APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 99-3410

CLEVELAND INDIANS BASEBALL COMPANY,
A LIMITED PARTNERSHIP, PLAINTIFF-APPELLEE

v.

UNITED STATES OF AMERICA,
DEFENDANT-APPELLANT

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

[Filed: May 10, 2000]

OPINION

Before: SUHRHEINRICH, COLE, Circuit Judges; and QUIST, District Judge.*

PER CURIAM. The United States appeals from the judgment of the district court in which the court found that an award of back wages is taxed for the purposes of the Federal Insurance Contribution Act (FICA), 26 U.S.C. §§ 3101-3128, and Federal Unemployment Tax

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* The Honorable Gordon J. Quist, United States District Court for the Western District of Michigan, sitting by designation.

Act (FUTA), 26 U.S.C. §§ 3301-3311, in the year in which those wages were earned rather than the year in which the award of back wages was actually paid. For the following reasons, we AFFIRM the district court's judgment.

I.

The parties stipulated to the facts of this case before the district court, which we briefly summarize here. Major League Baseball Clubs (the "Clubs") and the Major League Baseball Players Association ("MLBPA") were involved in three separate grievances in 1990, wherein the MLBPA claimed that the Clubs breached the Collective Bargaining Agreement ("CBA") with respect to free agency rights of the baseball players in 1986, 1987 and 1988. After an arbitration panel issued a series of rulings adverse to the Clubs, the Clubs and the MLBPA settled their grievances on December 21, 1990. The settlement required the Clubs to contribute $280 million to a custodial account for distribution to affected players according to the MLBPA framework approved by the arbitration panel.

The Cleveland Indians Baseball Company's ("Indians") share of the settlement fund was $610,000 for the 1986 season and $1,457,848 for the 1987 season. The Indians received the funds in 1994 and distributed those funds to the affected players—eight players who were employed in 1986 and fifteen players who were employed in 1987. Unsure as to the tax treatment of these distributions, the Indians paid FICA and FUTA taxes on the total funds as if the payments were wages for services rendered in 1994. In other words, the Indians paid FICA and FUTA taxes on the funds as if

they were actually wages received by the players in 1994, the year of distribution. The Indians paid these tax obligations in April 1994 and January 1995. None of the affected players, however, performed services for the Indians in 1994 or 1995. The Indians filed this instant action seeking reimbursement of the FICA and FUTA taxes paid to the United States.

The Indians sought a refund of FICA and FUTA taxes claiming that, (1) a portion of the funds paid to the Indians and disbursed to its former players constituted non-taxable interest; and (2) the non-interest portion was not taxable because the funds were damages for the wrongful breach of the CBA and not wages for services rendered. Finally, even if the payments constituted wages for services rendered rather than interest and damages, the Indians argued that they should have paid taxes at the 1986 and 1987 tax rates applicable when the services were rendered. Because the 1986 and 1987 FICA and FUTA taxes of each of the affected players were already paid to the maximum required amount, the Indians asserted that they are entitled to a full refund if the payments were determined to be wages for services rendered in 1986 and 1987.

The government initially disputed the Indians's claims. Both parties eventually agreed, however, that $629,000 of the payments from the settlement fund to affected players constituted interest and were not subject to FICA and FUTA taxes. Thus, the Indians were entitled to a refund for taxes paid on the interest portion of the settlement. The parties also agreed that the remaining portion of the payments, approximately $2 million, constituted back-wage payments, earnings

that would have been paid in 1986 and 1987 but for the Clubs' breach of the CBA. The issue presented to this court is the tax year applicable to these back-wage payments made in 1994 for services rendered in the 1986 and 1987 baseball seasons.

In the district court, the government and the Indians agreed that our decision in *Bowman v. United States*, 824 F.2d 528 (6th Cir.1987) directly addressed this precise issue. The *Bowman* court held that "a settlement for back wages should not be allocated to the period when the employer finally pays but 'should be allocated to the periods when the regular wages were not paid as usual.'" 824 F.2d at 530 (quoting *Social Security Bd. v. Neirotko*, 327 U.S. 358, 370 (1946)). Following *Bowman*, the district court entered judgment in favor of the Indians and ordered the United States to refund the FICA and FUTA taxes paid on the settlement disbursements designated as back wages, including interest from the dates on which the payments were made.

The United States sought en banc reversal of the *Bowman* decision. This court declined the en banc petition and the case was referred to this panel.

II.

Typically, statutory interpretations such as those presented in this appeal are reviewed *de novo*. *See Williams v. Coyle*, 167 F.3d 1036, 1038 (6th Cir. 1999).

Here, our precedent clearly indicates that the statutory provision in question requires settlements for back wages to be allocated to the period in which they were earned or should have been paid, and not to the

period in which the back wages were actually disbursed. *See Bowman*, 824 F.2d at 530. The government contends that *Bowman* was wrongly decided, arguing that the plain language, legislative history and applicable FICA and FUTA Treasury Regulations demonstrate that back wages are subject to tax in the year in which payment is made and not in which the services were rendered. In addition, the government cites cases from our sister circuits that are at odds with our *Bowman* holding. Despite these arguments, the government "agrees with taxpayer that the issue presented in this case was decided in *Bowman*." Appellant Reply Br. at 1.

Even if we were persuaded by the government's argument, we are bound by the *Bowman* decision. It is firmly established that one panel of this court cannot overturn a decision of another panel; only the court sitting en banc can overturn such a decision. *See United States v. Smith*, 73 F.3d 1414, 1418 (6th Cir. 1996). "The earlier determination is binding authority unless a decision of the United States Supreme Court mandates modification or this Court sitting en banc overrules the prior decision." *United States. v. Moody*, 206 F.3d 609,—(6th Cir. 2000) (citing *Salmi v. Secretary of HHS*, 774 F.2d 685, 689 (6th Cir.1985)). Accordingly, following *Bowman*, we reject the government's argument and affirm the district court's judgment that FUTA and FICA taxes paid on the back wage disbursements should have been paid as if earned in 1986 and 1987.

III.

For the foregoing reasons, we **AFFIRM** the district court's judgment.