benefits for that time, as they would be double-covered.

Respondents also claim that the Department of Labor slightly overcalculated Fuka's hours for the pay period beginning January 25, 2009 (RX 2A Amended). Specifically, Respondents reduce Fuka's hours by fifteen minutes, for a total reduction in prevailing wages of \$5.04 and a reduction in fringe benefits of \$0.96. Fuka's driver log is at CX 18, p. 90. The log shows that he worked 8 hours on January 26; 6.5 hours on January 27; 5.25 hours on January 28; 6.5 hours on January 29; and 6.25 hours on January 30, 2009. His time sheet on page 92 shows

that he worked 92 hours on January 31, which is not reflected on his driver log because there is a page missing from his log. The discrepancy appears to be that the third page of Fuka's driver log also contains the fifteen minutes from 7:45 pm to 8:00 pm, which is the time that he regularly spent driving the truck back to the lot, as well as the entire day of January 31. On all prior days in this pay period, Fuka spent 15 minutes driving the truck back to the truck lot, and as is evident from CX 18, p. 91, this time would have spilled over onto the missing third page, which is why Fuka claimed 6.5 hours for January 30 when the second page of the log only shows 6.25 hours. Because I will not hold the employee responsible for incomplete documentation in this case, I agree with the Department of Labor's calculation of 39.25 hours for Fuka rather than Respondents' calculation of 39 hours (see CX 22, p. 31). As a consequence, I do not reduce his hours for the pay period beginning January 25, 2009.

Fuka is entitled to a total of **\$3,860.24**, which is the amount calculated by the Department of Labor, with deductions for all vacation fringe benefits and 19.94 hours of vacation leave.

Perry E. Gates

I accept the Department of Labor's uncontested calculations and find that Perry Gates is entitled to **\$2,526.65** (CX 21).

Gary D. Gattis

The Department of Labor calculated a total of \$6,831.68 for Gary Gattis, including his prior paycheck (\$2,737.60 at CX 17, p. 33); holiday pay for the Martin Luther King, Jr. holiday (\$163.84 at CX 22, p. 33); estimated earnings for the pay period beginning January 25, 2009 (\$2,252.80 in wages and \$324.80 in fringe benefits at *id.*); and unused vacation leave of 80 hours. Gattis has a declaration dated August 19, 2011 in which he states he was owed 80 hours of vacation time (CX 19, p. 14). Respondents contest only the unused vacation hours, noting that Tammi Schleining personally arranged the schedule for his time off in 2008 (Tr. 125). Schleining later recalled that she believed he took two weeks in the summer of 2008 (Tr. 160). This is very specific testimony. I am entitled to credit Schleining's more specific testimony over the more general declaration. As a consequence, I deduct \$1,638.40 in vacation hours and \$324.80 in fringe benefits from the Department of Labor's calculation.

In addition, the Department of Labor investigator also appears to have awarded Gattis 48-hours of fringe benefits for his final pay period, instead of only 40 hours. I will deduct \$162.40 for this benefit, for a total fringe benefit of \$162.40. Gattis is entitled to **\$4,706.08**.

Gustavo Gomez-Ramirez

No calculations were submitted for this employee, and he is entitled to nothing.

James B. Goodwin

The Department of Labor calculated \$2,235.50 for James Goodwin for his prior paycheck, holiday pay, and estimated hours for the pay period beginning January 25, 2009 (CX

21; CX 22, p. 34). Respondents contest twenty hours of his time for the latter pay period, and they testify that he was a team driver in which he shared his truck with another driver (Tr. 198). Team drivers were required to record their co-driver's times on their driver log. *Id.* Goodwin's driver log shows four days of working 9.5 hours each, for a total of 39 hours (CX 18, p. 120). Two of the days have been scratched out, and the testimony strongly suggests that the times recorded for these two days were of his co-driver. That explanation is a reasonable one, and I accept it. As a consequence, I find Goodwin is entitled to \$374.30 for the 19 hours he worked, a reduction of \$394.00 from the Department of Labor calculation.

However, I note that Respondents recalculated Goodwin's fringe benefits with a higher multiplier than the Department of Labor did (\$3.86 instead of \$3.39; compare RX 2A Amended with CX 22, p. 34). They are in error, because the parties stipulated that Contract 63213, on which Goodwin worked, use the prevailing wage determination WD 1977-0196, Rev 40 5/23/2005, which uses \$3.39 for tractor trailer drivers (JX 1). As a consequence, I reject their calculation of \$73.34 in fringe benefits for Goodwin, and I find he is entitled to \$64.41 in fringe benefits. In total, Goodwin is entitled to an award of **\$1,832.57**.

Mark Gossett

I accept the Department of Labor's uncontested calculations and find that Mark Gossett is entitled to **\$2,383.60** (CX 21).

David F. Gray

The Department of Labor calculated a total award to David Gray in the amount of \$5,014.32 (CX 21; CX 22, p. 36). Respondents contest only Gray's entitlement to unused vacation pay, as to which Tammi Schleining testified that Gray took his vacation leave in 2008 for family issues after he moved to Minnesota (Tr. 126). Gray did not submit a signed declaration. Although Schleining conceded on cross-examination that she could not confirm vacation hours without the records taken by the Postal Service (Tr. 170), I find her testimony specific and credible. As a consequence, I find that the Department of Labor calculation for David Gray should be reduced by \$1,580.80 for vacation pay and \$154.40 for fringe benefits (CX 22, p. 36). David Gray is entitled to a total of **\$3,279.12**.

Tracy J. Guarascio

The Department of Labor calculation for Tracy Guarascio was \$6,209.88 (CX 21; CX 22, p. 37). He submitted a declaration stating that he had at least 120 vacation hours banked with Moser that he had not used (CX 19, p. 15). Respondents contest his entitlement to vacation leave, testifying that he routinely accepted a payout from Moser for his son's education, right on his anniversary date (Tr. 126-27). Although on cross-examination, Tammi Schleining testified that she did not remember when his anniversary date was, she confirmed that he was paid vacation leave in 2008 (Tr. 160). This is specific and credible testimony as against the form declaration. As a consequence, I deduct \$2,099.20 from his award, for a total entitlement of **\$4,110.68**.

Colin C. Hansen

The Department of Labor calculated a total award for Colin Hansen of \$1,542.74 (CX 21; CX 22, p. 38). Respondents dispute Hansen's unused vacation pay and seek minor adjustments to the hours he worked (RX 1 Amended; RX 2A Amended). Hansen did not submit a declaration stating how much vacation pay he believed he was owed. Respondents testified at trial that Hansen was not a full-time employee and did not have continuous employment for one year (Tr. 127). As a result, he was not entitled to vacation leave. This is specific testimony, and I will reduce Hansen's award by \$1,027.60, consisting of \$873.20 for vacation pay and the erroneously added \$154.40 for vacation fringe benefits.

The Department of Labor credited Hansen with 9.25 hours for the pay period beginning January 25, 2009, while Respondents credited him with only 6.91 hours (compare CX 22, p. 38; RX 2A Amended). According to his timesheet, Hansen worked only one day in this pay period, on January 31, 2009 (CX 18, p. 137). This timesheet shows a total of 7 hours and five minutes, at a rate of \$20.15 per hour, for a total of \$142.66 in wages. In addition, he is entitled to \$27.33 in fringe benefits.

For holiday pay, I will use Judith Meek's calculation with slightly different numbers. First, I take the average number of hours he worked as between the two contracts on his paycheck from the January 11-24, 2009 pay period, for 5.6 total hours (the average of 3.20 and 8.00). Dividing 5.6 by 40, I calculate 0.14, times 8 hours for the day, which equals 1.12 hours. I multiplied that times the following weighted average:

$$[(8.0 \times \$19.44) + (3.33 \times \$20.15)] / 11.2 \text{ hours}$$

This calculation results in an hourly rate of \$19.88 for the Martin Luther King, Jr. holiday. Since he was not a full-time employee, I take his average daily hours of 1.12 from the prior pay period (11.2 hours divided by 10 days in the pay period) and determine that he is entitled to \$22.27 in holiday pay.¹⁷ In sum, Hansen is entitled to \$266.42 for the January 11-24 pay period, 169.99 for the January 25-February 1 pay period, and \$22.27 for the Martin Luther King holiday. Hansen's total award is **\$458.68**.

Randall L. Hardy

I accept the Department of Labor's uncontested calculations and find that Randall Hardy is entitled to **\$2,092.40** (CX 21).

Rodney L. Hawkins

The Department of Labor calculated a total award to Rodney Hawkins of \$2,677.69 (CX 21; CX 22, p. 40). Respondents do not contest Hawkins's entitlement to unused vacation pay of 40 hours at \$16.40 per hour (RX 1 Amended; Tr. 127). They do argue that if he were to take his vacation leave as cash, he would not be entitled to fringe benefits. I agree. As a consequence, I

¹⁷ This is the number calculated by the Department of Labor (Tr. 22, p. 38). Because I have found this calculation reproducible, I reject Respondents' higher amount.

reduce Hawkins's award by \$162.40, the Department of Labor's vacation fringe benefits calculation, and find that he is entitled to **\$2,515.29**.

Jerod Hicks

Jerod Hicks is entitled to \$476.21 in prevailing wages for the period from January 14, 2009 through January 16, 2009 (CX 17, p. 42). Because he did not work after January 16, 2009, he is not entitled to holiday pay for the Martin Luther King, Jr. holiday (RX 2D). The Department of Labor calculation of \$622.60 must be reduced by \$56.14.

In addition, Mr. Hick's paycheck does not include fringe benefits for the period he worked. Because Respondents do not dispute that he was an employee under the SCA, Mr. Hicks would be entitled to fringe benefits for this period. Consequently, I accept the Department of Labor's addition of \$90.25, for a total payment to Mr. Hicks of **\$566.46**.

Jennifer A. Hinkle

No calculations were submitted for this employee.

Phillip G. Houston

I accept the Department of Labor's uncontested calculations and find that Phillip Houston is entitled to **\$1,188.27** (CX 21).

Justin Hyslop

No calculations were submitted for this employee.

Mark S. Jarrell

I accept the Department of Labor's uncontested calculations and find that Mark Jarrell is entitled to **\$2,097.59** (CX 21).

James Jilek

James Jilek is entitled to **\$989.28** for the period from January 11, 2009 through January 16, 2009 (CX 17, p. 47). Because he did not work after January 11, 2009, he is not entitled to holiday pay for the Martin Luther King, Jr. holiday (RX 2D). The Department of Labor calculation of \$1,087.88 must be reduced by \$98.57.

Christopher H. Johnsen

I accept the Department of Labor's uncontested calculations and find that Christopher Johnsen is entitled to **\$2,577.05** (CX 21).

Deborah D. Johnson

Deborah Johnson is entitled to **\$308.11** for the period from January 12, 2009 through January 13, 2009 (CX 17, p. 49). Because she did not work after January 13, 2009, she is not entitled to holiday pay for the Martin Luther King, Jr. holiday (RX 2D). The Department of Labor calculation of \$337.28 must be reduced by \$29.17.

Eric Johnson

I accept the Department of Labor’s uncontested calculations and find that Eric Johnson is entitled to **\$2,815.57** (CX 21).

Matthew C. Johnson

The Department of Labor calculated the amount of \$3,578.23 for Matthew Johnson (CX 21; CX 22, p. 48). Respondents claim a deduction of \$958.99, arguing that Johnson only worked part time on SCA contracts and was a floater the rest of the time, for which he was paid non-SCA wages (RX 2C; Tr. 106). As with Chris Broda and Matthew Cybulski, I reject both the Department of Labor calculations for Matthew Johnson as too high, and Respondents’ calculation because it is not reproducible. I note from Johnson’s driver’s log that he worked the following hours:

1/26/2009	Floater	11:00 am	6:30 pm	
1/27/2009	Floater	11:00 am	5:25 pm	
	60133	5:25 pm	7:05 pm	+ 1:40
	Floater	7:05 pm	7:45 pm	
1/28/2009	Floater	12:00 pm	4:20 pm	
	60133	4:20 pm	7:45 pm	+ 3:25
1/29/2009	Floater	11:00 am	7:10 pm	
1/30/2009	Floater	11:00 am	7:10 pm	
1/31/2009	Floater	11:10 am	5:20 pm	
	60133	5:20 pm	6:45 pm	+ 1:25

(CX 18, p. 163). Johnson worked on SCA contracts for a total of 6.5 hours. At the rate of \$20.15, he would be entitled to \$130.98 in prevailing wages and \$24.96 in fringe benefits, for a total of \$155.94 for the period January 26, 2009 through January 31, 2009. Johnson is additionally entitled to \$2,284.16 for the period January 11, 2009 through January 24, 2009, and \$157.36 for the Martin Luther King, Jr. holiday. In total, he is entitled to **\$2,957.46**, or a deduction of \$620.77 from the Department of Labor calculation.

Eric C. Jones

The Department of Labor calculated a total award for Eric Jones of \$4,122.40 (CX 21; CX 22, p. 49). Respondents seek a reduction in the number of hours that he worked, although they do not contest the holiday pay, fringe benefits, or paycheck amount for the pay period January 11 through 24, 2009 (RX 2A Amended). Specifically, the Department of Labor

calculated Jones's hours at 70.5, while Respondents seek 55 (Tr. 146-47). According to Jones's timesheet, he worked the following hours:

1/25/2009	60218	3:00 pm	2:30 am	+ 11:30
1/27/2009	60218	2:30 pm	8:00 am	+ 17:30
1/28/2009	60218	2:00 pm	2:30 am	+ 12:30
1/30/2009	60218	2:30 pm	3:00 am	+ 12:30
1/31/2009	60218	2:00 pm	1:00 am	+ 11:00

(CX 18, p. 153). Ordinarily, this would have worked out to 65 hours at \$20.48 as the prevailing wage under the contract. However, Jones drove the Chicago, Illinois, to Knoxville, Tennessee route, and Respondents suggest that he should have been paid a flat rate under the SCA contract (Tr. 146-47). However, this testimony is not as detailed as it was for other drivers in similar situations. Specifically, Respondents did not testify how long the drive should have taken, or why Jones recorded longer hours. In addition, the pay stub for the period January 11 through January 24 shows that Jones was paid for 99 hours at \$20.48 per hour (CX 17, p. 52). As a consequence, I will not use the Respondents' calculation. However, I am also unable to reproduce how the Department of Labor came up with 70.5 hours, particularly as Jones's daily logs are included several pages before (numbered 154-61, but taken out of order). In addition, Jones made comments on his daily logs that he was slowed due to severe weather (CX 18, p. 158-59). According to the testimony, Respondents would pay for this time. In light of the foregoing, I ultimately credit Jones with 65 hours at \$20.48 for a total of \$1,331.20 in prevailing wages. He is also entitled to \$4.06 per hour for 40 hours, for fringe benefits totaling \$162.40. His total award is therefore **\$4,172.16**.

Thomas L. Jordan

The Department of Labor calculated a total award of \$3,122.03 for Thomas Jordan (CX 21; CX 22, p. 50). Respondents seek a reduction in his total hours, from 58.25 to 54.25 (RX 2A Amended). Respondents do not contest the amount on his prior paycheck (January 11 to January 24, 2009), his holiday pay, or his fringe benefit amount. Turning to Jordan's timesheet, I note that he worked the following times:

1/25/2009	63213	10:30 am	7:30 pm	+ 9:00
1/26/2009	63213	5:30 pm	2:00 am	+ 8:30
1/27/2009	63213	10:30 am	7:30 pm	+ 9:00
1/28/2009	63213	5:30 pm	2:00 am	+ 8:30
1/29/2009	63213	2:00 am	11:30 am	+ 9:30
1/30/209	63213	2:00 am	11:30 am	+ 9:30

(CX 18, p. 146). This adds up to 54.0 hours, at a rate of \$19.70, for a total of \$1,063.80, plus fringe benefits of \$3.39 per hour for 40 hours, or \$135.60. In total, Jordan is entitled to a final award of **\$3,173.81**.

John J. Kackert

The Department of Labor calculated a total of \$2,892.86 for John Kackert (CX 21; CX 22, p. 51). Respondents dispute Kackert's wages for the pay period beginning January 25, 2009, testifying that he was a straight truck driver and did not work on tractor trailer contracts (Tr. 147). Kackert's earlier paycheck for the period January 11 through January 24, 2009, shows that he worked 67.24 hours at \$19.44 per hour (CX 17, p. 54). The Department of Labor contract showed that he worked on contract 55217, which Respondents denied at the trial (Tr. 147). However, the prevailing wage determination stipulated by the parties for contract 55217 shows that Chicago-based employees who drive straight trucks are entitled to \$19.44 per hour, the amount Kackert was paid; no tractor trailer drivers were paid this wage. Respondents are correct to note that Kackert apparently does not have driver logs or timesheets included at CX 18. Nonetheless, I am not convinced that the Department of Labor calculations are wrong since they use the correct prevailing wage, and Respondents do not contest the *number of hours* that Kackert worked, notwithstanding the missing driver logs and timesheets. As a result, I find that Kackert is entitled to the full **\$2,892.86**.

Eric O. Kidd

The Department of Labor calculated a total of \$3,465.27 for Eric Kidd, including his paycheck of \$2,285.94 for the period January 11 through January 24, 2009 and \$158.48 for the Martin Luther King, Jr., holiday, as well as an estimation of the amount he earned after January 24, 2009 (CX 21; CX 22, p. 52). Respondents seek a deduction of \$558.91, for time when Kidd worked as a floater and a sweeper after January 24 (RX 2C; Tr. 209-10).

According to his driver's log, Kidd worked as a floater for the following times in his last week of work (his SCA times are not included here):

1/26/2009	Floater	12:10 pm	2:15 pm	- 2:05
	Floater	3:25 pm	4:15 pm	- 0:50
1/27/2009	Floater	1:40 pm	4:20 pm	- 2:40
1/28/2009	Floater	12:00 pm	12:40 pm	- 0:40
	Floater	1:55 pm	4:30 pm	- 2:35
1/29/2009	Floater	12:10 pm	4:15 pm	- 4:05
1/30/2009	Floater	12:10 pm	4:15 pm	- 4:05
1/31/2009	Floater	12:10 pm	4:15 pm	- 4:05

(CX 18, p. 176-77). In total, I find that Kidd worked as a floater for 21 hours and 5 minutes, which cannot be compensated under the SCA. At a prevailing wage of \$20.15 and a fringe benefit rate of \$3.86, Kidd's award must be reduced by \$424.82 in prevailing wages and \$81.38 in fringe benefits for a total reduction of \$506.21. In total, including his prior pay check and holiday pay, Kidd would be entitled to **\$2,959.06**.

William L. Koons

The Department of Labor calculation for William Koons is \$5,001.36 (CX 21; CX 22, p. 53). Respondents contest Koons's entitlement to unused vacation pay and vacation fringe benefits (RX 1 Amended). Koons submitted a declaration in which he stated that he had 80 vacation hours banked with Moser that he had not taken (CX 19, p. 17). At the hearing, the following testimony took place between counsel for Respondents and Tammi Schleining:

Q Okay. Next one, William Koons, why is he not entitled?

A Bill Koons actually lived in Florida. So, when he would run for us out of Georgia, he would actually go home throughout the year to spend time with his family. And, with that, I would not be able to confirm that he had a continuous employment throughout the year for him to be eligible.

(Tr. 127-28). On cross-examination, the following testimony occurred between counsel for the Administrator and Tammi Schleining:

Q William Koons, you say can't confirm continuous employment. Can you confirm non-continuous employment?

A Without having records in front of me, I know personally that he would take long breaks in Florida when he was not on the schedule.

Q And how long did he go to Florida in 2008?

A I can't tell you the exact dates.

Q How long did he go to Florida in 2008?

A That's where he lived personally. He operated out of Georgia, so he went home numerous times.

Q How many weeks did he take off?

A I don't have that, those records.

(Tr. 162). I find that this testimony is not specific enough. Schleining confirmed that Koons took long breaks to Florida to visit family, but she could not confirm that he did so during 2008. She also could not confirm that he would have taken two weeks of vacation instead of, for instance, only one. Although I found Schleining to be a credible witness generally, as to William Koons I find his declaration to be more probative than Schleining's testimony. As a consequence, I do not deduct unused vacation pay from the amount owed by Respondents.

However, I do deduct the vacation fringe benefits from the calculation. Respondents have already convincingly shown that a driver cannot be entitled to both vacation pay and vacation fringe benefits, because the driver would have received fringe benefits when he worked in lieu of taking vacation leave. As a consequence, I deduct his calculation by \$308.80, for a final amount owed to him of **\$4,692.56**.

Tomasz Krynski

Tomasz Krynski was not an SCA-covered employee (RX 2B). Respondents testified at the hearing that he hauled freight and tires (Tr. 204). His rate of pay was different from any of the contractual prevailing wage amounts (CX 17, p. 57). As a consequence, the Department of Labor calculation of **\$1,353.99** is disallowed.

Sherrie L. Kubon

The Department of Labor calculation for Sherrie Kubon is \$5,178.09, including the prior pay period ending on January 24, 2009, pay for the Martin Luther King, Jr. holiday, estimated wages for the pay period beginning January 25, 2009, and unused vacation pay (CX 21; CX 22, p. 55). Respondents do not contest any of these calculations, but they do contest the unused vacation fringe benefit amount that the Department of Labor credited Kubon (RX 1 Amended; Tr. 128, 155). Above, I found that Respondents are probative when they argue that a driver cannot be entitled both to unused vacation pay and to fringe benefits for the same vacation time, because this would double count fringe benefits. As a consequence, I reduce Kubon's award by \$308.80, for a total of **\$4,869.29**.

Dejan Lalic

I accept the Department of Labor's uncontested calculations and find that Dejan Lalic is entitled to **\$4,235.32** (CX 21).

James R. Larsen

I accept the Department of Labor's uncontested calculations and find that James Larsen is entitled to **\$1,737.90** (CX 21).

Robert Latham

No calculations were submitted for this employee.

Sally J. Latham

No calculations were submitted for this employee.

Lydia A. Leone

I accept the Department of Labor’s uncontested calculations and find that Lydia Leone is entitled to **\$806.58** (CX 21).

Steven P. Lloyd

I accept the Department of Labor’s uncontested calculations and find that Stephen Lloyd is entitled to **\$606.59** (CX 21).

Jeff Lorang

No calculations were submitted for this employee.

James L. Lutz

The Department of Labor calculated an award of \$3,565.39 for James Lutz (CX 21; CX 22, p. 60). Respondents contest both his hours and wages for the pay period beginning January 25, 2009 (RX 2A Amended). On his timesheet for this period, I note the following schedule, excluding long breaks:

1/26/2009	60133	1:50 am	6:45 am	+ 4:55
	602L7	9:40 am	11:50 am	+ 2:10
1/27/2009	60133	2:20 am	3:30 am	+ 1:10
	60133	4:10 am	6:45 am	+ 2:35
	602L7	9:30 am	12:00 pm	+ 2:30
1/28/2009	60133	2:20 am	3:30 am	+ 1:10
	60133	4:10 am	10:35 am	+ 6:25
	60133	10:35 am	12:30 pm	+ 1:55
	602L7	12:30 pm	2:50 pm	+ 2:20
1/29/2009	60133	2:20 am	3:30 am	+ 1:10
	60133	4:10 am	6:45 am	+ 2:35
	602L7	9:40 am	12:05 pm	+ 2:25
1/30/2009	60133	2:20 am	3:30 am	+ 1:10
	60133	4:10 am	6:45 am	+ 2:35
	602L7	11:00 am	1:40 pm	+ 2:40
1/31/2009	60133	2:20 am	3:30 am	+ 1:10
	60133	4:10 am	6:45 am	+ 2:35
	602L7	9:05 am	11:30 am	+ 2:25

(CX 18, p. 220 *et seq.*) (contract 60133 values in bold). In total, Lutz worked 29.42 hours on contract 60133, and 14.5 hours on contract 602L7. Respondents and the Department of Labor also disagree about the wage rate for Lutz under contract 602L7. The Department of Labor used \$19.70, while Respondents use \$19.44. The Department of Labor’s number is clearly erroneous, since the number appears nowhere in the prevailing wage determination for contract 602L7. At

the hearing, Respondents suggested that even though these two contracts pay the same wages, Lutz received different wages because he drove different trucks; he drove a tractor trailer on contract 60133, but a straight truck for contract 602L7 (Tr. 183). As a consequence, Respondents are using the correct prevailing wages. Those wages are \$20.15 per hour on contract 60133 and \$19.44 per hour on contract 602L7. For the pay period beginning on January 25, 2009, therefore, I find that Lutz is entitled to \$592.81 in wages under contract 60133 and \$281.88 in wages under contract 602L7.

Respondents do not contest Lutz's holiday pay, his fringe benefits, or his paycheck for the period January 11 to 24, 2009. Accordingly, Lutz is entitled to a total award of **\$3,188.13**.

Joshua V. Lyn

The Department of Labor calculated a total of \$4,135.60 for Joshua Lyn, including his prior pay check, his holiday pay for the Martin Luther King, Jr. holiday, his estimated earnings for the pay period beginning January 25, 2009, and his vacation and fringe benefit payout (CX 21; CX 22, p. 61). Respondents contest only his entitlement to vacation leave (RX 1 Amended). In his declaration dated August 19, 2011, Lyn wrote that he had 80 vacation hours banked with Moser that he had not taken (CX 19, p. 21). However, Tammi Schleining testified that she initially denied him for vacation leave hours in 2008, but he already had tickets to Jamaica booked, so she paid him the vacation time (Tr. 129). As a consequence, he is not entitled to a vacation payout for that year. This is specific testimony, and I find Schleining's explanation credible and more detailed than Lyn's declaration. As a consequence, I reduce Lyn's award by \$1,580.80 for vacation hours and an additional \$308.80 for fringe benefits that he would not be entitled to even if he did receive a vacation payout. His total award is now **\$2,246.00**.

Earl Maier

I accept the Department of Labor's uncontested calculations and find that Earl Maier is entitled to **\$3,929.07** (CX 21).

Gabriel Maloul

I accept the Department of Labor's uncontested calculations and find that Gabriel Maloul is entitled to **\$3,597.30** (CX 21).

Benjamin S. Mancera

I accept the Department of Labor's uncontested calculations and find that Benjamin Mancera is entitled to **\$2,106.59** (CX 21).

James A. Martin

The Department of Labor calculated a total of \$4,867.88 for James Martin (CX 21; CX 22, p. 65). Respondents contest Martin's entitlement to vacation and seek a slight adjustment of his hours (RX 1 Amended; RX 2A Amended). The slight adjustment in hours stems from the

fact that Martin worked a route that had fixed hours (55) between Knoxville and Chicago, even though his driver log and timesheets reflect 59 hours (Tr. 199). Martin did not submit a declaration of vacation hours. Respondents testify that he took vacation when he was married, but that they could not remember dates (Tr. 163). This testimony is extremely generic, and Respondents did not confirm that Martin took this time during 2008. I weigh this, however, against a missing declaration. Absent a more specific explanation for his lack of eligibility, I accept the Department of Labor's calculation for vacation pay. However, I deduct \$162.40 in vacation fringe benefits, to which Martin is not entitled if he is paid out for vacation, and four hours of time for his fixed time driving routes, a total of \$81.80. With these adjustments Martin is entitled to a total award of **\$4,623.68**.

Steven P. Mauldin

The Department of Labor calculated a total of \$4,001.50 for Steven Mauldin (CX 21; CX 22, p. 66). Respondents contest Mauldin's eligibility for vacation pay and fringe benefits and seek a slight adjustment of Mauldin's hours, similar to those of James Martin, because he worked a fixed-hour route (RX 1 Amended; RX 2A Amended). Mauldin did not submit a declaration stating the vacation hours to which he believed he was entitled. Tammi Schleining testified that she did not remember whether he took vacation in 2008 (Tr. 130). As a consequence, I accept the Department of Labor's calculation for vacation pay, but deduct the fringe benefit amount since a driver receiving a vacation payout is not also entitled to fringe benefits for that time, for a deduction of \$154.40. In addition, Kristy Schleining testified that Mauldin drove a ten hour drive from Atlanta, Georgia, to Greenwood, Indiana, and consequently should have received credit for only forty hours rather than 43.25 hours (Tr. 200). Just as I found with Howard Bennett, Mauldin's prior paycheck is corroborative evidence, as he was credited for exactly 80 hours in the prior pay period (CX 17, p. 72). I credit this testimony and reduce the award by \$64.22. With these two deductions, Mauldin is entitled to a total award of **\$3,782.88**.

Allen R. May

Allen May was not an SCA-covered employee (RX 2B). The testimony at trial was that he was a mechanic (Tr. 205). His rate of pay does not reflect the contract prevailing wages, and he was paid overtime, unlike the drivers (CX 17, p. 73). As a consequence, the Department of Labor's calculation of **\$2,361.98** is disallowed.

Frederick M. May

No calculations were submitted for this employee.

Edward W. McCallum

I accept the Department of Labor's uncontested calculations and find that Edward McCallum is entitled to **\$541.78** (CX 21).

Robert M. McDermott

The Department of Labor calculated a total award for Robert McDermott of \$5,246.66 (CX 21; CX 22, p. 69). Respondents do not contest his paycheck for the period January 11 through 24, 2009, his entitlement to holiday pay, his estimated hours for the pay period beginning January 25, 2009, or his vacation leave payout. However, they argue that he cannot receive fringe benefits with a financial payout in lieu of vacation leave (RX 1 Amended; Tr. 130). I agree, and I have found earlier that paying fringe benefits on a vacation leave payout would lead to double payment. As a consequence, I reduce the Department of Labor calculation by \$154.40, for a total award of **\$5,092.26**.

Jeffrey E. Melton

The Department of Labor calculation for Jeffrey Melton is \$7,915.39 (CX 21; CX 22, p. 70). Respondents dispute Melton’s vacation hours and seek a reduction of hours for which is credited by the Department of Labor (RX 1 Amended; RX 2A Amended). Melton submitted a declaration dated August 17, 2011 stating that he was entitled to 160 vacation hours (CX 19, p. 27). Respondents testified, however, that Melton failed a random drug test and was terminated; he was rehired after completing a substance abuse program (Tr. 131). As a result, he did not have continuous employment for one year. I find this testimony both specific and credible, and as a consequence, I deduct \$3,276.80 in unpaid vacation leave and \$617.60 in erroneously added vacation fringe benefits.

According to Respondents, the Department of Labor overestimated Melton’s hours (Tr. 220). The Department of Labor estimated these at 58.5, while Respondents estimated them at 51.33 (compare CX 22, p. 70 to RX 2A Amended). According to Melton’s timesheet, he worked the following hours:

1/26/2009	607L8	11:50 pm	9:20 am	+ 9:30
1/27/2009	607L8	11:50 pm	9:15 am	+ 9:25
1/28/2009	607L8	11:50 pm	5:45 am	+ 5:55
	607L8	6:20 am	9:45 am	+ 3:25
1/29/2009	607L8	11:50 pm	4:35 am	+ 4:45
	607L8	6:20 am	9:30 am	+ 3:10
1/30/2009	607L8	11:50 pm	4:35 am	+ 4:45
	607L8	6:20 am	9:15 am	+ 2:55
1/31/2009	607L8	11:50 pm	4:30 am	+ 4:40
	607L8	6:20 am	9:15 am	+ 2:55

(CX 18, p. 254-55). In total, I find that Melton worked 51.42 hours, for a total of \$1,053.08. Respondents do not contest his fringe benefits, holiday pay, or the amount of his January 11 through 24, 2009, paycheck. In total, I find that Melton is entitled to an award of **\$3,876.19**.

David L. Meyerholz

No calculations were submitted for this employee.

Paul M. Mulka

I accept the Department of Labor's uncontested calculations and find that Paul Mulka is entitled to **\$3,386.42** (CX 21).

Rogelio Murillo-Caldera

The Department of Labor submitted a calculation of \$3,094.41 for Rogelio Murillo-Caldera (CX 21; CX 22, p. 16). Respondents do not dispute this award. However, upon my review of the Department of Labor calculations, I note that the investigator granted Mr. Murillo-Caldera more than full-time fringe benefits (46.5 hours instead of forty hours). Full-time employees receive only forty hours of fringe benefits even if they work over forty hours. As a consequence, I reduce Murillo-Caldera's award to **\$3,068.02**.

Michael R. Naumiec

I accept the Department of Labor's uncontested calculations and find that Michael Naumiec is entitled to **\$3,259.22** (CX 21).

Vickie S. Nipper

I accept the Department of Labor's uncontested calculations and find that Vickie Nipper is entitled to **\$273.09** (CX 21).

Ransom P. Page

The Department of Labor calculation for Ransom Page was \$5,526.76 (CX 21; CX 22, p. 74). Respondents contest Page's eligibility for vacation leave (RX 1 Amended). Page submitted a declaration dated August 19, 2011, stating that he was entitled to 80 hours of vacation leave (CX 19, p. 26). Respondents argue that Page was a part-time employee and some years later converted to an on-call employee (Tr. 131). The testimony at trial was that Page was not entitled to a "full-time" vacation. *Id.*; RX 1 Amended. This makes sense, but I disagree with Respondents that as a consequence Page would not be entitled to anything. For corroboration, I turn to Page's paycheck for the pay period from January 11 through January 24, 2008, in which he clearly worked full-time hours (CX 17, p. 83). Given Page's declaration and the evidence that he worked a full-time schedule, I find that Respondents have not rebutted the inference created by the Administrator that Page is entitled to vacation. As a consequence, I do not deduct the vacation pay from Page's award. I will, however, deduct the fringe benefits in the amount of \$308.80 for a total award of **\$5,217.96**.

Billy J. Parker

The Department of Labor calculated a total of \$3,012.24 owed to Billy Parker (CX 21; CX 22, p. 75). Respondents seek a slight reduction in Parker’s hours worked for the pay period beginning January 25, 2009 (RX 2A Amended). According to Respondents, Billy Parker worked on the fixed ten-hour route between Atlanta and Greenwood, Indiana, and was only entitled to 40 hours instead of 41.25 hours for that pay period (Tr. 200). As with Howard Bennett and other drivers above, I agree with that specific testimony and note that in the prior pay period Parker received a flat 80 hour wage for two forty-hour weeks (CX 17, p. 84). As a consequence, I reduce Parker’s eligibility by \$24.69 for the 1.25 hours, for a total eligibility of **\$2,987.55**.

John G. Pathenos

I accept the Department of Labor’s uncontested calculations and find that John Pathenos is entitled to **\$2,062.40** (CX 21).

Roger A. Paykert

The Department of Labor calculated an award of \$3,761.88 for Roger Paykert (CX 21; CX 22, p. 77). Respondents seek a reduction in the number of hours that he worked (RX 2A Amended). Respondents claim that he worked 47 hours, while Respondents claim that he worked 57.75 hours. I note the following hours from Paykert’s timesheet for the pay period beginning on January 25, 2009:

1/28/2009	60226	7:15 pm	9:50 pm	+ 2:35
	60226	10:15 pm	1:00 am	+ 2:45
	60226	4:15 am	8:30 am	+ 4:15
1/29/2009	60226	7:15 pm	9:50 pm	+ 2:35
	60226	10:15 pm	1:00 am	+ 2:45
	60226	4:15 am	8:30 am	+ 4:15
1/30/2009	60226	7:15 pm	9:50 pm	+ 2:35
	60226	10:30 pm	1:00 am	+ 2:30
	60226	4:15 am	8:30 am	+ 4:15
1/31/2009	60226	7:15 pm	9:50 pm	+ 2:35
	60226	10:30 pm	1:00 am	+ 2:30
	60226	4:15 am	8:30 am	+ 4:15

(CX 18, p. 273-74). In total, I find that Paykert worked 37.83 hours based on the timesheet, which is different from either the amount calculated by Respondents or by the Department of Labor. In total, his prevailing wages are \$774.76, and his fringe benefits total \$153.59. Because Respondents do not contest his holiday pay, fringe benefits, or paycheck for the pay period January 11 through 24, 2009, I find that Paykert should be awarded **\$3,534.51**.

Jeffrey R. Pearson

I accept the Department of Labor's uncontested calculations and find that Jeffrey Pearson is entitled to **\$2,880.63** (CX 21).

Sergio Perez

The Department of Labor calculation for Sergio Perez is \$4,220.56 (CX 21; CX 22, p. 79). Respondents argue that Perez is not eligible for a vacation payout, and Tammi Schleining specifically remembered that he came in and requested it in person even though he was already scheduled (Tr. 131-32; see RX 1 Amended). Perez submits a declaration stating that he believed he was entitled to 80 hours of vacation leave (CX 19, p. 29). However, given Schleining's very specific recollection, I find that he is not entitled to a vacation leave payout or to the fringe benefits payout. His award is reduced to **\$2,299.76**.

Charles R. Peterson

I accept the Department of Labor's uncontested calculations and find that Charles Peterson is entitled to **\$1,714.26** (CX 21).

Samantha M. Pilgrim

No calculations were submitted for this employee.

Robert M. Pleasnick

The Department of Labor calculation for Robert Pleasnick is \$4,850.45 (CX 21; CX 22, p. 81). Respondents contest Pleasnick's eligibility for vacation leave (RX 1 Amended). Pleasnick submits a declaration dated August 18, 2011, in which he claimed 40 banked vacation hours (CX 19, p. 32). However, Tammi Schleining testified at trial that she specifically remembered that he requested vacation leave, because she denied the leave but decided to reschedule after numerous conversations with Pleasnick's wife that they had already purchased plane tickets (Tr. 132). I am entitled to credit Schleining's more specific live testimony over Pleasnick's form declaration, and I do so. As a consequence, I reduce Pleasnick's award by \$960.40 for vacation leave (\$806.00) and vacation fringe benefits (\$154.40), for a total award of **\$3,890.05**.

Johnny R. Porter

The Department of Labor calculated Johnny Porter's final award as \$3,434.99 (CX 21; CX 22, p. 82). Respondents seek a slight reduction in the hours that Porter worked in the final pay period, from 48 hours to 46.16 hours at \$20.15 (RX 2A Amended). Respondents do not contest Porter's second-to-final pay check, his holiday pay, or his fringe benefit award. Turning to Porter's timesheet, I note that he worked the following times:

1/26/2009	60133	11:20 pm	7:20 am	+ 8:00
1/27/2009	60133	11:20 pm	7:20 am	+ 8:00
1/28/2009	60133	11:30 pm	7:20 am	+ 7:50
1/29/2009	60133	11:20 pm	7:15 am	+ 7:55
1/30/2009	60133	11:20 pm	7:20 pm	+ 8:00
1/31/2009	60133	11:20 pm	7:20 pm	+ 8:00

(CX 18, p. 283-86). This produces a total of 47.75 hours at \$20.15, for a total of \$962.16. With this total, Porter is entitled to a full award of **\$3,429.95**.

Gary L. Rains

The Department of Labor calculated Gary Rains's final award as \$3,520.00 (CX 21; CX 22, p. 83). Because Rains worked under two contracts, Respondents seek a slight adjustment in the proportion of hours allocated to each contract (RX 2A Amended). This will not change Rains's fringe benefit award, but it may change his holiday pay. As noted above, I will use the weighted average in calculating his holiday pay, and to the extent that Respondents use his lower wage instead to calculate the holiday pay, I reject this approach. Turning to Mr. Rains's timesheet, I note that he worked the following hours, excluding breaks longer than twenty minutes:

1/26/2009	601L7	4:30 am	9:10 am	+ 4:40
	60133	3:05 pm	6:15 pm	+ 3:10
1/27/2009	601L7	4:30 am	10:10 am	+ 5:40
	60133	3:05 pm	6:15 pm	+ 3:10
1/28/2009	601L7	4:30 am	8:40 am	+ 4:10
	60133	3:05 pm	6:15 pm	+ 3:10
1/29/2009	601L7	4:30 am	8:25 am	+ 3:55
	60133	3:05 am	6:15 pm	+ 3:10
1/30/2009	601L7	4:30 am	9:10 am	+ 4:40
	60133	3:05 pm	6:15 pm	+ 3:10
1/31/2009	601L7	4:30 am	9:10 am	+ 4:40
	60133	4:00 pm	7:05 pm	+ 3:05

(CX 18, p. 288-91) (bolded times are for contract 60133). I ultimately find that Gary Rains worked 18.92 hours on contract 60133 and 27.75 hours on contract 601L7. As a consequence, I reject both the Department of Labor calculation and the Respondents' calculation. However, as stipulated by the parties in JX 1, contracts 60133 and 601L7 have the same prevailing wage (\$20.15 per hour), and Respondents did not testify that Rains worked as both a tractor trailer driver and as a straight truck driver. In total, Rains earned \$940.40 for the pay period starting January 25, 2009.

I accept the Department of Labor calculation for Mr. Rains's holiday pay, because it is based on the weighted average (\$19.72) of the times listed on his prior paycheck (CX 17, p. 93). I reject Respondents' calculation because it uses only the lower rate (\$19.44) (see RX 2A

Amended). As a consequence, I find Mr. Rains is entitled to \$157.76 for the Martin Luther King, Jr. holiday, for a total award of **\$3,503.26**.

Federico Rojas

I accept the Department of Labor's uncontested calculations and find that Federico Rojas is entitled to **\$2,504.15** (CX 21).

Celso Salgado

I accept the Department of Labor's uncontested calculations and find that Celso Salgado is entitled to **\$3,604.89** (CX 21).

Jose A. Sandoval

I accept the Department of Labor's uncontested calculations and find that Jose Sandoval is entitled to **\$935.35** (CX 21).

Paul Schierer

I accept the Department of Labor's uncontested calculations and find that Paul Schierer is entitled to **\$1,414.58** (CX 21).

Donald H. Schleining, Jr.

No calculations were submitted for this employee.

Joshua A. Schleining

No calculations were submitted for this employee.

Kristy S. Schleining

No calculations were submitted for this employee.

Tammi M. Schleining

No calculations were submitted for this employee.

David M. Scott

David Scott was not an SCA-covered employee (RX 2B). The testimony at trial was that he was a mechanic (Tr. 205). He was paid at a much lower rate than the contract prevailing wages (CX 17, p. 102). As a consequence, the sum of **\$153.24** as calculated by the Department of Labor is disallowed.

William R. Shaffer, Sr.

I accept the Department of Labor's uncontested calculations and find that William Shaffer is entitled to **\$4,050.63** (CX 21).¹⁸

Lonnie Shaw, Jr.

Lonnie Shaw is entitled to \$806.00 in prevailing wages, as he was taking vacation leave from the period January 11, 2009 through January 24, 2009 (CX 17, p. 104). As a consequence, he is not entitled to holiday pay for the Martin Luther King, Jr. holiday, because this would result in a double payment for that day (RX 2D). The Department of Labor found that Mr. Shaw was entitled to \$1,056.44, which would have been \$806.00 plus fringe benefits in the amount of \$154.40, and plus holiday pay in the amount of \$96.04. I deduct the holiday pay portion but add the fringe benefits portion since Mr. Shaw took his leave in time and not the financial equivalent. As a consequence, Mr. Shaw is entitled to a total of **\$960.40**.

Jacob Simmons

I accept the Department of Labor's uncontested calculations and find that Jacob Simmons is entitled to **\$1,334.43** (CX 21).

George E. Smith

I accept the Department of Labor's uncontested calculations and find that George Smith is entitled to **\$2,019.08** (CX 21).

Torrey S. Stein

I accept the Department of Labor's uncontested calculations and find that Torrey Stein is entitled to **\$2,061.77** (CX 21).

Frank C. Stevens

The Department of Labor calculated an award of \$3,329.50 for Frank Stevens (CX 21; CX 22, p. 94). Respondents seek a slight reduction in his hours, to 40, instead of the 49 hours used by the Department of Labor (RX 2A Amended). According to Kristy Schleining, Stevens ran the fixed ten hour drive between Chicago and Knoxville four times per week, and consequently could only earn 40 hours in a week (Tr. 201). As corroboration, I note that Stevens's paycheck for the January 11 through 24, 2009, pay period paid him for a flat 80 hours, for two weeks of the fixed ten hour drives (CX 17, p. 108). I accept Respondents' calculations as to Frank Stevens, and reduce his award by \$184.32. In addition, I note that Judith Meek calculated fringe benefits at 49 hours instead of 40 hours. Drivers are only entitled to forty hours of fringe benefits per week, the flat full-time rate (see RX 2A Amended). As a consequence, I reduce Stevens's award by another \$36.54, for a total award of **\$3,108.64**.

¹⁸ Mr. Shaffer's last name is spelled wrong ("Schaeffer") on the Department of Labor worksheets, so he appears out of alphabetical order.

LeVone Stewart

I accept the Department of Labor’s uncontested calculations and find that LeVone Stewart is entitled to **\$1,611.51** (CX 21).

Timothy S. Sykes

Timothy S. Sykes is entitled to **\$770.34** for prevailing wages and fringe benefits for the period January 11, 2009 through January 16, 2009 (CX 17, p. 28). He did not work after this date, and did not work on the Martin Luther King, Jr. holiday (RX 2D). Consequently, the Department of Labor calculation of \$846.29 must be reduced by \$76.95.

Kenneth Thompson

I accept the Department of Labor’s uncontested calculations and find that Kenneth Thompson is entitled to **\$2,216.19** (CX 21).

Christopher A. Tigrett

The Department of Labor calculated a total award of \$3,085.54 for Christopher Tigrett (X 21; CX 22, p. 98). Respondents seek a slight reduction in his hours, to 40, from the 44.75 used by the Department of Labor (RX 2A Amended). Respondents testified that Tigrett drove the Atlanta, Georgia, to Greenwood, Indiana, route, a flat ten-hour route four times per week (Tr. 201). I note on Tigrett’s prior paycheck, for the pay period January 11 through 24, 2009, Tigrett was paid at a flat 80 hour rate for this route (CX 17, p. 112). As a consequence, I deduct \$93.86, for a total award of **\$2,991.68**.

Anthony W. Valentine

I accept the Department of Labor’s uncontested calculations and find that Anthony Valentine is entitled to **\$2,636.95** (CX 21).

Ciro Vargas

The Department of Labor calculated a total award of \$3,379.57 for Ciro Vargas (CX 21; CX 22, p. 100). Respondents seek a slight reduction in the hours that he worked for the pay period beginning January 25, 2009 (RX 2A Amended). Respondents calculated 42.63 hours, while the Department of Labor calculated 47.75 hours. I note the following hours as recorded on Vargas’s timesheet, excluding breaks longer than twenty minutes:

1/26/2009	60133	11:05 am	7:00 pm	+ 7:55
1/27/2009	60133	11:05 am	7:00 pm	+ 7:55
1/28/2009	60133	11:05 am	7:00 pm	+ 7:55
1/29/2009	60133	11:05 am	7:00 pm	+ 7:55
1/30/2009	60133	11:05 am	7:00 pm	+ 7:55

1/31/2009	60133	11:20 am	12:25 pm	+ 1:05
	60133	1:00 pm	1:45 pm	+ 0:45
	60133	3:50 pm	7:10 pm	+ 3:20

(CX 18, p. 325-28). This is a total of 44.75 hours, which again is different from either Respondents' calculation, which is too low, or the Department of Labor calculation, which is too high. As a consequence, Vargas is entitled to \$901.71 for work performed in the pay period beginning January 25, 2009. Because Respondents do not contest his holiday pay, his fringe benefits, or the amount on his paycheck for the pay period January 11 through 25, 2009, I find that Vargas is entitled to a final award of **\$3,319.12**.

Mark J. Vlahos

I accept the Department of Labor's uncontested calculations and find that Mark Vlahos is entitled to **\$2,273.99** (CX 21).

William B. Wade

The Department of Labor calculated a total award for William Wade of \$4,521.70 (CX 21; CX 22, p. 102). Respondents dispute Wade's entitlement to vacation benefits, and additionally seek a slight reduction in Wade's hours and fringe benefits from 38.25 to 30 hours (RX 2A Amended). In addition, Respondents argue that Wade was not a full-time employee, and they could not confirm eligibility due to his sporadic hours when he took time off for unknown personal reasons (RX 1 Amended). Wade's timesheet reveals that he worked the following times:

1/26/2009	60218	2:15 am	7:30 am	+ 5:15
	60218	7:30 am	2:30 pm	+ 7:00
1/30/2009	60218	2:00 am	7:00 am	+ 5:00
	60218	7:00 am	2:30 pm	+ 7:30
1/31/2009	60218	1:00 am	7:00 am	+ 6:00
	60218	7:00 am	2:30 pm	+ 7:30

(CX 18, p. 351). This is a total of 38.25 hours, the same number as found by the Department of Labor (CX 22, p. 102). As a consequence, I accept the Department of Labor's calculations as to wages and fringe benefits. Respondents have no dispute with the prior paycheck or the holiday pay.

Respondents do dispute his entitlement to vacation leave. Wade submits a declaration dated August 18, 2011 stating that he believed he was entitled to 80 vacation hours (CX 19, p. 33). Respondents testified at trial to the following:

- Q William Wade, when was William Wade, the start of his employment?
- A I don't know his date of hire without the records.

Q When was he, sporadic hours, gap of employment, was he ever not an employee of Moser during his period of time?

A Yes.

Q Okay, so he was terminated and then re-hired?

A No.

Q Okay, how did that work out then?

A Mr. Wade had no payroll for several weeks, if not more than a month, and then all of a sudden he had payroll again. He had taken time off and come back.

Q Oh, so he was continuously employed, but he wasn't paid for a certain period of time?

A No, he wasn't terminated, he had taken, he left his own position and then came back.

JUDGE JOHNSON: He left what --

THE WITNESS: His own position.

BY MS. RINGSTAD:

Q He had resigned?

A It was not a continuous employment that he had.

Q Okay, did he do this more than once?

A As far as the gap in employment, not that I'm aware of.

Q So, to your knowledge he only did it once?

A Yes, but he was still sporadic.

Q Okay, and you don't know when he started back again?

A I know it was in 2008, but as far as the exact date I couldn't tell you without records.

Q It could not have been 2007?

A Not with the gap in employment, no.

(Tr. 166-67). This testimony is not specific enough. While Schleining clearly states that Wade took time off in 2008, she sounds equivocal when she states that he took “several weeks, if not more than a month” off. On cross-examination, Schleining testified:

Q Okay, now however, there are points where you say can't, well for instance let's find one here, go to William Wade, 102, you say can't confirm eligibility. Now, what did you mean by can't confirm eligibility?

A What I mean by that is he was not a full-time employee, so I can't confirm the amount of hours that he would be eligible to under the SCA for providing a complete year of service, and having those vacation hours payable to him.

Q Okay, but now based upon your personal knowledge, and the items you've testified to, does that change your position that you, change the statement, the testimony that you gave? Well, let me re-phrase that question. You say you did this on personal knowledge, and also, but you can't confirm some of it. And maybe I'm gilding the lily here, but what do you mean by that?

A What, when I'm saying I can't confirm it means without all of the records in front of me I can't confirm the times he had off to change the amounts for his continuous year of service. So, I know he's not eligible to a complete year. As far as the amounts, I can't confirm, or the ability that he's even eligible for any amount I can't confirm either as well.

Q Well, but based on your personal knowledge do you know that he's not eligible?

A Yes, that, yes.

(Tr. 190). Here, Schleining's testimony becomes even more equivocal. She “knows” that he is not eligible, but she does not provide a basis for that belief. I simply find this testimony, as against Wade's signed and sworn declaration, to be too ambiguous for me to deny Wade vacation leave. As a consequence, I find that Wade is entitled to the full amount as calculated by the Department of Labor, **\$4,521.70**.

Madison E. Waits

I accept the Department of Labor's uncontested calculations and find that Madison Waits is entitled to **\$1,958.68** (CX 21).

Lakesha D. Washington

I accept the Department of Labor’s uncontested calculations and find that Lakesha Washington is entitled to **\$3,304.59** (CX 21).

William A. Werner

The Department of Labor calculated an award of \$3,961.98 for William Werner (CX 21; CX 22, p. 105). Respondents contest only Werner’s entitlement to unused vacation pay (RX 1 Amended). Werner submitted a declaration dated August 17, 2011 in which he stated that he was not paid for 80 hours of unused vacation leave (CX 19, p. 35). Tammi Schleining testified at the hearing that Werner was paid vacation for 2008 by the dispatcher, even though Schleining herself had denied him the time (Tr. 134). This is specific testimony, and I credit it over the form declaration. As a result, I deduct Werner’s award by \$790.40 for vacation time and the erroneously added \$71.19 for fringe benefits, for a total award of **\$3,100.39**.

Trent D. Whildin

Trent Whildin was not an SCA-covered employee (RX 2B). Respondents testified at trial that he was a mechanic (Tr. 205). In addition, his pay stub reflects a rate of pay that was lower than the prevailing wages that the parties stipulated to, and he was paid overtime, unlike the other employees (CX 17, p. 120). As a consequence, the entire sum of **\$4,332.22** as calculated by the Department of Labor is disallowed.

James L. Wibben

I accept the Department of Labor’s uncontested calculations and find that James Wibben is entitled to **\$782.95** (CX 21).

Michael B. Wilger

I accept the Department of Labor’s uncontested calculations and find that Michael Wilger is entitled to **\$921.64** (CX 21).

F. Douglas Wilson

The Department of Labor calculation for Doug Wilson is \$3,106.40 (CX 21; CX 22, p. 109). Respondents contest both Mr. Wilson’s entitlement to vacation pay and seek a slight reduction in his hours of service (RX 2A Amended). According to Mr. Wilson’s timesheets, he worked the following hours, excluding breaks longer than twenty minutes:

1/26/2009	601L7	4:00 am	8:00 am	+ 4:00
1/27/2009	601L7	4:00 am	8:00 am	+ 4:00
1/28/2009	601L7	4:00 am	8:00 am	+ 4:00
1/29/2009	601L7	4:00 am	9:45 am	+ 5:45

1/30/2009	601L7	4:00 am	10:00 am	+ 6:00
1/31/2009	601L7	4:00 am	8:00 am	+ 4:00

(CX 18, p. 387). I ultimately find that Mr. Wilson worked 27.75 hours on contract 601L7, which is the same number of hours found by the Department of Labor. Respondents did not testify that Wilson should be paid at a flat rate, and Wilson’s timesheet includes explanations for any delays that he had. Respondents and the Department of Labor also disagree about his rate of pay. Respondents pay him at \$19.44 and the Department of Labor pays him at \$20.15. The difference appears to be whether Wilson drove a tractor-trailer or a straight truck in the Chicago area. Respondents provided no testimony on this, and did not designate it on RX 2A Amended, as they did with other drivers who drove straight trucks and not tractor-trailers.¹⁹ As a consequence, I award Mr. Wilson the higher rate of \$20.15, and agree with the finding of the Department of Labor regarding both wages and fringe benefits.

Respondents also contest Mr. Wilson’s unused vacation leave. Respondents testified that Doug Wilson started at Moser toward the end of 2008, and thus he did not have a continuous year of employment entitling him to vacation leave (Tr. 167; RX 1 Amended). Wilson did not submit a signed declaration stating that he was entitled to vacation leave. As a consequence, I reduce the Department of Labor’s award by \$479.43 for this time.

Finally, the parties disagree over Mr. Wilson’s holiday pay because he did not quite reach 80 hours in the prior period (working only 76.3 hours). The Department of Labor found that he was entitled to 7.63 hours of pay on the holiday, based on the ratio of hours he worked in the total pay period. Respondents provide a number that is not reproducible and do not show their calculation. As a consequence, I award him \$153.25 for 7.63 hours.²⁰ Mr. Wilson’s total award is **\$2,602.65**.

Michael C. Wilson

The Department of Labor calculated an award of \$2,302.09 for Michael Wilson (CX 21; CX 22, p. 110). Respondents seek a slight reduction in his hours worked, from 35 to 31.15, which will also slightly reduce the fringe benefits to which Wilson was entitled (RX 2A Amended). According to Wilson’s timesheet, he worked the following hours:

1/25/2009	63213	12:00 am	7:30 am	+ 7:30
-----------	-------	----------	---------	--------

¹⁹ I do note that Mr. Wilson earned \$19.44 per hour in the prior pay period (CX 17, p. 123). However, I have no documentation from that period, and as a consequence I am unable to say that this amount is necessarily definitive in the later pay period. The burden was on the Department of Labor to create the inference of entitlement, and the burden shifted to Respondents to prove the precise parameters of employment if different from the inference. Because Respondents did not testify that Mr. Wilson drove a straight truck, I will use the Department of Labor multiplier.

²⁰ I have some concern over this calculation. Because Wilson worked less than 80 hours in this pay period, the Department of Labor’s calculation prorates his holiday pay based on working 76.3 hours out of 80 hours. However, if holiday pay for January 19, 2009 is not included in the 80 hours, the Department of Labor should be calculating out of 72 hours in the pay period (80 hours minus 8 for the holiday). Using this metric, Wilson would be a full-time employee and would be entitled to the full 8 hours of holiday pay. However, neither party raised this or testified to it, so I note my concern about the calculation used but ultimately select the Department of Labor calculation method.

	63213	9:00 pm	4:30 am	+ 7:30
1/30/2009	63213	12:00 am	7:30 am	+ 7:30
	63213	5:30 pm	2:00 am	+ 8:30

(CX 18, p. 386). In total, Wilson worked 31 hours at \$19.70, for a total of \$610.70. In addition, his fringe benefits would have been \$105.09 (31 × \$3.39). Respondents do not contest Wilson's holiday pay or paycheck for the pay period January 11 through 24, 2009. As a consequence, Wilson's total award is **\$2,209.73**.

Wayne M. York

I accept the Department of Labor's uncontested calculations and find that Wayne York is entitled to **\$2,420.00** (CX 21).

Charles E. Zezulak

The Department of Labor calculated a total award of \$3,175.86 for Charles Zezulak (CX 21; CX 22, p. 112). Respondents seek a slight reduction in the total due to their testimony that Zezulak was a straight truck driver instead of a tractor trailer driver (RX 2A Amended; Tr. 150). The Department of Labor calculated his wages at the tractor trailer rate of \$20.15 for contract 60133, when they should have calculated it at \$19.44, the straight truck rate (see JX 1). The Department of Labor used the correct wage in calculating Zezulak's holiday pay, and his fringe benefit amount would not change either. Respondents also seek a slight reduction in Zezulak's hours, from 44 to 42.3 (RX 2A Amended). According to Zezulak's time sheet, he worked the following times:

1/26/2009	60133	5:10 am	9:25 am	+ 4:15
	60133	4:00 pm	7:00 pm	+ 3:00
1/27/2009	60133	5:10 am	8:35 am	+ 3:25
	60133	3:45 pm	7:00 pm	+ 3:15
1/31/2009	60133	5:10 am	8:35 am	+ 3:20
	60133	3:45 pm	8:15 pm	+ 4:30

(CX 18, p. 389). Because the timesheet doesn't reflect the days January 27 through January 30, 2009, I look to the driver's daily logs (CX 18, p. 391 *et seq.*). These reflect the following times:

1/28/2009	60133	5:15 am	8:45 am	+ 3:30
	60133	3:45 pm	7:00 pm	+ 3:15
1/29/2009	60133	5:15 am	10:50 am	+ 5:35
	60133	3:45 pm	7:00 pm	+ 3:15
1/30/2009	60133	5:15 am	8:45 am	+ 3:30
	60133	3:45 pm	7:00 pm	+ 3:15

(CX 18, p. 391 *et seq.*). In total, Zezulak worked 44.08 hours, at \$19.44,²¹ for a total of \$856.92. Because Respondents do not contest Zezulak's paycheck from January 11 through 24, 2009, his holiday pay, or his fringe benefits, I find he is entitled to a total award of **\$3,146.18**.

Release of Contract Funds Withheld

The Administrator seeks an Order that the United States Postal Service should release the contract funds withheld upon suspension of the contracts to the Administrator as payment toward the total back wages due herein (Administrator's Post-Hearing Brief at 15-16). Administrator states that currently the Postal Service has not determined how much is available to the Department of Labor. *Id.* This request is GRANTED, and embargoed contract amounts held by the Postal Service should be released to the Administrator for payment of the back wages due under this decision.

Conclusion

I find that Respondents are liable for a violation of the McNamara-O'Hara Service Contract Act of 1965, 41 U.S.C. §§ 351, *et seq.* I further find that, as responsible parties, Kristy S. Schleining and Donald H. Schleining are individually responsible for payment of the unpaid wages and fringe benefits as set forth above and in Appendix A. Additionally, as responsible parties, the Schleinings, and any entity in which they have a substantial interest, are debarred from entering into contracts with the federal government for a period of three years.

ORDER

Based on the foregoing, IT IS ORDERED that:

1. The United States Postal Service shall release to the Administrator of the Wage and Hour Division the full amounts withheld under the contracts mentioned herein;
2. Respondents shall pay the amount of \$265,722.27, less the sum returned to the Administrator of the Wage and Hour Division by the United States Postal Service, and each of the named Respondents is individually liable for payment of said amount;
3. The Administrator of the Wage and Hour Division shall distribute the funds collected under the paragraphs 1 and 2 above, less appropriate withholding, to the employees listed in Appendix A hereto in the amounts shown on Appendix A;
4. Respondents J.N. Moser Enterprises, Inc., formerly known as Moser Enterprises, Inc., Kristy S. Schleining, and Donald H. Schleining shall be debarred from entering into contracts with the federal government for a period of three years; and

²¹ This calculation essentially takes the Department of Labor's hours and Respondents' prevailing wage.

5. Any firm, corporation, partnership, or association in which Respondents J.N. Moser Enterprises, Inc., Kristy S. Schleining or Donald H. Schleining have a substantial interest, as defined in the Act and 29 C.F.R. § 4.188(c), shall be debarred from entering into contracts with the federal government for a period of three years.

SO ORDERED.

A

PAUL C. JOHNSON, JR.
Associate Chief Administrative Law Judge

NOTICE: To appeal, you must file a written petition for review with the Administrative Review Board (“ARB”) within 40 days after the date of this Decision and Order (or such additional time that the ARB may grant). *See* 29 C.F.R. § 6.20. The Board’s address is:

Administrative Review Board
United States Department of Labor
Suite S-5220
200 Constitution Avenue, NW
Washington, DC 20210

A copy of any such petition must also be provided to the Chief Administrative Law Judge, Office of Administrative Law Judges, 800 K Street, NW, Washington, DC 20001-8002. Your petition must refer to the specific findings of fact, conclusions of law, or order at issue. A petition concerning the decision on the ineligibility list shall also state the unusual circumstances or lack thereof under the Service Contract Act, and/or the aggravated or willful violations of the Contract Work Hours and Safety Standards Act or lack thereof, as appropriate.

The ARB’s Rules of Practice further require that the petitioner provide to the ARB an original and four copies of the petition and any other papers submitted to the ARB. 29 C.F.R. § 8.10(b). Service is to be in person or by mail. 29 C.F.R. § 8.10(c). Service by mail is complete on mailing, and the petition is considered filed upon the day of service by mail. 29 C.F.R. § 8.10(c). The petition must contain an acknowledgement of service by the person served or proof of service in the form of a statement of the date and the manner of service and the names of the person or persons served, certified by the person who made service. 29 C.F.R. § 8.10(d).

A copy of the petition is also required to be served upon the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210; the Administrator, Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210; the Federal contracting agency involved; and all other interested parties. 29 C.F.R. § 8.10(e).

APPENDIX A – WAGES AND FRINGE BENEFITS PER EMPLOYEE

Name of Employee	Award
Byron J. Anderson	\$4,396.47
Richard A. Anderson	\$3,527.32
Jose G. Apantenco	\$943.69
David W. Ashby	\$4,451.87
Glenn F. Bailey	\$883.26
James O. Bailey	\$0.00
Charles A. Behnke	\$761.98
Christopher Benner	\$1,736.29
Howard E. Bennett	\$2,992.48
Scott D. Bennett	\$0.00
Gary R. Block	\$432.18
Calvin E. Bowers	\$2,460.60
Louie G. Brock	\$4,882.28
Chris Broda	\$2,614.32
Gerald L. Bumgarner	\$678.21
Steven A. Bunge	\$194.10
Edwin Cardona	\$4,735.78
Richard K. Carlson	\$0.00
Jesus Cervantes	\$841.83
Carl G. Churchill	\$3,568.78
Terry Christ	\$536.34
George B. Coe	\$832.29
Gary L. Cook	\$3,774.54
James B. Cook	\$0.00
Timothy J. Corrigan	\$3,277.94
Matthew T. Cybulski	\$2,741.99
Gary Dedrick	\$1,818.89
Dennis L. Edwards	\$2,299.62
Stanley D. Fiedor	\$884.09
David L. Fields	\$0.00
Mark A. Fletcher	\$723.77
Edward L. Fuka	\$3,860.24
Perry E. Gates	\$2,526.65
Gary D. Gattis	\$4,706.08
Gustavo Gomez-Ramirez	\$0.00
James B. Goodwin	\$1,832.57
Mark Gossett	\$2,383.60
David F. Gray	\$3,279.12
Tracy J. Guarascio	\$4,110.68
Colin C. Hansen	\$458.68
Randall L. Hardy	\$2,092.40

Rodney L. Hawkins	\$2,515.29
Jerod Hicks	\$566.46
Jennifer A. Hinkle	\$0.00
Phillip G. Houston	\$1,188.27
Justin Hyslop	\$0.00
Mark S. Jarrell	\$2,097.59
James Jilek	\$989.28
Christopher H. Johnsen	\$2,577.05
Deborah D. Johnson	\$308.11
Eric Johnson	\$2,815.57
Matthew C. Johnson	\$2,957.46
Eric C. Jones	\$4,172.16
Thomas L. Jordan	\$3,221.27
John J. Kackert	\$2,892.86
Eric O. Kidd	\$2,959.06
William L. Koons	\$4,692.56
Tomasz Krynski	\$0.00
Sherrie L. Kubon	\$4,869.29
Dejan Lalic	\$4,235.32
James R. Larsen	\$1,737.90
Robert Latham	\$0.00
Sally J. Latham	\$0.00
Lydia A. Leone	\$806.58
Steven P. Lloyd	\$606.59
Jeff Lorang	\$0.00
James L. Lutz	\$3,188.13
Joshua V. Lyn	\$2,246.00
Earl Maier	\$3,929.07
Gabriel Maloul	\$3,597.30
Benjamin Mancera	\$2,106.59
James A. Martin	\$4,623.68
Stephen P. Mauldin	\$3,782.88
Allen R. May	\$0.00
Frederick M. May	\$0.00
Edward W. McCallum	\$541.78
Robert M. McDermott	\$5,092.26
Jeffrey E. Melton	\$3,876.19
David L. Meyerholz	\$0.00
Paul M. Mulka	\$3,386.42
Rogelio Murillo-Caldera	\$3,068.02
Michael R. Naumiec	\$3,259.22
Vickie S. Nipper	\$273.09
Ransom P. Page	\$5,217.96
Billy J. Parker	\$2,987.55
John G. Pathenos	\$2,062.40

Roger A. Paykert	\$3,534.51
Jeffrey R. Pearson	\$2,880.63
Sergio Perez	\$2,299.76
Charles R. Peterson	\$1,714.26
Samantha M. Pilgrim	\$0.00
Robert M. Pleasnick	\$3,890.05
Johnny R. Porter	\$3,429.95
Gary L. Rains	\$3,503.26
Federico Rojas	\$2,504.15
Celso Salgado	\$3,604.89
Jose A. Sandoval	\$935.35
Paul Schierer	\$1,414.58
Donald H. Schleining, Jr.	\$0.00
Joshua A. Schleining	\$0.00
Kristy S. Schleining	\$0.00
Tammi M. Schleining	\$0.00
David M. Scott	\$0.00
William R. Shaffer, Sr.	\$4,050.63
Lonnie Shaw, Jr.	\$960.40
Jacob Simmons	\$1,334.43
George E. Smith	\$2,019.08
Torrey S. Stein	\$2,061.77
Frank C. Stevens	\$3,108.64
LeVone Stewart	\$1,611.51
Timothy S. Sykes	\$770.34
Kenneth Thompson	\$2,216.19
Christopher A. Tigrett	\$2,991.68
Anthony W. Valentine	\$2,636.95
Ciro Vargas	\$3,319.12
Mark J. Vlahos	\$2,273.99
William B. Wade	\$4,521.70
Madison E. Waits	\$1,958.68
Lakesha D. Washington	\$3,304.59
William A. Werner	\$3,100.39
Trent D. Whildin	\$0.00
James L. Wibben	\$782.95
Michael B. Wilger	\$921.64
F. Douglas Wilson	\$2,602.65
Michael C. Wilson	\$2,209.73
Wayne M. York	\$2,420.00
Charles E. Zezulak	\$3,146.18
Total Pre-Interest Wages and Fringe Benefits Due to Employees	\$265,722.27