San Diego, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

KAWANO, INC. Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case No. 76-CE-51-R 9 ALRB No. 62 (4 ALRB No. 104)

ERRATUM

In recalculating the net backpay owing to the discriminatees in the above-captioned matter, we inadvertently overlooked a stipulation by the parties regarding the net backpay owing to discriminatee Juan N. Rodriguez. (See ALJ Decision, p. 158.) Page 6 of the above-captioned Supplemental Decision and Order is therefore corrected by deleting the amount of $7,843.99 owing to Juan N. Rodriguez and by substituting therefore the amount of $1500.00.

Dated: February 8, 1984

ALFRED H. SONG, Chairman

JEROME R. WALDIE, Member

PATRICK W. HENNING, Member

San Diego, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

KAWANO, INC. Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case No. 76-CE-51-R 9 ALRB No. 62 (4 ALRB No. 104)

SUPPLEMENTAL DECISION AND ORDER

On January 28, 1983, Administrative Law Judge (ALJ) Michael H. Weiss issued the attached Supplemental Decision Re Backpay Proceedings. Thereafter, General Counsel and the Charging Party each timely filed exceptions to the ALJ's Decision, with a brief in support of its exceptions.

Pursuant to the provisions of Labor Code section 1146,[1/] the Agricultural Labor Relations Board (ALRB or Board) has delegated its authority in this matter to a three-member panel.

The Board has considered the record and the ALJ's Decision in light of the exceptions and briefs of the parties and has decided to affirm his rulings, findings of fact, and conclusions of law as modified herein and to adopt his recommended Order, with modifications.

Method of Calculation

All of the discriminatees in this proceeding had interim

[1/] All section references herein are to the California Labor Code unless otherwise specified.

earnings during the backpay period. However, the interim earnings data obtained by General Counsel from the interim employers was provided in daily, weekly, bi-weekly, and monthly form. Pursuant to the policy of the Board, General Counsel used a daily method of calculating net backpay liability whenever the interim earnings were available in daily form. (See Sunnyside Nurseries, Inc. (1977) 3 ALRB No. 42; High and Mighty Farms (1982) 8 ALRB No. 100.)

Unfortunately, as the ALJ herein correctly observed, the daily method of calculation in this case produced an anomaly or "inflation factor." This anomaly occurred because General Counsel used the discriminatees' actual daily earnings while working for Respondent in 1975 as the basis for estimating the gross backpay during the succeeding four years of the backpay period. When the daily gross backpay data was compared to the daily interim earnings data, however, General Counsel did not adjust its calculations to account for the yearly change in the calendar, i.e., January 5th was a Sunday in 1975 and a Monday in 1976. The ALJ clearly explained the "inflationary" effect of this mismatch in his Decision and estimated that, where daily calculations were used, Respondent's net backpay liability was inappropriately increased by approximately sixteen percent.

To correct this error, the ALJ proposed to recalculate the backpay for all the discriminatees over the entire backpay period on a weekly basis. However, the ALJ only performed the recalculations for ten of the discriminatees, leaving 43 more for the Board to recalculate. We have decided, largely for the sake

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of speed and simplicity, to reject the ALJ's approach.[2/] We have, instead, devised a formula that reduces the General Counsel's original net backpay figures by the sixteen percent "inflation factor," but does not require complete recalculation of each discriminatee's backpay.[3/] Using this formula, we have started with the net backpay figure in the General Counsel's original specifications, determined the portion of that figure which was calculated by the daily method, reduced that portion by sixteen percent, then recombined the portions to arrive at a new net backpay amount. (See Appendix I.)

The Raitero System

The Charging Party excepts to the ALJ's recommendation that the raitero system of hiring workers not be reinstituted. We find merit in this exception.

[2/] The need for speed and simplicity in this case has been dramatically increased by Respondent's Chapter 11 Petition for Reorganization (Case No. 82-5249-K11), filed on November 30, 1982, in the United States Bankruptcy Court of the Southern District of California. Respondent's apparent insolvency makes it unlikely that the discriminatees will ever be compensated for the full extent of their losses. Under these circumstances, it would be pointless to demand mathmatical precision in the calculation of each backpay award.

[3/] We note that the ALJ also attempted, in his recalculation of individual backpay awards, to impose more uniformity upon the discriminatees' entitlements to a ride subsidy from Respondent and their excess commuting expenses while working at interim employment. While we do not disagree with the ALJ's reasoning on these issues, we find it impracticable to make the adjustment he suggests, since we are relying on General Counsel's net backpay figures. After consideration of Respondent's insolvency, the length of time that has passed in these proceedings, the relative amounts of money involved, and general reduction in backpay awards resulting from our formular approach, we find that General Counsel's methodology regarding the ride subsidies and excess commuting expenses is reasonable.

In Kawano, Inc. (1978) 4 ALRB No. 104, the Board found that Respondent discontinued the raitero system with the specific unlawful intention of making it impossible for a particular class of employees, i.e., pro-union documented workers from the Tijuana-San Isidro area, to apply for work with Respondent after 1975.[4/] Although we did not specifically order Respondent to reinstitute the raitero system in our earlier Decision, such an order, restoring the status quo ante, was implied in our order that Respondent cease and desist from discriminating against any employee in regard to his or her rehire and also in our order that Respondent reinstate the discriminatees with out prejudice to their pre-discrimination employment rights and privileges. (See Ruline Nursery (1982) 8 ALRB No. 8.) Although the future of Respondent's farming operations is somewhat in doubt, we see no reason to allow Respondent, without some evidence of undue economic hardship resulting from reinstitution of the raitero system, to continue the very act of discrimination which precipitated these proceedings some seven years ago.

Interest Rates

General Counsel and the Charging Party except to the ALJ's refusal to modify the interest rate on Respondent's backpay liability from a fixed seven percent per annum to the variable formula adopted by the Board in Lu-Ette Farms, Inc. (1982) 8 ALRB No. 55.

[4/] The raitero system was a method of hiring seasonal workers whereby a "raitero" or driver would contact workers on Respondent's behalf and ask them if they wanted to work. The raitero then provided the selected workers with transportation to Respondent's operations in large cars or vans. The workers depended on the raiteros for notice of when and where Respondent needed seasonal employees.

We considered the Board's authority to modify its remedial orders after enforcement of those orders by a reviewing Court of Appeal in Abatti Farms, Inc. (1983) 9 ALRB No. 59, and determined that we could modify enforced orders only with the consent of the reviewing court. In the instant case, Respondent's obligation to pay interest on its liabilities was tolled as of November 30, 1982, by its petition in bankruptcy (See 11 U.S.C. section 502(b); Smith v. Robinson (4th Cir. 1965) 343 F.2d 793), and the exceptions on this point are therefore moot.

ORDER

Pursuant to Labor Code section 1160.3, the Agricultural Labor Relations Board hereby orders that Kawano, Inc., its officers, agents, successors, and assigns, shall pay to each of the discriminatees, whose names are listed below, the backpay amount listed next to his or her name, plus interest at the rate of seven percent per annum computed quarterly from the time the backpay period commenced until November 30, 1982.

Javier Acosta	$ 4,733.45
Antonio Aleman	5,271.44
Jose Arroyo	6,480.25
Catalina Barrios	9,086.35
Ramon Bravo	11,614.06
Martin Conriquez	8,428.89
Maria Luisa Diaz	7,008.09
Filiberta Escobedo	10,779.97
Pablo David Fink	4,801.85
Elisa Flores	9,480.03
Francisco Garcia	18,433.44
Gregorio Garcia	18,909.44
Juan Garcia	17,667.74
Luisa Garcia	11,013.58
Teresa Gomez	4,689.30
Hilario Veloz Gonzalez	11,937.06
Julian R. Gonzalez	11,822.03
Mario Guerrero	7,702.18
Luis Chavez Gutierrez	25,704.14

Herminio Vela Hernandez	8,203.14
Ignacio Hernandez	28,274.77
Josefa Hernandez	23,748.14
Aurelio Higuera	21,559.74
Jose Aleman Juarez	7,040.28
Silveria R. Juarez	3,512.43
Delfino Laras	1,777.45
Felipe Luna	13,647.62
Maria Mendez	17,028.74
Antonio Mendoza	9,185.05
Carmen Ortiz Mercado	5,524.49
Jose Luis Montellano	14,875.47
Martin Mora	3,825.21
Antonia M. de Ortiz	15,672.93
Ezequiel Pedroza	18,755.96
Maria Elena Perez	11,424.22
Jesus Ramirez	4,772.92
Juan Rios	6,258.57
Vicenta Rios	11,345.54
Juan N. Rodriguez,	7,843.99
Miguel Rodriguez	17,252.29
Feliciano Rubalcaba	7,926.14
Francisco Rubio	20,138.78
Gerardo Ruiz	3,974.54
Josefa Ruiz	20,848.37
Emma Saldana	10,218.63
Jose Sandoval	2,498.35
Domingo Santos	14,434.29
Jose Luis Vasquez	4,532.59
Refugio Vasquez	5,898.32
Felipe de la Vega	7,267.37
Ildefonso Villa	16,836.69
Antonio Zamarripa	4,457.46
Monica Zamarripa	9,673.16

Dated: October 28, 1983

ALFRED H. SONG, Chairman

JEROME R. WALDIE, Member

PATRICK W. HENNING, Member

APPENDIX I

KAWANO BACKPAY COMPUTATIONS

Employee Name	No. Weeks of Interim Earnings	No. Weeks Calcu-lated Daily	=%	General Counsel Backpay	Daily Portion	General Counsel Backpay - Daily =	Inflation Factor (.84)	Total
Acosta, Javier	45	45	100	5635.07	5635.07	0	4733.45	4733.45
Aleman, Antonio C.	233	13	5	5313.96	265.69	5048.27	223.17	5271.44
Arroyo, Jose	116	104	89	7556.27	6725.08	831.19	5649.06	6480.25
Barrios, Catalina	57	0	0	9086.35	0	9086.35	0	9086.35
Bravo, Ramon Chavez	209	128	61	12870.20	7850.82	5019.38	6594.68	11614.06
Conriquez, Martin	129	111	86	9773.76	8405.43	1368.33	7060.56	8428.89
Diaz, Maria Luisa	96	0	0	7008.09	0	7008.09	0	7008.09
Escobedo, Filiberta	108	0	0	10779.97	0	10779.97	0	10779.97
Fink, Pablo David	56	38	67	5378.42	3603.54	1774.88	3026.97	4801.85
Flores, Elisa A.	109	0	0	9480.03	0	9480.03	0	9480.03
Garcia, Francisco	157	85	54	20176.71	10895.42	9281.29	9152.15	18433.44
Garcia, Gregorio	110	72	65	21104.29	13717.78	7386.51	11522.93	18909.44
Garcia, Juan	121	0	0	17667.74	0	17667.74	0	17667.74
Garcia, Luisa	140	0	0	11013.58	0	11013.58	0	11013.58
Gomez de Cuevas, Teresa	131	0	0	4689.30	0	4689.30	0	4689.30
Gonzalez, Hilario Veloz	161	133	82	13739.71	11266.56	2473.15	9463.91	11937.06
Gonzalez, Julian R.	215	82	38	12587.34	4783.18	7804.16	4017.87	11822.03
Guerrero, Mario	55	34	61	8535.22	5206.48	3328.74	4373.44	7702.18
Gutierrez, Luis Chavez	60	32	53	28085.82	14885.48	13200.34	12503.80	25704.14
Hernandez, Herminio Vela	79	21	26	8559.21	2225.39	6333.82	1869.32	8203.14
Hernandez, Ignacio	226	11	4	28456.90	1138.27	27318.63	956.14	28274.77
Hernandez, Josefa R.	81	47	58	26177.41	15182.89	10994.52	12753.62	23748.14
Higuera, Aurelio C.	207	27	13	22017.71	2862.30	19155.41	2404.33	21559.74
Juarez, Jose Aleman	13	13	100	8381.29	8381.29	0	7040.28	7040.28
Juarez, Silveira R.	24	0	0	3512.43	0	3512.43	0	3512.43
Laras, Delfino	84	0	0	1777.45	0	1777.45	0	1777.45

APPENDIX I

KAWANO BACKPAY COMPUTATIONS

Employee Name	No. Weeks of Interim Earnings	No. Weeks Calcu-lated Daily	=%	General Counsel Backpay	Daily Portion	General Counsel Backpay - Daily =	Inflation Factor (.84)	Total
Luna, Felipe	188	44	23	14169.04	3258.87	10910.17	2737.45	13647.62
Mendez, Maria	131	1	0	17028.74	0	17028.74	0	17028.74
Mendoza, Antonio	103	15	14	9395.51	1315.37	8080.14	1104.91	9185.05
Mercado, Carmen Ortiz	17	9	52	6025.84	3133.43	2892.41	2632.08	5524.49
Montellano, Jose Luis	28	11	39	15865.85	6187.68	9677.82	5197.65	14875.47
Mora, Martin	100	68	68	6496.62	4417.70	2078.92	1746.29	3825.21
de Ortiz, Antonia M.	58	0	0	15672.93	0	15672.93	0	15672.93
Pedroza, Ezequiel	132	56	42	20107.16	8445.00	11662.16	7093.80	18755.96
Perez, Maria Elena	37	0	0	11424.22	0	11424.22	0	11424.22
Ramirez, Jesus	126	126	100	5682.05	5682.05	0	4772.92	4772.92
Rios, Juan	65	65	100	7450.68	7450.68	0	6258.57	6258.57
Rios, Vicenta	39	7	17	11662.77	1982.67	9680.10	1665.44	11345.54
Rodriguez, Juan N.	242	0	0	7843.99	0	7843.99	0	7843.99
Rodriguez (Cervantes),Miguel	188	0	0	17252.29	0	17252.29	0	17252.29
Rubalcaba, Feliciano	36	12	33	8367.97	2761.43	5606.54	2319.60	7926.14
Rubio, Francisco	196	0	0	20138.78	0	20138.78	0	20138.78
Ruiz, Gerardo	59	0	0	3974.54	0	3974.54	0	3974.54
Ruiz, Josefa	66	0	0	20848.37	0	20848.37	0	20848.37
Saldana, Emma	55	11	20	10556.44	2111.28	8445.16	1773.47	10218.63
Sandoval, Jose	15	7	46	2696.84	1240.54	1456.30	1042.05	2498.35
Santos, Domingo	43	13	30	15162.07	4548.62	10613.45	3820.84	14434.29
Vasquez, Jose Luis	44	12	27	4737.24	1279.05	3458.19	1074.80	4532.59
Vasquez, Refugio	25	25	100	7021.81	7021.81	0	5898.32	5898.32
de la Vega, Felipe	165	11	6	7337.82	440.26	6897.56	369.81	7267.37
Villa, Ildefonso	154	29	18	17335.97	3120.47	14215.50	2621.19	16836.69
Zamarripa, Antonio	34	34	100	5306.51	5306.51	0	4457.46	4457.46
Zamarripa, Monica	51	0	0	9673.16	0	0	0	9673.16

CASE SUMMARY

Kawano, Inc. (UFW)

9 ALRB No. 62
Case No. 76-CE-51-R
(4 ALRB No. 104)

ALJ DECISION

The ALJ generally approved the General Counsel's methodology in calculating the backpay to 53 discriminatees. He rejected the employer's arguments, inter alia, that the discriminatees' 1975 hours were an inappropriate basis for determining gross backpay; that the discriminatees did not diligently seek interim employment; and that the discriminatees found substantially equivalent employment. The ALJ did not approve the General Counsel's daily method of calculating net backpay because the General Counsel did not allow for the difference in the calendar in each year after 1975 and that method, therefore, inflated the backpay awards. He therefore recommended that the backpay awards be recalculated on a weekly basis. The ALJ also declined to recommend that Respondent reinstate the raitero system and to modify the interest rate on the backpay awards.

BOARD DECISION

The Board affirmed the ALJ's Decision with several exceptions. Due to Respondent's petition in bankruptcy and the length of the proceedings, the Board did not recalculate each entire backpay award, but reduced the awards by a simpler standard formula. The Board also ordered Respondent to reinstitute the raitero hiring system and declared the interest rate issue moot, by virtue of the tolling effect of Respondent's bankruptcy petition.

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This Case Summary is furnished for information only and is not an official statement of the case, or of the ALRB.

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STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

Agricultural Labor Relations Board
JAN 31 1983
RECEIVED
Exec. Secretary

In the Matter of: KAWANO, INC. Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case No. 76-CE-51-R (4 ALRB No. 104)

APPEARANCES:

Barbara Dudley, San Diego
for the General Counsel

Richard A. Paul
Jon R. Betts
Gray, Cary, Ames & Frye
San Diego, California
For Respondent, Kawano, Inc.

ADMINISTRATIVE LAW JUDGE'S SUPPLEMENTAL DECISION

RE BACKPAY PROCEEDINGS

STATEMENT OF THE CASE

MICHAEL H. WEISS, Administrative Law Officer.

This backpay proceeding arises from the decision of the Agricultural Labor Relations Board in 4 ALRB No. 104, issued December 26, 1978 in which the Board, inter alia, affirmed A.L.O. Joel Gomberg's decision and conclusion that KAWANO, INC. discriminatorily refused to rehire 53 of its workers in 1976 in violation of the Act.[1] The Board directed that each of the workers be offered reinstatement and made whole for loss of pay and any other economic loss suffered as a result.

The Board's decision was appealed by Respondent and affirmed[2] and became final on September 17, 1980 when the California Supreme Court denied hearing.

A Backpay Specification was issued by the General Counsel on August 26, 1981, setting forth the gross back wage claim, interim earnings and expenses for the 53 discriminatees for the applicable five-year period. Respondent filed an Answer thereto on September 22, 1981, disputing the amounts claimed and raising numerous affirmative defenses. Thereafter, the Executive Secretary granted two of Respondent's motions to continue the original October, 1981 hearing dates to accommodate Respondent's principal counsel's calendar conflicts. A third similar motion by the Respondent was denied by the Executive Secretary in January, 1982. Accordingly, a

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1. Unless otherwise indicated all references to the Act are to the Agricultural Labor Relations Act, Labor Code Section 1140 et seq.

2. See Kawano, Inc. v. A.L.R.B., 106 Cal.App.3d 937 (1980).

Prehearing Conference was held on January 25 and 26 and extended to February 1, 1982 as well. The Hearing commenced on February 2 and concluded 29 hearings days later on April 9.

All parties were given a full opportunity to participate in the hearing and both the General Counsel and Respondent were capably represented throughout the hearing.[3/]

Based upon the entire record,[4/] including my observation of the demeanor of the witnesses, and after considering the briefs filed by the parties during the hearing and after it closed, I make the following findings of fact and conclusions of law.

FINDINGS OF FACT

INTRODUCTION

In the course of a backpay proceeding involving the backpay entitlements and calculations for 53 discriminatees covering a five-year period (resulting in two file cabinet drawers full of exhibits, more than a dozen procedural motions and an even greater number of substantive ones), the proceeding tends to take on a life

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3. The caliber of counsel for both parties was extremely high and professional.

4. The entire record is voluminous. Attached hereto as Appendix I is the list of 50 discriminatee witnesses and 11 other witnesses who testified at the hearing. Appendix II contains a list of the exhibits identified and/or admitted into evidence. Appendix III contains a summary of worker characteristics that I prepared and utilized in organizing and preparing this decision. Appendix IV, under separate cover, contains the recommended backpay calculations for some of the 53 discriminatees. Due to the lengthy computation logistics, the Executive Secretary decided that recommended backpay entitlements and computations would be calculated for ten representative workers. (The parties stipulated to the backpay entitlements of one other worker.) It is expected that the Board, after reviewing the ALO's recommended rulings concerning the backpay claimants, would remand the proceedings to the General Counsel to make the necessary actual compuations pursuant to its remand order.

of its own.

To facilitate an understanding of the recommended backpay entitlements (including the underlying policies for the legal and factual determinations made), I've set forth below the factors that had the greatest impact, in varying degrees, on the ultimate determinations. An analysis and discussion of these factors in greater detail follows in subsequent sections.

I. Procedural history of the underlying case.

II. Hearing procedure followed in this backpay proceeding.

III. Summary of procedural motions and rulings.

IV. Summary of substantive issues and rulings.

V. Applicable legal standards.

VI. Individual discriminatee determinations.

I. PROCEDURAL HISTORY

As a result of an election held in September, 1975 the UFW was certified by the Board in March, 1977 as the exclusive bargaining representative for Respondent's agricultural employees.[5/] Prior to the hearing in the underlying proceeding commencing, the Board issued 3 ALRB No. 54 in July 1977 in which it

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5. 3 ALRB No. 25. This procedural history which includes three Kawano ALRB decisions (3 ALRB No. 25, 3 ARLB No. 54, 7 ALRB NO. 16), provides a useful context for understanding respondent's overall operations. Moreover, aspects of these decisions were outcome-determinative for particular individuals in this backpay proceeding.

I have taken hereinafter, where appropriate, administrative notice of applicable relevant Board findings in these decisions (as well as, of course, the underlying proceeding herein in 4 ALRB No. 104), pursuant to Sunnyside Nurseries (1978) 4 ALRB No. 88, footnote 4; N.L.R.B. v. Mueller Brass Co., 509 F.2d 704, 705; 88 LRRM 3236, 3239 (5th Cir. 1975).

found that Respondent had in 1975 discriminatorily discharged Felix Hernandez and had wrongfully transferred Javier Acosta to more arduous work after the election.[6/]

The underlying charge in this case was filed in September, 1976 and was heard before ALO Joel Gomberg commencing September, 1977. ALO Gomberg's finding that Respondent had discriminatorily refused to rehire the 53 workers herein because of their union activities and affiliation was issued in January, 1978 and affirmed by the Board in December, 1978 in 4 ALRB No. 104. Thereafter, Respondent appealed the Board's decision to the Court of Appeals, who affirmed the Board's decision. Respondent's further appeal to the California Supreme Court resulted in its Denial of Hearing in September, 1980. During this 1976-80 period Respondent chose not to make unconditional offers to rehire to these 53 workers which would have cut off its backpay liability. However, on approximately November 12, 1980, Respondent mailed out notices of recall to the 53 workers herein.[7/]

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6. These two workers plus three others were rehired by respondent in late July-early August, 1977 but assigned to cherry tomato picking work. Their claims are discussed in more detail hereinafter under the section "Cherry Tomato Five".

7. The parties have stipulated that for purposes of this backpay proceeding an unconditional offer of reinstatement was made to the 53 discriminatees resulting in a backpay liability cutoff date of November 14, 1980.

However, 13 of the 53 discriminatees challenged the validity and unconditionality of the recall as it applied to them in a separate consolidated complaint, 79-CE-30-SD, et al. The parties agreed and stipulated to hearing this aspect separately and it was scheduled for hearing before the undersigned ALJ in July, 1982. However, during the course of the extended pre-hearing conference the parties were able to reach settlement and resolve these claims. This obviated the need for any further backpay determinations beyond November 14, 1980.

Between October, 1980 and August, 1981, the General Counsel's compliance unit compiled the extensive data that became the Backpay Specification ("spec") which was issued on August 26, 1981.[8] Respondent's answer, which essentially disputed or disagreed with nearly every aspect of the Specification's contents, put at issue virtually every computation therein.[9] As indicated above, Respondent sought and obtained two continuances because of a scheduling conflict of its principal attorney who had been representing Respondent. A third continuance was not granted and the hearing eventually commenced February 2, 1982.

II. HEARING PROCEDURE FOLLOWING

At the outset of the pre-hearing conference in January, 1982 it soon became apparent that portions of the specification contained explicit and implicit premises and asumptions that required further explanation. Accordingly, General Counsel provided a written response further explicating the specification

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8. As will be indicated in more detail hereinafter, I have declined to accept a number of General Counsel's underlying theories of computations (e.g., daily calculations, driver's lost profits and some interim travel expenses) found in its backpay specification. This in no way, however, is meant to detract from the extensive, conscientious and competent preparation and computations ably performed by Roger Smith and Ellen Sward of General Counsel's compliance unit in preparing the Kawano Backpay "spec".

9. This occurred even though the gross backpay method was already established as "the law of the case" when the ALO's rebuttable presumption for utilizing 1975 hours was affirmed by the Board and Court of Appeal.

computations.[10/]

All the parties agreed that there were a number of legal and mixed factual-legal issues which could and should be presented at the outset of the hearing, prior to discriminatee testimony.[11/] This would provide the parties with an initial "reading" or tentative ruling by the A.L.O. on significant issues that separated the parties and prevented any realistic settlement discussions from being considered or pursued. By this procedure, all parties agreed that the most realistic possibility for pursuing settlement could be explored and ascertained while the issues were also being litigated.[12/] Prior to making tentative rulings the ALO was presented with brief legal memos by the parties in support of their respective positions.

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10. Although this document entitled "Response to Request for Discovery Re Method of Calculation of Backpay Specification" can be found in the ALO's file record, it is set forth in Appendix V as well for convenience to understanding the methodology used to prepare the specification. In addition, Ellen Sward and Roger Smith, the two persons primarily responsible for preparing the specification were available both informally, "off-the-record" and formally, on-the-record for further explanation.

11. It was expected that an average of 3 to 4 discriminatees could logistically and realistically be examined during a hearing day. Thus, just this aspect and portion of the case would require 13 to 18 days.

12. This procedure was utilized, at least in part, with the following issues:

1. Reduction in work force and acreage;
2. The reinstitution of the raitero system;
3. The reinstatement of "Cherry Tomato 5";
4. Weekly (as opposed to daily or quarterly) computations;
5. The application, if any, of the turnover rate of other Kawano workers;
6. School enrollment as a disqualifier.

Although this procedure proved useful and successful in resolving another recent compliance proceeding, which also involved a considerable number of discriminatees,[13] it was unsuccessful in this case. Ironically, the parties, on paper at least, appeared to have been closer at the outset of the proceeding than at its conclusion.[14]

III. SUMMARY OF PROCEDURAL MOTIONS FILED

A. By the General Counsel

1. Motion for Production of Documents regarding interim employment and disabilities -- GRANTED.

2. Motion for Production of Documents regarding reduction in acreage, work force, employment opportunities -- GRANTED.

3. Motion to Modify Interest Rate Sought from 7% to 20% -- GRANTED.

4. Motion to Quash EDD Subpoena -- GRANTED.

B. By Respondent

1. Motion on Application to Take Depositions of Discriminatees is DENIED.

2. Motion for a More Definite Statement is DENIED.

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13. Martori Bros., 4 ALRB No. 80, involving 43 discriminatees and an Imperial Valley-Arizona grower represented by the same law firm and attorney, was resolved and settled before the undersigned in 1982.

14. Cf., Respondent's Answer, which set forth the total maximum backpay entitlements of approximately $318,000, utilizing 1975 discriminatee hours reduced by their known interim earnings, but not including the yet-to-be-determined disqualifiers, with its final calculations set forth in its post-hearing brief totaling approximately $133,000. The General Counsel's initial and final calculations totaled approximately $619,000 and $622,000 respectively.

3. Motion for documents relevant to General Counsel's theory, calculation and computation of backpay spefication is GRANTED as to documents not privileged.

4. Motion for General Counsel's interview notes of discriminatees DENIED as attorney-client privilege and work product.

5. Motion for General Counsel to cooperate regarding EDD data GRANTED by ALO, reversed by Board in interim appeal by General Counsel.

6. Motion for Discriminatees' Tax Returns DENIED; but for W-2's, GRANTED.

7. Motion for copies of all releases or waivers signed by discriminatees is DENIED.

IV. SUMMARY OF SUBSTANTIVE ISSUES

1. Backpay methodology shall be computed on a weekly basis, not daily or quarterly. ...Subsection 2(b), p. 14

2. Reduction in work force defense inapplicable to circumstances of this case. ...Subsection 3, p. 18

3. 1975 was not an "extraordinary" year. No reduction in number of hours from 1975 base year to 1976-1980 years.

...Subsection 4, p. 24

4. Rebuttable presumption establishes commencement of backpay on same date as in 1975. Respondent's prevention of normal application procedure obviates requirement of actual application at ranch. ...Subsection 5, p. 26

5. General Counsel's request to reinstate raitero ride system as status quo ante is denied. ...Subsection 6, p. 27

6. Discriminatees to receive $1.50 daily ride subsidy as

part of their backpay. ...Subsection 7, p. 31

7. The $1.50 daily ride is provided in lieu of excess commuting costs. ...Subsection 8, p. 32

8. Job search and other related interim expenses are recoverable even absent interim earnings in that quarter. ALRB, not NLRB, rule followed. ...Subsection 9, p. 34

9. Discriminatees entitled to rebuttable presumption of 1975 hours regardless of the length of prior work history with Kawano. ...Subsection 10, p. 35

10. Turnover ratio of other Kawano workers (or agricultural workers generally) is not probative of work history of the 53 individual discriminatees. ...Subsection 11, p. 38

11. The discriminatees exercised due diligence in seeking and obtaining interim employment. The few examples of willful idleness are noted in individual backpay specification.

...Subsection 12a-h, p. 38

12. No adjustment need be made for either irrigator work availability or the applicable number of hours.

...Subsection 13, p. 50

13. Raiteros not entitled to lost "profits;" only entitled to $3.20 hourly rate and $1.50 daily ride subsidy.

...Subsection 14, p. 52

14. C.E.T.A. job training not a disqualifier unless also a failure to seek other interim work. ...Subsection 15, p. 54

15. Cherry Tomato Five liability cut-off claim is January 3, 1978. ...Subsection 16, p. 56

16. Backpay claim disqualifiers.

...Subsection 17, p. 58

17. Discriminatees testimonial credibility.

...Subsection 18, p. 59

18. Interest rate. ...Subsection 19, p. 59

V. APPLICABLE LEGAL STANDARDS

1. General Principles

In a backpay proceeding, under the N.L.R.B., the burden is on the General Counsel to show damage (that is, loss of earnings or other income by the discriminatee) and the amount of gross backpay due the discriminatee. The burden is on the Respondent to establish diminution of his liability, such as by reason of interim earnings, lack or diminution of work at the Respondent's place of employment, willful loss of wages, or the discriminatee's unavailability for work. See, as illustrative, N.L.R.B. v. Brown & Root, Inc. (1963) 311 F.2d 447; 327 F.2d 958 (C.A. 8, 1964); N.L.R.B. v. Mastro Plastics Corporation 354 F.2d 170 (C.A. 2, 1965), cert. denied 384 U.S. 972 (1966).

Willful loss of wages has been defined as the failure of a discriminatee to make reasonable efforts to seek and secure suitable interim employment. The burden of proving any claimed willful loss of earnings is always upon the Employer. Phelps Dodge Corp. v. N.L.R.B. (1941) 313 U.S. 177, Oil, Chemical & Atomic Workers Int'l Union v. N.L.R.B. 547 F.2d 598, 602-603 (D.C.Cir., 1976). Under this rule the discriminatee is merely required to make "reasonable efforts" to mitigate his loss of income, and only unjustified refusals to find or accept substantially equivalent employment are penalized. Thus, an employee need not seek employment which is not

consonant with his or her particular skills, background and experience or which involves conditions that are substantially more onerous than the prior position. Nor is the employee required to accept employment which is located an unreasonable distance or time from home. Oil, Chemical & Atomic Workers, et al., supra. In sum, the discriminatee's efforts at mitigation need not be successful; all that is required is an honest good faith effort, and "not the highest standard of diligence." Arduini Manufacturing Corp. 394 F.2d 420, 423 (1st Cir., 1968).

The ALRB, in a number of recent decisions has adopted these broad principles as applicable to backpay proceedings under the ALRA. See e.g., Maggio-Tostado (June 15, 1978) 4 ALRB No. 36; Arnaudo Bros. (August 31, 1981) 7 ALRB No. 25; O. P. Murphy Produce Co. (August 3, 1982) 8 ALRB No. 54, and Butte View Farms v. A.L.R.B. (1979) 95 Cal.App.3d 961 affirming Butte View Farms (November 8, 1978) 4 ALRB No. 90.

However, while the broad principle that the backpay award is designed to restore discriminatees to the position they would have enjoyed absent discrimination is easy to state, it is considerably less simple to apply. For instance, there is no formula that could measure an exact or precise make-whole figure since the discriminatee's subsequent work pattern rarely lends itself to precise comparisons. Consequently, "the Board is vested with a wide discretion in devising procedures and methods which will effectuate the purposes of the Act." N.L.R.B. v. Brown & Root, Inc. 311 F.2d 447, 452 (8th Cir., 1963).

Furthermore, because of the significant time lag between

the underlying ULP proceeding herein in 1977 and the backpay proceeding in 1982, the application of the foregoing principles to the adduced facts will necessarily have aspects of uncertainty. It is largely for this reason that the courts, National Board and ALRB generally resolve conflicts or any doubt in favor of the wronged discriminatee. As expressed in United Aircraft Corporation 204 NLRB 1068 (1973), "[A]s the Courts and the Board have generally indicated, the backpay claimant should receive the benefit of any doubt rather than the Respondent, the wrongdoer responsible for the existence of any uncertainty and against whom any uncertainty must be resolved." (Emphasis added).

Finally, the finding of an unfair labor practice and discriminatory discharge or refusal to rehire is "presumptive proof that some backpay is owed." Mastro Plastics Corp., supra, 354 F.2d at 178.[15]

2. Application Of General Principles To The Backpay Specification.

The underlying principles and premises applied by General Counsel in the backpay specification can be summarized as follows:

a. Gross Backpay Methodology

The discriminatee workforce can be categorized generally as seasonal and year-round workers. With the possible exception of the four driver-raiteros, Respondent considered each worker a general field worker regardless of the type of work performed or the crop involved. General field workers were paid $2.90 hourly during

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15. In Respondent's post-hearing brief it contends that twelve discriminatees are not entitled to any backpay while one is entitled to the sum of $10.75.

the period 1976-1980 by Respondent. In 1980 Respondent raised the general field workers pay to $3.10 hourly. General Counsel utilized these hourly figures, coupled with the 1975 hours each discriminatee worked in computing the gross backpay wages for all the discriminatees except the four driver-raiteros. Respondent paid the four driver-raiteros at a $3.20 hourly rate in 1975 which was utilized in General Counsel's specification for the 1976-1980 backpay period. General Counsel also included the ride expense payments received by the drivers daily ($2 per person per day, $1.50 from Kawano, $.50 from the individual) in 1975 as part of their backpay entitlements. The parties stipulated that the backpay liability cutoff date is November 14, 1980 when Respondent sent out unconditional offers of reinstatement.

The Court of Appeals affirmed, as the appropriate and applicable method, the rebuttable presumption established by the ALO and the Board for calculating backpay entitlements. Thus, because of Respondent's discriminatory conduct in preventing the discriminatees from making application for rehire in 1976, the 1975 hours were utilized by all the parties as the presumptive applicable ones, subject to the right of a party to rebut such presumption with appropriate evidence.

Respondent's efforts to rebut the presumption and reduce its backpay liability are discussed in more detail in the following sections.

b. Daily vs. Weekly vs. Quarterly Calculation

General Counsel, following the normal and usual calculation method in make-whole remedies, utilized a formula calculating

backpay on a daily basis. See e.g., Sunnyside Nurseries, Inc. (1977) 3 ALRB No. 42. This method would appear, at first, to be appropriate, reinforced by the fact that Kawano's payroll records were maintained on a daily basis. In addition, several of the more significant interim employers such as North County Growers, Harry Singh and Sun-West (Avila, a labor contractor) also maintained theirs on a daily basis.

Respondent, on the other hand, persuasively argues that using the rebuttable presumption of 1975 hours, when coupled with the daily calculations, will inflate or distort the backpay entitlements of the discriminatees by approximately 1/6 or 16.7%. This occurs because the 1975 dates used to compute the 1976-1980 gross wages are different than the 1976-1980 dates for interim wages. Thus, even where a Kawano worker worked 9 hours a day six days a week in 1975 and also worked 9 hours a day six days a week at the interim employment during 1976-1980, using daily calculations allows one day of unmatched gross income each week because the six days of work compared differ.[16/] Respondent's objections to the use of daily computations were clearly set forth at the outset of the hearing during its examination of Roger Smith, one of the principal persons responsible for preparation of General Counsel's backpay specification. An example may clarify this inflation effect.

Take, for example, a sample work week ending Saturday, August 16, 1975 (Kawano's work week actually ended on Fridays).

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16. During July-November, 1975 Kawano workers normally worked six days a week, excluding Sunday, and typically worked 9, 9½ or 10 hours each day.

Kawano workers worked six days, Monday through Saturday, 9 hours a day for a 54 hour work week, with Sundays off. Using daily computations and the rebuttable presumption, each of these hours, days of the week and dates were computed by General Counsel to establish the gross backpay for the 1976-1980 period. However, Worker A, working 6 days a week, 9 hours a day at an interim employer for the week ending August 16, 1976, August 16, 1977, etc. (at the same or higher wage) would not receive a complete interim wage offset. This occurs because August 16 in 1975 is a Saturday, but a Monday in 1976 and a Tuesday in 1977, etc. Using a typical wage rate of $3 an hour, the General Counsel computes that Worker A is entitled to, in this example, net wages of $27, even though the worker has found interim work with exactly the same work week, hours and wages. The day of the week that Sunday falls on changes for each week of each liability year when compared to 1975, thereby causing this "inflation."[17/]

Respondent, on the other hand, contends that calculations should be computed on a quarterly basis, essentially relying on the NLRB procedure and practice in this area.

While the Board has consistently held that the preference in agricultural settings is to use the daily backpay formula, there have been significant alterations when the circumstances call for it. Thus the Board has authorized the calculation of backpay on a weekly basis, "or indeed by any method that is practical, equitable and in accordance with the policy of the Act." Butte View Farms

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17. For the 53 discriminatees over the entire 5 year liability period the added amount would approach $100,000.

(1978) 4 ALRB No. 90; aff'd (1979) 95 Cal.App.3d 961; Maggio-Tostado (1978) 4 ALRB No. 36. The policy of the Act referred to and reflected in a backpay order is to restore the discriminatee to the same position he or she would have enjoyed had there been no discrimination. Arnaudo Bros. (1981) 7 ALRB No. 25.

Applying these standards to this particular case leads to the inevitable conclusion that the use of a weekly basis formula would be the most "practicable, equitable and in accordance with the policy of the Act." The weekly formula all but eliminates the objection Respondent raises to using daily calculations coupled with 1975 hours and dates. Thus, even where an arbitrary work week is used, so long as it is consistently so used throughout a year, then the comparison to interim work week will be accounted for. Furthermore, using any other formula, particularly a quarterly one, would unduly penalize the workers, particularly because of the significant vagaries and job vulnerabilities of agricultural seasonal work.

Moreover, the Board has ruled that there exists significant differences between backpay procedures under the NLRB as applied in the industrial setting and the agricultural setting under the ALRB, see e.g. John V. Borchard Farms (1982) 8 ALRB No. 52. Thus, Labor Code section 1148 which requires the ALRB ". . . to follow applicable precedents of the NLRA" has been limited.

> [T]he Legislature intended [the ALRB to] select and follow only those federal precedents which are relevant to the particular problems of labor relations on the California agricultural scene.

Departure from federal precedent is warranted when significant differences exist between the working conditions of industry in

general and those of California agriculture. (A.L.R.B. v. Superior Court (1976) 16 Cal.3d 392).

3. Reduction in Work Force

Respondent's most vociferous argument for rebutting the presumption that the 1975 hours were representative is based on its showing that there was an overall reduction in its acreage, work force and field worker hours, particularly in 1976 and 1977.[18]

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18. Respondent's Exhibits B, C-15 and 16, C and RR-3 contain the underlying figures for its contentions. The argument has considerable less thrust or basis for the years 1978-1980 since the underlying figures are very near the 1975 figures. Respondent's Appendix A was not considered and should be stricken from its brief. It appears to be an effort to do indirectly what Respondent was unwilling to do directly. Respondent asserted for three and a half months during this proceeding that it was going to produce a statistical expert who would analyze the 1976-1980 hours of the remaining regular workers along with their turnover ratio and give an expert opinion regarding the purported applicability of these statistics to the discriminatees. Respondent was ordered to produce a report by its expert prior to any testimony in order to allow the General Counsel and ALO to review, evaluate and understand both the underlying data used, assumptions made and conclusions drawn. Although given repeated opportunity to do so, Respondent declined to and withdrew its offer of proof and intention to produce testimony from a statistical expert. Appendix A, referred to on pages 20-23 of Respondent's post-hearing brief, purports to show a lowered average hours for the 1976-1980 regular workers compared to the 1975 discriminatee hours. The comparison is flawed on its face. The minimum number of months that a seasonal discriminatee employee worked in 1975 was 3 months. In fact, approximately 16 of the discriminatees worked year round, 10 to 11 months a year; of the remaining seasonal workers, all but 4 or 5 worked 6 to 7 months a year, with the 4 or 5 working approximately 3 months a year. By contrast, Respondent compares (in Appendix A) workers from the 1976-1980 period who worked several days total for the 5 years (Garciela Ponce, Manuel Carrillo, Elvira Ybarra, Gloria Guerro, Felepi Castillon, Larry Perez [2 hours on 1 day in 1978!]. They also include the Cherry Tomato Five as regular workers in 1978 when each of them left at the very beginning of January 1978 (after 1 or 2 days work) and unsuccessfully contested their termination. What can be gleaned from Appendix A is corroboration that there were at least 25-30 regular workers who worked the same range of hours for most of the 5 years. Since these workers all had 2000 or more hours each year it strongly suggests that for the 16 year-round workers there is ample corroboration that absent discrimination, they would have continued to be employed as year-round workers.

The argument, of course, is neither novel or new in this case. It's been raised and rejected throughout the underlying proceedings. Moreover, as the General Counsel points out, reviewing and analyzing this contention to any great lengths again involves a significant amount of relitigation as the reduction in work force defense was fully litigated and rejected through the course of the underlying ULP liability phase and subsequent appeals.

Respondent, on the other hand, refers to the dictum reference in the Court of Appeals decision where the Court states:

> We assume in the backpay proceedings which will take place, the Board, in determining the probable hours worked in 1976 and 1977, will consider the Kawano labor force cutbacks during that time, as well as other mitigating circumstances. 106 Cal.App.3d at 955.

In order that the record be clear regarding the applicability of this defense at the backpay proceeding stage, a summary of the parties' respective positions and my conclusion that no reduction in backpay liability is called for is set forth.

Essentially, Respondent contends that had the discriminatees continued in its employ, a percentage of them (approximately 45% in 1976, reduced to 0% by 1980)[19/] would not have been reemployed for economic reasons even absent discrimination because of the reduced acreage, work force and total hours worked. Respondent contends, nor does General Counsel deny it, that contrary to the Court of Appeals admonition, General Counsel has declined to take into account the reduction in work force in preparing its backpay specification.

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19. See e.g. Respondent's post-hearing brief, page 17.

General Counsel's response is a succinct one. The doctrine is wholly inapplicable in this case because despite reduced acreage, work force, etc., Respondent in each of the liability years hired hundreds of new employees for the precise work that the discriminatees had previously done. Respondent's defense and applicable work force and acreage reduction figures were considered, analyzed and rejected by ALO Gomberg in his decision and affirmed by the Board in its decision.[20/] Although during 1976, Kawano reduced its acreage and work force by more than one-half, neverthless, it concedes that during the eleven month period February-December 1976 Respondent hired 436 illegals, 152 in June and July alone, the primary hiring months for seasonal workers for the subsequent tomato harvests.[21/] In 1977, 242 illegals were hired during the February to mid-August 1977 period when Respondent's peak employment was 230 workers, down approximately one-half or more from 1975.

Moreover, Respondent does not dispute that there were significantly more than 53 new hires in each of the other liability years, 1978-1980. Reviewing ALO Exhibits 1D-1F [Respondent's weekly payroll and summaries 1978-1980] shows that during 1978 Respondent's work force of illegals went from a low of 38 (in the

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20. See Kawano, Inc. (1978) 4 ALRB No. 104, ALOD p. 15-16, 38.

21. Irrigator foreman Glenn Imoto testified that Respondent started a third tomato harvest commencing with the fall 1978 season. In 1979, Respondent established a field nursery that utilized additional irrigators. During each of the six years (1976-1982) that he was irrigator foreman, Imoto testified that Respondent had a tomato and/or cauliflower winter harvest in December and January. See e.g., Vol. XXVII R.T. pp. 18-19; p. 35, line 5.

last week of February) to a high of 456 (in the last week of August), while the number of legals went from 22 to only 50 (in the last week in June). In 1979, the number of illegals went from 96 to 427 (in the last week in July) while the number of legals went from 11 to 31. In January 1980, the number of illegals went from 93 (the last week in February) to 480 (the last week in July). By comparison the number of legals went from 17 to 25.[22/] Several notable inferences and conclusions can be drawn from these figures. The first is the significant number of new hires that are reflected in these figures. For comparison, in 1977 when the peak illegal employment was 230 the total number of new hires was 242 (for a six month period). These significantly higher peak employment figures for 1978-1980 also corroborate and reflect the additional hires for the new fall harvest. The second is the significant drop of legal to illegal worker ratio. In the underlying proceeding John Kawano testified that in 1975 and previous years the ratio of legals to illegals was approximately 40-50% legals. By contrast, the percentages of peak employment of legals to illegals in 1978 is 50/456 = 11.0; in 1979 is 31/427 = 7.3% and in 1980 is 24/480 = 5.2%. Third, a comparison of the December and January payroll summaries for each of the 1976-1980 years reveals that there are significant employment opportunities from December into January during Kawano's winter tomato, cauliflower and strawberry

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22. I randomly, for convenience, selected the payroll summaries for the last week ending in each month for 1978-1980. Any other week-ending summary or all the weeks together would result in the same pattern. I used for the legal workers figures only field workers. I excluded the non-field worker job categories of floor help, office and administration, packers or sorters and Glenn.

harvests.[23]

It is well settled that Respondents reduction in work force defense is an affirmative one and the burden of proof is on Respondent to establish that these discriminatees would not have remained in its employ for such non-discriminatory reasons. N.L.R.B. v. Mastro Plastics Corp. & French American Reeds Mfg. Co. (1962) 136 NLRB 1342, 1346; aff'd 354 F.2d 170 (2nd Cir., 1965).

Nor does Respondent's reference to the Court of Appeals

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23. The comparative figures were noted and obtained from the December and January week-ending payroll summaries (ALO Exhibit 1B-1E, omitting non-field worker job categories.

Week Ending	Illegals Employed	Legal Employed	Total
12/17/76	105	37	142
12/24/76	75	41	116
12/31/76	66	34	100
1/7/77	75	34	99
1/14/77	65	34	100
1/21/77	71	40	111

(Not including 20 hired for David's crew; unclear if that is a field worker's crew.)

12/16/77	199	73	272
12/13/77	216	39	255
12/30/77	183	35	218
1/6/78	151	36	187
1/13/78	127	28	155
1/20/78	121	30	150
12/15/78	165	30	195
12/11/78	143	30	173
12/19/78	134	29	163
1/5/79	106	28	134
1/12/79	131	28	159
1/19/79	135	16	161
12/14/79	155	22	177
12/21/79	166	20	186
12/18/79	150	18	168
1/4/80	135	18	153
1/11/80	130	17	147
1/18/80	126	17	143

dictum relieve it of its burden or require that the burden shift to the General Counsel. The Court plainly meant for Respondent to have to follow the well-established NLRB precedent and doctrine that once unlawful discrimination has been established, the burden is on the wrongdoer "as to diminution of damages . . . from the unavailability of a job at [its ranch] for some reason unconnected with the discrimination." Mastro Plastics Corp., supra.

A corollary of the above principle is that in an affirmative defense the burden is on the respondent to establish that each of these particular discriminatees would not have remained in its employ because of non-discriminatory reasons. N.L.R.B. v. Mastro Plastics Corp., supra. Nor is statistical reference to employment figures or statistical probability sufficient to meet this burden. What must be determined is the employment of each of the claimants based on respondent's actual employment policies. This specific showing must be made by Respondent and mere conclusions, conjecture or speculation are insufficient. W.C. Nabors, dba W.C. Nabors Co. (1961), 134 NLRB 1078, 1088.

Applying these applicable legal precedents to Kawano's actual employment history and practices from 1976-1980 leads to but one conclusion, that Respondent has failed to meet its burden. Moreover, although there was an overall reduction in acreage and work force for several years at Kawano, nevertheless, hundreds of new workers were hired each year, which completely undermines and rebuts Respondent's contention.

While the reduction in work force doctrine is a well-established one, it is used sparingly and narrowly in NLRB

cases. In none of the cases cited by Respondent,[24] nor in any of the other seminal NLRB cases on this point[25] has the National Board accepted a reduction in work force defense where, as here, the Respondent had subsequent hew hires during a retrenchment period. In Midwest Hanger Co., supra, the respondent went from 3 shifts to 1 shift thereby reducing its work force. Nevertheless, because availability of other relatively similar unskilled work existed, coupled with subsequent new hires, the Board rejected the defense. In United States Air Conditioning Corp. (1963) 141 NLRB 1278, 1280, the NLRB discussed that the burden of proof for a changed economic conditions defense during the backpay liability period lies with respondent. The Board held that introduction of evidence which discloses that there were sufficient jobs available to all the discriminatees is more than adequate to rebut respondent's claim of reduced employment opportunity. Thus, Respondent has asserted here a legal defense which is unavailable to it factually or legally.

4. 1975 "Extraordinary" Hours Defense

Respondent also seeks to reduce the applicable number of presumptive 1975 hours based on its contention that 1975 was an

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24. See citations pp. 9-12, Respondent's post-hearing brief.

25. See e.g. Midwest Hanger Co. (1975) 221 NLRB 911; Fort Vancouver Plywood Co. (1980) 252 NLRB 242; N.L.R.B. v. Ellis & Watts Products, Inc. 297 F.2d 516 (6th Cir., 1962); remand (1963) 143 NLRB 1269; enf'd 344 F.2d 67 (6th Cir., 1965); Florsheim Shoe Store Co. v. N.L.R.B. 565 F.2d 1240, 1247 (2nd Cir., 1977).

"extraordinary" year.[26/] It bases its argument on these contentions: First, that its Exhibit KK shows that the seven discriminatees listed therein worked more hours in 1975 than was "normal" for them. Second, that the winter tomato harvest, which extended into the third week of January 1976 was unusual, resulting in "extraordinary" hours. Third, Respondent's Exhibit MM and its Appendix A attached to its post-hearing brief purportedly indicates that the average number of hours worked by the regular field workers in 1976-1980 was less than the average number worked by the discriminatees in 1975.

Each of the contentions lack merit. General Counsel, in pages 4-8 of its post-hearing brief succinctly and effectively responded to and established the lack of reliability of Respondent's Exhibit KK. Rather than summarize General Counsel's response here I have set it forth in Appendix VII and incorporate it into this decision. Respondent's irrigation foreman, Glenn Imoto, testified that during his six years at Kawano as irrigation foreman (1976-1982), Respondent had a tomato and cauliflower harvest each December and January. The earlier discussion concerning ALO Exhibit 1B-E corroborates there was steady employment in December and January of each year for 150 to 200 field workers. Finally, as indicated earlier, Respondent's post-hearing brief, Appendix A is

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26. Respondent seemingly wants it both ways regarding this issue. Before the Court of Appeals it argued that 1975 was a bad year in agriculture, calling for a Kawano retrenchment in 1976. Cf. Kawano v. A.L.R.B. 106 Cal.App.3d 937, 950 fn2. During the backpay proceeding Respondent argues that 1975 was in fact an "extraordinary" year and should not be used as a representative one, in part because of the January harvest.

fatally flawed on its face and does not support its contention.

I accordingly conclude that the 1975 hours are an appropriate representative year to use for the rebuttable presumption. Respondent has failed to sustain its burden that those hours should be reduced as unrepresentative.

5. Respondent's Defense That No Backpay Liability Until Discriminatee Makes Employment Application at the Kawano Ranch

Under usual NLRB principles, an employee who was unlawfully laid off or refused rehire is not entitled to backpay until the date that individual discriminatee actually sought reemployment. See, e.g. Solboro Knitting Mills, Inc. (1978) 97 LRRM 3047. Respondent correctly notes that a number of discriminatees testified to seeking Kawano reemployment in 1976 at dates subsequent to the backpay liability dates established in the rebuttable presumption.

Nevertheless, that principle is not applicable to the Kawano discriminatees because Respondent, by its conduct of dismantling its driver-raitero system, prevented the discriminatees from making timely application in a normal or usual way. Many of the workers had no transportation to the Kawano ranches (35-45 miles from the border) and thus were unable to make reapplication though they desired to. Those workers who did seek reemployment at Kawano ranches were consistently thwarted in their efforts. The word spread fast amongst the Kawano workers of Respondent's refusal to hire any and the futility to go to the Kawano ranches to try. Where discriminatees are reasonably led to believe that application for reemployment would be futile, then the NLRB does not require an unconditional offer to return to work in order for backpay to

accrue. See e.g., Sigma Service Corp. (1977) 230 NLRB 316, 95 LRRM 1359. The ALRB, in establishing the rebuttable presumption in 4 ALRB No. 104, affirmed by the Court of Appeal, relied heavily on the difficulty and futility Kawano workers experienced in seeking reemployment in 1976 and 1977. It would be contrary to the purposes of the Act to remedy Respondent's unawful conduct by penalizing the discriminatees for Respondent's success in thwarting their reemployment efforts.

6. Raitero System Reinstitution

Respondent correctly notes that ALRB precedent is in accord with NLRB and case law precedent that the purpose of a backpay remedy is to place the discriminatee in the same position he or she would have been absent discrimination. Maggio-Tostado, Inc. (1978) 4 ALRB No. 36, p.3; N.L.R.B. v. Ft. Vancouver Plywood Co. 604 F.2d 596, 602 (9th Cir., 1979); remand 252 NLRB No. 142, p. 1009 (1980). Commencing in 1976, after the January layoffs, Respondent discontinued its ride subsidy system to its regular (legal) workers.[27/] Respondent claimed that the sole purpose of the ride subsidy elimination was for cost savings. However, the ALO and Board in 4 ALRB No. 104 found that the elimination of the ride subsidy was in fact to facilitate and assist Respondent's dismantling of the raitero system, thereby thwarting Kawano's

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27. The $1.50 daily ride subsidy was only offered to the legals who lived near the border as an offset to the transportation cost and to provide the transportation to Kawano's properties located 35-45 miles form the border. Most of the North County Growers continued to provide ride subsidies after Kawano terminated theirs. The illegals, because they lived on or near the ranch properties in make-shift quarters, were not provided the ride subsidies.

regular and union-supporting workers from making job application and obtaining transportation to work.[28/] General Counsel, on the other hand contends that the Board order of 4 ALRB No. 104 requiring "reinstatement . . . without prejudice to their seniority or other rights and privileges", as well as "making each employee whole for any losses suffered as a result of his or her failure to be rehired," compels and requires reinstitution of the raitero system as well as payment of the ride subsidy to both workers and raitero.

I found the resolution of this issue a particularly close one, in part, because both parties assert strong policy and precedent in support of their respective positions.[29/] However, I did not consider this matter in a vacuum. Rather, I considered the resolution of this troublesome issue along with the resolution of two related but separate issues: (1) inclusion of the daily ride subsidy as part of the backpay award and (2) an administratively convenient computation formula for excess commuting costs.

To effectuate the policies of the Act, a desired backpay remedy should be one that is "practicable and equitable", taking

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28. See Kawano, Inc. (1978) 4 ALRB No. 104, pp. 2-4, 9-10, 14-15; ALOD pp. 6-11, 15-20, 43-46. It is unclear on what factual basis the Court of Appeals concluded that the raitero system was an employee-organized one. See 106 Cal.App.3d at 944. However, the evidence at the backpay proceeding as well as the liability phase was clear, persuasive and overwhelming, that the raitero system was a Kawano-instituted transportation method utilizing the drivers as their agents for both hiring and transporting the workers from the border. See, e.g., the testimony of the four raiteros, Luis Chavez Guiterrus, XXIV RT 52-113, Ignacio Hernandez, XIV RT pp. 87-151, Jose Aleman Juarez, VII RT 1-57 and Refugio Vasquez, VIII RT 1-73.

29. Compare e.g., cases cited in Frudden Produce Co. (1982) 8 ALRB No. 42, p. 17 concerning restoration of status quo ante with cases cited at p. 32 of Respondent's post-hearing brief.

into account administrative convenience when faced with the myriad of variations which the 53 discriminatees interim work patterns present.[30]

Simply stated, I have determined that the most practicable and equitable resolution of the competing policy considerations involved in this issue is to fashion a compromise that would be compatible with, while effectuating the policies of the Act. The recommended compromise is as follows: As part of the backpay entitlements each of the discriminatees would receive the $1.50 daily ride subsidy that Kawano terminated when it dismantled its raitero system and refused to rehire most of its legal workers living in the Tijuana-San Ysidro border area. This backpay entitlement would also be in lieu of calculating and authorizing the proper excess of interim employment commuting expenses over the Kawano commuting expenses. The excess commuting expense determination is an administrative nightmare. While some commuting costs and ride subsidies are known, many were not. Some changed from season to season. At some places, such as Harry Singh, the raiteros received the workers daily pay in cash and withheld a ride subsidy from that. Complaints of unauthorized withholding of ride subsidies were frequently voiced against Singh's drivers. Precise commuting figures to Kawano for the 1976-1980 period were not presented. While the distance didn't change, how workers would get

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30. Respondent's assertion that ride subsidies are not considered "wages" for purposes of backpay entitlements is contrary to the great weight of NLRB precedent. See, e.g. W. C. Nabors dba W. C. Nabor Co. (1961) 134 NLRB 1078, 1086-87; Folk Chevrolet Inc. (1969) 176 NLRB 277; DeLorean Cadillac, Inc. (1977) 231 NLRB 329, 333 and Hollymanor Nursing Home (1978) 235 NLRB 426, 428.

to work and the cost thereof varied greatly between workers. The relative small amounts involved compared to the administrative difficulty and uncertainty ultimately resolved itself with utilizing instead more certain, easily ascertainable and equally equitable and appropriate $1.50 daily ride subsidy previously paid by Kawano. By utilizing the prior Kawano $1.50 ride subsidy, a remedial purpose of preventing Respondent from financially benefitting from its discriminatory purpose in dismantling the raitero system and ride susidy is averted. Moreover, it provides an administratively convenient and certain method for calculating in an equitable manner excess commuting costs, which the discriminatees are entitled to, but are not easily ascertained.

Finally, I've concluded that as part of the administrative compromise, the raitero system should not be ordered reinstituted in order to return to and restore the status quo ante. This would preserve Respondent's proffered rationale for dismantling the system, to the extent it was solely for non-discriminatory and financial reasons. It also minimizes the need to affect Kawano's operations and transportation arrangements and logistics which have apparently changed over the past six years.

This overall compromise strikes an equitable balance in arriving at a close approximation of disciminatees backpay entitlements. As recently noted by the Board in O.P. Murphy Co., Inc. (1982) 8 ALRB No. 54, that consistent with NLRB practice, the ALRB may determine the amount of backpay owed by using any formula or combination of formulas which are equitable, practicable and in accordance with the purposes of the Act:

The test of the amount arrived at is not exactitude, but whether the formula is reasonably calculated to arrive at the closest approximation to the amount the employee(s) would have earned during the backpay period, absent the employer's unfair labor practice(s). Butte View Farms v. A.L.R.B. (1979) 96 Cal.App.3d 961, 966 (157 Cal.Rptr.476); N.L.R.B. v. Toppino, Charley & Sons, Inc. (5th Cir. 1966) 358 F.2d 94 [61 LRRM 2655, 2656]. (O.P. Murphy Produce Co., Inc., supra, 8 ALRB No. 54, at p. 3.)

7. The $1.50 Daily Ride Subsidy

Prior to the January, 1976 layoff Kawano provided its regular workers, including the 53 discriminatees, a $1.50 daily ride subsidy. Respondent claimed that the termination of the ride subsidy was to save money. The ALO and Board in 4 ALRB No. 104, while not doubting the subsidy termination saved Respondent money, nevertheless found that the principal underlying reason was to dismantle the raitero system and thwart the discriminatees reemployment efforts. While Kawano was under no obligation to originally establish the ride subsidy, once established it could not withdraw it for discriminatory purposes or reasons. See e.g. W.C. Nabors, Co., supra. Ride premiums have been compensable under analagous NLRB precedent in Folk Chevrolet, Inc. 176 NLRB 277 (1969); Nickey Chevrolet Sales, Inc., 195 NLRBa5 (1972); DeLorean Cadillac 231 NLRB (1977), all involving compensation for loss of demonstrator cars.

In Holly Manor Nursing Home (1978) 235 NLRB 426, 428, the National Board found that the discontinuance of paid lunch time was sufficiently connected to the charge nurse position. Thus, a nurse, who was discriminatorily removed, is entitled to a make whole remedy which included the lunch time reimbursement. The Board so ruled even though the paid lunch time was not available to any staff nurse

position the discriminatee was demoted to and the particular charge nurse position was discontinued.

A similar result is called for in this case, both as a matter of an equitable make whole remedy as well as administrative convenience and clarity. Respondent's claim that no ride subsidy was offered to any Kawano employee after the 1976 layoffs thereby providing the discriminatees greater benefits than they would otherwise have received if they had remained has a hollow ring to it. For 5 years, since the 1976 layoffs, Kawano's hired almost exclusively illegal workers. The number of legal workers used during peak employment dropped from the norm of 40-50% in 1974 and 1975 to approximately 5% in 1980. (See ALO Exhibit 1F). For Kawano to claim that none of its workers received ride subsidies subsequent to 1976 layoffs borders on the disingenuous. Kawano did not offer ride subsidies to the less stable, less organized illegal work force, who lived in makeshift living quarters on or near the Kawano properties. It would be contrary to effectuating the purposes of the Act in remedying Respondent's unlawful conduct to deny the discriminatees this important work emolument.

8. Excess Commuting Costs

It is well established under NLRB precedent that a discriminatee is entitled to his excess transportation costs (cost of transportation to interim employment compared to respondent's employment). See, e.g., East Texas Steel Castings Co., Inc. (1956), 116 NLRB 1336, 1341-42; enf'd 255 F.2d 284 (5th Cir. 1958) and 281 F.2d 686 (5th Cir. 1960) and American Mfg. Co. of Texas (1967), 167 NLRB 520. However, stating the doctrine is considerably easier than

applying it in this case. The difficulty arises from the varied and constantly changing ride subsidies and interim employment transportation costs that occurred to the 53 discriminatees over a five-year period. Moreover, while the Kawano $1.50 ride subsidy and $.50 worker payment ($2.00 daily total) in 1975 is not disputed,[31] there is little, if any, clear evidence or testimony regarding the ride or transportation costs to Kawano during the liability period. Apparently, the $2 daily expense was not the actual cost in 1975 if there were more riders in the car and it is unclear what effect the lost ride subsidy had on the workers' efforts to reduce the Kawano ride expense. A method that took into account administrative convenience was needed.

As indicated in the prior two sections, the method I chose to eliminate the dilemma was to use a simple, clear, easy-to-ascertain and equitable compromise figure, the 1975 Kawano $1.50 ride subsidy. Although as respondent notes, the distances traveled to many of the interim employers was the same or less than to Kawano, nevertheless, the testimony was consistent that the actual cost varied depending on what the driver decided to charge, the ride frequency and the number of passengers. The variables and variations testified to changed week by week, season by season and employer by employer. The $1.50 daily ride subsidy chosen is clearly related to, although possibly less than the actual costs,

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31. The underlying ALO's Decision referred to the prior $1.25 daily ride subsidy. However, the evidence was uncontradicted that the applicable 1975 ride subsidy was $1.50 daily.

and is easy to calculate and simple to apply.[32/]

9. Job Search Expenses

The great bulk of job search expenses set forth by General Counsel in the Backpay Spec relate to gas costs required to search for interim employment. While a minority of workers were compelled to leave the San Diego area and/or State to seek and obtain interim employment (incurring bus fare costs), the great majority of workers incurred their job search expenses looking in the North County area (35-45 miles from the border) or in the Ojai Mesa area (3-12 miles from the border) of San Diego County.[33/] Generally, $2-$3 daily gas expenses were charged for job searching in the North County area while $1-$2 daily gas expenses were charged in the Ojai Mesa area. The amounts sought are quite reasonable. Indeed, Respondent does not contend otherwise. Rather, respondent asserts that the NLRB policy of deducting interim expenses only in quarters that interim income exist should be followed by the ALRB, citing to the NLRB Casehandling Manual (Part III) section 10610 and Herman Bros. Pet Supply, Inc. (1965), 150 NLRB 1419, 1422.

However, the ALRB has found inapplicable to the agricultural setting the interim expense rule applied by the NLRB to the industrial setting. Butte View Farms (1978) 4 ALRB No. 90; enf'd 95 Cal.App.3d 96. The rationale is readily apparent. Both

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32. For a year-round worker who works 240 days, the ride subsidy amounts to $360 a year. For the seasonal worker who works 120 days a year, the ride subsidy amount to $180 a year.

33. No job search expenses were sought for seeking employment from the raiteros at the border, a primary area for obtaining employment.

the ALRB and NLRB require workers to mitigate their damages by making reasonable good faith efforts to secure interim employment. However, in the agricultural setting, where most employers have very informal application procedures, a worker's ability to obtain employment is directly related to his or her ability to make frequent trips to the border or ranch asking the raiteros or foremen if there is any work available at that time. Particularly, for seasonal workers who generally applied during the two-week period prior to the season starting, the application of the NLRB rule would be totally contrary to effectuating the purposes of the Act. Thus, under respondent's proposed method, those workers who sought daily work for the two-week period each June prior to the start of the July harvesting season (and third quarter of the year) would be denied their reasonably incurred job-search costs if they did not have any or sufficient interim income during the second quarter. Application of the NLRB rule is patently inequitable and arbitrary. The more equitable and realistic rule set forth by the Board in Butte View is followed here.

10. Rebuttable Presumption Applicable Regardless of Length of Discriminatees Kawano Work History

Respondent asserts that those Kawano workers who had only worked there one or two years prior to the 1976 layoff are not entitled to backpay because they had no expectation of continued employment.[34/] Respondent cites to Ron Nunn Farms (1978), 4 ALRB

34. Respondent's post-hearing brief, p. 42-50. Respondent cites to 21 of the 53 discriminatees working one or two years for Kawano prior to the 1976 layoff. The ALO determined there were 20 rather than 21. Resolution of this difference is unnecessary given the ALO's conclusion. Unlike Respondent, the ALO finds that Jose Arroyo had worked for Kawano for three years prior to the 1976 layoff.

No. 34, George Arakelian Farm, Inc. v. A.L.R.B. (1980) 111 Cal.App. 3d 258, and Seabreeze Berry Farms (1981) 7 ALRB No. 40, for the proposition that harvest crew employment is neither continuous nor permanent. Therefore, because of their relatively short work history at Kawano, and the general turnover rate in agricultural employment, respondent contends these workers could not have reasonably expected continued employment with Kawano.

Respondent, however, declines to deal with a number of factual and policy considerations that refute its argument. First, each of the 19[35/] discriminatees credibly testified at the hearing that they intended to return to Kawano after the 1976 layoffs, attempted to reapply at Kawano in 1976 and were either personally denied by the raitero at the border, by a foreman at the ranch or were deterred because of the continuing futile efforts by the others. Second, the group as a whole and individually, was a particularly stable one. All had lived in the Tijuana-San Ysidro area for a number of years and continued to do so in the subsequent five-year liability period. Nearly all had families with school-aged children who attended the local schools. Most of the 53 discriminatees knew each other and went to and from work together in one of the vans that took them to and from the border. In short, unlike the type of work force described in some agricultural settings, the Kawano legals were well rooted in the San Diego area.

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35. Jesus Ramirez, one of the discriminatees in this group, had previously retired and was critically ill in the hospital and not expected to live at the time of the hearing. The parties stipulated to most of the underlying data so that his backpay claim could proceed without his testimony.

Most of the discriminatees sought and found interim work in the San Diego area near their family, home and school roots. In addition, of the 19 discriminatees in this group (excluding Ramirez), 10 returned to Kawano the first opportunity they were allowed to in January 1981. Of the remaining 9, each decided to stay with the interim employer they were working with at the time of the 1981 Kawano reinstatement offer. However, in all but two cases (Laras took permanent employment in Los Angeles and Montellano moved to the Imperial Valley), the interim employment was also in San Diego County, confirming the continued work stability of the group in San Diego County.

Moreover, respondent's contention is essentially one of speculation and conjecture. It does not sustain respondent's necessary burden of proof in this regard. Nor does respondent's references to the turnover ratio of some of the remaining legals at Kawano during the 1976-1980 period. There is simply no basis for referring to a work history of an entirely different set of individuals to speculate and conjecture what any of these discriminatees' work history at Kawano would have been. This is particularly true where, as here, the group remained in the immediate area on a permanent basis seeking interim employment while Kawano was hiring hundreds of new hires in each of the liability years.

As indicated, Respondent's argument is based on conjecture and uncertainty. To the extent there is any uncertainty as to the intention and length of Kawano employment desired by the discriminatees, the uncertainty must be resolved against respondent.

11. Turnover Ratio of Other Kawano Workers

Little need be added here regarding this issue that hasn't been considered in the preceding sections. Respondent's efforts to direct attention to the work histories or turnover ratios of other Kawano workers or other agricultural workers generally is based on sheer conjecture and is rejected. There is simply no plausible, logical, statistical or common sense basis for doing so particularly in view of having available the precise work histories of the individual discriminatees in question. Respondent's reliance on Sea Breeze, supra (p. 50-53 of its post-hearing brief) is inapplicable. Respondent essentially seeks to put Sea Breeze on its head and use a doctrine which was established by the Board in analyzing agricultural growers' contentions that replacement workers during a strike could be considered "permanent" by the grower in order to avoid rehiring their former workers. It would be contrary to the purpose of the Act to use the Sea Breeze doctrine as respondent contends, affirmatively against the otherwise permanent employees that the Sea Breeze doctrine was rendered to protect.

12. Due Diligence vs. Willful Idleness

The general principles of mitigation in backpay proceedings established by the NLRB has been adopted by the ALRB. Thus, the discriminatees have a duty to actively seek interim employment. Sunnyside Nurseries (1977) 3 ALRB No. 42; S & F Growers (1979) 5 ALRB No. 50. However, all that is required is reasonable good faith diligence, not necessarily success. Maggio-Tostado (1978) 4 ALRB No. 36. Reasonableness of the discriminatee's efforts depends upon the totality of the circumstances including consideration of such

factors as skill requirements, work availability, employees skills, transportation availability and related factors.

With the exception of Catalina Barrios, whose willful idleness disability periods are reflected in General Counsel's amended specification, I find and conclude that each of the discriminatees made reasonable, good faith efforts to seek and obtain interim employment during the liability period. Indeed, given the transportation difficulties, work availability limitations and general vagaries of seasonal agricultural employment, the overall interim work histories of all the discriminatees is quite impressive.

Respondent raises a variety of contentions under the rubric of willful idleness and will be considered in the following subsections.

a. "Rest" Periods. Respondent repeatedly interpreted the discriminatees' reference to "resting" as that of vacation or equivalent. In fact, the discriminatees used the reference in context to mean a short layoff period involuntarily imposed rather than some voluntarily-sought period for relaxation. No disqualification from backpay is appropriate while a discriminatee was on "rest" or layoff.

b. Layoff Periods. Each crop and each grower had different seasons and different layoff periods. In San Diego County, lemons had a late winter-early spring and late summer-early fall season; strawberries a spring and fall season; tomatoes a summer, fall and winter season. Ranches near the coast had somewhat different growing and harvesting seasons than those further inland.

Many layoffs incurred were of short duration, lasting a few days to a week to ten days. Those layoff periods are an integral part of agricultural employment which the workers had to adjust to in order to maintain their availability to return to the interim employer. While respondent implicitly, if not explicitly, would require each worker to go out and make an immediate job search the moment a layoff occurred, the reality is that the short layoff periods are simply a fact of life in agricultural work, whether caused by weather, market, labor or some other factor. I conclude that it is not willful idleness for a discriminatee to fail to seek new employment during the short layoff periods from one to ten days.

c. Awaiting Layoff Recall. Some of the workers established working patterns which involved employment with two (or more) steady seasonal employers with different seasons and layoff periods than Kawanos'. North County Growers employment was a typical example. Workers would rely upon approximately five months each spring of work picking lemons with North County/Fallbrook and four-five months a year at one (or more) other interim employers. Several months of involuntary layoff periods occurred in between during which the worker would await his recall to the next interim employment.

For instance, North County Growers would start lemon harvesting at the end of January during a one-month period (February) that Kawano was on layoff. The season ended in May, approximately one month before most San Diego growers (including Kawano) did their major summer harvesting hiring. If a worker did not already have a job durihg this one-month period he or she was

not likely to find one until recalled back or summer harvesting started. Respondent asserts that this amounts to willful idleness. I do not concur. The test is whether the discriminatees' conduct is reasonable. Nearly all the discriminatees were successful in obtaining steady interim employment. Often, however, it occurred for the same length of employment as their Kawano employment, but for different but overlapping seasons. Thus, while their overall employment is comparable, the periods of interim earnings and offset is different from the Kawano dates. The Kawano discriminatees were an experienced work force savvy to the agricultural employment needs in San Diego area. Nearly all had large families to support and it is simply contrary to the actual work histories of these 53 individuals, as well as contrary to commen sense and reality, to conclude as respondent does, that these workers would take every opportunity not to work because five years later Kawano could be ordered to pay for periods of time they were on layoffs.

d. Individual Job Search Patterns. While there was an over-all general job search pattern (the raiteros at the border pickup points; Ojai Mesa ranches, 3-12 miles from the border, and North County Ranches, 35-45 miles from the border), there were significant variations.

If a worker did not have a car (a majority of the Kawano workers did not), then lack of transportation significantly reduced the extent of job search. The major source of jobs was through the raiteros at the border. All the workers credibly testified to using this source on a nearly daily basis. However, drivers with vans were required in order to seek employment at most of the San Diego

a-ea ranches (San Diego County is quite large, approximately 60 miles north to south and approximately 80-90 miles east to west). Even the Ojai Mesa ranches required, because of the terrain, access to transportation even though close to the border. Most of the discriminatees credibly testified to making the ranch circuit with ranch raiteros or friends at least once, twice or three times a week. A third source of job referrals started in the summer 1977, through the UFW hiring hall after approximately a dozen or so ranches signed union contracts. In fact, a considerable number of interim jobs, including some permanent ones, were obtained through the hiring hall.

However, not all workers were capable of doing other agricultural work in San Diego County. Lemon picking was limited to males, generally younger, with prior lemon experience. Although both males and females picked strawberries, the preferrence of some growers was for women pickers. The testimony of the discriminatees was consistent throughout that the most overriding consideration for obtaining work was whether the foreman or raitero knew you. Thus, I found that all of the discriminatees (except Barrios) made good faith efforts to seek and obtain interim employment. Yet not all the good faith efforts resulted in equal success. Respondent, in seeking to establish willful idleness or substantially equivalent employment disqualifiers, compares and utilizes interim job success in its two extremes. Thus, if an individual is able to find steady employment (employment that lasts more than a part of one season), it seeks to have the employment treated as substantially equivalent even in the face of fewer hours or long layoffs. If several months

go by without successfully obtaining interim employment, respondent seeks disqualification, in part by comparing the interim work efforts of the more successful discriminatees. These standards are simply contrary to the established principles under ALRB and NLRB precedents. See e.g., cases cited in Applicable Legal Standards Section V, supra.

e. Testimony of Frank Avila, Labor Contractor, and Dave Pattison, General Manager of Sea Breeze Farms. Respondent called two witnesses, labor contractor Frank Avila and Sea Breeze General Manager Dave Pattison, who testified regarding job availability primarily during parts of 1977 and 1978. Avila, a labor contractor based in Imperial County, started to operate in San Diego County sometime during the Summer or Fall of 1977. Avila's principal clients were several non-union ranches, the largest one being San Clemente/Highland Ranch. For a period of time in 1977 and 1978, he also provided some workers to Sea Breeze. The thrust of both those witnesses' testimony is that they experienced difficulty obtaining enough workers for the Fall 1977, and Spring 1978 strawberry harvests. Avila testified to going to the San Ysidro border area with a van for several days to hire for the 1977 strawberry harvests and was unable to hire sufficient workers. He returned to Imperial Valley and hired a crew there of workers he knew and returned to San Diego County with the Imperial County workers, who lived in labor camps during the short harvesting season. As General Counsel points out, however, a number of important factors mitigate against drawing adverse conclusions from this testimony. First, only year-round workers were seeking or entitled to backpay during the spring

harvest season. The seasonal workers, as reflected in their claim periods in the backpay Spec, only were entitled to backpay commencing in June or July. Second, Avila new to the San Diego area and its workers in 1977, tried for only a few days at the border before returning with a crew comprised of Imperial County workers. Third, Avila with the possible exception of Sea Breeze, was supplying workers principally to non-union ranches. San Clemente Ranch, Avila's principal client (XXVII RT, p. 120) was the successor to Highland Ranch, but was refusing to bargain with the UFW. (See Highland Ranch (San Clemente Ranch, Ltd.) (1979) 5 ALRB No. 54; and San Clemente Ranch, Ltd. (1982) 8 ALRB No. 29, wherein one of Avila's drivers was found to have been told not to hire Chavistas for San Clemente and complied.)

The gist of Pattison's testimony was that Sea Breeze experienced serious "labor scarcity" during its short four-week strawberry harvest during October and November 1977, and a moderate "labor scarcity" during the following spring.

Pattison testified that he needed approximately one hundred extra workers in November 1977, for a four-week period to plant strawberries. The demand was not only shortlived, but had doubled suddenly and had not been anticipated. For inexplicable reasons, the company did not try to recall its workers from the previous year's planting season. The company did, however, go to EDD which provided 40 to 50 workers. The company also sent foremen to the border looking for workers. However, the company did not provide transportation for the workers to get to and from the ranch. (See XXVII RT 136-151.)

By March 1978, Sea Breeze/American Foods was hiring its employees through the UFW hiring hall. (XXVII RT 150, lines 20-26.) There were apparently "moderate labor shortages" after that in June 1978, where the harvest crews had to work longer hours, and if additional people had presented themselves at that time, they could have been hired. (XXVII RT 167.)

Neither testimony, however, provides a basis for denying backpay for persons who were unable to find work during these two limited time periods. Similar arguments and testimony has been raised and rejected before the NLRB. See, e.g., Champa Linen Service (1976) 222 NLRB 940. In Champa, the Board rejected similar testimony offered by the respondent from competing businesses that there was a demand or need for laundry workers during the backpay period. However, this type of testimony does not adequately rebut whether each of the discriminatees otherwise made a good faith effort to obtain interim employment. As observed in Madison Courier, Inc. (1973) 202 NLRB 808, 814, a discriminatee is not required to apply "for each and every possible job that might have existed" in the industry. This would be particularly true for such short harvesting jobs in strawberries.[36/]

The evidence presented reflects that hirings were available at several other San Diego area ranches, but that they are done on an as-needed basis to persons who knew of the openings and applied at the time. There is no basis, however, for concluding that

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36. Cf. respondent's argument to disqualify Francisco Zamora Garcia, because he sought in good faith a longer harvesting job only to find out that the harvest terminated, leaving him without a job for a time.

individual discriminatees would have secured this employment. See, e.g., Firestone Synthetic Fibers and Textile Co. (1973) 207 NLRB 810, and Midwest Hanger Co. (1975) 221 NLRB 911, 918. The applicable test for determining willful idleness is whether each particular claimant made a good faith, diligent and reasonable search for employment, not whether in hindsight, respondent can show that some area employers had hirings or labor needs during the relevant time span.

Respondent has not met its burden of proof and presented satisfactory evidence to rebut the discriminatees good faith efforts to seek and obtain interim employment.

f. Difficult Periods to Find Interim Work Generally. The consistently clear testimony of the discriminatees at the hearing was that after the 1976 layoffs, 1976 proved to be a difficult year for many to obtain employment in agricultural in San Diego County. A number of factors contributed to this. First, the UFW was pursuing an active organizing campaign during 1975, 1976 and 1977. 1976 was a particularly active year and the 53 Kawano discriminatees were prominently associated with union activity in the radio, TV and newspaper coverage of the strike activity. Many growers refused to hire them and resorted instead to hiring illegals. Second, because of the strike activity, there were considerably more workers seeking the same or fewer number of jobs. Moreover, there are traditionally slow hiring periods, the most prominent being from mid-December until the end of February, when most growers reach their peak and start to layoff their harvesters reaching a nadir in February. June, prior to tomato harvesting hiring starting, is also a slow

period for getting agricultural jobs in San Diego County. These periods of few hirings or job openings are reflected in the backpay claims, notwithstanding the good faith efforts of the discriminatees to find employment during these periods.

g. Substantially Equivalent Employment. Many, if not most of the discriminatees eventually found interim employment at one (or more) steady employer prior to Kawano's resinstatement offer in late 1980. Respondent seeks to apply the NLRB substantially-equivalent work doctrine, which tolls backpay as of the time such substantially-equivalent employment is secured, as of the first day the discriminatee started.

However, in all but a few cases, which were generally stipulated to by the General Counsel, the doctrine is inapplicable legally or factually here.

Preliminarily, some general observations of the work availability is required. Of the 400-500 agricultural employers in San Diego County, only 12-14 of them had union contracts during any portion of the liability period. Few if any of the remaining employees had seniority at their ranches. Thus, the overwhelming number of agricultural jobs were "at will." Even at the union ranches, it would normally take three to four years of seniority before a worker attained a significant degree of job security. In short, the fact that a worker remained with a steady employer for two, three or even four of the backpay liability years does not realistically mean that the worker had any job security until actually rehired. Eleven-year Kawano employees were summarily dismissed by respondent in 1976 to show but one example of the lack

of job security inherent in agricultural employment.

Second, substantially equivalent employment under the NLRB precedent has been defined as employment at the same or greater rate of pay, in a comparable type of job with a reasonable continuation of employment and expectation of future employment. See, e.g., Southeastern Envelope Co. (1979) 246 NLRB 423, 429. At least two aspects of most interim employment of the 53 discriminatees do not meet this definition. The first, as indicated previously above, is the lack of predictable continuing and future employment for most agricultural work. The second relates to a corollary of comparable rate of pay, which is comparable number of hours. The recurring theme of all the testifying discrminatees for preferring work at Kawano was the steady work available there. For four to six months a year Kawano offers nine to ten and one-half hour days, six days a week employment with little or no layoffs. Few if any interim employers offered comparable work weeks. Thus, even where Kawano paid less than the interim employer, the discriminatees nevertheless earned more at Kawano during these periods. This is the primary reason that more than 60% (31 of 51) of the discriminatees returned to Kawano when given the opportunity to do so. I have, accordingly, rejected both factually and legally respondent's rather cavalier use of the substantially-equivalent doctrine in this agricultural setting.

h. Effect of Discriminatees Refusal to Accept Kawano Reinstatement Offer. Thirty-one discriminatees returned to Kawano in 1981 pursuant to the reinstatement offer. Twenty declined Kawano's reinstatement offer, preferring to remain with their

current employer.[37] Respondent consistently asserted throughout its post-hearing computations that these refusals, combined with the existence of the steady interim employer, teriminated its backpay liability for each of these discriminatees.

Respondent's position is essentially one that can only be taken with the luxury of hindsight and conveniently overlooks the reality that faces agricultural workers seeking to find steady employment. Each of these employees was discriminatorily refused rehire to steady employment at Kawano in 1976. Each was entitled to a valid offer of reinstatement from Kawano before making an election as to whether he or she would return to respondent or earn a living elsewhere.

Kawano did not present the discriminatees with this alternative until nearly five years after it had unlawfully refused to rehire them. At any time within that long period Kawano might have made such an offer of reinstatement and had the discriminatees rejected this offer (as 20 did in 1981), thereafter Kawano would have been free of any further liability for backpay. Since it did not take this action, but chose instead to do nothing until compelled to make such an offer by court decree, then on the present record, it is my conclusion that there is no merit to respondent's claim that each of these discriminatees is not entitled to backpay from the time that he or she accepted employment that they

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37. Of the two remaining discriminatees, one, Herminio Hernandez, had died and a second, Jesus Ramirez, had earlier retired.

ultimately remained at. See, e.g., East Texas Steel Castings Company, Inc. (1956) 116 NLRB 1336, 1343-44; Enf'd 255 F.2d 284 (5th Cir. 1958); the Richard W. Kaase Co. (1967) 162 NLRB 1320. Moreover, "[R]einstatement is the conventional correction for discriminatory discharges [and refusals to rehire.]"[38]

As the NLRB has stated in a case raising the same issue:

> The fact that a remedial offer or reinstatement may be declined, particularly where, as here, it is made long after the discriminatory discharge, does not diminish the importance of the offer in our remedial scheme. Reinstatement is basic to our remedy here, for "to limit the significance of discrimination merely to questions of monetary loss to workers would thwart the central purpose of the Act." Respondent's offer of reinstatement was required to comply with our order and to remedy its discrimination by demonstrating to employees that their rights will be vindicated. To toll Respondent's backpay obligation prior to its offer in September 1965 would eliminate the practical incentive for compliance with our order.
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> Both in order to preserve the public interest in Respondent's meaningful compliance with our order and to safeguard a discriminatee's rights, we consistently have discounted statements, prior to a good-faith offer of reinstatement, indicating unwillingness to accept reinstatement.[39]

13. Irrigator Work and Hours

Respondent raised two arguments regarding the irrigator's work as a basis for rebutting the appropriateness of utilizing their 1975 hours. The first is that irrigators worked longer hours than regular field workers and the second is that because of the installation of a drip irrigation system commencing in 1976 there

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38. Phelps Dodge Corp. v. N.L.R.B. 313 U.S. 177, 187.

39. Heinrich Motors, Inc. (1967) 166 NLRB 783, 785 (footnotes omitted).

was substantially reduced need for irrigators thereafter. Eight discriminatees testified to doing predominantly irrigation work, primarily in the "dry" or summer season[40/] while employed by Kawano.

However, I concur with General Counsel that respondent's arguments do not withstand factual or legal analysis. First, all of the irrigators consistently and credibly testified that they were essentially general field laborers who did all the various types of jobs required at Kawano, from picking tomatoes, cauliflower and beans, to weeding, to pulling or installing and tieing stakes, to irrigating. Second, nearly all Kawano workers worked steady, ten-hour days during the same period as the irrigators did. They were all paid the same wage rate, $2.90 an hour. Third, Glenn Imoto, Kawano's irrigation foreman from 1976-1982, testified that with the new drip irrigation system, approximately one irrigator per 30 acres was needed, compared to the old "pipe and furrow" system which required five irrigators per 100 acres (see XXVII RT p. 22-23). Imoto testified that he used 20-30 irrigators in total on the drip system (XXVII RT p. 41-42), far exceeding the eight or so discriminatees who did irrigation work prior to 1976. All but one of Imoto's irrigators between 1976 and 1982 were illegals, apparently hired during that period. Moreover, Kawano in 1979 started a field nursery which required additional irrigators to be hired. Imoto testified that irrigation hours, particularly during the summer months, are long under both systems.

Contrary to respondent's claims, it has failed to introduce

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40. See Appendix III; a ninth had done sprayer work (with a truck).

any substantive evidence that would contradict the presumption that, absent discrimination, the discriminatees and irrigators would have been assigned to the drip irrigation work, nor that their hours would have been lessened. Even if the irrigation positions were not available, both the ALRB as well as the NLRB requires reinstatement to "substantially equivalent" positions if the former position is no longer available. See, e.g., Mooney Aircraft, Inc. (1967) 164 NLRB 1102, 1103. Substantially equivalent employment at Kawano would include any of the more than 200 general field labor positions that respondent hired for in each of the liability years.

14. Raitero-Drivers Lost Ride Subsidy Income

In the backpay specification, General Counsel has included as part of Gross Income for the four raitero-drivers, an amount for their lost ride subsidy income. The four, Jose Juarez Aleman, Luis Chavez Gutierrez, Refugio Vasquez and Ignacio Hernandez, received from Kawano prior to the 1976 layoffs, $3.20 an hour wages plus $1.50 ride subsidy payment from Kawano for each rider and an additional $.50 ride subsidy paid by each rider. The number of riders brought by each raitero varied, depending on the time of year from 16-18 during peak harvest in July and August to 3-6 during December and January. General Counsel took an average of $10.75 lost profits per day based on an average number of daily riders.[41/]

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41. In the original backpay specification, the General Counsel calculated lost profits on the basis of 15 riders. This is probably a high average figure. Ten to 12 average number of riders would be a more reasonable estimate. Nevertheless, in view of my determination, I did not find it necessary to do recomputations.

General Counsel relies on the language in that portion of the Board's order which states that the discriminatees are entitled to "reinstatement . . . without prejudice to their seniority or other rights and privileges . . ." and "for any losses suffered as a result of his or her failure to be rehired." (4 ALRB No. 104, page 21.) General Counsel notes that these drivers were hired by respondent as their agents to provide workers and transportation, and the ride subsidies Kawano (and the workers) provided compensated the drivers for the transportation costs as well as the means of transportation (the vans), thus relieving Kawano of that cost.

Respondent, on the other hand, claims that to impose these "lost" ride subsidies or profits would be contrary to the remedial purpose of backpay claims in that it would be punitive. Respondent notes that the raitero system was dismantled (except for one raitero) and such payments are no longer made; in addition, the number of riders used for the calculation is unduly high. Third, General Counsel seeks to recover ride subsidies to the workers as well as an overlapping ride subsidy for the driver. Finally, the drivers "net profit" calculation made by General Counsel only took into account gas expenses and not other transportation expenses.

As indicated previously, it is my conclusion that it would be inappropriate to include the drivers "lost profit" as part of their backpay claim. The most overriding reason is that the fundamental purpose of the ride subsidy to the drivers was to compensate for the transporation expenses to daily bring the workers to and from work. During portions of the year, this would result in

a "profit" to the drivers, because of the number of riders brought. These expenses were no longer incurred relative to Kawano after the 1976 layoff. It is therefore my determination that it would be punitive to require respondent to compensate the drivers thereafter for expenses no longer incurred on behalf of Kawano. Respondent does not dispute that the four drivers are entitled to backpay computed at $3.20 per hour, the rate they were receiving at the time of the 1976 layoff (Respondent's Brief, p. 95). Contrary to General Counsel's claim, I concur with respondent that the raitero system should not be reinstituted in order to make the workers fully whole and return them to the status quo ante.

15. Job Training Programs as a Disqualifier

Respondent asserts that five discriminatees who enrolled in federally-funded training programs during 1979-1980 should be disqualified from backpay during such periods.[42/] While respondent suggests that the general rule is that fulltime attendance at a school or training program results in a disqualification from backpay (Respondent's Brief, p. 83), the NLRB precedent does not support such a blanket proposition. Rather, the more critical considerations are: (1) the extent that the job training or schooling enhance the workers' employment prospects, see, e.g.,

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42. The five are Maria Mendez, Aurelio Higuera, Paul David Fink, Feliciano Rubalcaba and Jose Luis Vasquez. Each was enrolled in a CETA (Comprehensive Employment and Training Act) training program which entailed 6-8 hours day, half on-the-job and half classroom teaching. The five were paid $3.00 an hour for six hours a day, five days a week, which was considered interim wage offset by General Counsel.

Lozano Enterprises (1965), 152 NLRB 258; (2) the extent the discriminatee was looking for or willing to accept other employment, American Compress Warehouse, Div. of Frost-Whited Co. (1965) 156 NLRB 267, enf'd 374 F.2d 573 (5th Cir. 1966); and (3) the extent that the schooling is primarily for fulltime academic as opposed to job training purposes which removes the worker from the job market, L.C.C. Resort, Inc., dba Laurels Hotel & Country Club (1971) 193 NLRB 241, 247. See also, Butte View Farms (1978) 4 ALRB No. 90, pp. 6-7. Applying these precedents to the CETA job training programs here leads to the conclusion that mere enrollment and attendance in the program should not, as such, operate as a legal disqualification. Each of the job training programs (custodian, mechanic, machinist and maintenance) was primarily to prepare the worker for new and better-paying employment. Two of the workers in fact refused the Kawano reinstatement in order to finish the CETA program and accept work through it. Three of the workers, in fact, found jobs through the program. Two of the workers, however, returned to Kawano when given the opportunity to do so. Each of the workers, except Paul David Fink, indicated they continued to look for or were available for other jobs while enrolled in the program. Applying the applicable legal standards to the individual facts of the five discriminatees enrolled in the various CETA programs, all but Paul David Fink should not be disqualified from receiving backpay during their CETA training. Fink testified that he had only enrolled in the machinist program a month before Kawano made its reinstatement offer, chose to stay in the program rather than

return, was not looking for other employment during the training period and essentially had factually removed himself from the job market. I conclude, however, that the other four discriminatees in the CETA program did not remove themselves from the job market by enrolling in the job training program.

16. Cherry Tomato Five

General Counsel seeks to extend the backpay liability period to November 14, 1980 for the four discriminatees who had been rehired by Kawano in late July or early August 1977, but had terminated their employment there on January 3, 1978. They have been referred to herein as the "Cherry Tomato Five."[43/] Both ALO Gomberg and the Board found that the five were isolated after their rehire and given more onerous cherry tomato harvesting work. (See 4 ALRB No. 104, p. 17, ALOD pp. 42-43.) The Board ordered that respondent "Immediately assign [the five] work that they have customarily performed in the past, without segregating or isolating them from other workers."[44/] The five were excluded from the order of reinstatement, "provided they are employed by respondent when this Order becomes effective."

There is no dispute that the five are entitled to receive

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43. The four are Javier Acosta, Jose Juarez Aleman, Refugio Vasquez, and Antonio Zamarripa. The fifth, Felix Hernandez, who had been found by the Board in 3 ALRB No. 54 to have been discriminatorily discharged, was rehired and made whole pursuant to that decision in August 1977 and accordingly was not made a discriminatee under 4 ALRB No. 104.

44. The five were each strong union supporters seeking to organize their fellow workers.

backpay for the period between their 1976 layoff and their 1977 rehire.[45/] General Counsel argues that because the five were not reinstated to their former jobs they customarily performed in the past that respondent has failed to comply with the Board's order in 4 ALRB No. 104. Accordingly, "compliance proceedings are available" to remedy the non-compliance.

Respondent, on the other hand, persuasively argues that the five cherry tomato workers' termination was the subject of a separate charge, complaint and hearing regarding whether their termination was in fact a constructive discharge. However, ALO Robert LeProhn found, to the contrary, that the five had voluntarily terminated work primarily because of wet fields rather than isolation or constructive discharge. LeProhn's decision was affirmed by the Board in Kawano, Inc. (1981) 7 ALRB No. 16.

Although General Counsel is correct that there wasn't full compliance regarding job assignment for the five, there would not be any additional "damages" suffered by the five since there is no dispute that the pay and hours were the same for both work.

Rather, the issue to be decided is whether the finding by ALO LeProhn which was affirmed by the Board, that the Cherry Tomato Five's termination was not a constructive discharge forecloses any further compliance action by the ALO in this proceeding. I conclude that it does. The Board's finding in 7 ALRB No. 16 essentially

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45. The ALO has also determined that the four workers are entitled to their ride subsidy as well during their re-employment period.

operates as both the "law and facts of the case" concerning this issue and I conclude I am bound by that determination. I decline to extend the Cherry Tomato Five's liability period beyond January 3, 1978.

17. Backpay Claim Disqualifiers

The parties do not dispute that illness, injury, disability, absence from the job market (e.g., visits to the interior of Mexico) and related matters result in disqualification from backpay entitlements during the period of the disability. See, e.g. Maggio-Tostado (1978) 4 ALRB No. 36, and East Texas Steel Casting Co., Inc. (1965) 116 NLRB 1336. General Counsel has accounted for such disability periods in its amended backpay specification where applicable. Respondent sought disability periods on a far more extensive basis than General Counsel did, particularly where respondent asserts an interim job-related injury or purported fraud (receiving unemployment benefits and interim earnings). I conclude that General Counsel's backpay specification fairly, reasonably and equitably takes into account the appropriate disability periods and that respondent has failed to meet its burden of proof for rebutting the claims set forth.

No probative or persuasive evidence was presented by respondent that should require an adjustment to the disabilities set forth in the specification. This is particularly true concerning respondent's claim that one or two discrimiantees (e.g. Luis Chavez Gutierrez) should have his backpay claim set aside for a "fraud" concerning receiving unemployment benefits while working.

18. Discriminatees Credibility

The 50 discriminatees who testified at the hearing were individually, as well as a group, very impressive witnesses. With the exception of Juan Garcia, the stroke victim, I found their testimony generally clear, specific and persuasive. However, in some areas the discriminatees' testimony occasionally became vague or confusing regarding dates, particularly when describing their efforts to obtain interim employment. Nevertheless, I found their overall testimony reflected candor and worthy of belief. To note the obvious, this hearing occurred as much as six years after the refusal to rehire and initial job searches, and it is therefore not only not unusual but expected that many of the discriminatees experienced some difficulty recalling specific details of their respective job searches. See, e.g., Southern Household Products Co., Inc. (1973) 203 NLRB 881.

19. Interest Rate

In March 1982 General Counsel filed a motion with the ALO requesting that interest be imposed prospectively at the NLRB established rate of 20% rather then the current 7%. The ALO, over respondent's objections, permitted General Counsel to make the modification request, but held under submission whether the modification should be granted substantively. The Board in Lu-Ette Farms (August 18, 1982) 8 ALRB No. 55, established the higher figure, effective that date on subsequent make-whole remedies with the old rate of 7% applicable prior thereto.

However, the Lu-Ette decision left unanswered those

instances, as here, where the Board has ordered payment of a particular interest rate of 7% which has been enforced by a Court of Appeal. In 4 ALRB No. 104, the Board ordered 7% interest which was recommended for enforcement by the Court of Appeal in 106 Cal.App.3d 937.

There is available NLRB precedent supporting respondent's position that this "new" interest rate is not applicable in cases where prior Board orders provide for a different rate which has been enforced by a Court of Appeal. See, e.g., S.E. Nichols of Ohio, Inc. (1981) 258 NLRB No. 2; Pierre Pellation Enterprises, Inc. (1979) 239 NLRB No. 211; Florida Steel Corp. (1978) 234 NLRB No. 1089.

I, accordingly, conclude that the applicable interest rate remain at 7% per annum.

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VI. INDIVIDUAL DISCRIMINATEES DETERMINATIONS

The determinations required for each of the 53 discriminatees, starting alphabetically with Javier Acosta and ending with Monica Zamarripa is contained in this section. In order to try to avoid unnecessary repetition, the following is a summary concerning some recurring determinations. The actual computations can be found in Appendix IV which is separately bound and summarized in Appendix III hereto.

1. As noted earlier, I found General Counsel's initial and revised backpay specifications to be, generally, thoroughly and capably prepared. General Counsel stipulated to all interim employment where there was any documentation or discriminatee testimony corroboration. In the very few cases where there is a dispute between the parties it occurred because there was no corroboration, a discriminatee denial or outside the relevant liability period.

Accordingly, I have in most cases adopted General Counsel's interim employment computations rather than the Respondent's which, as a result of its litigation posture, often declined to give the benefit of any uncertainty, as required by applicable law.

2. Job search expenses were calculated by the General Counsel in a generally conservative manner. Most expenses were based on discriminatee testimony about job search efforts primarily in San Diego County. Most job search efforts and costs involved going in someone's car and/or van and splitting the gas costs.

Respondent's efforts to deny job search costs incurred in a quarter when no interim wages were earned is contrary to ALRB law

and rejected here.

3. Nearly all of the discriminatees credibly testified to frequent efforts to obtain interim employment from the many raitero-drivers of agricultural employers who did their primary hiring at the border through their driver-agents.

The 50 discriminatees who testified, individually and as a group, testified persuasively and credibly to their good faith efforts to seek and obtain interim employment during the backpay liability period. Each generally testified to following a variation of the general pattern of daily trips to the Tijuana-San Ysidro border area to the pick-up points (e.g., the Jack-in-the-Box and Donut restaurants) where most of the raitero-drivers gathered each morning to pick up regulars and new hires; or nearly daily trips to the various Ojai Mesa area ranches, some 5 to 12 miles from the border; or the once or twice weekly trips to the North County area ranches (35 to 55 miles from the border). Except for one or two workers, which are noted individually hereinafter, I find and conclude that each of the discriminatees made the necessary good faith efforts to secure interim employment.

4. The $1.50 daily ride subsidy provided by Kawano until January 1976 has been calculated as part of the discrimintees' backpay entitlement. This has been done as a component of gross wages and as an aspect of the make-whole doctrine. It also has been utilized by the ALO for administrative convenience in lieu of attempting to calculate the burdensome, uncertain and/or partially arbitrary computations for excess computing expense entitlements. Each discriminatee, as part of his gross wages component, had

allocated the $1.50 daily ride subsidy for each day he or she had gross wages during their respective liability period. The allocation was made for the "Cherry Tomato Five" workers as well as for the four driver-raiteros.

5. A list of the common nicknames that the San Diego area ranches were referred to by the workers is attached hereto as Appendix VII.

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JAVIER ACOSTA -- NO. 1

Acosta first worked for the Respondent in 1971 as a seasonal employee, and for each of the next five years. In 1975 Acosta worked for Respondent commencing March 5, 1975, working the entire season, finishing on January 14, 1976. The General Counsel, pursuant to the rebuttable presumption, utilized these 1975 hours for Acosta's subsequent backpay claim for 1976 and 1977. Respondent, on the other hand, asserts that a more applicable backpay period should be one that utilizes Acosta's average hours at Respondent's for the 1973 to 1975 period. (There are no Kawano payroll records available prior to 1973). In 1973 Acosta worked for Respondent from May 24 to September 6. At that time he voluntarily quit in order to take a better paying job elsewhere. Acosta returned to Respondent on July 3, 1974 and continued to work for Respondent until January 25, 1975. He was then off for approximately five weeks, before he returned to work on March 5.

It is my conclusion that it would be inappropriate to utilize Acosta's 1973-1975 Kawano average earnings. To do so would omit wages that Acosta earned from other employment during the 1973-75 period that he would have otherwise earned at Respondent except for taking a voluntary leave of absence. Respondent's proferred method would unfairly penalize Mr. Acosta for what otherwise would have been considerably greater hours worked during the 1973 to 1975 period. I therefore concur with General Counsel that Respondent has not met its burden to rebut the rebuttable presumption that the appropriate period to use for Mr. Acosta is his 1975 hours.

As indicated previously, Acosta is one of the workers referred to as the "Cherry Tomato Five." Acosta had been the subject of ALRB decision 3 ALRB No. 54, on July 15, 1977, in which the Board directed that Acosta and another worker, Felix Hernandez be reinstated. Acosta, pursuant to that decision, was reinstated by Respondent on August 3, 1977, and at the time of the underlying proceeding during the fall of 1977 was employed at Kawano. Acosta and the other four workers who comprised the "Cherry Tomato Five" stopped working at Kawano on January 3, 1978. That termination was the subject of a separate proceeding in which the ALO Robert LeProhn in 77-CE-28-X ruled in January 1980 that the five were not constructively discharged, although they were not reassigned to the work they had customarily performed in the past as had been ordered by the Board in 4 ALRB No. 104. LeProhn's decision specifically held that the five voluntarily quit as a result of the rainy condition at the field and accordingly ruled that the Respondent had not improperly terminated them. Accordingly, I feel constrained to find as General Counsel urges, that because the "Cherry Tomato Five" had not been properly reinstated to their prior or equivalent position, that there has not been a proper compliance with the mandate as set forth in 4 ALRB 104. An important consideration in this determination for backpay entitlements purposes is that the wages were the same although the work wasn't. Instead I find that the decision of ALO LeProhn, which was affirmed by the Board in 7 ALRB No. 16, controls my determination. Accordingly, I find and conclude that Acosta and the other four are not entitled to backpay pursuant to 4 ALRB 104 beyond the point of their voluntary

termination on January 3, 1978.

Moreover, subsequent to his leaving Respondent's in January 1978, Acosta took a position with the United Farm Workers as a volunteer for a period from January 1978 until May 1981 when he returned to Kawano pursuant to the reinstatement offer. The General Counsel has stipulated that this full-time employment with the UFW disqualifies Acosta from any backpay claim subsequent to January 3, 1978. Regarding the period from August 3, 1977 until January 3, 1978, it is my conclusion that in order to make Acosta whole completely for this backpay period, that he be entitled to receive the $1.50 ride subsidy for each day he worked. As indicated earlier, it is my conclusion that each of the discriminatees who were wrongfully denied rehire, including Acosta, should be entitled to the $1.50 daily ride subsidy in order to make them whole. According to the specification, Acosta worked 46 days in third quarter and 51 days in fourth quarter, 1977 at Kawano, for a total of $145.50 (97 X $1.50). In addition, he is entitled to his job search expenses as set forth in the specification (Respondent concedes $48 in its post-hearing brief).

To summarize, Acosta is entitled to net backpay (including ride subsidy) for a period from March 5, 1976 until August 3, 1977, as well as the ride subsidy of $145.50 for the August 3, 1977 to January 3, 1978 period and the job search expenses.

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ANTONIO ALEMAN -- NO. 2

At the time of the 1976 layoff, Aleman had worked as a tomato harvester at Kawano for 11 years. For ten of those years he worked seasonally from approximately May or June until the end of December or mid-January. For the remaining portion of those ten years Aleman worked at another agricultural employer, Fallbrook or North County Growers, picking lemons. In 1974 instead of working at both places however, he worked year-round at Kawano until January 16, 1975 when he was laid off. He then worked at North County during the lemon season until May 8, 1975 when he returned and remained at Kawano until his January 22, 1976 layoff. General Counsel utilized the 1975 hours (May 8-January 22) as the rebuttable backpay period for Aleman.[46/] Respondent concurs that Aleman should appropriately be considered a seasonal worker and accepts the rebuttable assumption of the 1975 hours. Instead, Respondent contends that Aleman found substantially equivalent employment at Oceanview/Yasocochi starting in October, 1976. Respondent's position is based on Aleman's employment history with Yasocochi where he generally worked year-round from October 1976 until his retirement in October 1981. While at Yasocochi, Aleman earned $3.10 an hour. Thus, Respondent contends that Aleman's backpay should be cut off or tolled commencing in October 1976.

General Counsel persuasively points out that while Aleman may have been employed year-round at Oceanview during these years he

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46. General Counsel has apparently withdrawn in her post-hearing brief her motion to modify the backpay period to be a year-round one based on the 1974-1975 year-round work.

did not work as steadily as he did at Kawano. For instance, during the 1974-1975 Kawano year-round work, Aleman worked 2283 hours, which at $2.90 an hour is $6620 a year. By comparison, while at Oceanview/Yasocochi, Aleman earned from 1977-1980, $5871.90, $4857.50, $5960.05 and $6661.70 respectively while earning $3.10 an hour.

It is clear that Respondent has not met its burden of proof that Oceanview was in fact substantially equivalent employment.

Nor does the suggestion that Aleman's refusal to return to Kawano in 1981 after he learned of the reinstatement offer corroborate Respondent's claim. As Aleman clearly testified, he would gladly have returned to Kawano had they offered at the time of the 1981 reinstatement offer the same ride availability and ride subsidy offered before the 1976 layoff and which Aleman was then currently receiving from Oceanview. As Aleman made no final determination regarding his ultimate choice[47/] until Respondent made its specific reemployment offer, there is no basis for claiming that Aleman by Oceanview employment and Kawano reemployment refusal, should have his backpay tolled or cut off. See, e.g., East Texas Steel (1956) 116 NLRB 1336, enf'd 255 F.2d 284 (5th Cir., 1958). Moreover, the NLRB has recently held that there should be no tolling of the backpay period until a valid offer of reinstatement, particularly when wages are lower than those earned in the previous employment with the respondent. Teamster Local 555, et al. (1981) 257 NLRB 6. While in Aleman's case the wages were comparable or

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47. Aleman worked for Oceanview for 10 months in 1981 and then retired.

slightly higher, the number of hours at the subsequent employer was less.

Aleman is also entitled to the job search expenses set forth in the specification as well as the $1.50 ride subsidy for the 1976-1980 backpay period.

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JOSE ARROYO -- NO. 3

Arroyo was a seasonal worker for Kawano for 3 years. In 1975 he worked June 5 to January 22, 1976, the hours utilized by General Counsel in the backpay specification. Respondent's claim that Arroyo's backpay liability period should be a "weighted" average, (i.e., July-end of December) using the 1972-1975 work periods rather than the 1975 hours, does not withstand analysis. First and overriding it appears, as indicated earlier, that Kawano commenced a longer tomato harvesting season with the winter, 1975-1976 harvest which also occurred during the subsequent years and into each succeeding January. Second, there appears to be some dispute between Respondent and General Counsel whether Arroyo worked from June or July 1973 until January 7, 1974. In either case, this evidence adequately supports the use of the 1975 hours as sufficiently representative.

Arroyo, as a number of other male workers, worked the lemon harvest season from February to June at Fallbrook or North County Growers each year. After his January 1976 Kawano layoff, Arroyo returned to North County where he worked the majority of the remaining year, although subject to several layoffs. Throughout the entire backpay period, Arroyo worked steadily at various employers.

Respondent does not question the extensiveness or good faith of Arroyo's job search or interim employment. Rather, it asks that Arroyo's entire backpay claim be stricken because the ALO prevented its counsel from pursuing a line of questioning as to whether Arroyo had received unemployment benefits in 1980 on a claim against North County Growers during a non-liability period

(January 22-June 5).[48]

In 1978 Arroyo found work picking tomatoes at Highland Ranch where he is still employed, choosing not to return to Kawano when offered reemployment in 1981. In 1978, Arroyo was a part-time worker at Highland. Although a year-round worker at Highland working steadily in 1979, Arroyo was nevertheless laid off periodically for 2-3 weeks at a time. In 1980 he worked at Highland approximately 8 months.

Respondent contends that this Highland Ranch employment should be treated as substantially equivalent employment as of 1978 thereby tolling and cutting off its backpay liability. However, I concur with General Counsel that the doctrine of substantially equivalent employment should be narrowly utilized in the agricultural setting, particularly where the work is seasonal, subject to weather, labor availability and other uncontrollable vagaries including frequent layoffs. Arroyo's interim work history clearly fits factually within the frequent vagaries of agricultural employment even while working relatively steady for one employer. Accordingly, I find that no substantially equivalent employment has

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48. Respondent sought to pursue this claim based on a speculative reference made by the investigator it utilized. However, the ALO ruled that the matter raised, even assuming it was otherwise probative, was outside of the relevant time frame; was collateral to any issue in this proceeding; did not affect the credibility of Arroyo, who was a very credible witness; and did not in any way reflect on Arroyo's interim work history, which was admitted by all parties to be excellent and extensive.

Moreover, repeatedly, throughout the hearing, the overall quality of the work performed by Respondent's investigators left much to be desired. Their work product was too often unpersuasive, faulty, incomplete, or outright erroneous.

been established or shown by Respondent.

Arroyo is entitled to a backpay for the period ending November 14, 1980 when, it was stipulated that unconditional offers of reinstatement were made.

Arroyo is also entitled to the job search expenses set forth in General Counsel's revised specification as well as the daily $1.50 ride subsidy.

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CATALINA HERRERA BARRIOS -- NO. 4

A seasonal worker at Kawano, Catalina Barrios was first hired in 1973 through raitero Jose Aleman. Her 1974 season there was cut short in September when she was injured in an automobile accident. In 1975, Barrios made several reapplications for work at Kawano but was denied. She prevailed in the litigation regarding her discriminatory refusal to rehire charge in 4 ALRB No. 104. It was stipulated by General Counsel, however, that her backpay liability period will commence in 1976 as with the other disciminatees, not 1975. This liability period extends form July 10 to January 22 with a cut-off on November 14, 1980.

Issues raised by Respondent include whether Catalina Barrios is disqualified from backpay payments for the winter months of 1977 through 1980 because of willful idleness. It is the ALO's determination that Mrs. Barrios' job search in November and December 1977 was sufficiently conducted. She testified to visiting the union office several times a week. Since at that time the union office hired workers for approximately 12 ranches in the area, this search seems sufficient. However, Catalina Barrios' job search efforts in the winters of the following years were insufficient, a fact already reflected in the General Counsel's specification and thereby accepted as correct by the ALO.

Respondent also questions the sample year chosen to estimate the representative number of hours of backpay liability, suggesting that 1973 be used as it was the only season Mrs. Barrios completed. The ALO has determined, however, that General Counsel's using an average of seasonal workers' hours in 1975 is a perfectly

appropriate method to use for three reasons: this method best reflects the number of hours Catalina Barrios would have worked in 1975 had she been hired; her 1974 hours were shortened abruptly due to the automobile accident; and the 1975 winter harvest, longer than those in prior years, was reflective of the extended harvest periods in the years following.

Finally, respondent objects that General Counsel has improperly subtracted interim expenses from gross earnings in quarters where there were no interim earnings. Respondent's position is contrary to ALRB law. As stated previously, job search expenses are subtracted without regard as to whether there was interim employment in that period.

Barrios is entitled to the backpay (including ride subsidy) for the periods set forth in General Counsel's amended specification.

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RAMON BRAVO -- NO. 5

A Kawano employee since May 1970, Ramon Bravo worked year-round starting with the 1971 season. When the offer of reinstatement was issued, Mr. Bravo returned to Kawano and was still employed there at the time of the hearing. A very credible witness, Ramon Bravo's work history and testimony indicate successful good faith job search efforts in the years following the Kawano dismissal. Never ill, the only occasion he was absent from the job market was to visit his mother in Michoacan in June 1980, as reflected in General Counsel's specification.

Although not actually claiming Ramon Bravo a seasonal worker, respondent appears to claim he was less than a year-round employee, stating that during the Kawano years he "took off one to three months per year to work in the lemons" at North County Growers. Both Mr. Bravo's work history and testimony verify this claim to be misleading. From May 1973 until December 1974, Ramon Bravo worked at Kawano 19 months without a single break, returning in February 1975 after the customary layoff. It appears he industriously filled his layoff period with interim employment, a pattern inherent in agricultural work, rather than quitting Kawano for North County. Any reference to time off is to a traditional, involuntary layoff. From January 31 to February 21 is a typical layoff period at Kawano, utilized by the General Counsel in its specification and affirmed by the ALO as proper. Moreover, respondent as indicated by footnote 19 of its Index of Revised Specification for Ramon Bravo acknowledges that any interim earnings by Bravo would offset Kawano Backpay entitlements as a year-round

worker.

Also questioned by respondent were the General Counsel's specification calculations for Mr. Bravo's Avila earnings. All stipulations and pay stubs are accurately reflected in the amended specification. As noted by General Counsel, Avila records are inaccurate, have unreliable documentation and often were misleading. (Gen. Coun. Post-hearing Brief, p. 22.) Thus, the apparent discrepancy for the third quarter of 1979 is explained by the existence of countervailing documentation and evidence that Bravo did not work for Avila the extent that respondent asserts. Respondent has not met its burden of proof.

Ramon Bravo is entitled to the backpay claim set forth in General Counsel's amended specification due a year-round employee for the backpay liability period February to January with a three week lay off period and a cutoff date on November 14, 1980.

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MARTIN CONRIQUEZ -- NO. 6

According to the General Counsel's specifications the backpay liability period of Martin Conriquez extends from June 12 until January 22 with a cutoff date of November 14, 1980, based on the presumption of the 1975 hours.

In 1975 Conriquez was first hired by Kawano through the raitero system for seasonal employment. From January until June of that year he had picked lemons for Fallbrook (or North County Growers) his seasonal employer from 1968-1980. Since this Fallbrook employment was not year-round, at each year's June layoff he sought additional work, usually at Placentia Co. in Escondido.

His first season at Kawano was followed by the job at Fallbrook. However, by the June 1976 Fallbrook layoff, Placentia Co., which in past years provided Conriquez other dependable income, had already closed. Therefore Conriquez once again sought employment with Kawano, not "in the nature of supplemental part-time emloyment" as asserted by Respondent, but as dependable, steady work. When Conriquez's interim work efforts and very credible testimony are taken into account it becomes clear that this was not sought as a "stop gap or fill-in-the off-season job", as Respondent claims it was.

From June until November, 1976, Conriquez was unemployed even though he sought work through raiteros daily (including the one remaining Kawano raitero) at the border for those four months and was told by the drivers that nothing was available. He depended on the raitero system as this was how he was first hired, and was his primary manner of seeking, obtaining and getting to work. Conriquez

credibly testified that he considered Kawano steady, seasonal employment after his first season, sought to return there and would have if rehired. When finally offered reinstatement in 1981 he willingly returned and was working there at the time of the backpay proceedings.

Respondent also disputes the entitlement of Conriquez (and most of the other workers) to commute expenses and ride subsidies. These issues have been earlier resolved by the ALO determination that the most appropriate, reasonable and equitable method is to grant the daily ride subsidy of $1.50 that had been provided to the workers up to the time they were discriminatorily denied rehire. This obviates the excessively burdensome and at times uncertain and arbitrary procedure for determining what the excess daily commuting costs would have been.

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MARIA LUISA DIAZ -- NO. 7

According to General Counsel's specification, and the rebuttable presumption, Maria Luisa Diaz' backpay liability period extends from July 11 until January 22. The parties stipulated that the cutoff date is May 3, 1980 based on her substantially equivalent employment at Bumble Bee Co.

Maria Luisa Diaz was first hired by Kawano for seasonal work in 1975 and completed the season on January 22. After the January 22 layoff she returned to Kawano several times in 1976 but was told there was no work.

She sought work daily in 1976, particularly at the border where she obtained work for 3 months at Imoto and later in October at Tabata. Mrs. Diaz credibly testified that she not only had sought work at the border through various labor contractors nearly every day, she also searched employment advertisements and was sent for an interview by the E.D.D. However, since her work experience was only in agriculture and she spoke no English, she was not hired for non-agricultural work.

In 1977 her employment efforts were similar except she was also able to obtain some job referrals by the UFW to those companies who had signed contracts that summer and fall. She, as well as many other workers, found it particularly difficult to find or obtain interim work in December and January of each year. In 1979 she had her own car which allowed her to look for work at more ranches.

Respondent raised issues concerning Diaz' good faith job searches and commuting expenses, purported periods when work at Kawano was not available (i.e., in January) and information gleaned

from a California State E.D.D. information form (provided by General Counsel) which purportedly was "not completely reflected on General Counsel's specification."

However, it is the ALO's determination that the job search expenses sought are reasonable in amount, supported by credible testimony and allowable. Moreover, as discussed in more detail earlier, Mrs. Diaz, as the others, should be entitled to the $1.50 per diem ride subsidy; nor, as ruled earlier, should there be a reduction in backpay based on Respondent's purported unavailability of work in January or on its reduction in workforce. Diaz credibly testified to her unsuccessful efforts to secure work at Kawano subsequent to her January 22, 1976 layoff. Both her credible testimony, her subsequent work history and Kawano's extensive subsequent hirings all fully substantiate Diaz' backpay entitlements until her Bumble Bee employment in May, 1980.

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FILIBERTA ESCOBEDO -- NO. 8

According to General Counsel's specification, the backpay liability period concerning Filiberta Escobedo is dated from May 29 to January 22, with a cutoff date of November 14, 1980.

A seasonal worker at Kawano since 1972, Mrs. Escobedo started her 1975 employment there in June. The following September she sought and obtained from her foreman, Felipe Castillon, a five-week leave of absence to arrange child care. She was granted this leave with the understanding that she would return to Kawano in November. However, on her November return she was told by Felipe that there was no more work for her at Kawano. Also, Mrs. Escobedo credibly testified at the hearing that Felipe told her his bosses did not want her as she had been an organizer of illegals at Kawano in 1975. Although she looked, Mrs. Escobedo was unable to find work for the remainder of the year.

On the basis of this testimony General Counsel sought to extend the original backpay period to the end of the 1975-1976 harvesting season, i.e., to January 11, 1976 as well as to include this liability period for each of the subsequent liability years. Needless to say, Respondent objected and countered that the appropriate backpay period should be limited to the periods she worked at Kawano during 1972-1974, approximately June 15 to September 15. Moreover, Respondent contends that the cutoff date should be established at July 21, 1977, the first day Mrs. Escobedo found work at SKF Ranches, where she ultimately remained, declining to return to Kawano after Respondent's offer of reinstatement in November, 1980.

I concur with Respondent that it would be inappropriate to include the remaining 1975 period, November 1975 to January 22, 1976, when Mrs. Escobedo sought to return to Kawano as part of her backpay entitlements. No charge or litigation occurred during the underlying proceeding concerning this alleged discriminatory refusal to rehire for the remainder of that season. I decline to extend the liability period back to this point in these proceedings.

However, I do concur with General Counsel that Mrs. Escobedo's testimony has successfully rebutted the presumption that her 1975 hours should be cut off at September 24 for the subsequent years. Mrs. Escobedo's particularly credible testimony and subsequent work history reveals that starting in 1976 she sought full-time, year-round employment, including at Kawano. Having successfully obtained full-time, year-round child care, something she had been unable to obtain in earlier years, Mrs. Escobedo pursued full-time employment. General Counsel has sought to extend this subsequent work period until the end of the harvesting season, approximately January 22 of each year.

In view of the evidence that is discussed in more detail elsewhere that Kawano had both a tomato and cauliflower harvesting season in each January 1976-1980 and that the level of work force at Kawano was generally maintained at the same level during December and January, I concur with General Counsel's position.

In February or March 1976, Filiberta Escobedo sought work at Kawano for the short strawberry season but was again refused. She testified to looking again in June for work at Kawano. Respondent sought to impeach Mrs. Escobedo's testimony and to

indicate that her period of employment was limited to a seasonal part-time pattern, by referring to Escobedo's prior testimony at the underlying proceeding where she testified that her first visit to Kawano had occurred in early June. Mrs. Escobedo however clearly and persuasively testified the work she first sought had been during the earlier strawberry season. Since she did go on to find strawberry picking work with a nearby rancher, Tabata at that time, and as Kawano's short early strawberry season was well-known, her testimony is credible.

Mrs. Escobedo credibly testified that after finding year-round child care help in November 1975, she was eager for full-time employment and searched for this daily. Proof of her willingness to accept employment is that she traveled to Washington state (a considerable distance and time from home) with her husband to pick apples in October of 1976, leaving her family behind with child care. On her return to Tijuana she sought work every day at the border or in Oceanside approximately once a week, visiting Kawano whenever in that vicinity.

In 1977, after periods of work with Puerto Blanca, Tabata and Uchimura/Fallbrook, Mrs. Escobedo found employment with SKF Lopez. As she was with SKF Lopez when offered reinstatement by Kawano and chose to stay with SKF Lopez, Respondent contends that her SKF Lopez employment was then substantially equivalent full-time employment and the cutoff date should be July 21, 1977.

However, Mrs. Escobedo testified she did not work full-time at Lopez in 1977. This is corroborated by her part-time employment with Tabata and Puerto Blanca during the last half of 1977. As SKF

Lopez had a union contract she did not have seniority, Mrs. Escobedo's work periods ranged from a week to 1 or 2 days a week. As her SKF pay records indicate, her seniority permitted her to work greater lengths of time each succeeding year. By November 1980 when Kawano's offer of reinstatement was made, Mrs. Escobedo was, for the first time, working steadily for SKF year-round. It was only at this point that it would be accurate to consider Mrs. Escobedo's choice between SKF and Kawano to be an appropriate cutoff.

To summarize, I conclude that Mrs. Escobedo's appropriate backpay period should be May 29 until January 22 for the years 1976 through 1980, with a cutoff at November 14, 1980. General Counsel's backpay specification should be modified to exclude the commuting expenses, which the $1.50 daily ride subsidy is intended to cover.

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PABLO DAVID FINK -- NO. 9

According to General Counsel's specifications and the rebuttable presumption, backpay liability period for Paul David Fink is from May 19 to November 5. Cutoff date has been determined as the fourth quarter of 1978 (October 1978) when Fink found full-time work with the UFW.

Paul Fink was 18 years old in 1975 when he was first hired by Kawano. In November of that year he was laid off and did not receive an offer for employment there until the court ordered reinstatement offer in November 1980.

Respondent questioned Fink's application for work at Kawano in 1976, stating that no proof of formal application exists. Fink, however, testified that indeed he did look for work there, although his testimony is not entirely clear or free of ambiguity. However, the ALO has previously ruled, based in part on the rebuttable presumption, that whether or not formal application was made is not to be the basis on which entitlement to backpay is decided. Most "regular" or "legal" Kawano workers were hired informally through the raitero system at the border at that time. Fink credibly testified to seeking work from the various raiteros who utilized the pick-up points along the border in 1976 and 1977.

Also questioned by Respondent is Fink's length of stay in Mexico in 1976-1977 which removed him from the work force. In the underlying proceeding Fink testified that he returned in August 1977, while in this proceeding he thought it was several months earlier in May. The ALO accepts the prior testimony, being closer in time (5 years earlier) that Fink's returned occurred in August.

Accordingly, the liability period in 1977 should be August-November 5. Fink was able to obtain work at the border from Harry Singh starting August 1977. The parties also stipulated to additional earnings in October at Frazee during this time as well.

The parties stipulated that Fink was not in the labor market while he worked for the UFW until October 1980. In October 1980, Fink enrolled in a C.E.T.A. training program in San Diego.

Respondent disagreed with the General Counsel's claim that Fink was entitled to backpay for the October-November 1980 period, asserting he was in school and training with C.E.T.A. and therefore out of the labor market. The ALO earlier ruled that school or job training programs such as C.E.T.A. does not per se disqualify a worker for backpay entitlements. However, the ALO concludes that in Fink's particular case the backpay claimed for the last quarter of 1980 (October-November 14) should be excluded. Fink did not testify to any other actual job search during this period, apparently was involved full-time in learning mechanics training and was given full-time employment through C.E.T.A. and declined Kawano's reinstatement offer in order to continue work as a mechanic. Under these circumstances it is concluded that Fink had, in fact, taken himself out of the labor market.

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ELISA FLORES -- NO. 10

According to General Counsel's specifications and the rebuttable presumption, the backpay liability period for Elisa Flores is from June 24 to January 20. Respondent suggests that Mrs. Flores' backpay period should end in December, because January 1976 was "unusual" or "extraordinary" for seasonal workers. As indicated earlier, however, this contention has been rejected both factually and legally. The parties also stipulated to two disability periods. One from July 14 to August 13, 1977 when Flores was visiting her brother in Mexico; the other from December 1977 until March 30, 1978 when she was on disability due to surgery. Respondent also challenges whether General Counsel's liability period should extend to November 15, 1980. This is based on Mrs. Flores finding work at Newport Casuals in November 1979, where she decided to remain when the Kawano offer of reinstatement was made in November 1980. As indicated earlier, the ALO has rejected Respondent's contention that legally a worker's interim employment should be treated as substantially equivalent employment, particularly in agricultural work, merely because there is one primary interim employer. In this case, Newport Casual was her employer for approximately one year but where she worked fewer hours (40 hours a week vs. 50-60 hours a week at Kawano). It would be contrary to the purposes of the Act and the make-whole doctrine for a worker to be required to determine whether a reinstatement offer is equivalent, preferable or less preferable to the interim employment until it is actually made.

Like many of the discriminatees, Flores was hired through the raitero system, first being employed by Kawano in 1975. After

her layoff in January 1976, she found periods of employment with Luis Kocho, Ichimura, Sam Vener, Season Produce and Lee Farms. Her crediible testimony reflects honest and good faith efforts to find work at these and other ranches as well as at Kawano. In 1976, she sought work at Kawano several times in March or April. She did the same in 1977, although her illness prevented her from doing so in 1978. Mrs. Flores also sought work at Kawano in the subsequent years as well, traveling to the ranch with Jose Aleman.

It was not until November of 1979 when she was hired by Newport Casuals that Elisa Flores found steady work and relief from the recurring layoff periods. As indicated above, Respondent's claim to treat this Newport Casuals employment as substantially equivalent employment as of November 1979, the date she was first hired, has been rejected.

Additionally, Respondent declared as sinister the General Counsel's refusal to disclose the identity of Mrs. Flores' current employer prior to the hearings (i.e. to hide that she had steady employment). Respondent's position is absurd. Both the ALO and Respondent were informed at the outset that a number of workers testifying had asked General Counsel not to identify their current employer in fear of possible retaliation. As the hearing progressed, however, both parties were able to agree upon this issue, and the current employers' names were generally revealed and documented.

Flores is entitled to her job search expenses as set forth in the specification and to the $1.50 daily ride subsidy.

FRANCISCO ZAMORA GARCIA -- NO. 11

Francisco Garcia had worked year-round at Kawano for nine years[49] prior to the 1975 layoff. The ALO has determined through consistent testimony by year-round workers that there was a normal two to three week layoff at the end of January to mid-February. Therefore, Kawano year-round employment consists of 11 months and one week. As a result, the backpay liability period for Francisco Garcia extends from February through January (year-long minus a three week period). The liability cutoff date is November 14, 1980 except for a six week disability period stipulated to from August 1 to September 17 in 1980.

Although Garcia's long work history at Kawano, starting in 1965 was as a full-time employee, Respondent attempted to treat him as a seasonal employee only. Despite the concession that Garcia would have worked each succeeding year (i.e., 1976-1980) had he not been laid off, Respondent strained to portray Garcia's full year-round work in seven of his nine years as less than that of year-round workers because Garcia took two leaves of absence of several months each during the 1972 to 1974 period. In effect, Respondent has taken the 9 year work pattern and attempted to squeeze it into a 2 year exceptional pattern. The result is disingenuous.

However, Francisco Garcia, a particularly credible witness,

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49. There was no evidence presented that Garica did not work for Kawano in 1966 and 1967 or that he worked seasonally in 1968 as asserted by Respondent. Resolution of this matter is not necessary since Garcia was clearly a year-round worker during the 1969-1975 period.

gave clear testimony that for these nine years Kawano was not just his primary employer, but his exclusive one. As such, he is definitely worthy of all entitlements based on a year-round employment.

Respondent also questioned whether or not Francisco Garcia actually sought work at Kawano in 1976 as no record of employment application exists until June of that year. As indicated earlier, exact dates of reapplication do not form the basis for when backpay entitlements are to commence, particularly in the case of year-round workers. Such workers testified repeatedly that the normal practice at Kawano was for the foreman or raitero to contact the year-round worker and advise them as to when work would commence. Garcia waited for a time and then became "concerned." However, any effort to locate and request work from Oscar Sanabia, the one remaining raitero picking up workers at the border would have been futile in March since Respondent concedes Oscar was on vacation then.[50/] The ALO concludes that Garcia's waiting to June to find out whether Kawano was going to recall him does not disqualify him from backpay entitlements from March until June 1976.

In 1977 Garcia left Oceanview, an interim employer, during the summer to take a union referral to Chula Vista Farms for an intended five month season. In fact the work at Chula Vista lasted only three weeks before he was laid off. Garcia's efforts to return to Oceanview were denied, resulting in periodic employment only for the next several months. Respondent seeks to penalize Garcia for

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50. See, e.g., Respondent's Post-Hearing Index of Revised Specifications, #13 Juan Garcia, footnote 2.

his good faith effort to obtain steady interim work by restricting any backpay claim during this period.

This seems difficult to accept given the nature of agricultural employment. Garcia had taken an interim job at Chula Vista in good faith which in fact did not last as long as he had been told it would. Following the Chula Vista layoff Oceanview declined to take him back.[51] It is the ALO's determination that this should not deprive him of backpay he is otherwise entitled to receive. See, e.g., F. M. Broadcasting Corp. (1977) 233 NLRB 57, p. 329-330 and cases cited therein.

The parties stipulated to the expenses set forth in the specification without the need for testimony. Respondent seeks to limit the applicability of some of the job search expenses because they were not necessarily incurred in the quarter that interim earnings were earned. Respondent's position is contrary to settled ALRB law and is rejected. Garcia is entitled to the job search expenses, union dues and work related expenses set forth in the specification along with the $1.50 ride subsidy in lieu of excess computing expenses.

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51. Moreover, contrary to Respondent's counsel's claims there is no evidence in the record that Oceanview's particular tomato harvest paralleled Kawano's so that Garcia would have worked at Oceanview for the same length of time as, for instance, one other former Kawano worker did.

GREGORIO GARCIA -- NO. 12

Two factors made the backpay liability period for Gregorio Garcia, a year-round employee since 1971, more difficult to determine than the others. The first factor was that Garcia suffered an embolism while working at Kawano in 1981 which erased his memory as to the entire period in question; the second was that Respondent could not locate any payroll records for Garcia for 1975. Not disputed is the fact that Gregorio Garcia had been a year-round employee from 1971 up to his leaving Kawano sometime in 1975 prior to the election (in September). Garcia had returned to Kawano in January 1981 in response to the reinstatement offer, working there until the embolism occurred. He was working for Kawano in 1982 after a several month recovery period.

In 1977 before suffering this stroke which impaired his memory, Garcia testified at the preceding hearing that he had worked at Kawano with Joaquin Haro's crew in 1975 until the beginning of September. Due to illness he was not at the ranch at the time of the election. However, several coworkers during the 1975 period testified at this proceeding and corroborated that they clearly recall Garcia working with them in 1975 at Kawano. It is the ALO's belief that this prior testimony establishes Garcia as a Kawano employee in that year.

In addition, I do not find it controlling that Garcia's 1975 payroll records could not be presently found. Gaps or missing 1975 payroll records occurred with several other Kawano workers, yet either through their testimony, actual Kawano paystubs or other documentation provided at the hearing it was clear that these

workers had been present at Kawano during that period being disputed.

Lacking these 1975 payroll records to establish the rebuttable presumption, the General Counsel used an average gleaned from the records of 12 other year-round employees to determine the appropriate hours for Garcia in that year. Respondent claimed that for 17 months of a possible 54 month backpay period (based on that of a year-round worker) Garcia did not find interim work. General Counsel instead utilized in its backpay specification a backpay claim period from May 1 to December 31 each year with a November 14 cutoff date. This essentially appears to be a compromise from a full year-round liability period.

Although the Respondent disputes the appropriateness of a May 1 to December 31 liability period [using an averaging method], the ALO finds and concludes that this is a fair, reasonable and appropriate method and period to utilize for Garcia. This conclusion results after taking into account all the circumstances of Garcia's past employment history, as well as his interim and current Kawano employment history coupled with the appropriateness of the averaging method.

While it is true that Garcia had less success at finding interim employment than most of the other workers, this is no doubt in part the result of his age (late 50's to early 60's during the 1976-1980 period) and lack of transportation. In any case, a review of his interim work history shows a good faith effort to obtain interim employment.

JUAN GARCIA -- NO. 13

Garcia had been employed by Kawano for 11 years before his layoff on January 20, 1976, eight of those years (1968-76) as a full-time year-round worker. Kawano had been his exclusive employer up to the layoff. He returned to work there in January 1981, shortly after the reinstatement offer was issued, and he was still a Kawano employee at the time of the hearing. Garcia, as a year-round worker has a backpay liability period of February 11 to January 20 with a cutoff date of November 14, 1980.

According to Garcia's testimony, the harvest season in late 1975 appeared no different from those of preceding years. In January after the harvest it was his job to remove stakes and chop down plants. After the customary layoff period of about 3 weeks he expected to be called back to start putting in new stakes.

In February of 1976, however, he was not called by the raitero as in previous years. A month after the layoff date, Garcia testified that he visited the Jack-in-the-Box pickup point in San Ysidro to ask Kawano drivers and those from other ranches for work. He did not find any Kawano raiteros there. Sometime later he recalls speaking specifically to Oscar Sanabia at the border to request work. During the rest of 1976 he visited the Kawano ranch several times, both with Jose Aleman and with others. No work was obtained at Kawano any of the times he sought it.

Garcia also provided credible testimony as to his diligent work search at other ranches during the backpay period. Some temporary employment of a few weeks' duration was found with Don Pedro, Chula Vista and Veneer farms, but work inquiries at such

ranches as Harry Singh, Los Diablos, Yesicochi and Sagata were unsuccessful. Garcia also registered with and applied for work through the State of Calilornia's Employment Development Department. He further testifed that he was not ill or unable to work during any of the liabiility period years. Nevertheless, the only steady employment he found (lasting more than a few weeks or month's duration) occurred at Podesta Nursery from November 1979 until November 1980.

Respondent asserts that this employment with Podesta should be considered substantially equivalent full-time employment. However, the ALO does not concur. First, while Podesta Nursery was full-time work, it was not as steady (i.e. as many hours) as Kawano. Second, Garcia left his wife and three children in Tijuana to take this job in Palo Alto, a considerable time and distance from Garcia's home and family in Tijuana. As soon as Garcia was given the opportunity to return to Kawano he accepted it. There was obviously no intention by Garcia to consider or treat Podesta Nursery as substantially equivalent employment.

Respondent also claims that Garcia should be disqualified from backpay for the months of January until June. As this is the period of the lemon harvest and Garcia did not work with lemons, Respondent asserts he thus voluntarily removed himself from the labor market. Garcia testified however that although well-qualified to work with such crops as strawberries, tomatoes, and cauliflowers, he had no experience with lemon trees and was handicapped by poor eyesight. Moreover, lemon picking is a particularly more arduous harvesting job then any of the other San Diego Country crops. The

work is limited to men, generally ones with prior lemon picking experience because it requires picking while balancing on ladders wearing thick gloves to avoid the sharp thorns. The work is also paid on a piece rate where speed and experience is important. Failure to seek or pursue a lemon picking job by a tomato, strawberry or cauliflower harvester would not be wilful removal from a comparable job market. In addition, Garcia fully and persuasively testified to making a good faith effort to seek interim employment from employers that offered suitable work for him. There is no merit to Respondent's contention.

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LUISA GARCIA -- NO. 14

Kawano hired Luisa Garcia as a seasonal worker each year from 1969 until her layoff on January 22, 1976. Upon receiving the letter of reinstatement in January 1981, Mrs. Garcia returned to Kawano on January 16 and was still employed there at the time of the hearing. In 1975 she worked from July 11 to January 22, 1976 which provided the basis for the backpay specification liability period.

Three issues were raised by Respondent concerning General Counsel's specifications. The first concerned the exact dates of the backpay liability period. Respondent claims that since 1975 was the first year that Mrs. Garcia worked into January past the December layoff dates of previous years, the liability period should not include January. As indicated earlier, the ALO has reviewed Respondent's payroll records from December 1975 through January 1976 and for each of the same periods for the succeeding four years. They indicate that the "normal" season at Kawano extended into the following January and created employment opportunities into that month; that 1975 may have been more extended compared to prior years, but it had not been an "unusually" long season when compared to subsequent years. I conclude therefore that the General Counsel's computations were not erroneous as claimed. Accordingly, Respondent's objection to General Counsel's figures concerning Mrs. Garcia's earnings at Egger & Ghio for the third quarters of 1978, 1979 and 1980 based on the improper use of a July to January 22 liability period is not also accepted.

The second issue presented by Respondent was whether Luisa Garcia was at all eligible for backpay for the entire year of 1976

due to her pregnancy. Mrs. Garcia credibly testified that when she was laid off at the end of the harvest she expected to go back to Kawano. She left not because of her pregnancy, but because of the work break. Mrs. Garcia presented believable testimony that she visited the Kawano raitero in June several times at the border seeking work and that it was Joaquin Haro who first advised her that she would not be rehired by Kawano. Although Respondent claims her pregnancy would have prevented her from working, Luisa Garcia testified that in June and July of 1976 she worked temporarily with Sun West picking strawberries.

Considering, however, that Mrs. Garcia gave birth to her child in October that year, the ALO concludes that some disability period because of the pregnancy is called for. Considering the time of year that the birth occurred relative to the hiring patterns, I conclude that a disability period from September 15, 1976 until the end of the season on January 22, 1977 is an appropriate one. (Mrs. Garcia testified that she gave birth to her previous child, by Caesarean Section, while also working at Kawano and took, at her doctor's orders, two months off before and after the birth. I used this four month period as a guideline here as well.)

Luisa Garcia credibly testified as to diligent work search in the years 1977 through 1980, including applications for work with the Kawano raitero in the beginning of the 1977 harvest season in June. Consequently, the ALO does not concur with Respondent that her earlier testimony that her first application in 1977 was in August 1977 at the Kawano ranch was inconsistent with her present testimony. The primary focus of the earlier testimony was whether

the discriminatees made personal application at the Kawano ranch. Moreover, employment is those years with American Foods, Sam Vener, Harry Singh, Sun West and Bobbi/Egger & Ghio and her prompt return to Kawano in 1981 demonstrate her willingness to work.

It is the determination of the ALO that the backpay liability period for Luisa Garcia extends from July 11 to January 22 in accordance with the General Counsel's specifications. For 1976-77, a disability period exists from September 15, 1976 to January 22, 1977. The cutoff date is November 14, 1980.

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THERESA GOMEZ -- NO. 15

Theresa Gomez' first year at Kawano in 1975 was as a seasonal worker. Three issues have been raised by Respondent concerning the backpay liability period and the cutoff date for Theresa Gomez. Respondent questions the extent of the liability period based on the apparent discrepancy between testimony given in the preceding hearing and that given in the present.

Respondent claims that Mrs. Gomez previously testified to applying only once for work at Kawano in 1976, in August. During the present hearing, on the other hand, Mrs. Gomez gave credible and detailed testimony that in March of that year she also did apply for work during Kawano's strawberry season.

This occurred during the period of time she was living in Oceanside near the Kawano properties. After reviewing significant portions of the underlying proceedings record and transcripts it is my conclusion that Mrs. Gomez' present testimony does not necessarily contradict that previously given. Not only was Mrs. Gomez a very credible witness, but, in addition, the focus of the underlying proceeding and testimony was primarily on the tomato harvest, not the earlier strawberry season. Many of the questions asked of the workers came in the context of Kawano's tomato harvest. In addition, much of the questioning asked regarding application for work could easily be interpreted to be limited to the ranch and not to the raiteros.

Ironically, it was this earlier strawberry harvest that became the background for the second issue raised by Respondent, that of the liability period cutoff date. In April of 1977 Theresa

Gomez was hired by Kawano for the strawberry season and worked for four weeks until injured on the job by falling boxes. Respondent holds that this rehiring constituted an offer of reinstatement, thus establishing a cutoff date in the second quarter of 1977. However, Mrs. Gomez credibly testified that it was only through the personal intercession of her friend Jose Adame, a driver-foreman (and strong no-union supporter),[52/] that she was hired.

Additionally, I do not concur with Respondent's claim because it was unclear and uncertain as to whether the employment was for the short strawberry season only or for a longer period. There is no evidence that Respondent intended this limited employment to be one of a reinstatement to her former job. After Mrs. Gomez recovered from her injury she received no offer of reinstatement until the 1981 offer. She testified credibly that she was willing to return to Kawano, and indeed had written Kawano asking for a job on August 14, 1977. Kawano neither responded nor made a reinstatement offer.

Finally, there is the issue concerning Theresa Gomez's employment with Robinson/Siempre Viva Farms. Mrs. Gomez found steady employment in August 1977 with Robinson. For the first four months she worked steadily, but only on a daily basis with a labor contractor there. In December 1977 she was hired directly as a Robinson employee and began to work full-time and more steady as she accrued seniority there. Respondent claims this employment was substantially equivalent employment terminating any backpay

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52. See Kawano, Inc. (1978) 4 ALRB No. 104, ALOD. p. 36.

liability for Mrs. Gomez. Respondent also points out that Mrs. Gomez chose to remain with Robinson instead of returning to Kawano when the reinstatement offers were made in late 1980.

However, Mrs. Gomez credibly testified that she had not actually made a decision against returning to Kawano until she received the Kawano reinstatement offer in 1981 and compared the two jobs. It was only at this point that it can realistically be said that her interim employment became substantially equivalent employment by both act and intent.

As discussed earlier under the substantially equivalent employment section, this is consistent with applicable N.L.R.B. precedent. Interim employment should not, as a factual determination, be considered substantially equivalent where agricultural work is involved. Even "year-round" steady employment will involve different seasons, hours and layoffs as well as different variations of the vagaries of agricultural employment. Moreover, as a policy matter, even if interim employment had been substantially equivalent, the U.S. Supreme Court has held that only the offer of reinstatement tolls the backpay period, particularly where to rule otherwise would not effectuate the policies of the Act. Phelps Dodge Corp. v. N.L.R.B. (1941) 313 U.S. 177, 196-97.

As a result, the extent of the liability period for Theresa Gomez, based on her 1975 hours, is determined to be from June 19 to October 18, with a cut off date on November 14, 1980.

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HILARIO GONZALEZ -- NO. 16

According to General Counsel's specification, the backpay liability period for Hilario Gonzalez is from June 4 to January 28, with a cutoff date on November 14, 1980. The ALO concludes these are the appropriate dates to utilize.

It is particularly fruitful to examine the claim of Hilario Gonzalez in the context of his work history. Until 1975 Mr. Gonzalez had been employed steadily for 12 years at White Nursery in Escondido. When his job there ended he was hired in that summer by Kawano, a position he believed would offer him the same constant employment he had held at White. That he returned to Kawano after the reinstatement offer in January of 1981 because of steadier hours and was still working there at the time of the hearing as a year-round employee is further indication of his expectations there. It is the ALO's conclusion that Mr. Gonzalez' work history and stated intent support the conclusion that Kawano would have been his choice absent discrimination.

Several issues have been raised by Respondent concerning Mr. Gonzalez' claim, two of them having been raised against other discriminatees as well. The first, that 1975 was an "unusual" year, has already been refuted; it was not an unusually long season when compared to the 1976-1980 seasons. Also, Respondent claims that Hilario Gonzalez did not formally apply for work at the Kawano ranch in 1976. As indicated previously, work application was generally made through the raitero system. Mr. Gonzalez, a particularly credible witness, testified he asked the Kawano driver for work at the border and was told there was none available.

A third issue raised concerns the Kawano irrigation system. Respondent states that Mr. Gonzalez had been hired as an irrigator in 1975 and that the old irrigation system was replaced by a drip irrigation. However, Mr. Gonzalez was not simply an irrigator. He also picked beans and tomatoes, and tied and nailed stakes. At the time of the present hearing he was working with tomatoes. There is no merit to the implication of Respondent's assertion that Gonzalez, as the other irrigators, would have not had employment because of the change in the irrigation system.

Finally, there is an issue raised concerning Mr. Gonzalez' work at North County Growers after his layoff by Kawano. Respondent claims this work with lemons to be substantially equivalent full-time employment. Although there were periods of work at North County starting in June, 1976 until 1980, there were also significant gaps because of layoff periods at that time, and Hilario Gonzalez was forced to find interim employment until the Kawano reinstatement occurred. Moreover, accepting lemon work is further proof of his desire to find interim work. Lemon picking is rigorous and thorny work, is usually performed by able men much younger than Mr. Gonzalez. That it was not substantially equivalent employment either factually or legally is corroborated by his return to Kawano at the first available opportunity.

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JULIAN GONZALEZ -- NO. 17

In June 1974 Julian Gonzalez was first hired by Kawano and worked year round until his layoff on January 20, 1976. As a full-time year-round worker he is entitled to backpay from February 15 to January 20 with a cutoff date on November 14, 1980.

The issues raised by respondent concerning Julian Gonzalez' backpay claim fall into two categories: one, concerning his job search history, and the second, concerning his possible substantially equivalent employment.

Respondent's claims tend to portray Mr. Gonzalez as a man of willful idleness during 1976, contrasting with their portrayal of his subsequent interim work efforts. Observing Julian Gonzalez and considering his testimony leads one to believe the contrary. A 60-year-old widower with a dependent child, he was a particularly credible witness at the hearing.

Respondent first states that Mr. Gonzalez did not even attempt to find work at Kawano until June of 1976 and not at all thereafter. Rather, Mr. Gonzalez testified that he formally visited the ranch in June and again in October, for he had been given rides there. However, he had previously made several applications through the raiteros, the first right after the January layoff. Jose Aleman told him then that Kawano was not going to give him either employment or a ride. His previous foreman Dagnino also said during this time there was no work for him. Still later, in 1977, Jose Adame (a Kawano driver-foreman) deterred him and convinced him it would be futile to try.

Julian Gonzalez further testified to his other work search

efforts in credible detail demonstrating good faith. In addition to the Kawano drivers, he had approached those from Egger & Ghio/Bobbi, Singh/Hindu, Yasucochi and Fallbrook. Francisco Armenta from Los Diablos told him there was no work for him. Mr. Gonzalez testified that when he could get rides he visited the ranches. Even then, at both Yasucochi and Nagata, the gates were closed and he was not allowed to visit the foreman. Until he found relatively steady employment at North County in 1977, only interim work of short duration at Bobbi and Hindu was found.

Respondent then claims that Julian Gonzalez' work records at North County and later at Robert Hall indicate substantially equivalent employment and therefore releases them from further backpay liability. However, the records show that there were substantial layoff periods during the North County employment in 1977. Like Hilario Gonzalez, Julian Gonzalez' willingness at his age to perform the arduous lemon work at all is further proof of his industriousness and effort to seek and obtain whatever interim work was available.

Commencing in July 1978 Gonzalez found steady employment through a union dispatch to Robert Hall, a San Diego County grower. While for approximately five months of the year Gonzalez worked six days a week at Kawano, he apparently worked only five days a week at Robert Hall. Accordingly, for four to five months each year during the 2½ years he was employed by Hall, he earned considerably less money than as a Kawano employee. At the first opportunity to return

to Kawano in June 1981 Gonzalez did so.[53/] On the basis of the record in this case I conclude that respondent has failed to sustain its burden of proof that Robert Hall was, both factually and legally, a substantially equivalent employer.

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53. Gonzalez sought reemployment with Kawano in January 1981 shortly after learning of the reinstatement offer. However, Kawano did not actually reinstate him until that June. Gonzalez was one of the individuals who filed a charge against Kawano that was independently resolved in a separate proceeding.

MARIO GUERRERO -- NO. 18

According to the General Counsel's specifications, the backpay liability period for Mario Guerrero is from June 1 to October 8 with a cutoff date on November 14, 1980.

1975 was Mario Guerrero's third year at Kawano. A seasonal worker, he had been employed to pick tomatoes, strawberries and cauliflower, always for short periods of approximately four months. During the interim employment period other employers such as Avila, Singh, Irvine and North County Growers offered additional part-time work; but still leaving him with layoff periods. Mario Guerrero testified at the hearing that twice after the 1975 layoff he visited the Kawano ranch to apply for work, once with Fernando and again with Vasquez.

The primary issue raised by respondent was whether or not Guerrero had worked for a period at TMY. Guerrero testified that he had never worked at that ranch and any record that indicated such work was undoubtedly caused by his stolen ID card (Immigration/Green Card) and Social Security Card. Although respondent produced pay records showing a Mario Guerrero with the same social security number working at TMY, General Counsel points out that there is other interim employment (Sun West) overlapping the TMY employment. General Counsel declined to include TMY interim employment because of Guerrero's testimony and corroborating evidence. I concur with the General Counsel since the uncertainty in the record, as between the discriminatee and the wrongdoer, should be born by the company.

LUIS CHAVEZ GUTIERREZ -- NO. 19

Luis Gutierrez was hired by Kawano during its 1975 season both as a worker and as a raitero. Gutierrez had also previously worked at Kawano for the 1968 tomato harvest season as well as in 1969 for a few weeks prior to an automobile accident. Since approximately 1965 or 1966 Gutierrez had worked the lemon season from January to June with North County Growers. The other six months of the year he worked steadily at other agricultural jobs.

Respondent attempted to impeach Gutierrez with a document it culled from the ALRB Kawano Case, 3 ALRB No. 54, in which Gutierrez signed a five-page declaration with eight others. The declaration, prepared in 1975, states in English that his first year at Kawano was in 1968. The preparer of the declaration also stated that Gutierrez, who does not read or write English, was a Kawano employee for nine years. In fact, he had been there a little over two years. Respondent argues that this discrepancy establishes Gutierrez as an untrustworthy witness and that his entire testimony and backpay claim should be disregarded.

To state the obvious, there is no basis, other than respondent's bald conclusion, that Gutierrez was aware then (or even later) of the discrepancy. Moreover, Gutierrez was a credible, frank and at times humorous witness. That there is no loss of love between respondent and Gutierrez was quite apparent during his testimony. Respondent has unsuccessfully strained to impeach Gutierrez and undermine his backpay claim.

In July, 1975 Gutierrez returned to Kawano with the hope of obtaining steady seasonal work there. This expectation was

strengthened when Leopoldo Dagnino gave him the additional position of raitero. This raitero position came with a significant hiring authority. Foremen delegated the actual hiring to the raitero. Accordihgly, other workers looked to him for their own job as well as for transportation to the ranch and paid him a ride subsidy. In testifying, he described Dagnino's instructions to fill up his van. At the harvest peak, he would bring 16 to 18 workers, later from 12 to 13, ahd finally in December sometimes only 3. On or about December 20, Felipe Costillan dismissed Gutierrez saying there was no more work for him, although others were still on the job. (Gutierrez is a very vocal union supporter. He occupied a position on the workers' ranch committee when he returned to Kawano in 1981.)

In 1976, according to his credited testimony, Luis Gutierrez again sought work at Kawano. He returned to the ranch two or three times taking others with him in his van. It is noteworthy that when offered reinstatement in 1981, Gutierrez returned to Kawano (but no longer as a raitero) and was still employed there at the time of the hearing.

Respondent also raised an issue concerning Gutierrez' North County Growers employment. Respondent asserted that Gutierrez' lemon-picking work there constituted his main, steady and permanent job, thus relieving Kawano from backpay obligation.

On the contrary, Luis Gutierrez' work records at North County give credence to his testimony that his work there was only steady seasonal work. Periods of employment were followed by layoffs of long duration. In addition, North County never gave him seniority until late 1979 when it signed a union contract or offered

APPENDIX III

SUMMARY OF WORKER CHARACTERISTICS

SUMMARY OF PARTIES AND ALO NET BACKPAY

him year-round work, or in any way gave him permanent status. Also questioned by respondent is whether Gutierrez is entitled to commute expenses as he had served as a North County raitero. Luis Gutierrez testified credibly that indeed he had served as raitero there for a few months in 1975, but never in the years following. As the North County foreman started bringing his own truck in 1975, he never again served as a driver. Neither could claim be realistically made for his being a driver for Harry Singh (the Hindu) in 1976, for he worked there for two or three days only.

In the years following his Kawano dismissal, Gutierrez made good faith efforts to find work. With a family of four children to support, he sought and found employment not simply as a raitero, but as a picker and loader of harvests as diverse as lemons, chilies, tomatos and strawberries. Employers were SFK/Lopez, TMY, American Foods, Sam Vener, Singh, Seabreeze and the above-mentioned North County Growers. He also traveled long distances from his family in San Ysidro to seek interim work in Oxnard and Yuma, Arizona.

Review of his work history refutes respondent's claim that he "took himself out of the job market" by "prioritizing his raitero search."

Finally, respondent makes an additional accusation of fraud against Luis Gutierrez. Respondent asserted that it heard rumors that Gutierrez owned or farmed a plot of land in Baja, California, thereby removing himself from the job market. Gutierrez denied the charge. His interim work record appears to corroborate his denial. Respondent also cross-examined Gutierrez concerning whether he drew unemployment benefits (UIB) while working for Hermosa Growers in

Arizona in 1976. Gutierrez recalled working there but couldn't recall precisely when or how long but denied collecting UIB while employed there. General Counsel stipulated to the earnings from Hermosa Growers on documents produced by respondent. Respondent nevertheless sought to have Gutierrez' entire claim stricken on its assertion that it is common for some agricultural workers to collect UIB in California while working out of state. Respondent's conjecture is not a basis for denying a credible witness his backpay entitlements. Credit for the Arizona interim work has been allocated to Gutierrez' claim, which is no more or less than he is legally entitled to.

According to General Counsel's specification, Luis Gutierrez is entitled to backpay for the liability period from July 9 to December 20 with the November 14, 1980 cutoff date. It is the ALO's determination, as discussed earlier, that the driver/raiteros should not receive the lost ride subsidy "profit" as part of their make-whole entitlements. This issue is similar to the one discussed in Ignacio Hernandez' claim (#21).

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HERMINO VELA HERNANDEZ -- NO. 20

Hermino Hernandez, who died of leukemia on June 9, 1978, was first hired by Kawano in 1972 and served as a year-round worker. It is agreed that without Mr. Hernandez' testimony in the present hearing it is somewhat difficult to fill in the gaps. However, his prior testimony, applicable law and the ALO's determination answer those issues raised by respondent concerning the backpay liability period.

First of all, respondent questions once again whether the discriminatee had indeed made application for employment at Kawano in 1976. As stated previously, the mere fact that no formal application exists does not provide respondent with legal justification for denying backpay entitlements. Kawano not only lacked a clear and consistent procedure for employment application (except through the dismantled raitero system), it actually pursued a policy of discouragement concerning the discriminatees. Mr. Hernandez' previous testimony given on October 27, 1977 precisely indicates this situation [Gen. Coun. Exh. 9].

Secondly, respondent attempts to make an assumption that Mr. Hernandez must have worked as an irrigator, based solely on his number of work hours. In his 1977 testimony, however, Hermino Hernandez clearly and emphatically denied to respondent's counsel that he had ever worked as an irrigator or moved any pipes. High number of work hours is equally consistent with the 6 day - 10 hour weeks worked by the tomato pickers.

The next issue raised by respondent concerns whether or not Mr. Hernandez was actually in the job market in the interim periods

between proven employment. Beyond the assumption that a leukemia victim whose records indicate he worked up to five days before his death must have been eager for employment, the ALO, in reviewing his interim work record, concludes that Mr. Hernandez did, in good faith, search for jobs. The applicable law is that any uncertainty concerning backpay entitlements is to be interpreted against the employer that caused the uncertainty.

Finally, there is the matter as to whether Mr. Hernandez' one year of full-time employment at Frazee was substantially equivalent employment. Again, even if this interim employment had been substantially equivalent, which is the exception in agricultural work with periodic layoffs, the U. S. Supreme Court has held that only the offer of reinstatement tolls the backpay period. As a result, the backpay liability period of Hermino Hernandez, a full-time year-round employee of Kawano, extends from February 15 to January 21 until his death on June 5, 1978.

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IGNACIO HERNANDEZ -- NO. 21

As Ignacio Hernandez had been a year-round employee at Kawano for ten years prior to the 1976 layoff, his backpay liability period is the same as that determined for other year-round discriminatees, a year less a customary three-week layoff period. In view of his layoff on January 5, 1976, the appropriate backpay liability period for Mr. Hernandez extends from February 1 to January 5 with a cut-off date on November 14, 1980.

Although respondent attempted several times to impeach Mr. Hernandez during his testimony, he proved a particularly credible witness. In each instance, he satisfactorily answered any seeming discrepancies and gave in believable detail his complete work history while at Kawano and in the years following.

Ignacio Hernandez' years at the Kawano ranch, from 1966 to 1976, followed a regular pattern. He explained that it was customary for the foreman, after the usual three-week layoff period had elapsed, to call the workers back to start the new season. He expected, after that normal layoff period, that Kawano would follow the same procedure in 1976.

When the call did not come in February, Ignacio Hernandez testified, he drove to the ranch. Searching in vain for Johnnie Kawano in the packing shed office, he did find the foreman who told him there was "no work for those from Tijuana." Still later, he talked to Oscar Sanabia at the border, "five or six times," the last in April. Finally that year, he returned to the ranch in November to be discouraged once more. His clear and credible testimony not only shows Mr. Hernandez' reliance on Kawano as an employer, but

also contradicts respondent's claim that he did not apply for work until November of 1976 and therefore is not entitled to backpay for that period.

Respondent raises another issue dealt with previously, that Ignacio Hernandez had been an irrigator and that the drip system made his job obsolete. Although he served primarily as an irrigator, he was not one solely. In those ten years with Kawano he also weeded, tied, picked and packed tomatoes, picked and packed strawberries, placed and removed stakes and occasionally helped with planting. No adjustment to his number of possible work hours will be made as he could have worked these same jobs in subsequent years.

Ignacio Hernandez' record also demonstrates that this father of five children made good faith efforts to find work, despite respondent's claim otherwise. After his discouraging conversations with Oscar Sanabia, he found temporary work at International Decorator. Other jobs sought were with Kasaka, TMY, Tabata and nurseries in Encinitas. Only at Iguchi was he able to find somewhat reliable work.

It is this Iguchi employment that respondent claims as substantially equivalent employment. Mr. Hernandez was able to work there fairly steadily, but this work was interrupted by long layoff periods. In 1976, for example, he worked there for only four months; 1977 was marked by a particularly long layoff period. In fact, at one time he found work in Anaheim, a considerable distance and time from home. Thus, the Iguchi employment cannot be determined as substantially equivalent.

As Ignacio Hernandez had served as a raitero while at

Kawano, General Counsel sought to claim a lost $10.75 profit per day. However, the ALO has determined there will be no additional sum given to drivers for lost profits. On the other hand, Mr. Hernandez is entitled to the ride subsidy of $1.50 a day for the commute expenses he entailed while a discriminatee.

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JOSEPHA RUIZ HERNANDEZ -- NO. 22

Josepha Hernandez had worked year-round at Kawano for more than two years prior to her dismissal on October 13, 1975. This dismissal, dated earlier than other discriminatees' layoff periods, was the subject of ligitation in one of the prior Kawano case (3 ALRB No. 54). Josepha's husband Felix, both a Kawano worker and raitero, was a known union supporter. Until his unlawful discharge on September of 1975, he drove his wife and nine or ten other workers to the ranch daily. In October, Mrs. Hernandez was also laid off. Although many of her husband's other former passengers were given continued work, she and one other were not. In 3 ALRB No. 54, the ALO determined that the stated reason, lack of work, was plausible.

Although General Counsel seeks in Josepha Hernandez' amended backpay claim to include the period from October 14, 1975 to the end of that season, this ALO declines to do so. The reason for Mrs. Hernandez' earlier layoff has been litigated. Due to the determination of the ALO in 3 ALRB No. 54, the period will not be extended as such. However, on the basis that Mrs. Hernandez was a year-round employee prior to dismissal, she is entitled to the same backpay period of a year less the customary three-week layoff due to all such employees. Therefore, the backpay liability period for Josepha Hernandez extends from February 15 to January 21 with a cutoff date on November 14, 1980.

Respondent claims that since there is no evidence that Mrs. Hernandez reapplied for work at Kawano until July, 1976, her backpay period should begin at that time. Why evidence of formal work

application at Kawano is lacking has already been described in detail. The ALO finds credible Mrs. Hernandez' testimony that she first asked to return to her job during the remainder of the season after the October dismissal. Also, she stated, she applied for work in the following season in March 1976, prior to leaving for Oxnard.

This particular employment at the Oliver Ranch in Oxnard is evidence of Josepha Hernandez' good faith job search efforts. After not finding agricultural work opportunities in San Diego, she then sought employment in Oxnard. Oxnard is a considerable distance from San Diego where she left her three children, then aged 11, 14 and 19. Accordingly, Mrs. Hernandez is entitled to $90 monthly rent incurred while working in Oxnard in 1976 and 1977. Upon her return in July, she once again was discouraged from applying to Kawano.

Indeed, the only job opportunity she obtained was from American Foods/Seabreeze who first hired her in December 1976. This job was secured after a five-month search. Mrs. Hernandez testified in detail to visiting the raiteros at the border, the union offices for dispatches, the Encinitas floral shops and the ranches of Piper, Chula Vista/Kosaka, Cozza/Terones and Ojai Mesa.

Respondent claims that Mrs. Hernandez' job at American Foods offered substantially equivalent employment. However, there were significant gaps in her work history there. During the 45-month period of employment at American Foods, Josepha Hernandez actually worked only 12 months. Layoff periods were covered by work at the Oliver Ranch (1977) and at Bill Mendoza (1978).

In an attempt to show that Mrs. Hernandez was less than industrious, respondent called as witness the manager of American

Foods (Dave Pattison) who testified that Mrs. Hernandez was a capable employee judging from the work she performed and that there was work available for some of the periods Mrs. Hernandez was on layoff from American Foods for workers with similar seniority. He conjectured that Mrs. Hernandez might possibly have found more steady employment there. General Counsel in the backpay spec has taken this possibility in account by making no backpay claim for the period between July 1 through September 10, 1978 when work was available to Mrs. Hernandez at Seabreeze.

Aside from this period the ALO finds credible Josepha Hernandez' testimony as to her job search and work efforts at American Foods and elsewhere. She made good faith efforts to search for and obtain interim work and is entitled to backpay for those periods reflected in the amended backpay specification when she was unsuccessful.

When the recall to Kawano was made, Mrs. Hernandez and her husband both returned there. After a time, her husband was let go or left (it was unclear which) and she lost her ride. Following this, Josepha Hernandez was injured on the job at Kawano and was disabled for a short time. Unable to obtain a ride back to Kawano, she was working again at American Foods (which is closer to the border) at the time of the hearing.

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AURELIO HIGUERA -- NO. 23

Aurelio Higuera first worked for Kawano in 1971 for three or four months. In the three years following he split his work periods between Chula Vista/Kosaka and Kawano. However, from June of 1974 until his layoff in 1976, Kawano was his exclusive year-round employer. When the letter of reinstatement was received, Higuero returned to Kawano and was still employed there at the time of the hearing.

Several issues are raised by respondent concerning Aurelio Higuera's claim. Two of these, that his work as an irrigator would not have been available in the years following and the question of ride subsidy and commute expenses, have been dealt with previously. Two others, concerning his status as a year-round employee and as a CETA worker, require further discussion.

Respondent claims that Higuera's work history from 1971 to 1976 indicates that he was a seasonal worker and as such does not qualify for the backpay due a year-round discriminatee. To bolster this claim, respondent asserts that Higuera's leave in March 1976, was voluntary, not a dismissal. The fact that Aurelio Higuera's discharge was found to be discriminatory (4 ALRB No. 104) contradicts this assumption. Furthermore, a detailed review of his work history indicates that Higuera was indeed a year-round employee at the time of the layoff, and is entitled to all backpay benefits due to a full-time worker. The backpay liability period for Aurelio Higuera is, therefore, March to February (less the week of July 23 to July 28, 1976) with a cut-off date of November 14, 1980.

On July 23, 1976 Higuera obtained employment with Kawano

for one week. However, Kawano transferred the employee that Higuera obtained a ride with to another location but did not transfer Higuera. Because of the dismantling of the raitero system, Higuera was unable to obtain transportation back to Kawano and sought and obtained interim work elsewhere. Respondent claims that this rehire and "voluntary quit" relieves it of any further backpay liability. I do not concur. Higuera was attempting to mitigate his damages in good faith. The continuing effect of respondent's dismantling of its raitero system must ultimately rest with respondent, not the discriminatees. There is no evidence that the one week re-employment was intended to be a compliance with respondent's legal obligations.

Respondent's claim concerning Aurelio Higuera's CETA position from May to November 1980 is that such schooling removed him from the job market and per se disqualifies him from backpay entitlements for those months. The General Counsel, on the other hand, holds that CETA is primarily on-the-job training and does not disqualify Higuera. The ALO determines that this is essentially a question of both law and fact based on whether the worker intended to remove himself from the job market as well as whether he in fact did. Aurelio Higuera reliably testified that while in the CETA program (for custodian's job) he continued to look for work. The ALO determines that he is not disqualified, although there is an interim offset for the pay received from the training program.

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JOSE JUAREZ ALAMAN -- NO. 24

Jose Juarez Aleman, one of those workers known as the Cherry Tomato Five, had been a steady seasonal employee at Kawano since 1969. Each year he evenly split his seasonal work between the tomato season at Kawano and the lemon harvest at North County Growers, also his employer for more than a decade. After the 1976 layoff, Jose Aleman's interim work record as well as his credited testimony reflects good faith efforts in his job search. Formerly a raitero for Kawano, he used his van to take others to look for work throughout the county, as testified by a number of discriminatees.

Because of this position as raitero, General Counsel sought to claim a lost "profit" or "ride subsidy" payment for Jose Aleman as part of his make-whole entitlements. The ALO has determined, however, that the former raiteros should not receive this additional sum, as a good portion of this subsidy was to offset the expenses incurred in transporting workers. No such expenses, of course, were incurred in the years following 1976 because of the refusal to rehire.

However, the ALO has separately concluded that the former raiteros, as with the other workers, are entitled to receive $1.50 a day ride subsidy as part of make-whole entitlements. Jose Aleman is thus entitled to this subsidy.

Respondent makes two claims concerning the extent of Aleman's backpay liability period. First is that since the 1975 harvest had been "unusually" long, the last date should be December, not January. That the harvest was not unusual when considering following years has already been discussed, and the General

Counsel's dates of July 10 to January 22 are accepted by the ALO.

However, respondent gives as the cut-off date for this period the third quarter of 1977, stating that Jose Aleman was rehired by Kawano at that time. The ALO has determined, however, that the cut-off date for the Cherry Tomato Five is on January 3, 1978.

In addition, the ALO finds that in order to make him whole, Aleman is entitled to the pay rate of $3.20 per hour, not the $2.90 he was actually paid during the Kawano employment from July 17, 1977 to January 2, 1978. He is also entitled to the ride subsidy during this employment.

When the offer for reinstatement was issued in late 1980, Jose Aleman returned to Kawano and was still employed there at the time of the hearing.

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SYLVERIA JUAREZ -- NO. 25

Sylveria Juarez had been employed as a seasonal worker by Kawano for three years at the time of her 1976 layoff. For the 1975 season, she was hired in July but left work early in October because of a tubal pregnancy. The 1975 presumptive hours are modified to include her 1974 December 10 termination date which appears to be appropriate and reasonable to establish her backpay claim period with a cut-off date of November 14, 1980.

Mrs. Juarez returned to Kawano along with her husband, Jose Juarez Aleman, in 1981 after the reinstatement offer was made, and was still employed there at the time of the hearing.

Respondent raises four issues concerning Mrs. Juarez' backpay claim. Respondent first challenged whether it was proper for Mrs. Juarez to be included in the proceedings at all. Its contention is based on the inadvertent omission of Mrs. Juarez' name from the original Appendix A list of discriminatees to the Board's decision in 4 ALRB No. 104. This omission was repeated by the Court of Appeals in its decision. Respondent claims a due process denial to now include Mrs. Juarez in the backpay proceeding.

Respondent's position totally lacks merit. Respondent does not deny, nor could it, that Mrs. Juarez was a member of the group that it was found to have disccriminated against, that she testified at the underlying proceeding to that effect, and that she is the wife of one of the prominent union supporters who was also discriminated against. More importantly, she was included in the list of discriminatees appended to ALO Gomberg's decision. In addition, respondent has fully litigated her backpay claim during

these proceedings, so its due process denial claim has a distinct hollow ring to it.

Respondent's efforts to convert a ministerial omission into a substantive claim is disingenuous. That the omission was ministerial is reflected in the amended order of the Board in February, 1979, correcting the inadvertence. A copy of this order was mailed to Kawano's counsel and provided to respondent's counsel at the hearing. See, e.g. General Counsel's Exhibit 15. I find and conclude that both factually and legally Mrs. Juarez is a member of the discriminatee group and is entitled to a backpay make-whole claim.

Respondent next claims that the "illness" suffered by Mrs. Juarez in October, 1975 that compelled her to leave work at Kawano early that year was also a problem in 1976 and kept her from the labor market until 1977.

The "illness" in fact was a tubular pregnancy, which can be potentially serious but is normally considered a usual emergency surgery. Mrs. Juarez testified that she was ready and able to work by the beginning of the year and in fact looked for work then at Kawano and elsewhere but was not hired. When questioned by respondent's counsel as to whether her doctor told her not to lift boxes Mrs. Juarez credibly testified "no" and further testified she could do so. Respondent refers to a note made by someone, presumably Ellen Sward, in the worksheets used to prepare the original "spec" which states that Mrs. Juarez did not look for work in 1976 and therefore was disqualified from backpay for that year. In fact, Mrs. Juarez very credibly testified that she looked for

work steadily in 1976 starting in June at Kawano and although she looked steadily that year she was unable to find any employment. Her husband had found work at North County Growers picking lemons but they did not hire women for that work. She does not recall whether she told Ellen Sward when she was interviewed prior to the original backpay spec being prepared that she didn't find work, rather than she didn't look for work. However, her testimony at the hearing was very clear, specific and persuasive that she in fact looked for work in 1976 at the border, near Ojai Mesa and the North County ranches, including Kawano. She is therefore entitled to backpay for that period.

Respondent repeats its claim that because of Kawano's reduced work forces in 1976 and 1977, there was no reasonable expectation for continued employment for Mrs. Juarez. Respondent's claim has been considered and discussed elsewhere and rejected.

Finally, respondent raises an issue as to the accuracy of the amended backpay specification concerning E.D.D. information on Cozza earnings. Rather than using E.D.D. quarterly summary information, General Counsel relied generally, as here, on actual pay stubs to Mrs. Juarez from Cozza. I have reviewed General Counsel's specification and underlying worksheets as well as the testimony of Mrs. Juarez and conclude that the specification accurately reflects Mrs. Juarez' interim earnings.

To summarize, I conclude that Mrs. Juarez is entitled to a backpay claim period, including 1976 for the period of July to December 10 with a cut-off date of November 14, 1980.

DELFINO LARAS -- NO. 26

According to General Counsel's specification, the backpay liability period for the seasonal worker Delfino Laras is from July 25 to December 23. Disability periods were established in the specification for the period April to November of 1976 and again for the month of November, 1977 for trips to Mexico which removed him from the job market. The cut-off date for the entire liability period is on January 1, 1979. By that time, Mr. Laras had secured full-time employment with Western Spring Works in Los Angeles and testified that he had decided not to return to Kawano.

Two issues are raised by Respondent: the first is a standing objection to all claimed expenses in the specification. These expenses, for job search and work tools, are recoverable and permitted by the ALO. As the $.20 per mile granted for job search trips to Los Angeles is reasonable, the $120 determined is granted for the total of the four trips there, in addition to the $70 measuring tool expense incurred in 1978. In lieu of excess commute expenses, the $1.50 per day ride subsidy is due Mr. Laras.

The ALO does not agree with respondent's second claim that the six-month employment with Frazee was substantially equivalent. Not only was this job of short duration, Mr. Laras was forced to leave because wet ground made work impossible and caused him rheumatism and arthritis. He then was able to secure the job at Western Springs which ultimately became his permanent employment.

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FELIPE LUNA -- NO. 27

Felipe Luna, a year-round employee at Kawano since 1965, assumed that the layoff in January 1976 was to be followed by the customary three-week layoff period. As with the other year-round employees, he waited for the expected recall in February. As with previous discriminatees, respondent again claims Felipe Luna neglected to apply for work at the ranch. However, he has credibly testified to inquiries at the border. At first, raiteros told him no work was available. Still later, the raiteros themselves did not appear. Finally, through conversation with Jose Aleman and Refugio Vasquez, he discovered Kawano's policy to discriminate against all the Tijuana workers and understood that further application was futile.

Felipe Luna's testimony concerning his search for employment at other ranches was equally credible, contradicting respondent's several claims of wilful idleness. The ALO determined at the hearing that Felipe Luna was not to be penalized for having jobs with layoff periods different from Kawano's. As indicated previously, it is the nature of agricultural work that periodic short layoff periods lasting from a few days up to two weeks occur and it is not unreasonable for dismissed workers to wait for recall.

Respondent next claims that Felipe Luna's employment periods with Southland and Sun West were substantially equivalent employment, terminating backpay liability. This is not so. There were substantial gaps in his Southland work record. Moreover, the work at Sun West was equally unsteady. There, Felipe Luna was hired through a labor contractor on a daily basis, and layoffs also

occurred.

Two final claims by respondent are examples of the questionable work of respondent's investigators. The first, a particularly bald assertion without any evidence at all, is that Mr. Luna had a lung operation in January 1977 which removed him from the job market. There is simply no evidence to support this claim. Mr. Luna himself contradicted the claim, testifying that the operation took place in 1972, four years before the Kawano dismissal, and required him to miss between ten and 11 months of work. There is no period during the interim work history that Luna missed work for that period of time.

Equally unpersuasive are claims of interim employment at Harry Singh (the Hindu). It has been previously found that Singh's records are unreliable (listing daily cash payments made from foremen's handwritten notes of workers employed that day), and respondent's claim is a further example of their inaccuracy. Not only has Felipe Luna denied ever working for Singh, the social security number does not match. Furthermore, he was steadily employed at Southland during that particular quarter respondent makes claims for.

As a year-round worker at Kawano, Felipe Luna is entitled to backpay from February 20 to January 27. As he was wounded in the finger on April 28, 1980 and unable to work for a year and a half, that is the date for the cut-off for respondent's backpay liability.

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MARIA MENDEZ -- NO. 28

Maria Mendez was first hired by Kawano in 1968. General Counsel's specification establishes her as a year-round worker with a claim from February 21 to January 28 and a cut-off date of November 14, 1980. With a family of five children (the youngest retarded) Mrs. Mendez, who was separated from her husband and then divorced, depended on her year-round position with Kawano for their support.

Respondent, without presenting any evidence, sought to portray Maria Mendez as a seasonal worker during the 1973 and 1974 harvests. However, Mrs. Mendez was a particularly strong and credible witness, and she clearly and emphatically denied this in her testimony, and as no proof was given to the contrary, she is entitled to backpay due a year-round worker. Consequently, the backpay liability period for Maria Mendez is from February 21 to January 28, that period which allows for the customary end-of-season three week layoff period.

Ironically, it is one of these three-week layoffs which respondent strained to term Mrs. Mendez' "vacation." Contrary to respondent's contention, that period from January 15 to February 10, 1975 was not a chosen time of rest and recreation, but an involuntary layoff period.

Once again, respondent claims as unfair the use of the 1975 hours as basis for backpay entitlements. As stated previously, these hours were not "abberationally high" in light of following years, and General Counsel's specification is accepted as stated.

Both Maria Mendez' work history and testimony give evidence

of good faith job search efforts starting in 1976 when she sought work with Kawano again. Mrs. Mendez said she saw and asked (along with others) a Kawano foreman if he had work, but he told them he "wouldn't give us any." After her first interim job at Vista/Ymoto from March to July, 1976, she found no other employment until March, 1977, for she and others were identified as "Kawano workers," and union supporters that many ranches wanted to avoid. Yosikochi, Los Diablos, Harry Singh and the Ojai Mesa ranches were visited as well as the border drivers. Respondent referred once again to the Pattison testimony to show that work had been available at that time. However, as stated previously, such testimony does not rebut Mendez' otherwise credible testimony that she made good faith efforts to seek and obtain interim employment. See, e.g., N.H.E./Freeway, Inc. (1975) 218 NLRB 259.

After periods of employment at Uchimara, TMY, SFK and Sea Breeze alternated with more layoffs, Maria Mendez started CETA training in November 1979, which respondent claims as a disqualifier. Although she did not obtain other work during the first ten months of the job-training program, Mrs. Mendez did continue to look for work. Her credited testimony is that she appplied to a San Diego cannery, a dry foods factory, for maintenance work and for agricultural work through friends. Moreover, she obtained a maintenance job through the CETA program which she held for one month prior to the Kawano resinstatement offer. Thus, she is not disqualified for the entire one-year CETA training period.

After receiving the offer of reinstatement, Maria Mendez

returned to Kawano and was still employed there at the time of the hearing.

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ANTONIO BAEZ MENDOZA -- NO. 29

Antonio Mendoza had worked at Kawano prior to his 1976 layoff for three years in 1964, 1970 and 1974. According to General Counsel's specifications, his backpay liability period extends from June 11 to January 26 with the stipulated cutoff on November 14, 1980.

Three issues raised by respondent concerning Antonio Mendoza's claim have been previously considered. The first, that Mendoza did not apply for work at the Kawano ranch, is not controlling as there was no standard hiring procedure at the ranch. The second issue, that the 1975 season was unusually long and that Mr. Mendoza is not entitled to January backpay, is simply contrary to the records and testimony concerning the 1976-1980 seasons. Thirdly, respondent claims that since Kawano's spraying procedure changed in 1976, there would have been no work for Mr. Mendoza, who had driven a spray truck. Although Mendoza had been a sprayer in 1976, according to his credited testimony it was only for approximately three weeks. Otherwise he performed general field work such as picking tomatoes and pulling stakes, work which was definitely available in the seasons following his layoff.

A father of eight children, Antonio Mendoza testified to the good faith job search efforts reflected in his work history. If necessary, he proved willing to travel a considerable distance from his home and family, once to Yuma, Arizona, and another time to Mecca, California, where he was required to rent a house while working at an interim job.

The ALO accepts the General Counsel's specification

concerning earnings and expenses as accurate. Stipulations concerning interim earnings at Singh, Gilbert Gomez and Horizon Harvest are verified as are expenses set forth in the specification for rent of a house while at Gomez and for special work equipment such as gloves, sacks and clothing. The $1.50 per day subsidy in lieu of excess commute costs is awarded as with the other discriminatees. His job search expenses, including his bus fare to Arizona, are also recoverable.

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CARMEN ORTIZ MERCADO -- NO. 30

The parties stipulated that Mrs. Mercado's backpay claim should be amended to include the period August 7 to October 1, 1975 and the second week of October, 1975. Respondent's 1975 payroll records which was the basis for the original backpay reflected a gap during this period. However, Mrs. Mercado produced Kawano payroll stubs indicating she in fact worked there during this period and credibly testified to that effect as well. Accordingly, Mrs. Mercado's backpay claim is for the period July 25 to December 21 with a cutoff date of November 14, 1980.

Mrs. Mercado first worked for Kawano as a seasonal worker in 1973. In 1973, she picked tomatoes starting in July until laid off that following January. In 1974, she again started in July picking tomatoes and worked approximately six months until she was laid off. In 1975 she again started in July picking tomatoes and recalls working the entire season until laid off in January 1976. She testified to finding work picking strawberries for Ynata during the spring 1976 harvest (outside of the liability period). After her Ynata layoff, however, she looked at ranches such as Yanikura, Piper, La Pedersa and Kawano but could not find any work.

In 1977, she worked the spring strawberry harvest again, but this time for Sea Breeze and then was laid off. She looked for work and found periodic but not steady work.

In 1978, she again worked at Sea Breeze for several months in the spring and was then laid off. She found periodic work that summer through union hall dispatchers. In 1979, she again returned to Sea Breeze where she worked until Sea Breeze closed down in

August. In 1980, although she looked, she found employment for only one month. Mrs. Mercado testified that she had no car so she had to rely upon rides from friends to look. She credibly testified to looking near the border ranches several times a week this way.

Each year, during a period when she could no longer find work, Mrs. Mercado would travel to the Yucatan ahd visit her parents there for one month. In 1976, she left at the end of December to be there in January. In 1977, she was there for the month of July. In 1978, she visited in the month of August; in 1979, the month of July and in 1980, the entire month of December. Upon her arrival back to the San Diego area in January, 1981, she returned to Kawano. (In 1981, she received permission from Kawano to leave for the month of December to travel to the Yucatan.)

Respondent raises three issues regarding her backpay claim. First, that since Mrs. Mercado did not have interim employment for most of the period in Fall, 1977 that Dave Pattison, Sea Breeze General Manager, said he needed workers, her backpay claim should be accordingly reduced. As indicated earlier, however, such testimony does not successfully rebut whether the discriminatee had otherwise sought, in good faith, interim employment. Mrs. Mercado's credited testimony persuades me she did.

Second, since Mrs. Mercado went to Yucatan for three years during the summer tomato harvesting season she should be disqualified from backpay entitledments for the entire quarter. However, in all but one of the years Mrs. Mercado's Mexican trip was outside the liability period (twice in July, once in December and once in January). Each time she went it was only after she was

unsuccessful in finding work. I conclude that her efforts were in good faith and reasonable.

Third, using hindsight and Kawano's tomato season layoff periods for comparison, respondent claims that Mrs. Mercado's vacation periods prevented her from effectively pursuing tomato harvesting, as opposed to the strawberry harvesting she did find work at. However, Mrs. Mercado credibly testified to making adequate good faith efforts to find work in both seasonal crops.

Respondent also notes Mrs. Mercado's either unwillingness or inability to obtain work from Harry Singh, who hired workers at the Border on a daily basis.

However, Paul David Fink very credibly testified that it was quite difficult for workers to get work with Singh. This was because most of the workers hired each day were "regulars," familiar to the drivers-foremen. Second, those few extras who were hired were generally younger men who were known to the drivers. This testimony was corrobated by the Board's Decision in Harry Singh & Sons (1978), 4 ALRB No. 63, where at page 15 of the ALOD the ALO found that approximately 60 of the daily workers are in fact "steadies" or "regulars."

I conclude that it is not a basis to disqualify from backpay entitlements this discriminatee, or any of the others, for failing to seek work from Singh or Avila (the labor contractor) particularly in view of the otherwise good faith job seeking efforts.

JOSE LUIS MONTELLANO -- NO. 31

Jose Luis Montellano first worked for Kawano as a seasonal worker in 1974. He returned in 1975 and worked from June 8 to January 20, 1976, the backpay period used in the specification. The cutoff date is November 14, 1980. Montellano is married and has three children. From 1976 to 1978, the San Diego area remained his home base, but in 1978 he and his family moved to Mexicali and worked primarily in the Imperial Valley. As a consequence, he did not return to Kawano in 1981 after the reinstatement offer.

Respondent raises four issues concerning Montellano's backpay claim. First, in 1976 after his Kawano layoff, Montellano sought work at North County Growers but was told there was no work and to return later. Instead, Montellano sought work daily at the Border and when he found no success there he went to Los Angeles and then to Salinas to look. Respondent's claim that Montellano should have, instead, returned again to North County Growers is without merit. Monetellano's action was done in good faith and was reasonable under the circumstances. Only respondent's conjecture and speculation provides a basis that he would have been more successful there.

Second, the parties stipulated to additional interim earnings, primarily from Imperial Valley employers during 1979 and 1980, which is reflected in General Counsel's amended specification. However, Montellano testified to finding two to three months of employment in Los Angeles during the Summer, 1977 that is not reflected in the backpay specification. Respondent argues for three months interim earnings. However, in view of the uncertainty and

lack of documentation, I conclude that two months interim earnings for the month of June and the month of July 1977 at $560 a month ($3.50 per hour x 20 days x 8 hours) is appropriate as interim earnings.

Third, during the Summer, 1976 while looking for agricultural work in Salinas, Montellano testified that he would do mechanical work on vehicles to earn some money for his family. He testified to receiving $20-$30 daily on an average for approximately a month-and-a-half. Respondent treats this as interim employment. However, I concur with General Counsel that this is more in the nature of supplemental income and did not interfere with or prevent him from looking for more steady work. See, e.g., Lee Cylinder Division of Galay & Co., Inc. (1980) 184 NLRB 241, 245; Rice Lake Creamery Co. (1965) 15 NLRB 1113, 1115, fn. 4; East Gate/IGA Foodliner (1980) 253 NLRB 735, 736.

Fourth, for periods of time in 1978 and 1979 in Imperial Valley, Montellano had steady yard work that General Counsel stipulated to in the amended specification. When he couldn't find yard work, Montellano would again do mechanic work on cars. Contrary to respondent's contention, there is no credible evidence, other than their bald assertion, that this mechanical repair work was anything other than supplemental income to his principal gardening job. Respondent's inclusion of such supplemental earnings as interim employment is not supported by the record. Respondent's claim that the spring Huron lettuce income which was outside the liability period was actually in the Fall, 1979 and therefore to be included is not supported by the record. Finally, the parties

stipulated that Mr. Montellano suffered a disability period from May until August 11, 1979 as the result of an automobile accident.

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MARTIN MORA -- NO. 32

1975 was Martin Mora's first year with Kawano; in the preceding years he had worked the tomato harvest at Highland Ranch. The liability period for his seasonal backpay is from July 13 to December 28 with a cutoff on November 14, 1980.

After his 1976 layoff, Martin Mora credibly testified that he sought work with Kawano in May and June of 1976 and at the same time in 1977, only to be denied work. However, his very extensive work history in the years from 1976 to 1980 reflects his resourcefulness. Jueschke, Pacific View, Shinohara, Double D Cattle, Sam Vener, Harry Singh, Sun West, Villa Park and Isen Iguchi were the principal places he found employment. He also worked the rigorous lemon harvest at North County Growers on three occasions which corroborates his testimony concerning his good faith job search efforts.

Martin Mora testified to suffering two accidents, one in March, 1976, and the other in December, 1980, both occurring in non-liability periods. Otherwise, he was able and willing to work. When the letter of reinstatement was issued, Martin Mora returned to Kawano.

Respondent asserts, without evidence, that a gap in Mr. Mora's employment record was actually filled with employment at Harry Singh. General Counsel's specification accurately reflects both the testimony of Mr. Mora and the stipulations concerning the fourth quarter of 1977, as well as earnings at TMY and Horizon Harvest. While Mora had an extensive interim work history, including periodic work with Singh, he denies that he was employed

there during other layoff gaps. I credit his testimony and conclude that General Counsel's specification accurately reflects Mora's interim earnings.

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ANTONIA M. DE ORTIZ -- NO. 33

The 1975 season was Antonia de Ortiz' first at Kawano. Hired through the raitero system, she first worked in March and April in the strawberry harvest; later in July she returned to work with tomatoes. Her backpay liability period extends from July 10 to January 28 with the November 14, 1980 cutoff date.

Respondent questions the extent of Mrs. de Ortiz' claim, stating once again that the 1975 season was unusually long. As discussed previously, however, this is contrary to the evidence and rejected. A second issue raised, whether or not Antonia de Ortiz truly applied for work at Kawano since she "only asked drivers" has also been dealt with at length. Not only was the raitero system her original and primary means of Kawano employment, but there was no other realistic avenue available since actually going to the ranch was futile. However, Mrs. Ortiz gave strong and detailed testimony that she actually went to the Kawano ranch twice to further her efforts to be rehired by Kawano in 1976, the first prior to the tomato harvest and the second in July. When she (and others) appeared at the packing shed to ask, she testified that those there would "act as if they did not hear us." With such discouragement and the general knowledge that Kawano would not hire any of the discriminatees, it is hardly surprising that after her and other coworkers' futile re-employment efforts, that she waited until September 1977 to apply again. Mrs. de Ortiz testified that she applied as well in 1979. Thus, Mrs. Ortiz should not lose any backpay due her for the third quarter of 1977 as respondent claims for failing to reapply at the ranch again earlier. Such futile acts

are not required to establish backpay entitlements.

Respondent's claim that Antonia de Ortiz was willfully idle is difficult to accept after hearing her testimony and reviewing her work record. A 63-year-old widow responsible for the care of three grandchildren, Mrs. de Ortiz' work record following the 1976 layoff notes Singh, Uchimura, Sun West, Garcia, TMY, Triple M, SFK and Ysidro Reyes as employers. Additional job search efforts were made at Bobbi, Puerto Blanco and Chimura. Both border drivers and the union hall were visited. On one occasion she was given a ride to the Bobbi ranch, refused work and had to walk back. On two occasions, in 1976 and 1980, Mrs. de Ortiz travelled the considerable distance to Fresno for work at Dos Palos. When finally offered reinstatement at Kawano she returned.

Respondent then claims Mrs. de Ortiz's Triple M job in 1978 as substantially equivalent employment for "an entire year." Actually only nine months in duration, wet working conditions and the hiring of illegals led to her layoff. When she applied again there she was refused. Such unsteady conditions and short-term employment cannot be considered substantially equivalent.

However, respondent has presented a corroborated claim that Antonia de Ortiz' earnings through Frank Avila on the third and fourth quarters of 1977 are missing from General Counsel's specifications. Although Avila's records have been proven unreliable regarding other claims, this particular claim is supported by Mrs. de Ortiz' own testimony at the hearing. Thus, the ALO includes as interim earnings the two totals of $264.00 and $271.15 for the third and fourth quarters of 1977, respectively, not

included on the General Counsel's specifications.

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EZEQUIEL PEDROZA -- NO. 34

First hired by Kawano as a seasonal worker in 1968, Ezequiel Pedroza worked year-round from 1972 until his 1976 layoff. Thus, his backpay liability period extends from February 15 to January 23 (full year less the normal three-week layoff period), with a November 14, 1980 cutoff.

Respondent first claims no liability for the quarters before June, 1976 when a "proper application" was made for rehire at Kawano. Again, no "proper" mode of application existed, not even solid evidence of the one respondent chooses to acknowledge and "presumes" to be June 22, "the same day witness began working in 1973." Reliable testimony by credible witnesses forms the only basis of proof regarding this issue, and Ezequiel Pedroza was a very honest and credible witness. As did other year-round employees, he awaited recall after the customary three-week layoff. When it did not come, he inquired for work through the raiteros every morning at the border. That he avidly sought Kawano employment is evidenced by the fact that he continued to reapply in the years 1977, 1979 and finally 1980, although rejected each year. There he saw the foreman who told him only the "boss" could give him work. The "boss" was absent. Similar claims by respondent concerning application in 1977 are equally without foundation.

Respondent also claims Mr. Pedroza guilty of willful idleness during layoff periods at Robert Hall, a claim disputed by Pedroza's work history and testimony. Interim employment at Sam Vener, Salyer Land Co., Chula Vista, Singh, Avila, Sun West and North County Growers testifies to his industriousness. Of

particular interest is his North County employment, for Ezequiel Pedroza was in his sixties and lemon work is arduous. Further proof of Mr. Pedroza's good faith job search is the bus trip he made to Corcoran in the Fresno area. Having traveled this considerable distance and visiting both ranches and union halls, he found the rumor of available work was false. These Robert Hall layoff periods, then, were not wilfully spent in idleness but in good faith efforts to find employment.

Ironically, respondent then chooses to claim this same Robert Hall employment as substantially equivalent. It is hard to equate insecure seasonal work at one ranch with fulltime year-round employment at another. In particular, Robert Hall's layoff periods were hard to anticipate for the crop was flowers, not vegetables; the seasons varied from year to year. Finally, his actual work period there was for only seven months in a two-year span.

Finally, respondent questions omissions concerning employment at Singh and Avila from the General Counsel's calculations. It is noted that the General Counsel's specification does reflect the stipulations made during the hearing concerning these amounts. As indicated in the spec for the fourth quarter, 1980, no net gross backpay is sought. For the fourth quarter, 1979, although the total quarter interim earnings is greater than the total quarter gross, nevertheless, Pedroza is due the $506 claimed for he had gross backpay in December while no interim earnings.

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MARIA ELENA PEREZ -- NO. 35

Maria Elena Perez had been seasonally employed at Kawano since the 1973 harvest. As such, the backpay liability period for Mrs. Perez is from June 4 to January 28 with the November 14, 1980 cutoff date.

A very credible witness, Mrs. Perez testified to looking for Kawano employment in 1976. Each Monday through Thursday she visited the border raiteros and asked for work. Although these efforts produced other work in the years following dismissal, her yearly Kawano inquiries from 1976 through 1979 were fruitless. However, work at farms such as San Bernardino, Cacho, SFK, Vista, Singh, Sea Breeze, San Vener and Cozza was sought and secured. After the resinstatement offer from Kawano was received, Maria Elena Perez returned to work there.

Respondent makes several claims concerning Mrs. Perez' backpay, two of them answered many times previously. The first, that 1975 was an unusual year, and therefore should not be used as the standard for estimates, is simply unsupported by the record. Equally unsupportable is the claim that the ALRB acts unlawfully by treating expenses as a deduction from gross earnings when no interim earnings. The Board's procedure, however, is well-founded in policy and effectuates the purposes of the Act.

Respondent also questions the extent of Mrs. Perez' disability period in 1979 and 1980 (because of surgery). It is the ALO's determination that this disability is properly reflected in the General Counsel's specification based on Mrs. Perez' credited testimony.

Yet another group of issues are raised concerning the computation of Maria Elena Perez' earnings at Singh and Sea Breeze in the years 1976, 1977 and 1979.

Discrepancies appear to exist. Three of these issues concern work at Harry Singh. Respondent first claims that Mrs. Perez worked there in November of 1976 and this figure is missing in computation. However, in her testimony Mrs. Perez made the correction that she did not work for Singh at all in November of 1976, but in 1977. Next, respondent makes computations concerning this 1977 employment that are somewhat inflated. According to the uniform testimony of other workers, the average number of days worked in a week at Singh would be five, while the expected pay from Singh would be $23 a day (from which was deducted a ride payment). Mrs. Perez testified to working for two weeks. Therefore, her estimated earnings from Singh in November of 1977 are $230. The third Singh issue concerns the fourth quarter of 1979. There is obvious discrepancy between the $625 estimated by respondent and the $102 figure presented by General Counsel. Again, according to Mrs. Perez' testimony, she worked for about one month. Estimations for 20 days of work give her an interim earning of $460, which I conclude is the appropriate amount to use to arrive at the net earnings.

The disputed Sea Breeze computation concerns 1977. Mrs. Perez, uncertain of exact dates, estimated she worked there for "approximately one month." Applicable NLRB and ALRB precedent establish that the discriminatee shall be given the benefit of the doubt and I accordingly, accept and adopt a 20-day work period. At

$25 per day, this interim employment would have earned her $500. Each of these amounts should be deducted from gross wages for the respective period.

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JESUS RAMIREZ -- NO. 36

Jesus Ramirez' backpay claim was treated differently by the parties because he was ill (apparently terminally) in the hospital and unable to testify. Moreover, his prior Kawano employment history is unclear since he did not testify at the underlying proceeding. General Counsel's liability period is from July 10 to January 21, based on Ramirez' 1975 Kawano hours with a cutoff of December 26, 1978. Ramirez left his North County Growers employment on that date due to illness and essentially retired from work then. (In 1982 he was 70 years old.)

The primary issue raised by respondent is that his employment at North County Growers should be treated as substantially equivalent thereby cutting off backpay liability. While it is true that Ramirez was able to work two North County lemon seasons, he nevertheless experienced month-long layoff periods during the summer and fall. Moreover, as discussed in Juan Rios' claim, North County Growers is an employer with an entirely different crop and season than Kawano. Working both is not incompatible. Indeed, many Kawano workers in fact did both. I conclude that North County Growers is interim, not substantially equivalent employment, and Ramirez is entitled to net backpay during the extended North County Grower layoffs as well as his $1.50 daily ride subsidy.

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JUAN RIOS -- NO. 37

Juan Rios was one of those several discriminatees such as Jose Arroyo and Martin Conriquez who split his work year between the North County lemon harvest and those shorter seasons, such as tomatoes or strawberries, which filled the long summer layoff. The 1975 season was his first at Kawano. In November 1975 when North County's season commenced, he returned there.

As a seasonal worker, the backpay liability period for Juan Rios is from June 8 to November 14, with a cutoff in 1980. General Counsel's specification accurately notes that no liability is sought for the time in 1978 that Juan Rios spent in Mexico. Although the specification reflects all stipulations made at the hearing to Mr. Rios' North County earnings, respondent has questioned why the stipulated sum of $386.04 for the fourth quarter of 1976 is missing. Apparently, General Counsel in reviewing the earnings allocated for this quarter has determined them to be outside the liability period (beyond November 14). The General Counsel's allocation appears reasonable and appropriate. Therefore, the ALO is following the General Counsel's determination.

Respondent makes three claims in denying Mr. Rios's entitlements. The first is that since 1976 was Juan Rios' first and only employment at Kawano and because it was of a seasonal nature only, he had no reason to expect further employment there. However, Kawano had been the ranch he chose for seasonal work in 1975 and there is no reason why he would not have chosen to work there again. Indeed, Kawano and North County Growers employment were seasonally compatible, permitting ten or more Kawano workers to continue both

employments. Moreover, Rios' testimony during the hearing was that he did indeed apply for work at Kawano during the years following the 1976 dismissal and was denied it, both by Oscar Sanabia and Felipe Castillon. Respondent's assertion that he has no viable claim is also contradicted by the fact that in 4 ALRB No. 104, he was indeed found to be one of the discriminatees and, therefore, entitled to the make-whole remedy.

Secondly, respondent claims that the employment found at North County was substantially equivalent and full-time. On the contrary, North County offered simply a different season. Other than the single year of 1977, Juan Rios' North County work has not been full-time, nor do the lemon seasons conflict with those at Kawano (although they do overlap). Again, since agricultural work involved different seasons, hours and layoffs, interim employment should not be considered substantially equivalent. The North County lemon harvest did not constitute employment better than the seasonal job at Kawano; it was simply a job during a different season.

Thirdly, respondent questions Mr. Rios' idle periods, claiming he did not look for other work but simply waited a North County recall. The credible testimony of Juan Rios contradicts this assumption, giving details of his good faith job search at ranches such as Los Diablos, Martinez and Yanicura in addition to Kawano. General Counsel's amended specification accurately reflects Rios' backpay entitlements with the modification for the $1.50 ride subsidy without the excess commute expenses.

VICENTA RIOS -- NO. 38

The 1975 season was Vicenta Rios' first at Kawano. The backpay liability period for this seasonal worker is from July 30 to January 22 with the November 14, 1980 cutoff. General Counsel's specification accurately reflects all stipulations concerning interim earnings, particularly those gained at Harry Singh and Sea Breeze.

Respondent first raises the issue that Vicenta Rios as a first time seasonal worker should have had no expectation of continued employment at Kawano, a conjecture that has been raised previously. Again, this is simply conjecture; rather, as she completed her first season there, she wanted to, as she so testified, follow it with others. In fact, solid evidence for this expectation is found in her credited testimony that in 1976 she applied at Kawano three times and twice in 1977, persevering despite the local knowledge of Kawano's policy against hiring those from Tijuana. Finally, when the letter of reinstatement was received, Vicenta Rios returned to Kawano and was still there at the time of the hearing.

In an attempt to bolster this claim of Mrs. Rios' limited expectations, respondent produces a contrived elaboration concerning tomato and strawberry harvests in 1977. Mrs. Rios, an experienced agricultural worker able and willing to work in the years disputed, could certainly have performed harvesting work at Kawano whenever it might have been offered. There was employment available year-round at Kawano at that time, and whether it was strawberries, tomatoes or cauliflowers to be harvested, she could have done so.

Respondent's second claim is that Mrs. Rios' periods of idleness were willful. On the contrary, her testimony as to good faith job search efforts in each of the years is credited and accepted. In addition to the visits to Kawano previously mentioned, Vicenta Rios visited ranches at Ojai Mesa and other areas near the border, asked raiteros for both work and rides, and visited the union hall for dispatches. She was not the only one of the discriminatees to be discouraged by the various ranches she visited.

The third claim, that Mrs. Rios' work at American Foods/Sea Breeze constituted substantially equivalent employment, cannot be accepted, for layoff periods there were equally substantial. As previously stated, interim employment should not be considered substantially equivalent where agricultural work with significant layoff periods is involved. Layoffs from Sea Breeze were filled with job searches and irregular periods of employment at Singh.

Finally, respondent makes a totally uncorroborated claim concerning possible interim earnings in 1980. Without knowledge of employer, place, dates or even quarter, respondent estimates Vicenta Rios might, while picking cucumbers, have earned $1,800, which is conveniently located in a third-quarter liability period. In fact, Mrs. Rios was referring to the brief period in early 1980 when she worked for Sea Breeze (a/k/a American Foods; a/k/a Puerto Blanca; a/k/a California Leasing) picking cucumbers, which is reflected in General Counsel's Amended Specification. Other interim earnings at Harry Singh have also been added to General Counsel's Amended Specification, which accurately reflects the interim earnings. Additional interim earnings sought by respondent are unwarranted.

Mrs. Rios, as the other discriminatees, is entitled to the $1.50 daily ride subsidy, but not the ride costs set forth in the backpay specification.

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JUAN N. RODRIGUEZ -- NO. 39

Rodriguez had been employed by Kawano since 1969 as a seasonal worker. His backpay claim is for the April 26 to January 20 period that he had worked at Kawano in 1975. After his 1976 layoff he sought re-employment with Kawano in both April and May 1976.

Rodriguez found steady, year-round work at Irvine Company. The parties agreed that it became substantially equivalent work at some point and further stipulated that $1,500 was a reasonable backpay entitlement.

Upon reviewing Rodriguez' work history, I concur. Accordingly, Rodriguez' net backpay shall be $1,500.

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MIGUEL RODRIGUEZ -- NO. 40

Miguel Rodriguez had been employed by respondent since 1966. He became a year-round worker in 1971 and years thereafter. The backpay period for Rodriguez is from February 15 to January 21 with the customary three-week layoff period for year-round workers. Cutoff is November 14, 1980.

Respondent raised one principal issue concerning substantial equivalent employment, and one issue concerning when the backpay period should commence. Rodriguez testified that normally he would be recalled to work, "Near March." Respondent seeks to reduce the first quarter backpay entitlements by one third based on this testimony. However, as indicated earlier, the year-round workers testimony has been consistently uniform that there was generally a three-week layoff period occurring between the end of January to the end of February before they were called back. Rodriguez' testimony is consistent with that. The ALO-determined liability period is also consistent with this testimony.

The principal issue raised by respondent is that Rodriguez' interim employment at International Decoratives ("Eucalyptus") was substantially equivalent. Rodriguez found the International Decoratives employment in November 1976. He remained working there until July 1977 when he lost his ride there. He was not able to return until three months later in November 1977. Rodriguez did find other interim work closer to the border. Upon return, he continued to work there until July 1979 when he was subject to an extended layoff (Rodriguez lost his seniority as the result of his ride loss and inability to get to work). He returned to work in the

fall of 1979 and continued until March 1980 when he was again laid off until August 1980. When the reinstatement offer was made in late 1980, Rodriguez chose to stay with International Decoratives.

In addition to the extensive layoff periods while employed at International Decoratives, Rodriguez worked an eight-hour day, five days a week.

As discussed in more detail previously, steady interim employment such as International Decoratives, where the worker is still subject to extensive layoffs while working considerably fewer hours than at Kawano, does not amount to substantially equivalent employment. This is even more true for the year-round workers who worked a steady 11-plus months a year. (Five or more of those months he worked six days a week, nine to ten-and-one-half hours a day.)

The parties stipulated to two disability periods, the month of August, 1979 while Rodriguez was in Mexico, and one-and-a-half weeks in early 1980 because of the Tijuana flood.

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FELICIANO RUBALCABA -- NO. 41

Feliciano Rubalcaba was a seasonal worker at Kawano first employed there in 1973. The backpay specification reflects a backpay period from August 13 to January 28, the dates he worked in 1975.

Respondent raises three issues regarding Rubalcaba's backpay claim. The first is that he found substantially equivalent employment in his Encinitas floral job starting about December 1978 (November 27, 1978). After working at a number of interim employers up to November 27, 1978, Rubalcaba found steady year-round employment with Encinitas as an irrigator until May 2, 1980 when he lost his ride. (It is a five-hour bus ride there.) While at his Encinitas job on October 8, 1979, Rubalcaba suffered a back injury at work that prevented him from working for one week. He returned to work for the next six months until he lost his ride.

As discussed previously, respondent's effort to require any steady interim employment to be construed as substantially equivalent is contrary to applicable legal precedents, factually unsupported and not in furtherance of the policies of the Act. I decline to cut off backpay liability because of the Encinitas floral employment (to the extent the job results in equal or greater interim earnings respondent's liability will be accordingly reduced).

Second, while on a week's vacation just prior to losing his job at Encinitas, Rubalcaba reinjured his back again. He was required to wear a back brace. Instead of seeking further employment in agriculture, Rubalcaba enrolled in a one-year C.E.T.A.

training program to become a machinist. Although he did not continue to actively look for agricultural jobs while in the C.E.T.A. program, Rubalcaba did put in applications to non-agricultural work. One such application led to his obtaining a school custodian and gardener's job in November 1980. When Rubalcaba received his reinstatement offer from Kawano in late 1980, he chose to remain with the school district job.

Respondent claims that the back injury along with the C.E.T.A. program enrollment should disqualify Rubalcaba from any further backpay entitlements. I do not concur. Although wearing the back brace, Rubalcaba was enrolled in the training program and making application to non-agriculture work. Neither factually nor legally is there a basis for disqualifying Rubalcaba from backpay during this period. Rubalcaba testified that although instructed to see the doctor every other day, he in fact only saw him once a month and wearing the brace did not prevent him from working in the machinist training program. Rubalcaba is entitled to backpay until November 14, 1980, including the $1.50 daily ride subsidy.

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FRANCISCO RUBIO VASQUEZ -- NO. 42

Francisco Rubio, a year-round worker of Kawano, started there in 1970. His backpay liability period from February 15 to January 22, like that of other year-round employees, allows for the customary three-week layoff period. Because he secured substantially equivalent employment at U.S. Elevator on November 3, 1980, the liability period is cut off on that date.

General Counsel's specification concerning Francisco Rubio Vasquez' gross wages is determined to be reasonable, appropriate and accurate. Respondent's calculations to reduce the backpay liability because Vasquez was a horse cultivator and irrigator, like similar claims for the other irrigators, are lacking substance and factual support and are rejected.

Francisco Rubio proved to be an extremely credible witness; even respondent admitted he "seemed candid." His experience in 1976 was similar to that of other year-round discriminatees. When the expected February recall did not follow the customary layoff period, he went to the Kawano office with others to get his job back. The discouragement received there was followed by similar experiences at other ranches, for they got refused "even from bosses we knew," because of their association as union activists.

He testified to diligent job search both at the North County and South County/Ojai Mesa ranches. It was not until International Decorator hired him in October 1976 that he was given any degree of steady employment.

It is this work at International Decorator that respondent claims to be substantially equivalent employment. Unfortunately,

there were still many layoff periods and Mr. Rubio's work history there cannot equal that at Kawano. As previously discussed, it has been determined that interim employment cannot be considered substantially equivalent where agricultural work with considerable layoff periods is concerned.

The other issue raised by respondent has also been discussed previously. Respondent claims that since Francisco Rubio had worked at Kawano as an irrigator and horse cultivator, changes in the irrigation system would have affected his employment in the following years. But Mr. Rubio was equally experienced in performing other jobs that were later available. At Kawano he also harvested cauliflower, picked tomatoes, cultivated strawberries, pulled stakes and performed whatever jobs needed to be done. As for those periods during the year when his hours were extraordinarily long while working as an irrigator, there were also several months during the year when harvesters worked equally long or more than did irrigators. There is no factual basis for making any adjustment to the rebuttable presumption established in General Counsel's Specification. Like the others, Rubio is entitled to his $1.50 daily ride subsidy.

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GERALDO VASQUEZ RUBIO -- NO. 43

Geraldo Vasquez Ruiz worked for Kawano while a student during his Eighth and Ninth Grades for the summers only. He had obtained the work through his uncle, Refugio Vasquez, a long-time Kawano worker (who later became a very active and vocal UFW supporter). His backpay claim is for the period from June 12 to September 11. The parties stipulate that the cutoff is at the beginning of 1978. Respondent's primary issue raised is that Ruiz had no expectation of continued work with Kawano for the 1976 and 1977 seasons. Respondent bases this contention on the fact that Ruiz dropped out of school after the 10th Grade in June, 1976 and therefore the employment would no longer be just "summer" employment. Respondent's argument borders on the absurd.

Ruiz credibly testified to seeking work and being denied work with Kawano in both June 1976 and June 1977, two normal hiring months there. Although he looked for work he was unable to find any during the summer 1976, but did during the following summer. While Kawano's job may have been Ruiz' "summer" employment during his school breaks, it was a normal seasonal employment period for Kawano. Respondent does not dispute that others (illegals) were hired during this period and later laid off, in both 1976 and 1977.

Ruiz, absent discrimination, would have been entitled to, wanted to and would have been employed at Kawano during the Summer, 1976 and 1977 seasons.

Respondent also objects to the amount of excess commute expenses set forth in the specification for third quarter 1977. The amount, $245, reflects an estimate of daily round-trip costs from

the Border to Oceanside (approximately 100 miles total).

However, in view of my finding that the $1.50 daily ride subsidy should be used in lieu of the difficult chore of accurately calculating excess commute expenses, it is unnecessary to make a determination. Ruiz is entitled, as the others, to $1.50 daily commute rather than the amounts set forth in the specification.

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JOSEPHA RUIZ -- NO. 44

Josepha Ruiz, a year-round employee at Kawano, first worked there in 1974. Her liability period, which like that of other year-round employees allows for the customary three-week layoff period, does not start in 1976 but on July 22, 1977. The cut off date is November 14, 1980.

Mrs. Ruiz was not dismissed at the same time as the other discriminatees at the end of the 1975 harvest. Instead, she was retained until the end of the strawberry season in June 1977. She clearly testified this was a dismissal, not a voluntary leave. Her expectation of continued work with the tomato harvest was strengthened when the foreman's wife, Luisa Rodriguez, said she would be recalled in a week.

Respondent attempted to claim Josepha Ruiz neglected to respond to the recall. Mrs. Ruiz' credited testimony denied this. In the underlying preceeding, 4 ALRB No. 104, she told of returning with Javier Acosta to the ranch wearing a union button. Refused employment, she became one of the discriminatees whose claim was litigated and prevailed.

That Josepha Ruiz is an industrious woman not given to willful idleness is evidenced by her work record at Kawano. From May 1974 until her dismissal in June 1977 she worked fulltime without breaks, even on Sundays. When the offer of reinstatement at Kawano was made, Mrs. Ruiz returned there.

Respondent claims that Mrs. Ruiz' Sea Breeze employment prior to the offer of reinstatement was substantially equivalent, terminating backpay liability. Respondent's assertion is meritless,

for four separate layoff periods totalling 13 months occurred during the 26 months she found Sea Breeze employment. This is hardly equivalent, offering still another example as to why interim employment should not be considered substantially equivalent where agricultural work with layoff periods is concerned.

Again, to bolster this claim respondent cites the testimony of Dave Pattison as to work availability there. However, Mrs. Ruiz, in testimony concerning her employment there, explained that in 1978 she was recalled by Sea Breeze only for the tomato season and then laid off.

Finally, respondent claims Josepha Ruiz is guilty of willful idleness during these same layoff periods. In her very credible testimony, Mrs. Ruiz gives good evidence to the contrary. Good faith job search efforts were made in applications to the Kosaka, Yanichura, Singh and Bobbi/Egger & Ghio ranches. In her 1980 search for work, Josepha Ruiz also visited the Piper and Bobbi ranches, the union hall, and raiteros at the border, specifically Avila and Singh. She even made a trip once more to the Kawano ranch with Jose Aleman and Javier Acosta a short time before the order to reinstate was issued, where they were told there was no work for them.

Mrs. Ruiz is entitled to the backpay liability period of a year-round worker less the leave of absences she took between February 25 to March 7, 1979 as reflected in the amended backpay specification.

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EMMA SALDANA -- NO. 45

Emma Saldana was employed as a seasonal worker with Kawano starting in 1972. Prior to becoming an agricultural worker she had been a nun for ten years. Her backpay claim as reflected in the specification is for July 11 to January 21, the dates she worked in 1975. Her liability cutoff date is November 14, 1980.

Respondent raises three issues concerning Miss Saldana's claim. The first is that the specification does not include the week of earnings at American Food (Sea Breeze) that she testified to. I concur with respondent that an additional $100 interim earnings (five days x $20) should be added to the fourth quarter, 1976. Respondent once again objects to the use of the January, 1976 liability period as being unwarranted given the December termination dates in prior years. However, as previously discussed, General Counsel's use of the January period for the 1976-80 years is fully corroborated by respondent's employment history during those years.

Finally, respondent misconstrues Miss Saldana's use of "rest" after her Egger and Ghio employment and layoff as a basis for denying her any backpay liability thereafter. As discussed earlier, such interpretation is unwarranted. Miss Saldana was a very credible witness and her work history reflects very active efforts to obtain interim employment.

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JOSE SANDOVAL -- NO. 46

Jose Sandoval was first hired by Kawano as a seasonal worker in 1973. In that year he worked from April 19 until September 6. In 1974 he worked from June 20 until August 15. In 1975 he started June 4 and worked until July 15 when he suffered a nose hemorrhage which required him to miss four days of work. When he returned he was denied work by his foreman, Dagnino. In August, he went to Keene, California to train to become a UFW organizer. He returned to San Diego County where he organied until he returned to agricultural work in May 1976. He returned to Kawano in May 1981 pursuant to the reinstatement offer.

General Counsel made a motion to extend the liability period from July 16 to September 4 based upon Sandoval's average work history from 1973-75. I concur with General Counsel that Sandoval's work history at Kawano, coupled with Kawano's refusal to rehire in July 1975 warrants the adjustment. Accordingly, Sandoval's liability period is June 4 until September 4 with a cutoff of September 4, 1980.

The parties stipulated that Sandoval suffered a disability period starting June 24 for the 1976 season as a result of an incarceration. Sandoval also suffered a disability period from July 1 to July 24, 1980 when he was in Mexico. In view of the extended liability period into September, Sandoval's earnings from Sea Breeze and Robert Hall have been posted in General Counsel's amended backpay specification.

Sandoval, as the others, is entitled to the $1.50 daily ride subsidy as well.

DOMINGO SANTOS -- NO. 47

Domingo Santos was first employed by Kawano as a seasonal worker in April 1969. He generally worked each year from April until the end of November or beginning of December. However, in 1975, Santos' wife became ill and he left work on October 18 to care for her. General Counsel seeks to extend Santos' backpay liability period to December 1 based on his prior Kawano work history and his unusual shortened season in 1975. I concur with General Counsel that it would be appropriate in view of Santos consistent prior Kawano work history to do so.

Respondent raises several issues that it has previously raised, been discussed and rejected. Mr. Santos was an irrigator for periods of time with Kawano. Respondent argues that Santos had unusually high hours in 1975 as a result and that he would not have been rehired in subsequent years as a result of the change to the drip irrigation system. Both issues have been earlier considered and analyzed and respondent's contention found wanting and accordingly rejected. Respondent also objects to interim expenses being deducted in quarters where there were no earnings, an issue also previously resolved against respondent.

Respondent also claims that Santos voluntarily quit his job at International Decorative in May, 1977 and did not find subsequent interim work until June. However, Santos testified that he was laid off for wearing his UFW union button. Respondent's claim is not supported by the record. Respondent also claims that Santos should be denied backpay for the portion of the fourth quarter, 1978 after he voluntarily quit TMY on October 3, 1978. However, Santos'

interim employment record for 1978 was extensive, including more than $3,000 with labor contractor Avila for various periods of time including fourth quarter, 1978. Accordingly, it would be unwarranted and inappropriate to cut off Santos as of October 3 for the fourth quarter, 1978.

General Counsel has stipulated to a cutoff date of October 31, 1980 based on Santos' leaving for Mexico on November 1. Avila and NIF earnings were added to the amended specification along with an $80 bus fare and $24 monthly and Green Giant job search expenses which is warranted.

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JOSE LUIS VASQUEZ -- NO. 48

Jose Vasquez, the son of Refugio Vasquez, was first employed with Kawano in 1973 as a seasonal worker. He worked from July 2 to September 7 as well as October 11, 1973; June 27 to September 26 as well as October 3, 1974 and June 18 to September 12 as well as September 18, October 23 and October 25, 1975. During this period, Jose Vasquez was a high school student at Montgomery High School in Imperial Beach where he graduated on June 16, 1977. In June 1976 and June 1977 he sought work again with Kawano but was denied any. (In 1976 he returned to ask on five separate occasions.)

As with Hererro Ruiz, respondent contends that Vasquez had no continued expectation that he would obtain summer employment in subsequent years with Kawano. Kawano's argument has even less merit here than with Ruiz. Vasquez' prior work history shows that he in fact worked for Kawano at other than summer vacation dates. He also attended school in both 1976 and 1977, for two years that backpay is sought. I concur that the appropriate backpay period for Vasquez is June 12 until September 12 and that his cutoff date is December, 1978 when he obtained substantially equivalent non-agricultural employment.

From February 1978 to September 1978 Vasquez was attending a C.E.T.A. training program in building maintenance at American Business College in San Diego. As discussed previously, Vasquez' enrollment in this C.E.T.A. training program did not disqualify him from backpay. He did not remove himself from the job market, ultimately finding non-agricultural work later that year and left

the C.E.T.A. program.

Respondent also claimed that commute expenses to North County Growers, one of Vasquez' interim employers, was not greater than Kawano's. However, the consistent evidence presented was that Fallbrook was a considerably greater distance than Kawano's ranches and cost more to commute to. However, in view of the ALO's determination to provide the $1.50 ride subsidy in lieu of the excess ride costs it is unnecessary to make further determinations as to the appropriate amount.

General Counsel has also added additional North County Grower earnings to the amended specification.

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REFUGIO VASQUEZ -- NO. 49

Refugio Vasquez was first employed by Kawano in 1973 as a seasonal worker and raitero-driver. In 1975 he worked from June 8 until his layoff on January 22, 1976 which are the liability dates set forth in the backpay specification. Vasquez is also one of the "Cherry Tomato Five." Although General Counsel has sought to extend his liability cutoff date to November 14, 1980, I have concluded that the Cherry Tomato Five's liability cutoff date has been determined to be January 3, 1978 based on ALO LeProhn's decision, affirmed by the Board in 7 ALRB No. 16. Vasquez had also been rehired by Kawano from July 17, 1977 until January 3, 1978 but was paid at only $2.90 an hour and not his prior rate of $3.20 an hour. Therefore, Vasquez is entitled to be made whole for the July, 1977 to January 1978 period at the $3.20 rate in addition to the $1.50 daily ride subsidy.

The issues raised by respondent regarding Vasquez' claim have been considered previously and can be briefly summarized. Respondent objects to General Counsel's inclusion of Vasquez' last driver's ride subsidy and profit in the backpay specification. As indicated earlier, I find that lost driver's profit should not be included as part of the raitero's make-whole remedy. Respondent also objects to the excess ride subsidy sought for Vasquez while working for other North County area growers. In lieu of the excess commute costs (the evidence presented was that commute expenses were greater to other North County ranches than to Kawano's), and as part of the backpay wage entitlement, I have instead included the $1.50 daily ride subsidy for all the discriminatees, including the

drivers.

Respondent also contends that 1975-76 was an "unusual" year because of the extended January harvest. Vasquez should not receive any backpay for each January. However, as indicated earlier, respondent's contention is contrary to the evidence presented regarding the 1976-80 January harvests.

To summarize, Vasquez is entitled to backpay from June 8 to January 22 with a cutoff of January 3, 1978. He is entitled to backpay at the $3.20 rate he was previously paid in addition to a $1.50 daily ride subsidy. General Counsel's amended specification otherwise sets forth the added interim earnings for Vasquez.

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FELIPE DE LA VEGA -- NO. 50

Felipe de la Vega was first employed as a seasonal worker by Kawano in 1973. In 1975 he worked from May 12 until January 22, 1976, the dates set forth in the backpay specification as the liability period. General Counsel establishes October 11, 1978 as the cutoff date based on de la Vega's substantially equivalent employment with Aqua Spa Co.

Respondent raises several issues regarding de la Vega's backpay claim. First, respondent asserts again that the liability dates should not include January (respondent suggests June 15 to December 15) because the January, 1976 work was "unusual." As indicated previously, January harvesting may have been "unusual" prior to 1976, but it wasn't subsequently. Respondent's assertion is without merit. Second, respondent claims de la Vega voluntarily quit an interim employer (San Diego Galvanizing Co.) in April 1976, and therefore all his subsequent backpay claims for 1976 should be denied. Respondent's position here is also without merit. The San Diego Galvanizing Co. employment was for two weeks, several months prior to the liability period. De la Vega credibly testified that he was laid off and did not voluntarily quit.[54/] In either case, he immediately found another interim employer, North County Growers, for the next two-and-a-half months. De la Vega credibly testified

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54. Respondent sought to introduce a note or letter from a San Diego Galvanizing Co. secretary stating that she was informed that De la Vega voluntarily left and there was additional work still to be done. De la Vega denied this. The double hearsay document was not probative of De la Vega's backpay entitlements because the job was outside the relevant liability period, there was no indication how much longer the job was to last and De la Vega found immediate employment for the next two-and-a-half months.

to looking for both agricultural and non-agricultural work after his North County Growers layoff. Although he went to the Border four times a week he was unsuccessful in finding work until late November 1976 when he was rehired by North County Growers.

Respondent next claims that de la Vega's work from May 1977 until he voluntarily left in June 1978 with Kaylien Door Co. was substantially equivalent thereby cutting off backpay liability. While the Kaylien job was a steady employer it was a job working in fiberglass. De la Vega credibly testified that the job demands (working faster than he was able to) combined with the fiberglass made him decide to leave. However, within one week, de la Vega found another interim employer which he stayed at for a short time before returning to agricultural work for a few months. General Counsel has allocated a one-week disability period in the backpay specification to account for the one-week period de la Vega was not employed.

In October 1978 de la Vega was hired through a friend to a job at Aqua Spa that General Counsel stipulated was substantially equivalent as of October 11, 1978. He is also entitled to the $1.50 daily ride subsidy.

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IDLEFONZO VILLA -- NO. 51

Ildefonzo Villa, a year-round employee, was first hired by Kawano in 1972. Payroll records presented at the hearing and stipulated to show that but for one week he worked continuously from January 4, 1973 to the day of his layoff on January 28, 1976. Mr. Villa, a very credible and impressive witness, testified that it was Felipe Castellon who told him he was dismissed for there was no more work. When Mr. Villa asked when he should return, Castellon said he was not sure ("Who knows?").

Thus, Ildefonzo Villa, as did all the other year-round employees, assumed that this was just another of the customary end-of-season layoffs. Nevertheless, Ildefonzo Villa, the father of eight children living at home, started to look for work in February. During this period, Mr. Villa testified to visiting the places where the raiteros and foremen met, the union hall, and the employment office.

Respondent once again raises the claim that the discriminatee neglected to make any application at the ranch, formal or informal, to return to Kawano until May. Once again, no standard means of application existed. As soon as Oscar Sanabia (whom respondent conceded was on vacation for part of March, not laid off) returned to the border in April, Ildefonzo Villa asked him for work. He testified that after the fourth or fifth refusal he lost hope. However, he did travel to the Kawano ranch in 1977 and 1978 to be refused again, contradicting respondent's claim to the contrary.

The second issue raised by respondent, also raised and answered several times previously, is that because Ildefonzo Villa

had been an irrigator, his job would no longer have existed after 1976. Actually, Mr. Villa had irrigated for one season only, that in 1975. While at Kawano, he had also worked with strawberries and "everything to do with tomatoes," staking, picking and planting. He performed all types of agricultural work in the years following the 1976 dismissal and could have done so at Kawano had he been given the opportunity.

Respondent's third claim, of willful idleness during the second and third quarters of 1976, is refuted by Ildefonzo Villa's employment at Jose Martinez, Sun Valley Harvest and Chula Vista Farms during that period. Although the length of employment was not as long as he desired, that difficulty must ultimately fall on respondent's shoulders, not Mr. Villa's. Nor can he be faulted for not working at North County Growers. Mr. Villa, a 67-year-old man, testified he had never worked with lemons before. As explained previously, this is rigorous work usually performed by younger men.

Finally, respondent questions three items on the General Counsel's specification, concerning TMY interim earnings, a trip to Texas in the third quarter of 1979, and a period of work missed after the Tijuana flood at the beginning of 1980. The ALO has noted that all these items are already posted and no change is warranted. The specification is accepted as correct.

Ildefonzo Villa, then, is entitled to all backpay due him as a year-round employee from his 1976 dismissal until the cutoff on November 14, 1980. The extent of the liability period, from February 21 to January 28, reflects the customary end-of-season three-week layoff period.

ANTONIO ZAMARIPPA -- NO. 52

Antonio Zamarippa, a seasonal worker at Kawano, was employed yearly for periods of six to eight months starting in 1973. In determining the extent of his liability period, General Counsel sought to modify and extend the term to include January. After Mr. Zamarippa's 1975 December leave, which was occasioned by a family emergency, he returned in January to complete the harvest but was refused. Respondent argues once again that this particular season was unusually long, a claim that has been refuted.

Therefore, the ALO has granted General Counsel's motion, determining that the backpay liability period for Antonio Zamarippa extends from May 1 to January 20. As Antonio Zamarippa was one of those men known as the "Cherry Tomato Five," the cutoff date for this liability period is January 3, 1978, the date stipulated to during the hearing.

Respondent raises once again the issue that "no proper application for work was made" at Kawano in 1976 and in 1977. Despite the fact that no such means of application existed, Mr. Zamarippa credibly testified that in addition to talking with Felipe Castellon in January, he visited the Kawano ranch three times in 1976 with Refugio Vasquez. In June of 1977 he again asked for work at Kawano and again was discouraged. This is ironic, for it was in the very next month that he was hired as part of an agreement between the ALRB and Kawano at the same time as the 3 ALRB No. 54 order. Except for the rainy weather in the following January, Mr. Zamarippa would have continued working for Kawano; indeed, when he again applied for his job he was refused.

Respondent raises issues concerning calculations of interim earnings on General Counsel's specification. All earnings stipulated to, particularly those at North County and Singh, are posted on the specification and are correct. No change is warranted.

All other claims raised by respondent occur outside the liability period and need not be considered in view of the January 3, 1978 cutoff date.

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MONICA ZAMARIPPA -- NO. 53

Monica Zamarippa was first employed by Kawano as a seasonal worker in 1975. She had worked the two prior years in strawberries. Her backpay liability period set forth in the specification is July 11, 1975 to January 20, 1976, the dates she worked in 1975.

Monica Zamarrippa's claim does not commence, however, until July 11, 1978. In June, 1976 she had heart surgery that required a one-year recuperation period. From June, 1977 to June, 1978 she took factory jobs and less strenuous jobs. However, starting in June, 1978 she returned to tomato picking again (at Skyline Ranch). Over the next year to year-and-a-half, she continued to do seasonal tomato harvesting, working with her husband who would help her lift the tomato boxes if they got too heavy.

Respondent raises two familiar arguments, the first regarding the "unusual" length of the 1975 tomato harvest season and the second, that Mrs. Zamarripa could not have had reasonable expectations of continued work after 1975, both of which have been previously discussed and rejected. Respondent's primary contention is that Mrs. Zamarippa is not entitled to any backpay because she was unable to lift heavy tomato boxes. Mrs. Zamarripa testified that when the boxes of tomatoes were too heavy to lift she would have her husband (or someone else) help her lift. Respondent's assertion that Mrs. Zamarripa was therefore unable to do the tomato harvesting work is without merit. There is no contention that she was unable to do the harvesting work (she in fact did from June, 1978 on) and that she did do harvesting work for Kawano when she returned in 1981 pursuant to the reinstatement offer. Rather,

Mrs. Zamarripa testified that if she had to lift she would have, but with her husband there, he preferred to do it. It is sheer conjecture and speculation by respondent that Mrs. Zamarippa would not have been able to perform the work required. That is not the basis on which to disqualify a worker from backpay. Moreover, absent discrimination her husband Antonio would have been working with her at Kawano and no doubt would have assisted her to lift boxes if necessary. Mrs. Zamarripa is entitled to backpay from July 11, 1978 until November 14, 1980 including her $1.50 daily ride subsidy.

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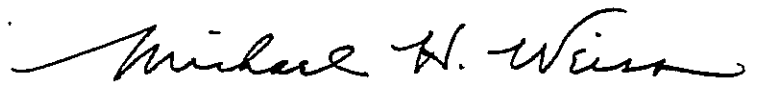
CONCLUSION

For the reasons set forth above, these are the recommended backpay claim determinations for the 53 Kawano discriminatees, including computations for ten representative discriminatees.

DATED: January 28, 1983



MICHAEL H. WEISS
Administrative Law Judge

APPENDIX I

GENERAL COUNSEL AND RESPONDENT'S WITNESSES

GENERAL COUNSEL WITNESSES

NAME	DESCRIPTION	DATE TESTIFIED	VOL. & P.#
ROGER SMITH	Field Ex'r-ALRB Re Gen.Coun.Backpay Spec.I	2/2/82 2/3/82	I:1-44 II:1-23
BARBARA DUDLEY	ALRB attorney re Gen. Coun.Backpay Spec.II	2/3/82	II:24-48
ELLEN SWARD	Former ALRB EE Field Ex'r who prepared work-sheets	2/5/82	IV:6-57
JAVIER ACOSTA	Discriminatee #1	2/10/82	VI:12
ANTONIO ALEMAN	Discriminatee #2	4/5/82	XXIII:67-90
JOSE ARROYO	Discriminatee #3	3/29/82	XVIII:39-70
CATALINA BARRIOS	Discriminatee #4	3/3/82	XV:33-74
RAMON BRAVO	Discriminatee #5	2/17/82	IX:67-107
MARTIN CONRIQUEZ	Discriminatee #6	2/26/82	XIII:67-97
MARIA LUISA DIAZ	Discriminatee #7	4/2/82	XXII:61-77
FELIBERTA ESCOBEDO	Discriminatee #8	4/1/82	XXI:106-157
PABLO DAVID FINK	Discriminatee #9	4/2/82	XXII:25-51
ELISA FLORES	Discriminatee #10	3/30/82	XIX:132-156
FRANCISCO GARCIA	Discriminatee #11	2/17/82	IX:1-66
GREGORIO GARCIA	Discriminatee #12	3/3/82	XV:8-33
JUAN GARCIA	Discriminatee #13	2/3/82	II:49-134
LUISA GARCIA	Discriminatee #14	2/24/82	XI:94-128
TERESA GOMEZ	Discriminatee #15	3/30/82	XIX:25-62
HILARIO VELOZ GONZALEZ	Discriminatee #16	2/26/82	XIII:4-26
JULIAN R. GONZALEZ	Discriminatee #17	2/24/82	XI:34-64
MARIO GUERRERO	Discriminatee #18	2/18/82	IX:107-139
LUIS CHAVEZ GUTIERREZ	Discriminatee #19	4/6/82	XXIV:52-113
HERMINIO VELA HERNANDEZ (deceased)	Discriminatee #20	3/29/82	XVIII:86-93

GENERAL COUNSEL WITNESSES

NAME	DESCRIPTION	DATE TESTIFIED	VOL. & P.#
IGNACIO HERNANDEZ	Discriminatee #21	3/1/82	XIV:87-151
JOSEFA HERNANDEZ	Discriminatee #22	3/30/82	XIX:63-132
AURELIO HIGUERA	Discriminatee #23	2/10/82	VI:105-150
JOSE ALEMAN JUAREZ	Discriminatee #24	2/11/82	VII:1-57
SILVERIA JUAREZ	Discriminatee #25	3/15/82	XVI:12-37
DELFINO LARAS	Discriminatee #26	4/2/82	XXII:1-25
FELIPE LUNA	Discriminatee #27	2/10/82	VI:62-104
MARIE MENDEZ	Discriminatee #28	2/25/82	XII:37-55
ANTONIO MENDOZA	Discriminatee #29	2/4/82	III:58-89
CARMEN ORTIZ MERCADO	Discriminatee #30	2/25/82	XII:8-37
JOSE LUIS MONTELLANO	Discriminatee #31	4/5/82	XXIII:22-66
MARTIN MORA	Discriminatee #32	4/6/82	XXIV:23-39
ANTONIO M. de ORTIZ	Discriminatee #33	2/24/82	XI:65-93
EZEQUIEL PEDROZA	Discriminatee #34	2/26/82	XIII:27-66
MARIA ELENA PEREZ	Discriminatee #35	3/1/82	XIV:48-87
JESUS RAMIREZ (Ill)	Discriminatee #36	4/7/82	XXV: 6-11
JUAN RIOS	Discriminatee #37	4/5/82	XXII:1-22
VICENTA RIOS	Discriminatee #38	(3/4/82 (4/6/82	XXIV:1-22
JUAN A. RODRIGUEZ	Discriminatee #39	4/7/82	XXV:1-6 (stip
MIGUEL RODRIGUEZ	Discriminatee #40	3/29/82	XVIII:8-37
FELICIANO RUBALCABA	Discriminatee #41	(3/16/82 (3/30/82	XVII:106-116 XIX:2-25
FRANCISCO RUBIO VASQUEZ	Discriminatee #42	3/31/82	XX:4-77
GERARDO RUIZ	Discriminatee #43	4/6/82	XXIV:39-52
JOSEFA RUIZ	Discriminatee #44	4/1/82	XXI:1-77
EMMA SALDANA	Discriminatee #45	2/25/82	XII:56-88

GENERAL COUNSEL WITNESSES

NAME	DESCRIPTION	DATE TESTIFIED	VOL. & P.#
JOSE SANDOVAL	Discriminatee #46	3/31/82	XX:1-41
DOMINGO SANTOS	Discriminatee #47	2/4/82	III:1-57
JOSE LUIS VASQUEZ	Discriminatee #48	4/1/82	XXI:78-106
REFUGIO VASQUEZ	Discriminatee #49	2/16/82	VIII:1-73
FELIPE de la VEGA	Discriminatee #50	3/1/82	XIV:2-48
ILDEFONSO VILLA	Discriminatee #51	3/16/82	XVIII:7-44
ANTONIO ZAMARRIPA	Discriminatee #52	4/5/82	XXIII:90-111
MONICA ZAMARRIPA	Discriminatee #53	2/11/82	VII:58-85

RESPONDENT'S WITNESSES

CAROL STILWELL	Respondent's Secretary and Bookkeeper	2/23/82 3/15/82 3/16/82	X:5-8 XVI:74-83 XVII:45-116
VIRGINIA FORSHEY	Secretary with Gray, Carey, Ames & Frye re Exhibits KK, LL, MM prepared	3/15/82 4/8/82 4/9/82	XVI:83-95 XXVI:93-108 XXVII:170-19(
DIANA R. ALFORD	Investigator re Interim Employer's records	4/7/82 4/8/82	XXV:34-65 XXVI:1-67
HARVEY BERGER	Investigator re Interim Employer's records	4/8/82	XXVI:68-97
GLEN IMOTO	Kawano irrigator foreman	4/9/82	XXVII:1-53
FRANK AVILA	Labor contractor	4/9/82	XXVII:54-122
DAVE PATTISON	Vice-President - Sea Breeze Co.	4/9/82	XXVII:122-17(
SYLVIA ARREOLA	Bookkeeper, Yuma, Az Citrus Co.	4/9/82	XXVII:191-20:

APPENDIX II

EXHIBIT WORKSHEET

APPENDIX II

EXHIBIT WORKSHEET

CASE NAME: KAWANO

CASE NO: 4 ALRB NO. 104 ~~BACKPAY PROCEEDING~~

.C.	RESP.	C.P.	OTHER A.L.O.	IDENT.	ADMIT or REJECT.	DESCRIPTION
1				2/1/82	2/1/82	"Moving Papers" - Initial backpa spec. & ALO Dec.,Bd & Ct.of Appe ~~Decs. & Ans.~~
2				2/2/82	2/5/82	Gen.Coun.Calculations of gross earnings for 53 discim'tees,##1-
	(1) A(2)			2/4/82	2/24/82	2 - W-2 statements for 1978 (A-1) - Sun West, Inc. ~~(A-2) - Piper Ranch~~
	(3)			2/4/82	Withdrawn	(A-3) - NIF Pay Stub.
	B 1-4			2/16/82	2/16/82	Summary exhibit of respondents acreage reduction defense.
	11 C 12 13			2/16/82	11 12 13 } 2/16/82	Exhibits admitted in resp's case in 4 ALRB No. 104
	14 15 16			2/16/82	14 2/23/82 2/23/82	
	D			2/16/82	2/23/82	Tot. Kawano field worker hrs 1975-1980
	E			2/16/82	2/23/82 Not rec.for truth	Appendixes to resp.brief & ALO D To show reduced P/R for '76 & '7
	F			2/23/82	NOT REC	Duration of tomato harvest 1972-1975 summary
	G			2/23/82	2/23/82	Total payroll summary 1977-1980
	H			2/23/82	Withdrawn	Number of workers summary 1975-1977
A B C				A 2/24/82 B C 3/31/83	2/24/82 3/31/82	Carmen Ortiz Mercado's 1975 Kawano paystubs & Posting Card & Yrly P/R summary
	I			3/15/82	3/29/82	Summary turnover of Reg EES at Kawano w/quarterly '941's
			ALO 1 A-E	3/16/82	3/29/82	Kawano weekly payroll records 1975-1980
			ALO 2	3/16/82	3/29/82	Kawano black binder 'EE' log book

EXHIBIT WORKSHEET

CASE NAME: KAWANO

CASE NO: 4 ALRB No. 104

BACKPAY PROCEEDING

G.C.	RESP.	C.P.	OTHER A.L.O.	IDENT.	ADMIT or REJECT.	DESCRIPTION
4				3/16/82	3/16/82	Maria Elena Perez 1975 Kawano paystubs.
5				3/16/82	3/29/82	Gregorio Garcia notices of disa period 10/6/75-2/10/76
6				3/16/82	3/16/82	Prior hearing transcript Vol.XI p.61-69 of Gregorio Garcia
			ALO 3	4/7/82	4/7/82	941's-quarterlies summary of Kawano workforce - 1976-1980
			ALO 4	4/7/82	4/7/82	943 & yr.end summary of Kawano workforce - 1976-1980
7				3/29/82	3/29/82	Gen.Coun worksheet for Gregorio Garcia
8				3/29/82	3/29/82	3/12/82 letter to Dr. Benshoff & attached report of Gregorio Garcia
9				3/29/82	3/29/82	Testimony of decedent Herminio Hernandez-Vela from earlier pro 10/27/77.
10				3/29/82	3/29/82	Gen.Coun.worksheet for backpay spec.for Herminio Hernandez-Vel
	J			3/30/82	3/30/82	Prior test'y of Teresa Gomez Vol. 15, p. 1-13.
11				3/30/82	3/30/82	Kawano posting cards for Josefa Hernandez wkending Dec.27,1973- Oct.15, 1975
12				3/30/82	3/30/82	Prior test'y 4 ALRB 104 Vol. 10 p.50-64, Josefa Hernandez
	K			3/30/82	3/30/82	Prior Bd. Dec. 3 ALRB 54 re Josefa & Felix Hernandez
	L			3/30/82	3/30/83	9/15/78 ALRB letter to Kawano atty/re compliance w/3ALRB 54
	M			3/30/82	4/2/82	Flores - summary of paystubs fo 1979 Believe are in Lee Farm as Interim earnings
	N			3/31/82	3/31/82	Jose Sandoval - 1979 earnings from Sea Breeze
	O			3/31/82	3/31/82	Francisco Rubio Vasquez posting cards-Kawano, Inc. 1973-Jan,'76

EXHIBIT WORKSHEET

CASE NAME: KAWANO, INC. CASE NO: 4 ALRB No. 104

BACKPAY PROCEEDING

.C.	RESP.	C.P.	OTHER	IDENT.	ADMIT or REJECT.	DESCRIPTION
13				3/31/82	3/31/82	List of San Diego Area employees w/UFW contracts plus dates.
14				3/31/82	3/31/82	List of nicknames of San Diego area ranches
15				3/31/82	3/31/82	Kawano Board Order of 2/2/79 add Silveria Juarez's name to discri minatee's list
	P			4/1/82	4/1/82	Jose L. Vasquez wage records - North County Growers,summer,1976
	Q			4/1/82	4/1/82	Filiberta Escobedo-summary of 19 & 1980 S.K.F. Ranch paychecks
	R			4/2/82	4/2/82	Delfino Lares prior Kawano testimony, Vol. 12, p. 2-10
	S			4/2/82	4/2/82	Paul David Fink prior testimony 4ALRB 104, Vol. 16, p. 137ff.
	T 1 thru 5			4/2/82	NO	Yr. end earnings - North County Growers, 1976-1980, Juan Rios
	U			4/5/82	W/DRAWN STIP.TO	Juan Rios quar'ly earnings North County Growers,1976-1980
	V			4/5/82	4/6/82	Antonio Zamarripa quar'ly earnin North County Growers, 1978-1980
16				4/7/82	4/7/82	Jesus Ramirez' North County Growers payroll records,1976-198
	W			4/7/82	4/7/82	1974-1975 Kawano Posting Cards for Antonio Baez Mendoza (#29)
	X			4/7/82	4/7/82	1973-1975 Kawano Posting Cards for Aurelio Higuira (#23)
	Y			4/7/82	4/7/82	Prior testimony of 4ALRB No. 104 of Aurelio Higuera (#23)
	Z			4/7/82	4/7/82	Gregorio Garcia (#12) EDD Summary of earnings.
	AA			4/7/82	4/7/82	Frazee letter to ALRB re Herminio Hernandez (#20)

EXHIBIT WORKSHEET

CASE NAME: KAWANO, INC. CASE NO: 4 ALRB No. 104

BACKPAY PROCEEDIN(

.C.	RESP.	C.P	OTHER	IDENT.	ADMIT or REJECT.	DESCRIPTION
	BB			4/7/82	4/7/82	Sea Breeze records for Jose Sandoval (1979) - (#46)
	CC			4/7/82	4/7/82	1978 & 1979 Sea Breeze records for Josefa Ruiz (#44) - 1978-19
	DD			4/7/82	4/7/82	North County Growers -4th QTR19 record for Jose Juarez Alemon(#2
	EE			4/7/82	W/DRAWN	Harry Singh Qtrly summary of wages for some Kawano workers.
	FF			4/7/82	W/DRAWN	1977 & 1976 Harry Singh Foreman report handwritten summaries
	GG			4/8/82	4/8/82	Letter, July 14, 1978, Chula Vi Farms to UFW - Recall list.
	HH	(1)-(5)		4/8/82	4/8/82	Amerfoods summary - 1977 earnings - Juan Garcia
	II	(1) & (2) - (3)		4/8/82	4/8/82	Summary of Frank Avica payroll records
	JJ			4/8/82	4/8/82	Summary of hrs work 1975 by discriminatees
	KK			4/8/82	4/8/82	Summary - partial list of discriminatee hours - 1973-1975
	LL			4/8/82	4/8/82	Summary of Control Group hours 1973-1980
	MM			4/9/82	4/9/82	Summary of reg. field worker pay, 1976-1980
	NN	(1)-(9)		4/9/82	4/9/82	J.M.Y. Interim earnings for 9 discriminatees
	OO			4/9/82	4/9/82	Summary of EE & FF - which are w/drawn - to be provided
	PP			4/9/82	4/9/82	Citrus Harvesting Co. records for Rubicaba (#41) & Luis Chauz Gutienez (#19)
	QQ			4/9/82	4/9/82	Oceanview earnings 1976-1980 for Antonio C. Aleman (#2)

EXHIBIT WORKSHEET

CASE NAME: KAWANO, INC. CASE NO: 4 ALRB NO. 104

BACKPAY PROCEEDING

C.	RESP.	C.P.	OTHER	IDENT.	ADMIT or REJECT.	DESCRIPTION
	RR	(1) thru (5)		4/9/82	4/9/82	Transcript pages from underlying hearing-for John Kawano
7				4/9/82	4/9/82	Posting cards for 6 of 7 discriminatees in KK-7th is Resp. Exh.
8	(1)&(2)			4/9/82	4/9/82	Newspaper articles 1975 & 1976 re union activity
			ALO 5	4/7/82	4/7/82	EDD letter re subpoened documents
			ALO 6(1-53)	4/7/82	4/7/82	General Counsel's work sheets for backpay specification for 53 discriminatees (1-53)

APPENDIX III

SUMMARY OF WORKER CHARACTERISTICS
SUMMARY OF PARTIES AND ALO NET BACKPAY

Name	# Years w/Kawano	Year-Round Seasonal Summer (YR) (S) (SU)	Raitero-Driver (4)	"Cherry Tomato Five" (act. 4)	C.E.T.A. Worker (5)	Irrigator or Sprayer	1981 Rein-statement (Y=30) (N=21)	1981 Rein-statement Factors	General Counsel's Net Backpay	Respondent's Net Backpay	Respondent's Maximum Net Backpay in 9/81 Answer	ALO Net Backpay
1 JAVIER ACOSTA 559-90-4038	5	S	-	Y	-	-	Y	Now w/U.F.W.	$ 5,927.67	$ 3,592.46	$ 2,884.02	$ 5,070.13
2 ANTONIO ALEMAN 551-62-5434	7	S	-	-	-	-	N	Retired 1981	3,920.19	467.53	900.13	5,236.87
3 JOSE ARROYO 728-12-7862	3	S	-	-	-	-	N	w/Highland '81	7,339.63	1,056.16	1,476.34	4,239.07
4 CATALINA BARRIOS 562-76-4057	3	S	-	-	-	-	Y	w/Kawano	6,943.05	2,138.75	0	
5 RAMON BRAVO 107-20-7200	6	YR	-	-	-	-	Y	w/Kawano	11,585.10	4,101.09	2,976.72	
6 MARTIN CONRIQUEZ 568-48-4601	1	S	-	-	-	-	Y	w/Kawano	9,426.11	4,572.52	3,586.25	
7 MARIA LUISA DIAZ 547-27-1761	1	S	-	-	-	-	N	w/Bumble Bee	6,261.99	3,191.05	2,660.83	
8 FELIBERTA ESCOBEDO 553-80-2189	4	S	-	-	-	-	Y	w/Kawano	10,738.12	2,111.20	3,331.45	
9 PABLO DAVID FINK 547-35-1877	2	S	-	-	Y	-	N	w/CETA-1980	5,354.22	1,253.31	3,084.39	
10 ELISA FLORES 570-11-2769	1	S	-	-	-	-	N	W/Newport Casuals	7,935.08	4,830.24	7,751.03	
11 FRANCISCO GARCIA 560-62-1980	11	YR	-	-	-	-	Y	w/Kawano	18,709.21	8,623.91	13,184.92	
12 GREGORIO GARCIA 569-50-6923	4	YR	-	-	-	Y	Y	w/Kawano	21,149.29	5,419.51	0	
13 JUAN GARCIA 569-50-6923	12	YR	-	-	-	-	Y	w/Kawano	17,960.84	5,136.76	12,782.89	17,375.92
14 LUISA GARCIA 547-84-5019	6	S	-	-	-	-	Y	w/Kawano	9,738.63	4,511.93	7,810.40	
15 TERESA GOMEZ 551-96-1541	1	S	-	-	-	-	N	w/Robinson	2,177.90	0	2,404.40	

APPENDIX III - page 2

Name	# Years w/Kawano	Year-Round Seasonal Summer	(YR) (S) (SU)	Raitero-Driver (4)	"Cherry Tomato Five" (act. 4)	C.E.T.A. Worker (5)	Irrigator or Sprayer	1981 Rein-statement (Y=30) (N=21)	1981 Rein-statement Factors	General Counsel's Net Backpay	Respondent's Net Backpay	Respondent's Maximum Net Backpay in 9/81 Answer	ALO Net Backpay
16. HILARIO V. GONZALEZ 548-64-8041	1	S		-	-	-	Y	Y	w/Kawano	$ 14,591.80	$ 1,091.08	$ 7,024.13	$ 13,089.64
17. JULIAN R. GONZALEZ 571-02-7049	2	YR		-	-	-	-	Y	w/Kawano	13,153.54	10.75	6,337.43	10,936.79
18. MARIO GUERRERO 558-42-6320	2	S		-	-	-	-	Y	w/Kawano	8,616.22	3,838.58	4,875.27	
19. LUIS C. GUTIERREZ 571-50-4786	1	S		Y	-	-	-	Y	w/Kawano	26,685.27	0 or (8,598.92)	7,930.67	
20. HERMINO V. HERNANDEZ 565-21-6090	4	YR		-	-	-	-	N/A	Died 6/78	7,805.41	5,092.15	5,277.65	
21. IGNACIO HERNANDEZ 563-70-2748	11	YR		Y	-	-	Y	N	w/Iguchi	26,587.96	644.45	12,822.24	17,227.01
22. JOSEFA HERNANDEZ 565-62-6775	3	YR		-	-	-	-	Y	Now w/Amer. Foods	23,173.11	3,525.34	11,906.69	22,370.13
23. AURELIO HIGUERA 560-68-0732	6	YR		-	-	Y	Y	Y	w/Kawano	22,125.91	0	16,628.83	20,967.36
24. JOSE ALEMAN JUAREZ 325-38-3031	7	S		Y	Y	-	-	Y	w/Kawano	16,202.59	1,985.22	1,854.02	
25. SILVERIA JUAREZ 561-25-5429	3	S		-	-	-	-	Y	w/Kawano	10,344.23	0	0	
26. DELFINO LARAS 585-22-5995	1	S		-	-	-	-	N	w/Western Spring	1,346.20	0	296.55	
27. FELIPE LUNA 573-36-2992	11	YR		-	-	-	-	Y	w/Kawano	13,517.89	0	8,609.18	
28. MARIA MENDEZ 563-82-2898	8	YR		-	-	Y	-	Y	w/Kawano	16,596.39	4,094.23	9,889.13	
29. ANTONIO MENDOZA 561-64-2272	6	S		-	-	-	-	Y	w/Kawano	8,672.51	1,110.30	5,656.37	
30. CARMEN ORTIZ MERCADO 564-11-1292	3	S		-	-	-	-	Y	w/Kawano	11,959.03	4,333.84 or 1,459.65	4,636.17	
31. JOSE LUIS MONTELLANO 550-29-0260	2	S		-	-	-	-	N	Lives Imperial Valley	11,070.83	2,519.98	12,845.11	
32. MARTIN MORA 557-02-1977	1	S		-	-	-	-	Y	w/Kawano	5,866.42	1,649.41	2,342.19	
33. ANTONIA M. DE ORTIZ 567-29-0463	1	S		-	-	-	-	Y	w/Kawano	13,548.00	4,521.63	11,945.70	
34. EZEQUIEL PEDROZA 324-32-4555	7	YR		-	-	-	-	N	w/Robert Hall	19,423.50	3,544.90	15,603.57	

APPENDIX III - page 3

Name	# Years w/Kawano	Year-Round (YR) Seasonal (S) Summer (SU)	Raitero-Driver (4)	"Cherry Tomato Five" (act. 4)	C.E.T.A. Worker (5)	Irrigation or Sprayer	1981 Reinstatement (Y=30) (N=31)	1981 Reinstatement Factors	General Counsel Net Backpay	Respondent's Net Backpay	Respondent's Maximum Net Backpay in 9/81 Answer	ALO Net Backpay
35. MARIA ELENA PEREZ 571-04-0660	3	S	–	–	–	–	Y	w/Kawano	$ 13,299.19	$ 2,239.72	$ 0	$
36. JESUS RAMIREZ 572-52-7506	1	S	–	–	–	–	N/A	Retired/hospitalized	5,682.05	0	1,878.18	
37. JUAN RIOS 567-62-9360	1	S	–	–	–	–	N	w/Fallbrook	7,394.68	0	5,332.66	
38. VICENTA RIOS 565-27-1814	1	S	–	–	–	–	Y	w/Kawano	12,088.61	0	7,885.51	
39. JUAN N. RODRIGUEZ 564-78-9844	7	S	–	–	–	Y	N	Stipulated to	1,500.00	1,500.00	3,715.56	
40. MIGUEL RODRIGUEZ 546-62-7860	10	YR	–	–	–	–	N	w/Int'l Decoratives	16,195.74	3,670.75	12,824.73	
41. FELICIANO RUBALCABA 545-11-5195	2	S	–	–	Y	–	N	w/School Dist.	7,656.19	4,437.24	4,190.19	
42. FRANCISCO R. VASQUEZ 556-88-6274	6	YR	–	–	–	Y	N	w/U.S. Elevator Co.	20,057.33	6,256.08	15,463.81	
43. GERARDO RUIZ 561-15-1245	2	SU	–	–	–	–	N	w/Loomis Peop.	2,812.64	0	1,985.89	
44. JOSEFA RUIZ 565-92-6775	2	YR	–	–	–	–	Y	w/Sea Breeze now	19,923.97	2,547.00	12,505.24	
45. EMMA SALDANA 564-60-3887	4	S	–	–	–	–	Y	w/Kawano	10,681.59	4,581.57	5,710.55	
46. JOSE SANDOVAL 557-46-0270	3	S	–	–	–	–	Y	w/Kawano	3,624.89	1,356.76	728.10	
47. DOMINGO SANTOS 564-88-5981	7	S	–	–	–	Y	N	Mexico	19,446.27	4,268.34	8,662.17	
48. JOSE LUIS VASQUEZ 554-06-9596	3	SU	–	–	Y	–	N	Amer. Bus. College	2,897.87	0 or (453.24)	2,535.30	
49. REFUGIO VASQUEZ 561-60-5486	3	S	Y	Y	–	–	Y	w/Kawano	22,077.30	1,876.19	620.43	
50. FELIPE DE LA VEGA 568-84-7787	3	S	–	–	–	–	N	w/Kay Line Door	5,808.27	0	3,127.91	
51. ILDEFONSO VILLA 570-11-7631	4	YR	–	–	–	Y	Y	w/Kawano '81	16,357.87	1,544.56	11,151.65	14,647.40
52. ANTONIO ZAMARRIPA 556-52-9529	3	S	–	Y	–	–	N	w/Double D	12,738.18	278.00	3,180.17	
53. MONICA ZAMARRIPA 559-23-9497	1	S	–	–	–	–	Y	w/Kawano	5,549.41	0	6,047.04	
TOTALS	YR=16	S=35 SU=2	4	4	5	9	Y=30 N=21		$622,245.89	$132,576.64	$317,680.76	

APPENDIX IV

BACKPAY COMPUTATIONS

JAVIER ACOSTA -- NO. 1

QUARTER	KAWANO GROSS	KAWANO RIDE SUBSIDY	INTERIM	EXPENSES	NET
1/76	265.90	16.50	49.01	14.00	279.90
2/76	1,613.85	88.50	1,405.38	2.00	521.37
3/76	1,871.95	106.50	-0-	42.00	2,020.15
4/76	1,338.35	82.50	1,001.89	18.00	798.41
1/77	433.55	28.50	598.77	-0-	58.22
2/77	1,239.75	66.00	591.67	6.00	720.08
3/77	493.00	25.50	-0-	8.00	526.50
4/77	-0-	145.50*	-0-	-0-	145.40
TOTAL					$5,070.13

* Ride subsidy per ALO, 97 days at $1.50 per day.

JAVIER ACOSTA -- NO. 1

1976 (Page 1 of 2)

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
3/6	104.40	6.00	-0-	4.00	114.40
3/13	-0-	-0-	-0-	2.00	2.00
3/20	116.00	7.50	-0-	4.00	127.50
3/27	29.00	3.00	-0-	4.00	36.00
3/31	-0-	-0-	49.01	-0-	-0-
1/76	249.40	16.50	49.01	14.00	279.90
4/3	-0-	-0-	90.24	-0-	-0-
4/10	52.20	3.00	125.16	-0-	-0-
4/17	87.00	6.00	76.16	-0-	16.84
4/24	130.50	7.50	181.24	-0-	-0-
5/1	130.50	7.50	153.15	-0-	-0-
5/8	130.50	7.50	41.16	-0-	96.84
5/15	130.50	7.50	103.86	-0-	35.00
5/22	172.55	9.00	166.32	-0-	15.23
5/29	174.00	9.00	70.96	-0-	112.04
6/5	116.00	6.00	124.95	-0-	-0-
6/12	145.00	7.50	105.58	-0-	46.92
6/19	174.00	9.00	99.98	-0-	83.02
6/26	116.00	6.00	66.62	-0-	55.38
6/30	55.10	3.00	-0-	2.00	60.10
2/76	1,613.85	88.50	1,405.38	2.00	521.37
7/3	29.00	1.50	-0-	2.00	32.50
7/10	145.00	7.50	-0-	6.00	158.50
7/17	174.00	9.00	-0-	2.00	185.00
7/24	174.00	9.00	-0-	4.00	187.00
7/31	113.10	6.00	-0-	4.00	123.00
8/7	159.50	9.00	-0-	4.00	172.00
8/14	156.60	9.00	-0-	2.00	167.60
8/21	130.50	7.50	-0-	2.00	140.00
8/28	158.05	9.00	-0-	4.00	171.05
9/4	130.50	7.50	-0-	2.00	140.00
9/11	101.50	7.50	-0-	2.00	111.00
9/18	118.90	7.50	-0-	4.00	130.40
9/25	150.80	9.00	-0-	2.00	161.80
9/30	130.50	7.50	-0-	2.00	140.00
3/76	1,871.95	106.50	-0-	42.00	2,020.15
10/2	52.20	3.00	-0-	2.00	56.20
10/9	156.60	9.00	-0-	2.00	167.60
10/16	130.50	7.50	-0-	4.00	142.00
10/23	156.60	9.00	-0-	4.00	169.60
10/30	121.80	7.50	-0-	2.00	131.30
11/6	129.05	9.00	96.22	4.00	45.83
11/13	129.05	7.50	55.03	-0-	81.52
11/20	120.35	7.50	123.49	-0-	4.36
11/27	46.40	3.00	104.60	-0-	-0-

JAVIER ACOSTA -- NO. 1

1976 (Page 2 of 2)

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
12/4	46.40	3.00	114.78	-0-	-0-
12/11	110.20	7.50	133.90	-0-	-0-
12/18	92.80	6.00	140.67	-0-	-0-
12/25	23.20	1.50	130.44	-0-	-0-
12/31	23.20	1.50	102.76	-0-	-0-
4/76	1,338.35	82.50	1,001.89	18.00	798.41

JAVIER ACOSTA -- NO. 1

1977

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
1/8	91.35	6.00	52.70	-0-	44.65
1/15	92.80	6.00	153.26	-0-	-0-
3/5	78.30	4.50	69.23	-0-	13.27
3/12	26.10	1.50	62.97	-0-	-0-
3/19	89.90	6.00	95.60	-0-	.30
3/26	55.10	4.50	66.71	-0-	-0-
3/31	-0-	-0-	98.30	-0-	-0-
1/77	433.55	28.50	598.77	-0-	58.22
4/2	-0-	-0-	17.04	-0-	-0-
4/9	26.10	1.50	81.50	-0-	-0-
4/16	113.10	7.50	82.66	-0-	37.94
4/23	104.40	6.00	82.46	-0-	27.94
4/30	130.50	7.50	132.67	-0-	5.33
5/7	130.50	7.50	116.22	-0-	21.78
5/14	130.50	7.50	29.40	-0-	108.60
5/21	169.65	9.00	133.99	-0-	44.66
5/28	174.00	9.00	80.40	-0-	102.60
6/4	145.00	7.50	44.11	-0-	108.39
6/11	116.00	6.00	73.53	-0-	48.47
6/18	174.00	9.00	114.02	-0-	68.98
6/25	116.00	6.00	-0-	4.00	126.00
6/30	84.10	4.50	-0-	2.00	90.60
2/77	1,239.75	66.00	591.67	6.00	720.08
7/2	29.00	1.50	-0-	-0-	30.50
7/9	116.00	6.00	-0-	4.00	126.00
7/16	174.00	9.00	-0-	2.00	185.00
7/23	174.00	9.00	-0-	2.00	185.00
3/77	493.00	25.50	-0-	8.00	526.50

ANTONIO ALEMAN -- NO. 2

QUARTER	KAWANO GROSS	KAWANO RIDE SUBSIDY	INTERIM	EXPENSES	NET
1/76	-0-	-0-	-0-	-0-	-0-
2/76	1,317.35	66.00	884.85	2.00	449.50
3/76	2,117.80	111.00	1,836.82	2.00	646.81
4/76	1,117.95	73.50	2,957.64	-0-	-0-
1/77	337.00	12.00	484.00	-0-	-0-
2/77	1,314.35	63.00	968.00	-0-	346.35
3/77	2,117.80	111.00	1,452.00	-0-	665.80
4/77	1,191.45	73.50	1,452.00	-0-	-0-
1/78	-0-	-0-	-0-	-0-	-0-
2/78	1,251.35	66.00	809.58	-0-	507.77
3/78	2,006.80	111.00	1,214.37	-0-	903.43
4/78	1,071.55	70.50	1,214.37	-0-	39.81
1/79	214.60	12.00	496.67	-0-	-0-
2/79	1,251.35	66.00	993.34	-0-	324.01
3/79	2,006.80	111.00	1,490.01	-0-	627.79
4/79	1,117.95	73.50	1,490.01	-0-	-0-
1/80	229.40	12.00	421.53	-0-	-0-
2/80	1,337.65	66.00	1,144.00	-0-	259.65
3/80	2,145.20	111.00	1,790.25	-0-	465.95
4/80	620.00	36.00	945.49	-0-	-0-
TOTAL					5,236.87

ANTONIO ALEMAN -- NO. 2

1976

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
5/8	130.50	7.50	97.85	2.00	40.15
5/15	104.40	6.00	84.62	-0-	25.78
5/22	174.00	9.00	109.76		73.24
5/29	145.00	7.50	87.76	-0-	64.74
6/5	203.00	10.50	139.44	-0-	74.06
6/12	174.00	9.00	107.12	-0-	75.88
6/19	175.45	9.00	134.94	-0-	49.51
6/26	116.00	6.00	77.86	-0-	44.14
2/76	1,251.35	66.00	884.85	2.00	449.50
7/3	87.00	4.50	43.96	-0-	47.54
7/10	116.00	6.00	66.67	-0-	55.33
7/17	237.80	10.50	64.82	-0-	183.48
7/24	174.00	9.00	102.63	-0-	80.37
7/30	110.20	6.00	65.69	2.00	52.51
8/4	104.40	6.00	123.75	-0-	-0-
8/11	156.60	9.00	148.50	-0-	17.10
8/18	156.60	9.00	145.75	-0-	19.85
8/25	130.50	7.50	89.37	-0-	48.63
8/31	104.40	6.00	-0-	-0-	110.40
9/1	26.10	1.50	-0-	2.00	29.60
9/7	130.50	7.50	205.35	-0-	-0-
9/14	156.60	9.00	246.42	-0-	-0-
9/21	147.90	9.00	246.42	-0-	-0-
9/28	121.80	7.50	205.35	-0-	-0-
9/30	46.40	3.00	82.14	-0-	-0-
3/76	2,006.80	111.00	1,836.82	2.00	646.81
10/7	139.20	9.00		-0-	-0-
10/14	92.80	6.00		-0-	-0-
10/21	69.60	4.50		-0-	-0-
10/28	69.60	4.50		-0-	-0-
10/31	46.40	3.00	985.88*	-0-	-0-
11/7	92.80	6.00		-0-	-0-
11/14	69.60	4.50		-0-	-0-
11/21	69.60	4.50		-0-	-0-
11/28	46.40	3.00		-0-	-0-
11/30	23.20	1.50	985.88*	-0-	-0-
12/7	69.60	4.50		-0-	-0-
12/14	130.50	9.00		-0-	-0-
12/21	82.65	6.00		-0-	-0-
12/28	69.60	4.50		-0-	-0-
12/31	46.40	3.00	985.88*	-0-	-0-
4/76	1,117.95	73.50	2,957.64	-0-	-0-

*Monthly figures (24 days x $41.07 = $985.88).

ANTONIO ALEMAN -- NO. 2

1977 (Page 1 of 2)

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
1/8	131.95	7.50		-0-	-0-
1/15	82.65	4.50		-0-	-0-
1/22	-0-	-0-		-0-	-0-
1/31	-0-	-0-	484.00*	-0-	-0-
1/76	214.60	12.00	484.00	-0-	-0-
5/7	104.40	6.00		-0-	-0-
5/14	104.40	6.00		-0-	-0-
5/21	171.10	7.50		-0-	-0-
5/28	145.00	7.50		-0-	-0-
5/31	87.00	4.50	484.00*	-0-	159.40
6/4	116.00	6.00		-0-	-0-
6/11	174.00	9.00		-0-	-0-
6/18	175.45	7.50		-0-	-0-
6/25	116.00	6.00		-0-	-0-
6/30	58.00	3.00	484.00*	-0-	186.95
2/77	1,251.35	63.00	968.00	-0-	346.35
7/2	58.00	3.00		-0-	-0-
7/9	145.00	7.50		-0-	-0-
7/16	208.80	9.00		-0-	-0-
7/23	174.00	9.00		-0-	-0-
7/31	165.30	9.00	484.00*	-0-	304.60
8/6	130.50	7.50		-0-	-0-
8/13	156.60	9.00		-0-	-0-
8/20	130.50	7.50		-0-	-0-
8/27	130.50	7.50		-0-	-0-
8/31	78.30	4.50	484.00*	-0-	178.40
9/3	78.30	4.50		-0-	-0-
9/10	156.60	9.00		-0-	-0-
9/17	156.60	9.00		-0-	-0-
9/24	121.80	7.50		-0-	-0-
9/30	116.00	7.50	484.00*	-0-	182.80
3/77	2,006.80	111.00	1,452.00	-0-	665.80
10/1	23.20	1.50		-0-	-0-
10/8	116.00	7.50		-0-	-0-
10/15	92.80	6.00		-0-	-0-
10/22	92.80	6.00		-0-	-0-
10/29	69.60	4.50		-0-	-0-
10/31	23.20	1.50	484.00*	-0-	-0-
11/5	69.60	4.50		-0-	-0-
11/12	69.60	4.50		-0-	-0-
11/19	92.80	6.00		-0-	-0-
11/26	46.40	3.00		-0-	-0-
11/30	23.20	1.50	484.00*	-0-	-0-

*Monthly figures.

ANTONIO ALEMAN -- NO. 2

1977 (Page 2 of 2)

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
12/3	69.60	4.50		-0-	-0-
12/10	69.60	4.50		-0-	-0-
12/17	107.30	7.50		-0-	-0-
12/24	105.85	7.50		-0-	-0-
12/31	46.40	3.00	484.00*	-0-	-0-
4/77	1,117.95	73.50	1,452.00	-0-	-0-

*Monthly figures.

ANTONIO ALEMAN -- NO. 2

1978

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
5/31	611.90	33.00	404.79	-0-	240.11
6/31	639.45	33.00	404.79	-0-	267.66
2/78	1,251.35	66.00	809.58	-0-	507.77
7/31	751.10	37.50	404.79	-0-	383.81
8/30	626.40	36.00	404.79	-0-	257.61
9/31	629.30	37.50	404.79	-0-	262.01
3/78	2,006.80	111.00	1,214.37	-0-	903.43
10/31	417.60	27.00	404.79	-0-	39.81
11/30	301.60	19.50	404.79	-0-	-0-
12/31	352.35	24.00	404.79	-0-	-0-
4/78	1,071.55	70.50	1,214.37	-0-	39.81

ANTONIO ALEMAN -- NO. 2

1979

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
1/24	214.60	12.00	496.67	-0-	-0-
1/79	214.60	12.00	496.67	-0-	-0-
5/31	611.90	33.00	496.67	-0-	148.23
6/30	639.45	33.00	496.67	-0-	175.78
2/79	1,251.35	66.00	993.34	-0-	324.01
7/31	751.10	37.50	496.67	-0-	291.93
8/31	626.40	36.00	496.67	-0-	165.73
9/30	629.30	37.50	496.67	-0-	170.13
3/79	2,006.80	111.00	1,490.01	-0-	627.79
10/31	417.60	27.00	496.67	-0-	-0-
11/30	301.60	19.50	496.67	-0-	-0-
12/31	398.75	27.00	496.67	-0-	-0-
4/79	1,117.95	73.50	1,490.01	-0-	-0-

ANTONIO ALEMAN -- NO. 2

1980

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
1/24	229.40	12.00	421.53	-0-	-0-
1/80	229.40	12.00	421.53	-0-	-0-
5/31	654.10	33.00	572.00	-0-	115.10
6/30	683.55	33.00	572.00	-0-	144.55
2/80	1,337.65	66.00	1,144.00	-0-	259.65
7/31	802.90	37.50	596.75	-0-	243.65
8/31	669.60	36.00	596.75	-0-	108.85
9/30	672.70	37.50	596.75	-0-	113.45
3/80	2,145.20	111.00	1,790.25	-0-	465.95
10/31	471.20	27.00	630.33	-0-	-0-
11/14	148.80	9.00	315.16	-0-	-0-
4/80	620.00	36.00	945.49	-0-	-0-

JOSE B. COREA ARROYO -- NO. 3

QUARTER	KAWANO GROSS	KAWANO RIDE SUBSIDY	INTERIM	EXPENSES	NET
1/76	-0-	-0-	-0-	-0-	-0-
2/76	374.10	19.50	535.50	-0-	27.60
3/76	1,739.10	96.00	721.41	24.00	1,151.97
4/76	1,048.35	69.00	1,226.41	-0-	212.32
1/77	232.00	15.00	312.97	-0-	76.32
2/77	374.10	19.50	393.75	4.00	105.25
3/77	1,615.30	90.00	1,737.75	-0-	105.85
4/77	1,094.75	72.00	480.50	48.00	785.35
1/78	232.00	15.00	-0-	18.00	265.00
2/78	374.10	19.50	497.25	-0-	15.00
3/78	1,692.30	96.00	1,501.80	-0-	438.55
4/78	1,048.35	69.00	1,208.51	-0-	140.39
1/79	232.00	15.00	176.50	12.00	184.90
2/79	374.10	19.50	468.00	-0-	-0-
3/79	1,658.80	93.00	2,030.50	-0-	76.50
4/79	1,048.35	69.00	1,189.77	12.00	275.20
1/80	248.00	15.00	397.80	-0-	-0-
2/80	399.90	19.50	732.76	-0-	-0-
3/80	1,807.30	96.00	1,882.20	12.73	378.87
4/80	570.40	36.00	1,985.09	-0-	-0-
TOTAL					$4,239.07

JOSE B. COREA ARROYO -- NO. 3

1976

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
6/11	116.00	6.00	180.00	-0-	-0-
6/18	87.00	4.50	157.50	-0-	-0-
6/25	145.00	7.50	198.00	-0-	-0-
6/30	26.10	1.50	-0-	-0-	27.60
2/76	374.10	19.50	535.50	-0-	27.60
7/3	58.00	3.00	-0-	24.00	85.00
7/10	145.00	7.50	-0-	-0-	152.50
7/17	147.90	7.50	-0-	-0-	155.40
7/24	87.00	4.50	-0-	-0-	91.50
7/31	162.40	9.00	-0-	-0-	171.40
8/7	156.60	9.00	106.92	-0-	58.68
8/14	104.40	6.00	66.58	-0-	43.82
8/21	78.30	4.50	97.08	-0-	-0-
8/28	130.50	7.50	106.34	-0-	31.66
9/4	156.60	9.00	93.49	-0-	72.11
9/11	156.60	9.00	67.86	-0-	97.74
9/18	95.70	6.00	21.73	-0-	79.97
9/25	142.10	9.00	98.18	-0-	52.92
9/30	118.00	4.50	63.23	-0-	59.27
3/76	1,739.10	96.00	721.41	24.00	1,151.97
10/2	46.40	3.00	-0-	-0-	49.40
10/9	116.00	7.50	93.26	-0-	30.24
10/16	69.60	4.50	46.04	-0-	28.06
10/23	92.80	6.00	158.76	-0-	-0-
10/30	69.60	4.50	87.18	-0-	-0-
11/6	69.60	4.50	126.00	-0-	-0-
11/13	69.60	4.50	162.23	-0-	-0-
11/20	69.60	4.50	89.54	-0-	-0-
11/27	46.40	3.00	48.55	-0-	.85
12/4	69.60	4.50	85.05	-0-	-0-
12/11	92.80	6.00	137.80	-0-	-0-
12/18	84.10	6.00	133.02	-0-	-0-
12/25	59.45	4.50	-0-	-0-	63.95
12/31	92.80	6.00	58.98	-0-	39.82
4/76	1,048.35	69.00	1,226.41	-0-	212.32

JOSE B. COREA ARROYO -- NO. 3

1977

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
1/1	-0-	-0-	-0-	-0-	-0-
1/8	116.00	7.50	47.18	-0-	76.32
1/15	46.40	3.00	138.23	-0-	-0-
1/22	69.60	4.50	127.56	-0-	-0-
1/77	232.00	15.00	312.97	-0-	76.32
6/4	-0-	-0-	-0-	4.00	4.00
6/11	116.00	6.00	99.00	-0-	23.00
6/18	87.00	4.50	149.00	-0-	-0-
6/25	145.00	7.50	74.25	-0-	78.25
6/30	26.10	1.50	71.50	-0-	-0-
2/77	374.10	19.50	393.75	4.00	105.25
7/2	58.00	3.00	49.50	-0-	11.50
7/9	116.00	6.00	123.75	-0-	-0-
7/16	118.90	6.00	148.50	-0-	-0-
7/23	87.00	4.50	99.00	-0-	-0-
7/31	191.40	10.50	123.75	-0-	78.15
8/3	52.50	3.00	74.25	-0-	5.70
8/10	130.50	6.00	135.00	-0-	1.50
8/17	104.40	6.00	123.00	-0-	-0-
8/24	104.40	6.00	108.00	2.16	2.40
8/31	130.50	7.50	162.00	3.24	-0-
9/7	156.60	9.00	162.00	3.24	3.60
9/14	130.50	7.50	135.00	2.70	3.00
9/21	118.90	7.50	159.00	3.18	-0-
9/28	116.00	7.50	135.00	2.70	-0-
3/77	1,615.30	90.00	1,737.75	17.22	105.85
10/5	139.20	9.00	162.00	3.24	-0-
10/12	92.80	6.00	54.00	1.08	44.80
10/19	92.80	6.00	154.50	3.09	-0-
10/26	46.40	3.00	-0-	6.00	55.00
10/31	92.80	6.00	-0-	-0-	98.80
11/30	232.00	15.00	-0-	24.00	271.00
12/31	398.75	27.00	110.00	18.00	315.75
4/77	1,094.75	72.00	480.50	55.41	785.35

JOSE B. COREA ARROYO -- NO. 3

1978

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
1/22	232.00	15.00	247.00	18.00	265.00
1/78	232.00	15.00	247.00	18.00	265.00
6/4	-0-	-0-	-0-	-0-	-0-
6/11	116.00	6.00	117.00	-0-	5.00
6/18	87.00	4.50	81.75	-0-	3.75
6/25	145.00	7.50	146.25	-0-	6.25
6/30	26.10	1.50	146.25	-0-	-0-
2/78	374.10	19.50	497.25	-0-	15.00
7/1	29.10	1.50	29.25	-0-	1.35
7/8	116.40	6.00	88.05	-0-	34.00
7/15	148.30	7.50	-0-	-0-	155.80
7/22	87.30	4.50	117.00	-0-	-0-
7/29	168.60	9.00	146.25	-0-	31.35
8/5	156.60	9.00	117.00	-0-	48.60
8/12	104.40	6.00	146.25	-0-	-0-
8/19	104.40	6.00	175.50	-0-	-0-
8/26	130.50	7.50	146.25	-0-	-0-
9/2	130.50	7.50	146.25	-0-	-0-
9/9	156.60	9.00	55.25	-0-	110.35
9/16	104.40	6.00	84.50	-0-	25.90
9/23	139.20	9.00	117.00	-0-	31.20
9/30	116.00	7.50	133.25	-0-	-0-
3/78	1,692.30	96.00	1,501.80	-0-	438.55
10/7	139.20	9.00	143.19	-0-	5.01
10/14	92.80	6.00	117.00	-0-	-0-
10/21	69.60	4.50	68.25	-0-	5.85
10/28	69.60	4.50	133.25	-0-	-0-
11/4	69.60	4.50	130.00	-0-	-0-
11/11	92.80	6.00	26.00	-0-	72.80
11/18	69.60	4.50	64.42	.25	9.68
11/25	23.20	1.50	77.90	.51	-0-
12/2	69.60	4.50	58.50	-0-	15.60
12/9	69.60	4.50	78.00	-0-	-0-
12/16	107.30	7.50	156.00	-0-	-0-
12/23	59.45	4.50	52.00	-0-	11.95
12/31	116.00	7.50	104.00	-0-	19.50
4/78	1,048.35	69.00	1,208.51	.76	140.39

JOSE B. COREA ARROYO -- NO. 3

1979

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
1/6	69.60	4.50	176.50	-0-	-0-
1/13	69.60	4.50	-0-	12.00	86.10
1/20	92.80	6.00	-0-	-0-	98.80
1/79	232.00	15.00	176.50	12.00	184.90
6/2	-0-	-0-	-0-	-0-	-0-
6/9	87.00	4.50	112.00	-0-	-0-
6/16	116.00	6.00	145.25	-0-	-0-
6/23	87.00	4.50	106.75	-0-	-0-
6/30	84.10	4.50	104.00	-0-	-0-
2/79	374.10	19.50	468.00	-0-	-0-
7/7	116.00	6.00	187.50	-0-	-0-
7/14	147.90	7.50	156.00	-0-	-0-
7/21	116.00	6.00	189.00	-0-	-0-
7/28	142.10	7.50	189.00	-0-	-0-
8/4	130.50	7.50	178.50	-0-	-0-
8/11	104.40	6.00	150.50	-0-	-0-
8/18	104.40	6.00	157.50	-0-	-0-
8/25	104.40	6.00	49.00	-0-	61.40
9/1	130.50	7.50	150.50	-0-	-0-
9/8	156.60	9.00	171.50	-0-	-0-
9/15	104.40	6.00	115.50	-0-	-0-
9/22	145.00	9.00	185.50	-0-	-0-
9/30	156.60	9.00	150.50	-0-	15.10
3/79	1,658.80	93.00	2,030.50	-0-	76.50
10/6	116.00	7.50	108.50	-0-	-0-
10/13	92.80	6.00	112.00	-0-	-0-
10/20	69.60	4.50	154.00	-0-	-0-
10/27	69.60	4.50	189.00	-0-	-0-
11/3	69.60	4.50	56.00	-0-	18.10
11/10	92.80	6.00	136.50	-0-	-0-
11/17	69.60	4.50	87.50	12.00	-0-
11/24	23.20	1.50	-0-	-0-	24.70
11/30	46.40	3.00	-0-	-0-	49.40
12/19	246.50	16.50	80.00	-0-	183.00
12/26	82.65	6.00	189.41	-0-	-0-
12/31	69.60	4.50	76.86	-0-	-0-
4/79	1,048.35		1,189.77	12.00	275.20

JOSE B. COREA ARROYO -- NO. 3

1980

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
1/5	49.60	3.00	79.90	-0-	-0-
1/12	99.20	6.00	121.90	-0-	-0-
1/19	74.40	4.50	56.00	-0-	22.90
1/26	24.80	1.50	140.00	-0-	-0-
1/31	-0-	-0-	-0-	-0-	-0-
1/80	248.00	15.00	397.80	-0-	22.90
6/7	31.00	1.50	54.38	-0-	-0-
6/14	124.00	6.00	228.00	-0-	-0-
6/21	93.00	4.50	222.00	-0-	-0-
6/28	151.90	7.50	162.75	-0-	-0-
6/30	-0-	-0-	65.63	-0-	-0-
2/80	399.90	19.50	732.76	-0-	-0-
7/5	62.00	3.00	91.88	-0-	-0-
7/12	155.00	7.50	135.00	-0-	27.50
7/19	189.10	9.00	202.50	-0-	-0-
7/26	124.00	6.00	101.25	-0-	28.75
8/2	167.40	9.00	169.03	2.68	10.05
8/9	139.50	7.50	109.87	2.18	40.31
8/16	111.60	6.00	162.15	2.63	-0-
8/23	111.60	6.00	105.62	2.08	14.06
8/30	139.50	7.50	128.81	2.55	20.74
9/6	139.50	7.50	30.59	.61	117.02
9/13	167.40	9.00	121.88	-0-	54.52
9/20	99.20	6.00	91.88	-0-	13.32
9/27	151.90	9.00	292.50	-0-	-0-
9/30	49.60	3.00	-0-	-0-	52.60
3/80	1,807.30	96.00	1,882.20	12.73	378.87
10/4	99.20	6.00	257.25	-0-	-0-
10/11	99.20	6.00	402.00	-0-	-0-
10/18	99.20	6.00	406.88	-0-	-0-
10/25	49.60	3.00	276.75	-0-	-0-
11/1	99.20	6.00	198.00	-0-	-0-
11/8	74.40	6.00	166.50	-0-	-0-
11/14	49.60	3.00	162.00	-0-	-0-
4/80	570.40	36.00	1,985.09	-0-	-0-

JUAN GARCIA -- NO. 13

QUARTER	KAWANO GROSS	KAWANO RIDE SUBSIDY	INTERIM	EXPENSES	NET
1/76*	687.30	43.50	-0-	32.00	762.80
2/76	1,783.50	97.50	-0-	48.00	1,929.00
3/76	1,802.35	102.00	900.70	16.00	1,096.25
4/76	1,164.35	76.50	-0-	48.00	1,288.85
1/77*	926.40	19.00	579.90	65.00	642.10
2/77	1,757.40	94.50	872.89	28.00	1,104.39
3/77	1,886.45	102.00	1,312.41	15.43	723.45
4/77	1,164.35	76.50	532.00	39.00	859.20
1/78*	794.60	51.00	-0-	32.00	877.60
2/78	1,783.50	97.50	-0-	48.00	1,929.00
3/78	1,779.15	100.50	1,674.02	41.61	620.12
4/78	1,187.55	78.00	734.74	46.67	835.14
1/79*	820.70	52.50	-0-	48.00	921.20
2/79	1,783.50	97.50	-0-	48.00	1,929.00
3/79	1,637.05	91.50	960.00	51.00	835.90
4/79	1,329.65	87.00	1,886.25	-0-	34.60
1/80*	852.50	51.00	1,207.50	-0-	130.30
2/80	1,987.10	102.00	1,793.25	-0-	478.20
3/80	1,777.85	91.50	1,525.69	-0-	343.66
4/80	768.80	46.50	936.82	-0-	35.16
TOTAL					$17,375.92

* The precise dates used in calculating backpay are different than the February to January dates set forth in the decision. The gross and interim earnings for February and January are the same. Therefore, the week ending dates used were for administrative convenience.

JUAN GARCIA -- NO. 13

1976 (Page 1 of 2)

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
2/7	14.50	1.50	-0-	16.00	32.00
2/14	78.30	4.50	-0-	-0-	82.80
2/21	185.60	10.50	-0-	-0-	196.10
2/28	130.50	7.50	-0-	-0-	138.00
3/6	130.50	7.50	-0-	16.00	154.00
3/13	5.80	1.50	-0-	-0-	7.30
3/20	63.80	4.50	-0-	-0-	68.30
3/27	55.10	4.50	-0-	-0-	59.60
3/31	23.20	1.50	-0-	-0-	24.70
1/76	687.30	43.50	-0-	32.00	762.80
4/3	78.30	4.50	-0-	16.00	98.80
4/10	52.20	3.00	-0-	-0-	55.20
4/17	87.00	6.00	-0-	-0-	93.00
4/24	130.50	7.50	-0-	-0-	138.00
5/1	130.50	7.50	-0-	16.00	138.00
5/8	130.50	7.50	-0-	-0-	138.00
5/15	130.50	7.50	-0-	-0-	138.00
5/22	175.45	9.00	-0-	-0-	184.45
5/29	174.00	9.00	-0-	-0-	183.00
6/5	174.00	9.00	-0-	16.00	183.00
6/12	174.00	9.00	-0-	-0-	183.00
6/19	175.45	9.00	-0-	-0-	184.45
6/26	116.00	6.00	-0-	-0-	122.00
6/30	55.10	3.00	-0-	-0-	58.10
2/76	1,783.50	97.50	-0-	48.00	1,929.00
7/13	290.00	15.00	339.30	-0-	-0-
7/17	116.00	6.00	-0-	8.00	130.00
7/24	145.00	7.50	-0-	-0-	152.50
7/31	162.40	9.00	-0-	-0-	171.40
8/7	130.50	7.50	-0-	8.00	146.00
8/14	156.60	9.00	-0-	-0-	165.60
8/21	78.30	4.50	52.20	-0-	30.60
8/28	130.50	7.50	127.60	-0-	10.40
9/4	126.15	7.50	156.60	-0-	-0-
9/8	52.20	3.00	-0-	-0-	55.20
9/15	156.60	9.00	49.50	-0-	116.10
9/22	118.90	7.50	145.75	-0-	-0-
9/30	139.20	9.00	29.75	-0-	118.45
3/76	1,802.35	102.00	900.70	16.00	1,096.25
10/2	46.40	3.00	-0-	-0-	65.40
10/9	116.00	7.50	-0-	-0-	123.50
10/16	69.60	4.50	-0-	-0-	74.10
10/23	92.80	6.00	-0-	-0-	98.80
10/30	69.60	4.50	-0-	-0-	74.10

JUAN GARCIA -- NO. 13

1976 (Page 2 of 2)

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
11/6	92.80	6.00	-0-	16.00	114.80
11/13	92.80	6.00	-0-	-0-	98.80
11/20	69.60	4.50	-0-	-0-	74.10
11/27	69.60	4.50	-0-	-0-	74.10
12/4	69.60	4.50	-0-	16.00	90.10
12/11	92.80	6.00	-0-	-0-	98.80
12/18	84.10	6.00	-0-	-0-	90.10
12/25	105.85	7.50	-0-	-0-	113.35
12/31	92.80	6.00	-0-	-0-	98.80
4/76	1,164.35	76.50	-0-	48.00	1,288.85

JUAN GARCIA -- NO. 13

1977 (Page 1 of 2)

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
1/31	98.60	9.00	400.00	20.00	-0-
3/5	104.40	6.00	-0-	-0-	
3/12	31.90	3.00	-0-	45.00	79.90
3/20	89.90	6.00	64.70	-0-	31.20
3/27	55.10	4.50	115.20	-0-	-0-
3/31	23.20	1.50	-0-	-0-	24.70
1/77	926.40	19.00	579.90	65.00	642.10
4/4	104.40	6.00	92.70	-0-	18.00
4/11	52.20	3.00	135.90	-0-	-0-
4/18	87.00	6.00	103.50	-0-	-0-
4/23	78.30	4.50	-0-	20.00	102.80
4/30	130.50	7.50	-0-	-0-	138.00
5/11	182.70	10.50	80.00	-0-	113.20
5/31	511.85	25.50	178.88	-0-	358.47
6/4	87.00	4.50	-0-	8.00	99.50
6/11	174.00	9.00	-0-	-0-	183.00
6/15	88.45	4.50	24.00	-0-	68.95
6/22	145.00	7.50	130.03	-0-	22.47
6/29	116.00	6.00	127.88	-0-	-0-
2/77	1,757.40	94.50	872.89	28.00	1,104.39
7/5	113.10	4.50	112.75	-0-	4.85
7/13	203.00	10.50	132.00	-0-	81.50
7/20	145.00	7.50	107.63	-0-	44.87
7/27	174.00	9.00	82.25	-0-	100.75
8/3	162.40	9.00	107.00	-0-	64.40
8/7	87.00	4.50	79.63	-0-	11.87
8/10	58.00	3.00	81.00	-0-	-0-
8/17	116.00	6.00	123.00	2.46	1.46
8/24	145.00	7.50	135.00	2.70	20.20
8/31	137.75	7.50	163.50	3.27	-0-
9/3	52.20	3.00	-0-	-0-	55.20
9/9	104.40	6.00	-0-	7.00	117.40
9/16	130.50	7.50	21.50	-0-	116.50
9/23	142.10	9.00	95.80	-0-	52.30
9/30	116.00	7.50	71.35	-0-	52.15
3/77	1,886.45	102.00	1,312.41	15.43	723.45
10/7	139.20	9.00	93.55	-0-	54.65
10/31	278.40	18.00	396.75	7.00	-0-
11/5	69.60	4.50	-0-	16.00	90.10
11/12	92.80	6.00	-0-	-0-	98.80
11/19	69.60	4.50	-0-	-0-	74.10
11/26	69.60	4.50	-0-	-0-	74.10

JUAN GARCIA -- NO. 13

1977 (Page 2 of 2)

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
12/3	69.60	4.50	23.70	16.00	66.40
12/10	69.60	4.50	-0-	-0-	74.10
12/17	107.30	7.50	-0-	-0-	114.80
12/24	105.85	7.50	-0-	-0-	113.35
12/31	92.80	6.00	-0-	-0-	98.80
4/77	1,164.35	76.50	532.00	39.00	859.20

JUAN GARCIA -- NO. 13

1978 (Page 1 of 2)

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
1/7	75.40	6.00	-0-	15.00	97.40
1/14	23.20	1.50	-0-	-0-	24.70
1/21	23.20	1.50	-0-	-0-	24.70
2/18	159.50	9.00	-0-	-0-	168.50
2/25	156.60	9.00	-0-	-0-	165.60
3/2	78.30	4.50	-0-	16.00	98.80
3/9	110.20	7.50	-0-	-0-	117.70
3/16	11.60	1.50	-0-	-0-	13.10
3/23	78.30	4.50	-0-	-0-	82.80
3/31	78.30	6.00	-0-	-0-	84.30
1/78	794.60	51.00	-0-	32.00	877.60
4/1	26.10	1.50	-0-	16.00	43.60
4/8	78.30	4.50	-0-	-0-	82.80
4/15	104.40	6.00	-0-	-0-	110.40
4/22	87.00	6.00	-0-	-0-	93.00
4/29	130.50	7.50	-0-	-0-	138.00
5/6	130.50	7.50	-0-	16.00	154.00
5/13	130.50	7.50	-0-	-0-	138.00
5/20	169.65	9.00	-0-	-0-	178.65
5/27	174.00	9.00	-0-	-0-	183.00
6/3	174.00	9.00	-0-	16.00	199.00
6/10	174.00	9.00	-0-	-0-	183.00
6/17	175.45	9.00	-0-	-0-	184.45
6/24	145.00	7.50	-0-	-0-	152.50
6/30	84.10	4.50	-0-	-0-	88.60
2/78	1,783.50	97.50	-0-	48.00	1,929.00
7/1	29.00	7.50	-0-	10.00	40.50
7/8	145.00	7.50	-0-	-0-	152.50
7/15	174.00	9.00	-0-	-0-	183.00
7/22	145.00	7.50	-0-	-0-	152.50
7/26	116.00	6.00	31.00	.62	91.62
8/2	156.60	9.00	186.00	3.72	-0-
8/9	130.50	7.50	186.00	3.72	-0-
8/16	104.40	6.00	186.00	3.72	-0-
8/23	130.50	7.50	186.00	3.72	-0-
8/30	126.15	7.50	217.00	4.34	-0-
9/6	130.50	7.50	149.57	2.99	-0-
9/10	52.20	3.00	93.00	1.86	-0-
9/13	78.30	4.50	93.00	-0-	-0-
9/20	118.90	7.50	175.16	3.50	-0-
9/27	142.10	9.00	171.29	3.42	-0-
3/78	1,779.15	100.50	1,674.02	41.61	620.12

JUAN GARCIA -- NO. 13

1978 (Page 2 of 2)

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
10/4	116.00	7.50	186.01	3.72	-0-
10/11	92.80	6.00	151.13	3.02	-0-
10/18	92.80	6.00	174.39	3.48	-0-
10/25	46.40	3.00	129.43	2.58	-0-
10/31	92.80	6.00	93.78	1.87	6.89
11/4	46.40	3.00	-0-	16.00	65.40
11/11	92.80	6.00	-0-	-0-	98.80
11/18	69.60	4.50	-0-	-0-	74.10
11/25	69.60	4.50	-0-	-0-	74.10
12/2	69.60	4.50	-0-	16.00	90.10
12/9	69.60	4.50	-0-	-0-	74.10
12/16	107.30	7.50	-0-	-0-	114.80
12/23	105.85	7.50	-0-	-0-	113.35
12/31	116.00	7.50	-0-	-0-	123.50
4/78	1,187.55	78.00	734.74	46.67	835.14

JUAN GARCIA -- NO. 13

1979

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
1/6	52.20	4.50	-0-	16.00	72.70
1/13	46.40	3.00	-0-	-0-	49.40
1/20	23.20	1.50	-0-	-0-	24.70
2/3	-0-	-0-	-0-	16.00	16.00
2/17	159.50	9.00	-0-	-0-	168.50
2/24	156.60	9.00	-0-	-0-	165.60
3/3	130.50	7.50	-0-	16.00	154.00
3/10	84.10	6.00	-0-	-0-	90.10
3/17	37.70	3.00	-0-	-0-	40.70
3/24	55.10	4.50	-0-	-0-	59.60
3/31	75.40	4.50	-0-	-0-	79.90
1/79	820.70	52.50	-0-	48.00	921.20
4/7	104.40	6.00	-0-	16.00	126.40
4/14	78.30	4.50	-0-	-0-	82.80
4/21	87.00	6.00	-0-	-0-	93.00
4/28	130.50	7.50	-0-	-0-	138.00
5/5	130.50	7.50	-0-	16.00	154.00
5/12	130.50	7.50	-0-	-0-	138.00
5/19	165.30	9.00	-0-	-0-	174.30
5/26	175.45	9.00	-0-	-0-	184.45
6/2	174.00	9.00	-0-	16.00	199.00
6/9	174.00	9.00	-0-	-0-	183.00
6/16	175.45	9.00	-0-	-0-	184.45
6/23	145.00	7.50	-0-	-0-	152.50
6/30	113.10	6.00	-0-	-0-	119.10
2/79	1,783.50	97.50	-0-	48.00	1,929.00
7/7	145.00	7.50	-0-	16.00	168.50
7/14	174.00	9.00	-0-	-0-	183.00
7/21	145.00	7.50	-0-	-0-	152.50
7/28	171.10	9.00	-0-	-0-	180.10
7/31	78.30	4.50	-0-	35.00	117.80
8/10	182.70	10.50	192.00	-0-	1.20
8/24	234.90	13.50	240.00	-0-	8.40
9/6	256.65	15.00	288.00	-0-	-0-
9/21	249.40	15.00	240.00	-0-	24.40
3/79	1,637.05	91.50	960.00	51.00	835.90
10/5	258.10	16.50	240.00	-0-	34.60
10/19	185.60	12.00	240.00	-0-	-0-
10/31	139.20	9.00	195.00	-0-	-0-
11/5	69.60	4.50	117.00	-0-	-0-
11/19	162.40	10.50	301.50	-0-	-0-
12/3	139.20	9.00	277.50	-0-	-0-
12/17	176.90	12.00	297.75	-0-	-0-
12/31	198.65	13.50	217.50	-0-	-0-
4/79	1,329.65	87.00	1,886.25	-0-	34.60

JUAN GARCIA -- NO. 13

1980

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
1/14	105.40	7.50	249.00	-0-	-0-
1/28	80.60	4.50	228.75	-0-	-0-
1/25	365.80	19.50	255.00	-0-	-0-
3/10	201.50	12.00	246.75	-0-	130.30
3/24	99.20	7.50	228.00	-0-	-0-
1/80	852.50	51.00	1,207.50	-0-	130.30
4/7	192.20	10.50	290.25	-0-	-0-
4/21	176.70	10.50	282.00	-0-	-0-
5/5	279.00	15.00	240.00	-0-	54.00
5/19	316.20	16.50	253.50	-0-	79.20
6/2	373.55	18.00	230.25	-0-	161.30
6/16	373.55	18.00	240.75	-0-	150.80
6/30	275.90	13.50	256.50	-0-	32.90
2/80	1,987.10	102.00	1,793.25	-0-	478.20
7/14	341.00	16.50	226.50	-0-	131.00
7/28	337.90	16.50	274.63	-0-	79.77
8/11	306.90	16.50	244.56	-0-	78.84
8/25	251.10	13.50	260.81	-0-	3.79
9/8	246.45	13.50	243.75	-0-	16.20
9/22	294.50	15.00	275.44	-0-	34.06
3/80	1,777.85	91.50	1,525.69	-0-	343.66
10/6	272.80	16.50	273.81	-0-	15.49
10/20	173.60	10.50	248.63	-0-	-0-
11/3	173.60	10.50	276.25	-0-	-0-
11/14	148.80	9.00	138.13	-0-	19.67
4/80	768.80	46.50	936.82	-0-	35.16

HILARIO VELOZ GONZALEZ -- NO. 16

QUARTER	KAWANO GROSS	KAWANO RIDE SUBSIDY	INTERIM	EXPENSES	NET
1/76	-0-	-0-	-0-	-0-	-0-
2/76	461.20	24.00	463.85	-0-	80.48
3/76	1,957.50	108.00	885.09	12.00	1,192.41
4/76	1,914.00	108.00	1,552.46	-0-	549.04
1/77	510.00	33.00	423.94	-0-	119.06
2/77	461.10	24.00	375.50	-0-	119.78
3/77	1,972.00	108.00	1,133.15	-0-	946.85
4/77	1,938.65	111.00	1,344.09	-0-	705.56
1/78	510.00	33.00	-0-	16.00	559.00
2/78	461.10	24.00	-0-	16.00	501.10
3/78	1,879.20	103.50	1,485.68	38.79	689.89
4/78	2,022.65	115.50	985.09	43.69	1,242.62
1/79	510.00	33.00	-0-	16.00	559.00
2/79	461.10	24.00	93.00	12.00	466.60
3/79	1,957.50	108.00	421.50	35.00	1,679.55
4/79	1,806.70	106.50	943.96	38.00	1,116.89
1/80	545.60	33.00	229.01	-0-	349.59
2/80	492.90	24.00	210.00	4.15	311.05
3/80	2,108.60	108.00	849.90*	27.61	1,394.31
4/80	1,100.50	55.50	662.06	13.10	507.04
TOTAL					$13,089.64

* Stipulated amount.

HILARIO VELOZ GONZALEZ -- NO. 16

1976

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
6/5	29.00	1.50	22.24	-0-	8.26
6/12	87.00	4.50	133.25	-0-	-0-
6/19	145.00	7.50	142.60	-0-	9.90
6/26	171.10	9.00	117.78	-0-	62.32
6/30	29.10	1.50	47.98	-0-	-0-
2/76	461.20	24.00	463.85	-0-	80.48
7/3	58.00	3.00	37.51	-0-	23.49
7/10	174.00	9.00	-0-	12.00	195.00
7/17	174.00	9.00	-0-	-0-	183.00
7/24	174.00	9.00	-0-	-0-	183.00
7/31	174.00	9.00	-0-	-0-	183.00
8/7	139.20	7.50	-0-	-0-	146.70
8/14	133.40	7.50	138.37	-0-	2.53
8/21	156.60	9.00	119.90	-0-	45.70
8/28	131.95	7.50	129.65	-0-	9.80
9/4	130.50	7.50	97.82	-0-	40.18
9/11	130.50	7.50	68.17	-0-	69.83
9/18	156.60	9.00	82.06	-0-	83.54
9/25	123.25	7.50	116.10	-0-	14.65
9/30	101.50	6.00	95.51	-0-	11.99
3/76	1,957.50	108.00	885.09	12.00	1,192.41
10/2	52.20	3.00	-0-	-0-	55.20
10/9	130.50	7.50	168.43	-0-	-0-
10/16	158.05	9.00	142.36	-0-	24.69
10/23	175.45	9.00	109.40	-0-	75.05
10/30	178.35	9.00	132.70	-0-	54.65
11/6	169.65	9.00	144.93	-0-	33.72
11/13	192.85	10.50	93.63	-0-	109.72
11/20	136.30	9.00	123.78	-0-	21.52
11/27	159.50	9.00	106.16	-0-	62.34
12/4	153.70	7.50	55.78	-0-	105.42
12/11	139.20	9.00	141.47	-0-	6.73
12/18	113.10	6.00	129.41	-0-	-0-
12/25	94.25	6.00	112.07	-0-	-0-
12/31	60.90	4.50	92.34	-0-	-0-
4/76	1,914.00	108.00	1,552.46	-0-	549.04

HILARIO VELOZ GONZALEZ -- NO. 16

1977

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
1/28	510.00	33.00	423.94	-0-	119.46
1/77	510.00	33.00	423.94	-0-	119.46
6/11	116.00	6.00	107.20	-0-	14.80
6/18	116.00	6.00	112.56	-0-	9.44
6/25	174.00	9.00	87.46	-0-	-0-
6/31	55.10	3.00	68.28	-0-	-0-
2/77	461.10	24.00	375.50	-0-	119.78
7/2	29.00	1.50	-0-	-0-	30.50
7/9	174.00	9.00	57.74	-0-	125.26
7/16	174.00	9.00	64.16	-0-	118.84
7/23	174.00	9.00	89.96	-0-	93.04
7/30	174.00	9.00	85.20	-0-	97.80
8/6	142.10	7.50	86.78	-0-	62.82
8/13	133.40	7.50	89.05	-0-	51.85
8/20	156.60	9.00	60.73	-0-	104.87
8/27	131.95	7.50	113.13	-0-	26.32
9/3	130.50	7.50	107.51	-0-	30.49
9/10	145.00	7.50	90.99	-0-	61.51
9/17	156.60	9.00	90.78	-0-	74.82
9/24	126.15	7.50	87.92	-0-	45.73
9/30	124.70	7.50	109.20	-0-	23.00
3/77	1,972.00	108.00	1,113.15	-0-	946.85
10/1	26.10	1.50	-0-	-0-	27.60
10/8	156.60	9.00	119.38	-0-	46.22
10/15	130.50	7.50	124.69	-0-	13.31
10/22	166.75	9.00	90.90	-0-	84.85
10/29	182.70	9.00	127.23	-0-	64.47
11/5	174.00	9.00	117.32	-0-	65.68
11/12	191.40	10.50	111.24	-0-	90.66
11/19	163.85	9.00	135.02	-0-	37.83
11/26	162.40	9.00	82.06	-0-	89.34
12/3	153.70	9.00	130.92	-0-	31.78
12/10	139.20	9.00	116.61	-0-	31.59
12/17	118.90	7.50	114.04	-0-	12.36
12/24	111.65	7.50	74.68	-0-	44.47
12/31	60.90	4.50	-0-	-0-	65.40
4/77	1,938.65	111.00	1,344.09	-0-	705.56

HILARIO VELOZ GONZALEZ -- NO. 16

1978

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
1/28	510.00	33.00	-0-	16.00	559.00
1/78	510.00	33.00	-0-	16.00	559.00
6/10	116.00	6.00	-0-	16.00	138.00
6/17	116.00	6.00	-0-	-0-	122.00
6/24	145.00	7.50	-0-	-0-	152.50
6/30	84.10	4.50	-0-	-0-	88.60
2/78	461.10	24.00	-0-	16.00	501.10
7/1	29.00	1.50	-0-	12.00	42.50
7/8	145.00	7.50	-0-	-0-	152.50
7/15	174.00	9.00	-0-	-0-	183.00
7/18	87.00	4.50	-0-	-0-	91.50
7/25	174.00	9.00	140.28	2.80	45.52
8/1	174.00	9.00	139.50	2.79	46.29
8/8	136.30	7.50	144.15	2.88	2.53
8/15	133.40	7.50	71.30	1.42	71.02
8/23	156.60	9.00	151.90	.15	13.85
8/30	131.95	7.50	215.45	4.30	-0-
9/6	104.40	6.00	147.25	2.94	-0-
9/13	156.60	9.00	185.22	3.70	-0-
9.19	153.70	9.00	124.00	2.48	41.18
9/27	123.25	7.50	166.63	3.33	-0-
3/78	1,879.20	103.50	1,485.68	38.79	689.89
10/4	156.60	9.00	186.01	3.72	-0-
10/11	130.50	7.50	166.65	3.33	-0-
10/18	158.05	9.00	174.39	3.48	-0-
10/20	58.00	3.00	41.08	.82	20.74
10/27	208.80	105.0	81.38	1.63	139.55
11/3	146.45	7.50	106.18	2.12	49.89
11/10	194.30	10.50	131.75	2.64	75.69
11/17	165.30	9.00	97.65	1.95	78.60
11/25	193.95	10.50	-0-	8.00	212.45
12/2	156.85	9.00	-0-	16.00	181.85
12/9	162.40	10.50	-0-	-0-	172.90
12/16	95.70	6.00	-0-	-0-	101.70
12/23	110.20	7.50	-0-	-0-	117.70
12/31	85.55	6.00	-0-	-0-	91.55
4/78	2,022.65	115.50	985.09	43.69	1,242.62

HILARIO VELOZ GONZALEZ -- NO. 16

1979

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
1/28	510.00	33.00	-0-	16.00	559.00
1/79	510.00	33.00	-0-	16.00	559.00
6/6	29.00	1.50	93.00	-0-	-0-
6/9	87.00	4.50	-0-	12.00	103.50
6/16	87.00	4.50	-0-	-0-	91.50
6/23	145.00	7.50	-0-	-0-	152.50
6/30	113.10	6.00	-0-	-0-	119.10
2/79	461.10	24.00	93.00	12.00	466.60
7/1	145.00	7.50	114.00	-0-	38.50
7/14	174.00	9.00	102.00	-0-	81.00
7/21	174.00	9.00	97.50	-0-	85.50
7/28	174.00	9.00	88.50	-0-	94.50
8/4	171.10	9.00	19.50	-0-	161.15
8/11	107.30	6.00	-0-	19.00	132.30
8/18	159.50	9.00	-0-	-0-	168.50
8/25	158.05	9.00	-0-	-0-	167.05
9/1	103.50	7.50	-0-	16.00	154.00
9/8	104.40	6.00	-0-	-0-	110.40
9/15	156.60	9.00	-0-	-0-	165.60
9/22	149.35	9.00	-0-	-0-	158.35
9/29	127.60	7.50	-0-	-0-	135.10
9/30	26.10	1.50	-0-	-0-	27.60
3/79	1,957.50	108.00	421.50	35.00	1,679.55
10/6	78.30	4.50	-0-	16.00	98.80
10/13	156.60	9.00	-0-	-0-	165.60
10/20	153.70	9.00	-0-	-0-	162.70
10/27	123.25	7.50	-0-	-0-	130.75
11/3	133.40	7.50	-0-	4.00	144.90
11/10	194.30	10.50	-0-	-0-	204.80
11/17	165.30	9.00	132.10	2.62	44.82
11/24	163.85	9.00	101.67	2.02	73.20
12/1	156.60	9.00	144.12	2.86	24.34
12/8	166.75	10.50	152.22	3.02	28.05
12/15	94.25	6.00	162.40	3.22	-0-
12/22	111.65	7.50	116.15	2.31	5.31
12/29	108.75	7.50	84.30	1.67	33.62
12/31	-0-	-0-	51.00	1.01	-0-
4/79	1,806.70	106.50	943.96	38.73	1,116.89

HILARIO VELOZ GONZALEZ -- NO. 16

1980

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
1/31	545.60	33.00	229.01	-0-	349.59
1/80	545.60	33.00	229.01	-0-	349.59
6/7	62.60	3.00	43.08	.85	22.77
6/14	93.00	4.50	91.27	1.80	8.03
6/21	155.00	7.50	75.65	1.50	88.35
6/28	151.90	7.50	-0-	-0-	159.40
6/31	31.00	1.50	-0-	-0-	32.50
2/80	492.90	24.00	210.00	4.15	311.05
7/5	93.00	4.50		16.00	113.50
7/12	186.00	9.00		-0-	195.00
7/19	186.00	9.00		-0-	195.00
7/26	186.00	9.00		-0-	195.00
8/2	186.00	9.00		-0-	195.00
8/9	145.70	7.50		8.00	161.20
8/16	142.60	7.50		-0-	150.10
8/23	186.00	9.00		2.12	90.13
8/30	141.05	7.50		.20	138.70
9/6	111.60	6.00		.34	100.59
9/13	167.40	9.00		.64	143.99
9/20	161.80	9.00		-0-	170.80
9/27	131.75	7.50		.12	132.99
9/30	83.70	4.50		.19	78.77
3/80	2,108.60	108.00	849.90*	27.61	2,060.95
10/4	83.70	4.50	-0-	-0-	88.20
10/11	139.50	7.50	13.72	-27	133.55
10/18	168.95	9.00	141.88	2.81	38.88
10/25	220.10	10.50	153.86	3.03	79.77
11/1	162.75	7.50	163.42	3.24	10.07
11/8	207.70	10.50	133.15	2.64	87.69
11/14	117.80	6.00	56.03	1.11	68.88
4/80	1,100.50	55.50	662.06	13.10	507.04

*Stipulated amount.

JULIAN GONZALEZ -- NO. 17

QUARTER	KAWANO GROSS	KAWANO RIDE SUBSIDY	INTERIM	EXPENSES	NET
1/76*	664.85**	19.50	-0-	10.00	694.35
2/76	1,840.05	100.50	-0-	36.00	1,976.55
3/76	2,143.80	114.00	-0-	36.00	2,191.70
4/76	1,231.05	82.50	877.91	13.00	606.50
1/77*	664.25**	19.50	356.08	-0-	327.67
2/77	1,840.05	100.50	1,315.04	1.50	647.31
3/77	1,995.20	112.50	756.20	12.00	1,354.66
4/77	1,187.55	78.00	1,194.40	-0-	198.53
1/78*	638.75**	18.00	430.95	-0-	225.80
2/78	1,813.95	99.00	1,720.05	6.75	360.83
3/78	1,769.00	97.50	1,159.92	23.20	807.34
4/78	1,436.95	93.00	2,395.28	47.90	-0-
1/79*	1,059.25**	45.00	1,360.19	27.20	-0-
2/79	1,726.95	94.50	2,105.26	42.11	75.92
3/79	2,151.80	120.00	1,792.15	35.84	790.79
4/79	1,141.14	75.00	2,083.90	41.65	-0-
1/80*	1,069.45**	45.00	1,265.58	25.32	-0-
2/80	1,813.50	93.00	2,320.25	46.40	-0-
3/80	2,309.50	120.00	1,923.75	38.49	678.84
4/80	722.30	45.00	1,517.82	23.55	-0-
TOTAL					$10,936.79

JULIAN GONZALEZ -- NO. 17
(Continued)

* The precise dates used in calculating backpay are different than the February to January dates set forth in the decision. The gross and interim earnings for February and January are the same. Therefore, the week ending dates used are for administrative convenience.

** Computed quarterly. $390.80 added to Kawano gross. (132 hours X $2.90).

JULIAN GONZALEZ -- NO. 17

1976 (Page 1 of 2)

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
2/28	390.80	-0-	-0-	-0-	-0-
3/6	-0-	-0-	-0-	-0-	-0-
3/13	36.25	4.50	-0-	10.00	50.75
3/20	104.40	6.00	-0-	-0-	110.40
3/27	107.30	7.50	-0-	-0-	114.80
3/31	26.10	1.50	-0-	-0-	27.60
1/76	664.85	19.50	-0-	10.00	694.35
4/3	78.30	4.50	-0-	12.00	94.80
4/10	52.20	3.00	-0-	-0-	55.20
4/17	87.00	6.00	-0-	-0-	93.00
4/24	130.50	7.50	-0-	-0-	138.00
5/1	130.50	7.50	-0-	12.00	150.00
5/8	130.50	7.50	-0-	-0-	138.00
5/15	130.50	7.50	-0-	-0-	138.00
5/22	174.00	9.00	-0-	-0-	183.00
5/29	174.00	9.00	-0-	-0-	183.00
6/5	174.00	9.00	-0-	12.00	195.00
6/12	174.00	9.00	-0-	-0-	183.00
6/19	175.45	9.00	-0-	-0-	184.45
6/26	174.00	9.00	-0-	-0-	183.00
6/30	55.10	3.00	-0-	-0-	58.10
2/76	1,840.05	100.50	-0-	36.00	1,976.55
7/3	87.00	4.50	-0-	-0-	91.50
7/10	145.00	7.50	-0-	12.00	164.50
7/17	203.00	10.50	-0-	-0-	213.50
7/24	203.00	10.50	-0-	-0-	213.50
7/31	191.40	10.50	-0-	-0-	201.90
8/7	130.50	7.50	-0-	12.00	150.00
8/14	156.60	9.00	-0-	-0-	165.60
8/21	130.50	7.50	-0-	-0-	138.00
8/28	104.40	6.00	-0-	-0-	110.40
9/4	130.50	7.50	-0-	12.00	150.00
9/11	156.60	9.00	-0-	-0-	165.60
9/18	156.60	9.00	-0-	-0-	165.60
9/25	150.90	9.00	-0-	-0-	159.90
9/30	95.70	6.00	-0-	-0-	101.70
3/76	2,143.80	114.00	-0-	36.00	2,191.70
10/2	46.40	3.00	-0-	10.00	59.40
10/9	139.20	9.00	-0-	-0-	148.20
10/16	116.00	7.50	-0-	-0-	123.50
10/23	69.60	4.50	-0-	-0-	74.10
10/30	92.80	6.00	49.00	-0-	49.80

JULIAN GONZALEZ -- NO. 17

1976 (Page 2 of 2)

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
11/6	69.60	4.50	98.00	-0-	-0-
11/13	92.80	6.00	147.00	-0-	-0-
11/20	92.80	6.00	132.00	-0-	-0-
11/27	92.80	6.00	132.00	-0-	-0-
12/4	69.60	4.50	88.00	-0-	-0-
12/11	92.80	6.00	22.00	3.00	79.80
12/18	58.00	6.00	-0-	-0-	64.00
12/25	105.85	7.50	118.81	-0-	-0-
12/31	92.80	6.00	91.10	-0-	7.70
4/76	1,231.05	82.50	877.91	13.00	606.50

JULIAN GONZALEZ -- NO. 17

1977 (Page 1 of 2)

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
2/28	390.80*	-0-	-0-	-0-	-0-
3/12	9.55	3.00	97.46	-0-	-0-
3/19	104.40	6.00	71.02	-0-	39.38
3/26	107.30	7.50	93.80	-0-	21.00
3/31	52.20	3.00	93.80	-0-	-0-
1/77	664.25	19.50	356.08	-0-	327.67
4/2	52.20	3.00	14.96	-0-	40.24
4/9	52.20	3.00	72.12	-0-	-0-
4/16	113.10	7.50	109.31	-0-	11.29
4/23	104.40	6.00	122.35	-0-	-0-
4/30	130.50	7.50	129.43	-0-	-0-
5/7	130.50	7.50	131.53	-0-	6.47
5/14	130.50	7.50	53.32	-0-	84.68
5/21	171.10	9.00	132.25	-0-	47.85
5/28	174.00	9.00	134.65	-0-	48.35
6/4	174.00	9.00	145.00	-0-	38.00
6/11	174.00	9.00	95.73	-0-	87.27
6/18	175.45	9.00	123.49	-0-	60.96
6/25	174.00	9.00	50.90	1.50	133.60
6/30	84.10	4.50	-0-	-0-	88.60
2/77	1,840.05	100.50	1,315.04	1.50	647.31
7/2	58.00	3.00	-0-	12.00	73.00
7/9	145.00	7.50	-0-	-0-	152.50
7/16	203.00	10.50	-0-	-0-	213.50
7/23	203.00	10.50	-0-	-0-	213.50
7/30	194.30	10.50	-0-	-0-	204.80
8/6	130.50	7.50	-0-	-0-	138.00
8/13	156.60	9.00	-0-	-0-	165.60
8/20	130.50	7.50	91.47	-0-	46.53
8/27	104.40	6.00	124.09	-0-	-0-
9/3	130.50	7.50	115.47	-0-	-0-
9/10	156.60	9.00	108.82	-0-	56.78
9/17	127.60	7.50	77.12	-0-	57.98
9/24	139.20	9.00	119.41	-0-	28.79
9/30	116.00	7.50	119.82	-0-	3.68
3/77	1,995.20	112.50	756.20	12.00	1,354.66
10/1	23.20	1.50	-0-	-0-	24.70
10/8	116.00	7.50	126.16	-0-	-0-
10/15	69.60	4.50	112.16	-0-	-0-
10/22	92.80	6.00	95.37	-0-	3.43
10/29	69.60	4.50	134.14	-0-	-0-

*Posting cards missing; added 132 hrs. x 2.90 per GC spec. (252 hrs. minus 15/8 hr. days per ALO) plus 1.50 per day ride.

JULIAN GONZALEZ -- NO. 17

1977

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
11/5	92.80	6.00	98.46	-0-	.34
11/12	92.80	6.00	91.89	-0-	.34
11/19	92.80	6.00	100.48	-0-	-0-
11/26	69.60	4.50	77.12	-0-	-0-
12/3	92.80	6.00	124.10	-0-	-0-
12/10	69.60	4.50	56.81	-0-	17.29
12/17	107.30	7.50	117.99	-0-	-0-
12/24	105.85	7.50	59.72	-0-	53.63
12/31	92.80	6.00	-0-	-0-	98.80
4/77	1,187.55	78.00	1,194.40	-0-	198.53

JULIAN GONZALEZ -- NO. 17

1978

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
2/28	390.80*	-0-	-0-	-0-	-0-
3/11	10.15	3.00	107.00	-0-	-0-
3/18	78.30	4.50	135.45	-0-	-0-
3/25	107.30	7.50	115.04	-0-	-0-
3/21	52.20	3.00	73.46	-0-	-0-
1/78	638.75	18.00	430.95	-0-	225.80
4/8	104.40	6.00	103.48	-0-	6.92
4/15	104.40	6.00	136.43	-0-	-0-
4/22	87.00	6.00	148.39	-0-	-0-
4/29	130.50	7.50	116.84	-0-	21.16
5/6	130.50	7.50	140.01	-0-	-0-
5/13	104.40	6.00	180.53	-0-	-0-
5/20	168.20	9.00	169.69	-0-	7.51
5/27	174.00	9.00	154.25	-0-	28.75
6/3	174.00	9.00	103.78	-0-	79.22
6/10	174.00	9.00	129.15	-0-	61.47
6/25	378.45	19.50	337.50	6.75	67.20
6/30	84.10	4.50	-0-	-0-	88.60
2/78	1,813.95	99.00	1,720.05	6.75	360.83
7/9	203.00	10.50	297.00	5.94	-0-
7/23	406.00	21.00	207.90	4.16	223.26
8/6	324.80	18.00	148.50	2.97	197.27
8/20	287.10	16.50	-0-	-0-	303.60
9/3	234.90	13.50	178.65	3.57	73.32
9/17	313.20	18.00	327.87	6.56	9.89
3/78	1,769.00	97.50	1,159.92	23.20	807.34
10/1	295.80	18.00	327.68	6.55	-0-
10/15	255.20	16.50	329.74	6.59	-0-
10/29	185.60	12.00	326.70	6.53	-0-
11/12	162.40	10.50	359.84	7.20	-0-
11/26	185.60	12.00	361.58	7.23	-0-
12/10	139.20	9.00	361.80	7.24	-0-
12/24	213.15	15.00	327.94	6.56	-0-
4/78	1,436.95	93.00	2,395.28	47.90	-0-

*Posting cards missing; added 132 hrs. x 2.90 per GC spec. (252 hrs. minus 15/8 hr. days per ALO) plus 1.50 per day ride.

JULIAN GONZALEZ -- NO. 17

1979

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
1/7	208.80	13.50	345.97	6.92	-0-
1/21	185.60	12.00	327.07	6.54	-0-
2/28	390.80*	-0-	-0-	-0-	-0-
3/18	88.45	7.50	355.50	7.11	-0-
3/31	185.60	12.00	331.65	6.63	-0-
1/79	1,059.25	45.00	1,360.19	27.20	-0-
4/15	208.80	12.00	331.65	6.63	-0-
4/29	217.50	13.50	350.08	7.00	-0-
5/13	261.00	15.00	376.28	7.53	-0-
5/27	342.20	18.00	376.30	7.53	-0-
6/10	348.00	18.00	351.45	7.03	21.58
6/24	349.45	18.00	319.50	6.39	54.34
2/79	1,726.95	94.50	2,105.26	42.11	75.92
7/8	287.10	15.00	351.45	7.03	-0-
7/22	406.00	21.00	127.80	2.56	301.76
7/29	197.20	10.50	-0-	-0-	207.70
8/5	130.50	7.50	-0-	-0-	138.00
8/19	313.20	18.00	191.70	3.83	143.33
9/2	208.80	12.00	383.40	7.67	-0-
9/16	313.20	18.00	401.20	8.02	-0-
9/30	295.80	18.00	336.60	6.73	-0-
3/79	2,151.80	120.00	1,792.15	35.84	790.79
10/14	278.40	18.00	319.50	6.39	-0-
10/28	162.40	10.50	367.20	7.34	-0-
11/11	162.40	10.50	336.60	6.73	-0-
11/25	185.60	12.00	318.15	6.36	-0-
12/9	139.20	9.00	319.50	6.39	-0-
12/23	213.15	15.00	422.95	8.44	-0-
4/79	1,141.15	75.00	2,083.90	41.65	-0-

*Posting cards missing; added 132 hrs. x 2.90 per GC spec. (252 hrs. minus 15/8 hr. days per ALO) plus 1.50 per day ride.

JULIAN GONZALEZ -- NO. 17

1980

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
1/1	215.20	13.50	337.25	6.75	-0-
1/20	198.40	13.50	236.08	4.72	-0-
2/28	390.80*	-0-	-0-	-0-	-0-
3/16	38.75	4.50	355.00	7.10	-0-
3/30	226.30	13.50	337.25	6.75	-0-
1/80	1,069.45	45.00	1,265.58	25.32	-0-
4/13	195.30	10.50	351.45	7.03	-0-
4/27	232.50	13.50	369.20	7.38	-0-
5/11	279.00	15.00	384.60	7.69	-0-
5/25	359.60	18.00	405.00	8.10	-0-
6/8	372.00	18.00	405.00	8.10	-0-
6/22	375.10	18.00	405.00	8.10	-0-
2/80	1,813.50	93.00	2,320.25	46.40	-0-
7/6	306.90	15.00	405.00	8.10	-0-
7/20	434.00	21.00	405.00	8.10	58.10
8/3	384.40	19.50	371.25	7.43	40.08
8/17	306.90	16.50	168.75	3.38	158.03
8/31	223.20	12.00	-0-	-0-	235.20
9/14	334.80	18.00	168.75	3.38	187.43
9/28	319.30	18.00	405.00	8.10	-0-
3/80	2,309.50	120.00	1,923.75	38.49	678.84
10/12	300.70	18.00	367.50	7.35	-0-
10/26	198.40	12.00	438.75	8.77	-0-
11/9	148.80	9.00	371.25	7.43	-0-
11/14	74.40	6.00	340.32	-0-	-0-
4/80	722.30	45.00	1,517.82	23.55	-0-

*Posting cards missing; added 132 hrs. x 2.90 per GC spec. (252 hrs. minus 15/8 hr. days per ALO) plus 1.50 per day ride.

IGNACIO HERNANDEZ -- NO. 21

QUARTER	KAWANO GROSS	KAWANO RIDE SUBSIDY	INTERIM	EXPENSES	NET
1/76*	787.35	55.50	-0-	108.00	950.85
2/76	2,389.70	115.50	1,144.80	36.00	1,396.40
3/76	2,817.60	132.00	1,312.08	-0-	1,637.52
4/76	1,913.60	106.50	1,312.08	-0-	708.02
1/77*	782.35	57.00	1,492.59	-0-	-0-
2/77	2,448.88	115.50	1,492.59	-0-	1,071.79
3/77	2,817.60	132.00	1,492.59	-0-	1,457.01
4/77	1,939.20	108.00	1,492.59	-0-	554.61
1/78*	711.95	49.50	1,196.15	-0-	66.55
2/78	2,362.80	115.50	2,130.47	-0-	604.53
3/78	2,782.40	132.00	1,587.00	-0-	1,327.40
4/78	1,913.60	111.00	945.73	-0-	1,186.27
1/79*	726.40	49.50	1,158.74	-0-	240.01
2/79	2,137.70	105.00	1,636.60	-0-	862.50
3/79	2,835.20	130.50	1,721.70	-0-	1,244.00
4/79	1,966.40	111.00	1,619.15	15.00	750.12
1/80*	841.10	57.00	124.94	144.00	917.16
2/80	2,285.10	115.50	1,467.38	24.00	1,049.52
3/80	2,552.00	129.00	2,051.15	-0-	917.55
4/80	1,164.80	63.00	999.35	-0-	285.20
TOTAL					$17,227.01

* The precise dates used in calculating backpay are different than the February to January dates set forth in the decision. The gross and interim earnings for February and January are the same. Therefore, the dates used were for administrative convenience.

IGNACIO HERNANDEZ -- NO. 21

1976

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
2/14	249.40	16.50	-0-	60.00	325.90
2/21	76.85	9.00	-0-	-0-	85.85
2/28	134.85	7.50	-0-	-0-	142.35
3/6	55.10	3.00	-0-	48.00	106.10
3/13	36.25	4.50	-0-	-0-	40.75
3/20	104.40	6.00	-0-	-0-	110.40
3/27	107.30	7.50	-0-	-0-	114.80
3/31	23.20	1.50	-0-	-0-	24.70
1/76	787.35	55.50	-0-	108.00	950.85
4/3	78.30	4.50	-0-	12.00	94.80
4/10	52.20	3.00	-0-	-0-	55.20
4/17	87.00	6.00	63.60	-0-	29.40
5/1	269.80	15.00	254.40	-0-	30.40
5/15	393.60	19.50	254.40	-0-	158.70
5/29	435.20	19.50	254.40	-0-	200.30
6/12	476.80	21.00	233.20	-0-	264.60
6/18	196.80	9.00	84.80	-0-	121.00
6/24	200.00	9.00	-0-	12.00	221.00
6/30	200.00	9.00	-0-	12.00	221.00
2/76	2,389.70	115.50	1,144.80	36.00	1,396.40
7/31	1,049.60	46.50	437.36	-0-	658.74
8/31	936.00	43.50	437.36	-0-	542.14
9/30	832.00	42.00	437.36	-0-	436.64
3/76	2,817.60	132.00	1,312.08	-0-	1,637.52
10/31	814.40	43.50	437.36	-0-	420.54
11/30	540.80	30.00	437.36	-0-	133.44
12/31	558.40	33.00	437.36	-0-	154.04
4/76	1,913.60	106.50	1,312.08	-0-	708.02

IGNACIO HERNANDEZ -- NO. 21

1977

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
1/29	78.30	4.50	497.53	-0-	-0-
2/28	377.80	28.50	497.53	-0-	-0-
3/31	326.25	24.00	497.53	-0-	-0-
1/77	782.35	57.00	1,492.59	-0-	-0-
4/30	499.48	27.00	497.53	-0-	28.95
5/31	929.60	43.50	497.53	-0-	475.57
6/30	1,019.80	45.00	497.53	-0-	567.27
2/77	2,448.88	115.50	1,492.59	-0-	1,071.79
7/31	1,049.60	46.50	497.53	-0-	598.57
8/31	936.00	43.50	497.53	-0-	481.97
9/30	832.00	42.00	497.53	-0-	376.47
3/77	2,817.60	132.00	1,492.59	-0-	1,457.01
10/31	814.40	43.50	497.53	-0-	360.37
11/30	566.40	31.50	497.53	-0-	100.37
12/31	558.40	33.00	497.53	-0-	93.87
4/77	1,939.20	108.00	1,492.59	-0-	554.61

IGNACIO HERNANDEZ -- NO. 21

1978 (Page 1 of 2)

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
1/28	52.20	3.00	144.90	-0-	-0-
2/4	66.70	4.50	134.40	-0-	-0-
2/11	58.00	4.50	115.50	-0-	-0-
2/18	116.00	10.50	142.50	-0-	-0-
2/25	107.30	7.50	162.00	-0-	-0-
3/4	92.80	6.00	32.25	-0-	66.55
3/11	33.35	4.50	130.70	-0-	-0-
3/18	78.30	4.50	167.40	-0-	-0-
3/25	107.30	4.50	166.50	-0-	-0-
1/78	711.95	49.50	1,196.15	-0-	66.55
4/1	101.50	6.00	115.95	-0-	-0-
4/8	78.30	4.50	156.75	-0-	-0-
4/15	104.40	6.00	162.90	-0-	-0-
4/22	87.00	6.00	164.70	-0-	-0-
4/29	130.50	7.50	162.90	-0-	-0-
5/6	213.00	10.50	147.00	-0-	76.50
5/12	150.40	7.50	135.00	-0-	22.90
5/19	225.60	10.50	147.00	-0-	89.10
5/26	198.40	9.00	135.00	-0-	72.40
6/3	270.90	12.00	153.75	-0-	129.15
6/10	241.60	10.50	163.52	-0-	88.58
6/17	232.00	10.50	162.00	-0-	80.50
6/24	198.40	9.00	162.00	-0-	45.40
7/1	130.80	6.00	162.00	-0-	-0-
2/78	2,362.80	115.50	2,130.47	-0-	604.53
7/8	236.80	10.50	135.00	-0-	112.30
7/15	236.80	10.50	162.00	-0-	85.30
7/22	236.80	10.50	162.00	-0-	85.30
7/29	240.00	10.50	162.00	-0-	88.50
8/4	185.60	10.50	129.00	-0-	67.10
8/11	182.40	9.00	-0-	-0-	191.40
8/18	225.60	10.50	133.50	-0-	102.60
8/25	201.60	9.00	96.00	-0-	114.60
9/9	486.40	22.50	121.50	-0-	387.40
9/15	182.40	9.00	135.00	-0-	56.40
9/23	200.00	10.50	189.00	-0-	21.50
9/30	168.00	9.00	162.00	-0-	15.00
3/78	2,782.40	132.00	1,587.00	-0-	1,327.40
10/6	164.80	9.00	-0-	-0-	173.80
10/13	198.40	10.50	135.00	-0-	73.90
10/17	110.40	10.50	150.00	-0-	-0-
10/20	57.60	3.00	26.00	-0-	34.60

IGNACIO HERNANDEZ -- NO. 21

1978

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
10/24	116.80	6.00	49.60	-0-	73.20
10/31	166.40	9.00	-0-	-0-	175.40
11/3	27.20	1.50	-0-	-0-	28.70
11/10	160.00	9.00	113.93	-0-	55.07
11/18	217.60	12.00	-0-	-0-	229.60
11/25	108.80	6.00	-0-	-0-	114.80
12/2	104.00	6.00	-0-	-0-	110.00
12/9	80.00	4.50	148.80	-0-	-0-
12/16	177.60	10.50	124.00	-0-	64.10
12/23	120.00	7.50	74.40	-0-	53.10
12/30	104.00	6.00	124.00	-0-	-0-
4/78	1,913.60	111.00	945.73	-0-	1,186.27

IGNACIO HERNANDEZ -- NO. 21

1979 (Page 1 of 2)

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
1/5	94.40	4.50	86.80	-0-	12.10
1/12	145.60	7.50	65.85	-0-	87.25
1/19	22.40	1.50	85.25	-0-	-0-
1/26	-0-	-0-	112.40	-0-	-0-
2/23	78.30	7.50	1.24	-0-	84.56
3/2	98.60	7.50	104.80	-0-	1.30
3/9	44.95	4.50	352.00	-0-	-0-
3/16	30.45	3.00	150.40	-0-	-0-
3/23	130.50	7.50	83.20	-0-	54.80
3/60	81.20	6.00	116.80	-0-	-0-
1/79	726.40	49.50	1,158.74	-0-	240.01
4/6	127.60	7.50	194.90	-0-	-0-
4/13	52.20	3.00	147.75	-0-	-0-
4/20	87.00	6.00	167.65	-0-	-0-
4/27	130.50	7.50	167.40	-0-	-0-
5/4	202.80	10.50	171.00	-0-	42.30
5/11	184.00	9.00	124.00	-0-	69.00
5/18	220.80	10.50	158.10	-0-	73.20
5/25	200.00	9.00	170.10	-0-	38.90
6/1	235.20	10.50	168.30	-0-	77.40
6/15	233.60	10.50	-0-	-0-	244.10
6/22	230.40	10.50	-0-	-0-	240.90
6/29	233.60	10.50	167.40	-0-	76.70
2/79	2,137.70	105.00	1,636.60	-0-	862.50
7/6	235.20	10.50	55.00	-0-	190.70
7/13	241.60	10.50	67.90	-0-	184.20
7/20	232.00	10.50	167.40	-0-	75.10
7/27	244.80	10.50	164.30	-0-	91.00
8/3	220.80	10.50	55.00	-0-	176.30
8/10	182.40	9.00	148.80	-0-	42.60
8/17	222.40	10.50	108.50	-0-	124.40
8/24	235.20	9.00	139.50	-0-	104.70
8/31	243.20	10.50	155.00	-0-	98.70
9/7	217.60	10.50	167.40	-0-	60.70
9/14	217.60	10.50	167.40	-0-	60.70
9/21	169.60	9.00	167.40	-0-	11.20
9/28	172.80	9.00	158.10	-0-	23.70
3/79	2,835.20	130.50	1,721.70	-0-	1,244.00
10/5	192.00	10.50	148.80	-0-	53.70
10/12	198.40	10.50	124.00	-0-	84.90
10/19	166.40	9.00	128.00	-0-	47.40
10/26	206.40	10.50	128.00	-0-	88.90

IGNACIO HERNANDEZ -- NO. 21

1979 (Page 2 of 2)

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
11/2	105.60	6.00	128.00	-0-	-0-
11/9	155.20	9.00	108.80	-0-	55.40
11/17	204.80	12.00	-0-	15.00	216.80
11/24	102.40	6.00	125.29	-0-	16.89
12/1	102.40	6.00	163.58	-0-	-0-
12/8	78.40	4.50	201.86	-0-	-0-
12/15	179.20	10.50	169.37	-0-	20.33
12/22	118.40	7.50	193.45	-0-	-0-
12/29	105.60	6.00	-0-	-0-	111.60
12/31	51.20	3.00	-0-	-0-	54.20
4/79	1,966.40	111.00	1,619.15	15.00	750.12

IGNACIO HERNANDEZ -- NO. 21

1980

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
2/2	127.10	7.50	124.94	-0-	9.66
2/9	12.40	1.50	-0-	72.00	85.90
2/16	149.85	10.50	-0-	-0-	160.35
2/23	83.70	7.50	-0-	-0-	91.20
3/1	119.30	6.00	-0-	72.00	197.30
3/8	58.90	4.50	-0-	-0-	63.40
3/15	38.75	4.50	-0-	-0-	43.25
3/22	139.50	7.50	-0-	-0-	147.00
3/29	86.80	6.00	-0-	-0-	92.80
3/31	24.80	1.50	-0-	-0-	26.30
1/80	841.10	57.00	124.94	144.00	917.16
4/5	111.60	6.00	-0-	24.00	141.60
4/11	55.80	3.00	-0-	-0-	58.80
4/18	93.00	6.00	126.40	-0-	-0-
4/25	139.50	7.50	12.83	-0-	134.17
5/3	179.60	9.00	145.00	-0-	43.60
5/9	182.40	9.00	173.70	-0-	17.70
5/16	184.00	9.00	161.00	-0-	32.00
5/23	99.20	10.50	174.60	-0-	090
5/30	201.60	9.00	166.40	-0-	44.20
6/6	236.80	10.50	153.85	-0-	93.45
6/13	238.40	10.50	170.00	-0-	78.90
6/20	228.80	10.50	183.60	-0-	55.70
6/30	334.40	15.00	-0-	-0-	349.40
2/80	2,285.10	115.50	1,467.38	24.00	1,049.52
7/4	132.80	6.00	-0-	-0-	138.80
7/11	243.20	10.50	183.60	-0-	70.10
7/18	228.80	10.50	351.10	-0-	-0-
7/25	104.00	10.50	166.60	-0-	-0-
8/1	160.00	10.50	136.00	-0-	34.50
8/8	212.80	10.50	136.00	-0-	87.30
8/15	185.60	9.00	136.00	-0-	58.60
8/22	225.60	10.50	136.00	-0-	100.10
8/29	220.80	9.00	131.75	-0-	98.05
9/5	212.80	10.50	153.00	-0-	70.30
9/12	222.40	10.50	183.60	-0-	49.30
9/19	203.20	10.50	337.50	-0-	-0-
9/28	200.00	10.50	-0-	-0-	210.50
3/80	2,552.00	129.00	2,051.15	-0-	917.55
10/3	136.00	7.50	175.85	-0-	-0-
10/10	200.00	10.50	138.40	-0-	72.10
10/17	192.00	10.50	135.15	-0-	67.35
10/24	174.40	9.00	136.00	-0-	47.40
10/31	166.40	9.00	141.95	-0-	33.45
11/7	105.60	6.00	136.00	-0-	-0-
11/14	190.40	10.50	136.00	-0-	64.90
4/79	1,164.80	63.00	999.35	-0-	285.20

JOSEPHA HERNANDEZ -- NO. 22

QUARTER	KAWANO GROSS	KAWANO RIDE SUBSIDY	INTERIM	EXPENSES	NET
1/76*	362.50	30.00	-0-	103.80	496.30
2/76	2,075.05	211.50	1,890.54	270.00**	810.46
3/76	2,154.70	123.00	273.06	341.60**	2,346.24
4/76	1,914.00	186.00	133.38	63.00	2,029.62
1/77*	517.80	37.50	617.44	49.60	202.72
2/77	2,072.05	121.50	1,874.54	270.00**	723.35
3/77	2,189.50	124.50	505.38	341.60**	2,150.22
4/77	1,909.40	111.00	-0-	72.00	2,092.40
1/78*	571.30	40.50	529.25	24.00	557.05
2/78	2,164.85	124.50	1,926.55	-0-	584.95
3/78	379.90***	24.00	424.50	-0-	21.50
4/78	1,914.00	111.00	1,281.65	-0-	820.38
1/79*	551.00	39.00	1,301.25	-0-	44.40
2/79	2,167.75	126.00	2,346.46	45.69	467.27
3/79	2,016.50	117.00	1,023.20	44.42	1,154.72
4/79	1,921.25	111.00	6.00	72.00	2,098.25
1/80*	589.00	39.00	156.80	27.12	527.46
2/80	2,343.95	127.50	486.20	57.70	2,042.95
3/80	2,216.50	117.00	257.26	29.10	2,105.34
4/80	970.55	97.50	7.50	34.00	1,094.55
TOTAL					$22,370.13

JOSEPHA HERNANDEZ -- NO. 22
(Continued)

* The precise dates used in calculating backpay are different than the February to January dates set forth in the decision. The gross and interim earnings for February and January are the same. Therefore, the dates used were for administrative convenience.

** Rent in Oxnard added $270.00 ($90.00 per month).

*** No backpay 7/1/78 to 9/10/78 work available at Seabreeze.

JOSEPHA HERNANDEZ -- NO. 22

1976 (Page 1 of 2)

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
1/14	118.90	7.50	-0-	-0-	126.40
1/21	47.85	7.50	-0-	-0-	55.35
1/28	134.85	7.50	-0-	-0-	142.35
3/6	55.10	6.00	-0-	12.00	73.10
3/13	5.80	1.50	-0-	-0-	7.30
3/20	-0-	-0-	-0-	47.20	47.20
3/27	-0-	-0-	-0-	44.60	44.60
1/76	362.50	30.00	-0-	103.80	496.30
4/2	69.60	4.50	140.15	-0-	-0-
4/10	181.25	10.50	107.57	-0-	84.18
4/17	169.65	10.50	-0-	-0-	180.15
4/24	171.10	10.50	169.54	-0-	12.06
5/1	130.50	7.50	169.54	-0-	-0-
5/8	156.60	9.00	158.76	-0-	6.84
5/15	184.25	10.50	179.34	-0-	15.41
5/22	158.05	9.00	168.56	-0-	-0-
5/29	182.70	10.50	197.96	-0-	-0-
6/5	149.35	9.00	198.94	-0-	-0-
6/12	187.05	10.50	146.02	-0-	51.53
6/19	175.45	10.50	105.33	-0-	80.62
6/26	159.50	99.00	148.83	270.00	109.67
2/76	2,075.05	211.50	1,890.54	270.00	810.46
7/3	188.50	10.50	151.29	-0-	47.71
7/10	201.55	10.50	73.80	-0-	138.25
7/17	197.20	10.50	47.97	-0-	159.73
7/24	174.00	9.00	-0-	23.60	206.60
7/31	165.30	9.00	-0-	-0-	174.30
8/7	156.60	9.00	-0-	24.00	189.60
8/14	155.15	9.00	-0-	-0-	164.15
8/21	124.70	7.50	-0-	-0-	132.20
8/28	130.50	7.50	-0-	-0-	138.00
9/4	176.90	10.50	-0-	24.00	211.40
9/11	159.50	9.00	-0-	-0-	168.50
9/18	118.90	7.50	-0-	-0-	126.40
9/25	136.30	9.00	-0-	-0-	145.30
9/30	69.60	4.50	-0-	270.00	74.10
3/76	2,154.70	123.00	273.06	341.60	2,346.24
10/9	178.35	12.00	-0-	24.00	214.35
10/16	75.40	4.50	-0-	-0-	79.90
10/23	203.00	10.50	-0-	-0-	213.50
10/30	139.20	7.50	-0-	-0-	146.70

JOSEPH HERNANDEZ -- NO. 22

1976

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
11/6	156.60	9.00	-0-	24.00	189.60
11/13	182.70	10.50	-0-	-0-	193.20
11/20	182.70	10.50	-0-	-0-	193.20
11/27	104.40	82.50	-0-	-0-	186.90
12/4	121.80	9.00	-0-	15.00	145.80
12/11	149.35	9.00	-0-	-0-	158.35
12/18	162.40	7.50	133.38	-0-	36.52
12/25	166.75	7.50	-0-	-0-	174.25
12/31	91.35	6.00	-0-	-0-	97.35
4/76	1,914.00	186.00	133.38	63.00	2,029.62

JOSEPHA HERNANDEZ -- NO. 22

1977 (Page 1 of 2)

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
1/8	82.65	4.50	28.88	-0-	58.27
1/15	72.65	4.50	119.64	-0-	-0-
2/12	66.70	4.50	-0-	-0-	71.20
2/19	100.05	10.50	99.01	-0-	11.54
2/26	73.95	4.50	107.26	-0-	-0-
3/5	116.00	7.50	111.39	-0-	12.11
3/12	5.80	1.50	126.51	-0-	-0-
3/19	-0-	-0-	24.75	-0-	-0-
3/25	-0-	-0-	-0-	49.60	49.60
1/77	517.80	37.50	617.44	49.60	202.72
4/2	69.60	4.50	146.69	-0-	-0-
4/9	155.15	9.00	142.65	-0-	21.50
4/16	169.65	10.50	178.50	-0-	1.65
4/23	171.10	10.50	183.75	-0-	-0-
4/29	130.50	7.50	159.60	-0-	-0-
5/7	182.70	10.50	113.40	-0-	79.80
5/14	184.15	10.50	97.65	-0-	97.00
5/21	156.60	9.00	96.60	-0-	69.00
5/28	184.15	10.50	163.80	-0-	30.85
6/4	149.35	9.00	196.35	-0-	-0-
6/11	187.05	10.50	121.80	-0-	75.75
6/18	175.45	10.50	139.65	-0-	46.30
6/25	156.60	9.00	134.10	270.00	31.50
2/77	2,072.05	121.50	1,874.54	270.00	723.35
7/2	194.30	10.50	143.00	-0-	61.80
7/9	195.75	10.50	132.60	-0-	73.65
7/16	197.20	10.50	110.50	-0-	97.20
7/23	174.00	9.00	119.28	-0-	63.72
7/30	168.20	9.00	-0-	23.60	200.80
8/6	156.60	9.00	-0-	24.00	189.60
8/13	155.15	9.00	-0-	-0-	164.15
8/20	124.70	7.50	-0-	-0-	132.20
8/27	130.50	7.50	-0-	-0-	138.00
9/3	182.70	10.50	-0-	24.00	217.20
9/10	159.50	9.00	-0-	-0-	168.50
9/17	124.70	7.50	-0-	-0-	132.20
9/24	133.40	9.00	-0-	-0-	142.40
9/30	92.80	6.00	-0-	270.00	98.80
3/77	2,189.50	124.50	505.38	341.60	2,150.22
10/8	155.15	10.50	-0-	24.00	189.65
10/15	69.60	4.50	-0-	-0-	74.10
10/22	203.00	10.50	-0-	-0-	213.50
10/29	142.10	7.50	-0-	-0-	149.60

JOSEPHA HERNANDEZ -- NO. 22

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WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
11/5	156.60	9.00	-0-	24.00	189.60
11/12	182.70	10.50	-0-	-0-	193.20
11/19	182.70	10.50	-0-	-0-	193.20
11/26	104.40	7.50	-0-	-0-	111.90
12/3	127.60	9.00	-0-	-0-	160.60
12/10	146.45	9.00	-0-	-0-	155.45
12/17	144.45	7.50	-0-	-0-	151.95
12/24	203.30	9.00	-0-	-0-	212.30
12/31	91.35	6.00	-0-	-0-	97.35
4/77	1,909.40	111.00	-0-	24.00	2,092.40

JOSEPHA HERNANDEZ -- NO. 22

1978

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
1/7	82.65	4.50	-0-	24.00	111.15
1/14	82.65	4.50	-0-	-0-	87.15
2/11	46.40	3.00	-0-	-0-	49.40
1/18	116.00	10.50	-0-	-0-	126.50
2/25	78.30	6.00	-0-	-0-	84.30
3/4	92.80	6.00	60.00	-0-	38.80
3/11	29.00	3.00	115.50	-0-	-0-
3/18	-0-	-0-	102.00	-0-	-0-
3/25	-0-	-0-	145.50	-0-	-0-
3/31	43.50	3.00	106.25	-0-	59.75
1/78	571.30	40.50	529.25	24.00	557.05
4/8	155.15	9.00	158.65	-0-	5.50
4/15	169.65	10.50	171.00	-0-	9.15
4/22	181.25	10.50	171.95	-0-	19.80
4/29	146.45	9.00	228.10	-0-	-0-
5/6	130.50	7.50	174.80	-0-	-0-
5/13	184.15	10.50	243.75	-0-	-0-
5/20	156.60	9.00	166.75	-0-	-0-
5/27	184.15	10.50	193.20	-0-	1.45
6/3	149.35	9.00	199.65	-0-	-0-
6/10	187.05	10.50	218.70	-0-	-0-
6/17	178.35	10.50	-0-	-0-	188.85
6/24	174.00	9.00	-0-	-0-	183.00
6/30	168.20	9.00	-0-	-0-	177.20
2/78	2,164.85	124.50	1,926.55	-0-	584.95
9/16	127.60	7.50	165.00	-0-	-0-
9/23	136.30	9.00	157.50	-0-	-0-
9/30	116.00	7.50	102.00	-0-	21.50
3/78	379.90	24.00	424.50	-0-	21.50
10/7	131.95	9.00	114.00	-0-	26.95
10/14	69.60	4.50	123.51	-0-	-0-
10/21	197.20	10.50	125.55	-0-	82.15
10/28	171.10	9.00	157.65	-0-	22.45
11/4	130.50	7.50	165.62	-0-	-0-
11/11	182.70	10.50	109.05	-0-	84.15
11/18	185.60	10.50	128.65	-0-	67.45
11/25	127.60	9.00	63.99	-0-	72.61
12/2	101.50	7.50	86.20	-0-	22.80
12/9	172.55	10.50	36.43	-0-	146.62
12/16	113.10	6.00	-0-	-0-	119.10
12/23	216.05	9.00	60.95	-0-	164.10
12/31	114.55	7.50	110.05	-0-	12.00
4/78	1,914.00	111.00	1,281.65	-0-	820.38

JOSEPHA HERNANDEZ -- NO. 22

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WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
1/6	82.65	4.50	49.60	-0-	37.55
1/13	62.35	3.00	207.70	-0-	-0-
2/10	26.10	1.50	99.20	-0-	-0-
2/17	126.15	10.50	158.10	-0-	-0-
2/24	59.45	6.00	151.90	-0-	-0-
3/3	121.80	7.50	122.45	-0-	6.85
3/10	29.00	3.00	120.91	-0-	-0-
3/17	-0-	-0-	163.54	-0-	-0-
3/24	-0-	-0-	121.68	-0-	-0-
3/31	43.50	3.00	106.17	-0-	-0-
1/79	551.00	39.00	1,301.25	-0-	44.40
4/8	129.05	7.50	160.43	3.17	-0-
4/14	169.65	10.50	132.93	2.62	49.84
4/21	181.25	10.50	157.60	3.11	37.26
4/28	146.45	9.00	160.00	3.17	-0-
5/5	156.60	9.00	103.52	2.06	64.14
5/12	184.15	10.50	171.28	3.39	26.76
5/19	182.70	10.50	140.00	2.78	55.98
5/26	158.05	9.00	-0-	-0-	167.05
6/2	175.45	10.50	209.85	4.17	-0-
6/9	160.95	9.00	291.60	5.81	-0-
6/16	175.45	10.50	315.90	5.48	-0-
6/23	156.60	9.00	364.95	7.19	-0-
6/30	191.40	10.50	138.40	2.74	66.24
2/79				45.69	467.27
7/7	192.85	10.50	148.80	2.95	57.50
7/14	169.20	10.50	140.00	2.78	42.48
7/21	174.00	9.00	158.40	3.14	27.74
7/28	174.00	9.00	160.00	3.17	26.17
8/4	156.60	9.00	136.00	2.70	32.30
8/11	158.05	9.00	144.00	2.87	25.92
8/18	147.90	9.00	136.00	2.81	23.71
8/25	130.50	7.50	-0-	-0-	138.00
9/1	156.60	9.00	-0-	24.00	189.60
9/8	150.80	9.00	-0-	-0-	159.80
9/15	130.50	7.50	-0-	-0-	138.00
9/22	136.30	9.00	-0-	-0-	145.30
9/30	139.20	9.00	-0-	-0-	148.20
3/79	2,016.50	117.00	1,023.20	44.42	1,154.72
10/6	117.45	7.50	-0-	24.00	148.95
10/13	92.80	6.00	6.00	-0-	92.80
10/20	168.20	9.00	-0-	-0-	177.20
10/27	200.10	10.50	-0-	-0-	210.60

JOSEPHA HERNANDEZ -- NO. 22

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WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
11/3	104.40	6.00	-0-	24.00	134.40
11/10	182.70	10.50	-0-	-0-	193.20
11/17	191.40	10.50	-0-	-0-	201.90
11/24	130.50	9.00	-0-	-0-	139.50
12/1	118.90	9.00	-0-	24.00	151.90
12/8	152.25	9.00	-0-	-0-	161.25
12/15	100.05	6.00	-0-	-0-	106.05
12/22	247.95	10.50	-0-	-0-	258.45
12/29	59.45	4.50	-0-	-0-	63.95
12/31	55.10	3.00	-0-	-0-	58.10
			6.00	72.00	2,098.25

JOSEPHA HERNANDEZ -- NO. 22

1980 (Page 1 of 2)

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
1/5	66.65	3.00	100.80	2.01	-0-
1/12	88.35	4.50	56.00	1.11	37.96
2/9	-0-	-0-	-0-	-0-	-0-
2/16	150.35	10.50	-0-	-0-	160.85
2/23	52.70	6.00	-0-	-0-	58.70
3/1	136.40	7.50	-0-	24.00	167.90
3/8	48.05	4.50	-0-	-0-	52.55
3/15	-0-	-0-	-0-	-0-	-0-
3/22	-0-	-0-	-0-	-0-	-0-
3/29	-0-	-0-	-0-	-0-	-0-
3/31	46.50	3.00	-0-	-0-	49.50
1/80	589.00	39.00	156.80	27.12	527.46
4/5	110.05	6.00	-0-	24.00	140.05
4/12	153.55	9.00	-0-	-0-	162.55
4/19	193.75	10.50	-0-	-0-	204.25
4/26	156.55	9.00	-0-	-0-	165.55
5/3	167.40	9.00	-0-	24.00	200.40
5/10	196.85	10.50	-0-	-0-	207.35
5/17	195.30	10.50	-0-	-0-	205.80
5/24	196.85	10.50	-0-	-0-	207.35
5/31	186.25	10.50	-0-	-0-	196.75
6/7	167.40	9.00	107.20	2.13	71.33
6/14	189.10	10.50	134.40	2.67	67.87
6/21	170.50	9.00	115.20	2.30	66.60
6/28	198.40	10.50	89.60	1.78	121.08
6/31	62.00	3.00	39.80	.82	26.02
2/80	2,343.95	127.50	486.20	57.70	2,042.95
7/5	144.15	7.50	-0-	-0-	151.65
7/12	207.70	10.50	88.50	1.76	131.46
7/19	189.10	9.00	27.20	.54	171.44
7/26	217.00	10.50	34.00	.67	194.17
8/2	173.60	9.00	30.60	.61	152.61
8/9	167.40	9.00	-0-	-0-	176.40
8/16	159.65	7.50	26.33	.52	141.34
8/23	139.50	7.50	50.63	1.00	97.37
8/30	167.40	9.00	-0-	-0-	176.40
9/6	161.20	9.00	-0-	24.00	194.20
9/13	161.20	9.00	-0-	-0-	179.50
9/20	120.90	7.50	-0-	-0-	128.40
9/27	124.00	7.50	-0-	-0-	131.50
9/30	74.40	4.50	-0-	-0-	78.90
3/80	2,216.50	117.00	257.26	29.10	2,105.34

JOSEPHA HERNANDEZ -- NO. 22

1980 (Page 2 of 2)

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
10/4	68.45	49.50	-0-	24.00	141.95
10/11	120.90	7.50	-0-	-0-	128.40
10/18	142.60	7.50	7.50	-0-	142.60
10/25	217.00	10.50	-0-	-0-	227.50
11/1	142.60	7.50	-0-	10.00	160.10
11/8	167.40	9.00	-0-	-0-	176.40
11/14	111.60	6.00	-0-	-0-	117.60
4/80	970.55	97.50	7.50	34.00	1,094.55

AURELIO HIGUERA -- NO. 23

QUARTER	KAWANO GROSS	KAWANO RIDE SUBSIDY	INTERIM	EXPENSES	NET
1/76	121.80	7.50	69.60	-0-	59.70
2/76	2,215.45	109.50	2,023.48	-0-	506.82
3/76	2,682.50	109.50	1,440.04	-0-	1,395.26
4/76	1,784.95	96.00	1,132.46	24.00	921.29
1/77	1,444.15	79.50	252.40	30.00	1,341.55
2/77	2,183.05	106.50	1,777.54	-0-	633.51
3/77	2,905.80	120.00	1,071.72	28.83	1,982.91
4/77	1,784.96	97.50	1,606.22	-0-	663.62
1/78	1,377.50	76.50	1,486.17	-0-	53.34
2/78	2,133.75	102.00	1,706.09	-0-	529.66
3/78	2,905.80	120.00	1,932.61	-0-	1,093.19
4/78	1,660.25	88.50	1,433.00	-0-	627.94
1/79	1,365.10	75.00	205.80	30.00	1,264.30
2/79	2,181.75	106.50	118.00	48.00	2,236.65
3/79	2,639.00	106.50	1,414.10	6.00	1,337.40
4/79	1,860.35	97.50	781.76	37.95	1,353.86
1/80	1,546.30	84.00	1,091.32	18.82	782.61
2/80	2,450.55	111.00	904.00	-0-	1,657.55
3/80	3,100.00	120.00	1,227.60	-0-	1,992.40
4/80	1,029.95	52.50	613.80	-0-	533.80
TOTAL					20,967.36

AURELIO HIGUERA -- NO. 23

1976

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
3/31	121.80	7.50	69.60	-0-	59.70
1/76	121.80	7.50	69.60	-0-	59.70
4/3	78.30	4.50	69.60	-0-	13.20
4/10	26.10	1.50	198.65	-0-	-0-
4/16	104.40	6.00	130.50	-0-	-0-
4/24	145.00	9.00	145.00	-0-	9.00
5/1	189.95	10.50	131.95	-0-	68.50
5/8	184.15	9.00	107.30	-0-	85.85
5/14	127.60	6.00	106.58	-0-	27.02
5/21	229.10	10.50	139.20	-0-	100.40
5/28	220.40	10.50	201.55	-0-	29.35
6/5	268.25	12.00	189.95	-0-	90.30
6/12	232.00	10.50	179.80	-0-	62.70
6/19	224.60	10.50	214.60	-0-	20.50
6/25	185.60	9.00	208.80	-0-	-0-
2/76	2,215.45	109.50	2,023.48	-0-	506.82
7/3	220.40	9.00	179.80	-0-	49.60
7/9	240.70	9.00	192.85	-0-	56.85
7/16	150.80	6.00	200.10	-0-	-0-
7/22	150.80	6.00	-0-	-0-	156.80
8/4	284.20	10.50	57.75	-0-	236.95
8/11	176.90	7.50	123.75	-0-	60.65
8/18	194.30	7.50	121.00	-0-	80.80
8/25	237.80	10.50	138.87	-0-	109.43
9/1	237.80	9.00	134.75	-0-	112.05
9/8	237.80	10.50	123.75	-0-	124.55
9/15	203.00	9.00	24.75	-0-	187.25
9/22	243.60	10.50	122.37	-0-	131.73
9/25	104.40	4.50	20.30	-0-	88.60
3/76	2,682.50	109.50	1,440.04	-0-	1,395.26
10/1	168.20	7.50	162.40	-0-	13.30
10/9	255.20	12.00	171.10	-0-	96.10
10/16	145.00	7.50	201.55	-0-	-0-
10/22	145.00	7.50	100.05	-0-	52.45
10/29	133.40	7.50	95.70	-0-	45.20
11/5	150.80	9.00	128.33	-0-	31.47
11/10	49.30	3.00	133.40	-0-	-0-
11/19	98.60	6.00	123.25	-0-	-0-
11/27	188.90	7.50	16.68	-0-	109.72
12/4	159.50	10.50	-0-	24.00	194.00
12/11	214.60	9.00	-0-	-0-	223.60
12/18	30.45	1.50	-0-	-0-	31.95
12/25	17.40	1.50	-0-	-0-	18.90
12/31	98.60	6.00	-0-	-0-	104.60
4/76	1,784.95	96.00	1,132.46	24.00	921.29

AURELIO HIGUERA -- NO. 23

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WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
1/8	52.20	3.00	-0-	24.00	79.20
1/15	198.65	10.50	-0-	-0-	209.15
1/22	174.00	9.00	-0-	-0-	183.00
1/19	197.20	10.50	-0-	-0-	207.70
1/26	160.90	9.00	-0-	-0-	169.90
3/5	185.60	9.00	-0-	6.00	200.60
3/12	145.00	9.00	-0-	-0-	154.00
3/19	107.30	6.00	124.70	-0-	-0-
3/26	130.50	7.50	-0-	-0-	138.00
3/31	92.80	6.00	127.70	-0-	-0-
1/77	1,444.15	79.50	252.40	30.00	1,341.55
4/8	104.40	6.00	130.50	-0-	-0-
4/14	52.20	3.00	156.60	-0-	-0-
4/21	118.90	7.50	108.75	-0-	17.65
4/29	198.65	10.50	158.05	-0-	51.10
5/6	189.95	9.00	184.88	-0-	14.07
5/13	159.50	7.50	130.50	-0-	36.50
5/19	196.70	9.00	188.50	-0-	17.20
5/27	252.30	12.00	101.50	-0-	162.80
6/3	230.55	10.50	136.30	-0-	104.75
6/10	234.90	10.50	118.13	-0-	127.27
6/17	230.40	10.50	177.98	-0-	62.92
6/24	214.60	10.50	185.85	-0-	39.25
2/77	2,183.05	106.50	1,777.54	-0-	633.51
7/1	171.10	7.50	155.92	-0-	22.68
7/9	321.90	12.00	-0-	-0-	333.90
7/13	81.20	3.00	-0-	-0-	84.20
7/20	220.40	9.00	54.00	-0-	175.40
7/27	150.80	6.00	151.50	3.03	8.33
8/3	284.20	10.50	162.00	3.24	135.94
8/10	217.50	9.00	162.00	3.24	67.74
8/17	194.30	7.50	123.00	2.46	81.26
8/24	203.00	9.00	135.00	2.70	79.70
8/31	237.80	10.50	108.00	2.16	142.46
9/3	104.40	4.50	-0-	12.00	120.90
9/10	237.80	10.50	-0-	-0-	248.30
9/18	237.80	10.50	-0-	-0-	248.30
9/25	243.60	10.50	20.30	-0-	233.80
3/77	2,905.80	120.00	1,071.72	28.83	1,982.91
10/1	168.20	7.50	162.40	-0-	13.30
10/9	255.20	12.00	171.10	-0-	96.10
10/16	145.00	7.50	101.55	-0-	50.95
10/22	145.00	7.50	100.05	-0-	52.45
10/29	133.40	7.50	95.70	-0-	45.20

AURELIO HIGUERA -- NO. 23

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WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
11/5	150.80	10.50	128.33	-0-	32.97
11/9	49.30	3.00	-0-	-0-	52.30
11/16	49.30	3.00	201.07	-0-	-0-
11/23	98.60	6.00	158.71	-0-	-0-
11/30	133.41	9.00	30.81	-0-	111.60
12/14	340.75	16.50	148.50	-0-	208.75
12/31	116.00	7.50	308.00	-0-	-0-
4/77	1,784.96	97.50	1,606.22	-0-	663.62

AURELIO HIGUERA -- NO. 23

1978

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
1/15	250.85	13.50	298.38	-0-	-0-
1/31	362.50	19.50	334.13	-0-	47.87
2/28	166.75	9.00	170.28	-0-	5.47
3/15	292.90	16.50	323.13	-0-	-0-
3/31	304.50	18.00	360.25	-0-	-0-
1/78	1,377.50	76.50	1,486.17	-0-	53.34
4/15	326.25	18.00	335.50	-0-	8.75
5/15	381.35	18.00	364.38	-0-	34.97
5/31	514.25	24.00	360.25	-0-	178.00
6/15	497.20	22.50	298.38	-0-	221.32
6/30	414.70	19.50	347.58	-0-	86.62
2/78	2,133.75	102.00	1,706.09	-0-	529.66
7/15	481.40	18.00	352.00	-0-	147.40
7/31	493.00	19.50	287.05	-0-	225.45
8/15	501.70	19.50	364.05	-0-	157.15
8/31	472.70	21.00	305.94	-0-	187.76
9/15	475.60	21.00	308.69	-0-	187.91
9/30	481.40	21.00	314.88	-0-	187.52
3/78	2,905.80	120.00	1,932.61	-0-	1,093.19
10/15	437.90	19.50	327.25	-0-	130.15
10/31	356.70	19.50	152.63	-0-	223.57
11/5	101.50	6.00	45.00	-0-	62.50
11/12	49.30	3.00	96.00	-0-	-0-
11/19	98.60	6.00	109.86	-0-	-0-
11/26	118.90	7.50	110.22	-0-	16.18
12/3	133.40	9.00	146.60	-0-	-0-
12/10	203.00	9.00	96.36	-0-	115.64
12/17	68.15	3.00	166.08	-0-	-0-
12/24	17.40	1.50	183.00	-0-	-0-
12/31	75.40	4.50	-0-	-0-	79.90
4/78	1,660.25	88.50	1,433.00	-0-	627.94

AURELIO HIGUERA -- NO. 23

1979

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
1/7	27.55	1.50	24.00	-0-	5.05
1/14	193.50	10.50	120.30	-0-	83.70
1/20	145.00	7.50	-0-	12.00	164.50
1/27	145.00	7.50	-0-	-0-	152.50
2/25	192.85	10.50	61.50	-0-	141.85
3/3	142.10	7.50	149.60	18.00	167.60
3/10	162.40	9.00	-0-	-0-	171.40
3/17	104.40	6.00	-0-	-0-	110.40
3/24	133.40	7.50	-0-	-0-	140.90
3/29	118.90	7.50	-0-	-0-	126.40
1/79	1,365.10	75.00	205.80	30.00	1,264.30
4/5	130.50	7.50	24.00	-0-	114.00
4/11	26.10	1.50	46.00	-0-	-0-
4/18	104.40	6.00	48.00	-0-	62.40
4/21	40.60	3.00	-0-	-0-	43.60
4/28	163.85	9.00	-0-	-0-	172.85
5/5	195.75	9.00	-0-	24.00	228.75
5/12	156.60	7.50	-0-	-0-	164.10
5/19	228.60	10.50	-0-	-0-	239.10
5/26	220.40	10.50	-0-	-0-	230.90
6/2	233.45	10.50	-0-	24.00	267.95
6/9	232.00	10.50	-0-	-0-	242.50
6/16	232.00	10.50	-0-	-0-	242.50
6/23	217.50	10.50	-0-	-0-	228.00
2/79	2,181.75	106.50	118.00	48.00	2,236.65
7/31	974.40	37.50	742.50	-0-	269.40
8/4	162.40	6.00	97.20	-0-	71.20
8/11	176.90	7.50	26.00	-0-	158.40
8/18	234.90	7.50	194.40	-0-	48.00
8/25	237.80	10.50	78.00	-0-	170.30
9/1	237.80	10.50	156.00	-0-	92.30
9/8	237.80	10.50	-0-	6.00	254.30
9/13	168.20	7.50	-0-	-0-	175.70
9/20	208.80	9.00	120.00	-0-	97.80
3/79	2,639.00	106.50	1,414.10	6.00	1,337.40
10/4	440.80	19.50	352.00	-0-	108.30
10/11	191.40	9.00	32.00	-0-	168.40
10/20	197.20	10.50	-0-	12.00	219.70
10/27	139.20	7.50	-0-	-0-	146.70
11/3	150.80	9.00	-0-	18.00	177.80
11/10	101.50	6.00	-0-	-0-	107.50
11/17	49.30	3.00	-0-	-0-	52.30
11/23	98.60	6.00	-0-	-0-	104.60
12/8	330.60	19.50	83.20	1.66	268.56
12/23	160.95	7.50	314.56	6.29	-0-
4/79	1,860.35	97.50	781.76	37.95	1,353.86

AURELIO HIGUERA -- NO. 23

1980

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
1/6	128.05	7.50	365.50	7.31	-0-
1/20	300.70	18.00	332.52	6.65	-0-
2/17	176.70	9.00	81.60	2.45	106.55
3/2	330.15	16.50	120.70	2.41	228.36
3/7	158.10	7.50	-0-	-0-	165.60
3/14	127.10	7.50	56.00	-0-	78.60
3/22	142.60	7.50	140.00	-0-	10.10
3/31	182.90	10.50	-0-	-0-	193.40
1/80	1,546.30	84.00	1,630.30	18.82	782.61
4/30	516.15	28.50	160.00	-0-	384.65
5/3	105.40	4.50	-0-	-0-	109.90
5/10	162.75	7.50	74.40	-0-	95.85
5/17	210.80	9.00	93.00	-0-	126.80
5/24	238.70	9.00	93.00	-0-	154.70
5/31	240.25	10.50	93.00	-0-	157.75
6/7	254.20	10.50	93.00	-0-	171.70
6/14	248.00	10.50	93.00	-0-	165.50
6/21	235.60	10.50	93.00	-0-	153.10
6/27	207.70	9.00	93.00	-0-	123.70
6/30	31.00	1.50	18.60	-0-	13.90
2/80	2,450.55	111.00	904.00	-0-	1,657.55
7/5	210.80	7.50	74.40	-0-	143.90
7/12	260.40	9.00	93.00	-0-	176.40
7/19	192.20	7.50	93.00	-0-	106.70
7/26	173.60	6.00	93.00	-0-	86.60
8/2	291.40	10.50	93.00	-0-	208.90
8/9	269.70	10.50	93.00	-0-	187.20
8/16	207.70	7.50	93.00	-0-	122.20
8/23	186.00	7.50	93.00	-0-	100.50
8/30	254.20	10.50	93.00	-0-	171.70
9/6	254.20	10.50	93.00	-0-	171.70
9/13	248.00	10.50	93.00	-0-	165.50
9/20	223.20	9.00	93.00	-0-	139.20
9/27	260.40	10.50	93.00	-0-	177.90
9/30	68.20	3.00	37.20	-0-	34.00
3/80	3,100.00	120.00	1,227.60	-0-	1,992.40
10/4	142.60	6.00	55.80		92.80
10/11	240.60	9.00	93.00		120.60
10/18	179.00	9.00	93.00		95.00
10/25	179.80	9.00	93.00		95.80
11/1	133.30	9.00	93.00		49.30
11/8	164.30	9.00	93.00		80.30
11/14	26.35	1.50	93.00		-0-
4/80	1,029.95	52.50	613.80		533.80

ILDEFONZO VILLA -- NO. 51

QUARTER	KAWANO GROSS	KAWANO RIDE SUBSIDY	INTERIM	EXPENSES	NET
1/76*	788.80	49.50	-0-	48.00	886.30
2/76	1,834.25	100.50	361.62	48.00	1,621.13
3/76	2,118.45	111.00	1,017.54	20.00	1,231.91
4/76	1,896.60	106.50	519.25	36.00	1,525.05
1/77*	957.00	61.50	651.48	-0-	428.95
2/77	1,834.25	100.50	1,180.93	-0-	755.38
3/77	2,088.65	112.50	1,664.76	10.02	559.92
4/77	1,896.60	106.50	897.77	18.00	1,146.53
1/78*	867.o0	54.00	931.88	-0-	232.62
2/78	1,805.25	99.00	1,963.72	-0-	95.83
3/78	2,048.00	111.00	1,689.50	-0-	530.10
4/78	1,886.45	105.00	1,238.30	12.00	891.40
1/79*	957.00	61.50	627.55	12.00	645.25
2/79	1,808.45	100.50	1,967.35	-0-	178.05
3/79	1,573.75	75.00	1,099.20	-0-	589.15
4/79	1,956.05	109.50	1,482.40	18.00	763.40
1/80*	565.30	180.60	-0-	24.00	769.90
2/80	1,985.55	102.00	1,520.75	18.00	634.70
3/80	1,610.45	97.50	1,050.35	8.31	727.31
4/80	1,289.60	70.50	967.78	-0-	434.52
TOTAL					$14,647.40

* The precise dates used in calculating backpay are different than the February to January dates set forth in the decision. The gross and interim earnings for February and January are the same. Therefore, the dates used were for administrative convenience.

ILDEFONZO VILLA -- NO. 51

1976

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
2/7	14.50	1.50	-0-	24.00	40.00
2/14	78.30	4.50	-0-	-0-	82.80
2/21	182.70	10.50	-0-	-0-	193.20
2/28	156.60	9.00	-0-	-0-	165.60
3/6	104.40	6.00	-0-	24.00	134.40
3/13	31.90	3.00	-0-	-0-	34.90
3/20	89.90	6.00	-0-	-0-	95.90
3/27	107.30	7.50	-0-	-0-	114.80
3/31	23.20	1.50	-0-	-0-	24.70
1/76	788.80	49.50	-0-	48.00	886.30
4/30	452.40	27.00	-0-	24.00	503.40
5/8	182.70	10.50	13.75	-0-	179.45
5/15	130.50	7.50	88.00	-0-	50.00
5/22	172.55	9.00	127.87	-0-	53.68
5/29	174.00	9.00	132.00	-0-	51.00
5/31	58.00	3.00	-0-	-0-	61.00
6/30	664.10	34.50	-0-	24.00	722.60
2/76	1,834.25	100.50	361.62	48.00	1,621.13
7/3	58.00	3.00	-0-	20.00	81.00
7/10	174.00	9.00	-0-	-0-	183.00
7/17	145.00	7.50	-0-	-0-	152.50
7/24	174.00	9.00	-0-	-0-	183.00
7/31	179.80	9.00	30.30	-0-	158.50
8/4	82.65	4.50	74.25	-0-	12.90
8/11	166.75	9.00	123.75	-0-	52.00
8/18	160.95	9.00	145.75	-0-	24.20
8/25	163.85	9.00	138.87	-0-	33.98
9/1	136.30	7.50	136.12	-0-	7.68
9/8	162.40	9.00	148.50	-0-	22.90
9/15	159.50	9.00	74.25	-0-	94.25
9/22	140.65	7.50	145.75	-0-	2.40
9/30	214.60	9.00	-0-	-0-	223.60
3/76	2,118.45	111.00	1,017.54	20.00	1,231.91
10/8	211.70	10.50	100.00	-0-	122.20
10/15	178.35	9.00	120.00	-0-	67.35
10/22	181.25	9.00	102.50	-0-	87.75
10/29	147.90	7.50	100.00	-0-	55.40
10/31	56.55	3.00	-0-	-0-	59.55
11/30	682.95	39.00	-0-	24.00	745.95
12/17	259.55	16.50	-0-	12.00	288.05
12/24	85.55	6.00	96.75	-0-	-0-
12/31	92.80	6.00	-0-	-0-	98.80
4/76	1,896.60	106.50	519.25	36.00	1,525.05

ILDEFONZO VILLA -- NO. 51

1977 (Page 1 of 2)

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
1/8	121.80	9.00	20.00	-0-	110.80
1/16	46.40	3.00	-0-	-0-	49.40
2/12	66.70	4.50	115.03	-0-	-0-
2/19	156.60	9.00	98.25	-0-	67.35
2/26	156.60	9.00	70.71	-0-	94.89
3/5	130.50	7.50	100.00	-0-	38.00
3/12	58.00	4.50	60.16	-0-	2.34
3/19	63.80	4.50	43.78	-0-	24.52
3/26	107.30	7.50	73.15	-0-	41.65
3/31	49.30	3.00	70.40	-0-	-0-
1/77	957.00	61.50	651.48	-0-	428.95
4/9	104.40	6.00	99.27	-0-	11.13
4/16	113.10	7.50	99.07	-0-	21.53
4/23	104.40	6.00	111.96	-0-	-0-
4/30	130.50	7.50	124.75	-0-	13.25
5/7	156.60	9.00	108.75	-0-	56.85
5/14	130.50	7.50	108.75	-0-	29.25
5/21	169.65	9.00	133.68	-0-	44.97
5/28	174.00	9.00	76.23	-0-	106.77
6/4	174.00	9.00	94.15	-0-	88.85
6/11	145.00	7.50	96.67	-0-	55.83
6/18	174.00	9.00	83.92	-0-	99.08
6/25	174.00	9.00	24.48	-0-	158.52
6/30	84.10	4.50	19.25	-0-	69.35
2/77	1,834.25	100.50	1,180.93	-0-	755.38
7/6	116.00	6.00	90.75	-0-	31.25
7/13	145.00	7.50	132.00	-0-	20.50
7/20	174.00	9.00	115.50	-0-	67.50
7/27	176.90	9.00	116.88	-0-	69.02
8/3	172.55	9.00	115.50	-0-	66.05
8/10	139.20	9.00	129.13	1.62	20.69
8/17	160.95	9.00	23.00	2.46	149.41
8/24	163.85	9.00	135.00	2.70	40.55
8/31	137.75	7.50	162.00	3.24	-0-
9/8	188.50	10.50	162.00	-0-	37.00
9/15	159.50	9.00	162.00	-0-	6.50
9/22	140.65	7.50	136.50	-0-	11.65
9/30	213.80	10.50	184.50	-0-	39.80
3/77	2,088.65	112.50	1,664.76	10.02	559.92
10/5	123.25	6.00	66.00	-0-	63.25
10/12	175.45	9.00	89.38	-0-	95.07
10/17	152.25	7.50	61.88	-0-	97.87
10/24	185.60	9.00	117.60	-0-	77.00
10/30	113.10	6.00	97.50	-0-	21.60

ILDEFONZO VILLA -- NO. 51

1977 (Page 2 of 2)

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
11/6	162.40	9.00	46.25	-0-	125.15
11/15	217.50	12.00	136.36	-0-	93.14
11/23	156.60	9.00	110.10	090	55.50
11/30	172.55	10.50	61.50	-0-	121.55
12/7	72.50	4.50	100.20	-0-	-0-
12/10	72.50	4.50	11.00	18.00	84.00
12/17	114.55	7.50	-0-	-0-	122.05
12/24	85.55	6.00	-0-	-0-	91.55
12/31	92.80	6.00	-0-	-0-	98.80
4/77	1,896.60	106.50	897.77	18.00	1,146.53

ILDEFONZO VILLA -- NO. 51

1978 (Page 1 of 2)

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
1/31	78.30	4.50	61.88	-0-	20.92
2/9	14.50	1.50	114.00	-0-	-0-
2/16	130.50	7.50	81.00	-0-	57.00
2/23	156.60	9.00	159.00	-0-	6.60
3/2	130.50	7.50	51.00	-0-	87.00
3/9	130.50	7.50	103.50	-0-	34.50
3/16	5.80	1.50	145.50	-0-	-0-
3/24	142.10	9.00	124.50	-0-	26.60
3/31	78.30	6.00	91.50	-0-	-0-
1/78	867.10	54.00	931.88	-0-	232.62
4/6	104.40	6.00	111.00	-0-	-0-
4/13	52.20	3.00	133.50	-0-	-0-
4/20	87.00	6.00	108.00	-0-	-0-
4/27	130.50	7.50	127.50	-0-	10.50
5/4	156.60	9.00	153.00	-0-	12.60
5/11	130.50	7.50	156.00	-0-	-0-
5/18	160.95	9.00	163.50	-0-	6.45
5/25	174.00	9.00	165.00	-0-	18.00
6/1	174.00	9.00	156.00	-0-	27.00
6/8	145.00	7.50	151.50	-0-	1.00
6/15	174.00	9.00	181.42	-0-	1.58
6/22	174.00	9.00	164.30	-0-	18.70
6/29	142.10	7.50	193.00	-0-	-0-
2/78	1,805.25	99.00	1,963.72	-0-	95.83
7/6	145.00	7.50	167.40	-0-	-0-
7/13	145.00	7.50	167.40	-0-	-0-
7/20	174.00	9.00	172.05	-0-	10.95
7/27	136.90	9.00	176.70	-0-	-0-
8/3	172.55	9.00	178.25	-0-	3.30
8/10	168.20	9.00	164.30	-0-	12.90
8/17	160.95	9.00	105.40	-0-	64.55
8/24	163.85	9.00	131.75	-0-	41.10
8/31	137.75	7.50	-0-	-0-	145.25
9/7	160.95	9.00	31.00	-0-	138.95
9/14	162.40	9.00	136.40	-0-	35.00
9/21	136.30	7.50	133.30	-0-	10.50
9/28	184.15	9.00	125.55	-0-	67.60
3/78	2,048.00	111.00	1,689.50	-0-	530.10
10/5	182.70	9.00	124.00	-0-	67.70
10/14	236.35	12.00	133.30	-0-	115.05
10/21	181.25	9.00	164.30	-0-	25.95
10/28	150.80	7.50	150.35	-0-	7.95

ILDEFONZO VILLA -- NO. 51

1978 (Page 2 of 2)

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
11/6	220.40	12.00	82.15	-0-	150.25
11/22	374.10	21.00	-0-	12.00	407.10
11/30	172.55	10.50	127.10	-0-	55.95
12/7	72.50	4.50	134.85	-0-	-0-
12/14	140.65	9.00	108.50	-0-	41.15
12/21	108.75	7.50	95.95	-0-	20.30
12/28	46.40	3.00	117.80	-0-	-0-
4/78	1,886.45	105.00	1,238.30	12.00	891.40

ILDEFONZO VILLA -- NO. 51

1979

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
1/4	116.00	7.50	49.60	-0-	73.90
1/11	75.40	6.00	93.00	-0-	-0-
2/8	14.50	1.50	99.20	-0-	-0-
2/15	104.40	6.00	35.65	-0-	74.75
3/1	313.20	18.00	-0-	12.00	343.20
3/8	130.50	7.50	99.20	-0-	38.80
3/15	5.80	1.50	155.00	-0-	-0-
3/22	116.00	7.50	24.80	-0-	98.70
3/29	81.20	6.00	71.30	-0-	15.90
1/79	957.00	61.50	627.55	12.00	645.25
4/5	127.60	7.50	167.40	-0-	-0-
4/12	52.20	3.00	148.80	-0-	-0-
4/19	87.00	6.00	131.75	-0-	-0-
4/26	130.50	7.50	133.30	-0-	4.70
5/3	156.60	9.00	153.45	-0-	12.15
5/10	130.50	7.50	158.10	-0-	-0-
5/17	160.95	9.00	137.95	-0-	32.00
5/24	174.00	9.00	161.20	-0-	21.80
5/31	174.00	9.00	161.20	-0-	21.80
6/7	116.00	6.00	155.00	-0-	-0-
6/14	183.00	10.50	142.40	-0-	51.10
6/21	145.00	7.50	171.20	-0-	-0-
6/28	171.10	9.00	145.60	-0-	34.50
2/79	1,808.45	100.50	1,967.35	-0-	178.05
7/5	116.00	6.00	161.60	-0-	-0-
7/12	154.00	9.00	142.40	-0-	20.60
7/19	174.00	9.00	144.00	-0-	39.00
7/26	376.90	9.00	168.00	-0-	217.90
8/3	172.55	9.00	132.80	-0-	48.75
8/9	168.20	9.00	120.00	-0-	57.20
8/16	160.95	9.00	22.40	-0-	147.55
9/15	159.50	9.00	121.60	-0-	46.90
9/21	91.65	6.00	86.40	-0-	11.25
3/79	1,573.75	75.00	1,099.20	-0-	589.15
10/5	182.70	9.00	172.80	-0-	18.90
10/12	175.45	9.00	168.00	-0-	16.45
10/26	337.85	16.50	400.00	-0-	-0-
11/2	166.75	9.00	99.20	-0-	76.55
11/9	162.40	9.00	137.60	-0-	33.80
11/16	163.85	9.00	155.20	-0-	17.65
11/24	184.15	10.50	140.80	-0-	53.85
11/30	145.00	9.00	15.20	-0-	138.80
12/7	72.50	4.50	193.60	-0-	-0-
12/31	365.40	24.00	-0-	18.00	407.40
4/79	1,956.05	109.50	1,482.40	18.00	763.40

ILDEFONZO VILLA -- NO. 51

1980

WEEK ENDING	KAWANO WEEKLY EARNINGS	KAWANO RIDE SUBSIDY	INTERIM EARNINGS	EXPENSES	NET
1/14	103.40	155.10	-0-	24.00	282.50
2/28	461.90	25.50	-0-	-0-	487.40
3/29	-0-	-0-	-0-	-0-	-0-
1/80	565.30	180.60	-0-	24.00	769.90
4/2	80.60	4.50	135.00	-0-	-0-
4/21	232.50	13.50	-0-	18.00	264.00
5/1	223.20	12.00	233.75	-0-	1.45
5/15	306.90	16.50	320.00	-0-	3.40
5/22	184.45	9.00	160.00	-0-	33.45
5/29	186.00	9.00	144.00	-0-	51.00
6/3	155.00	7.50	140.80	-0-	21.70
6/12	186.00	9.00	153.00	-0-	42.00
6/19	186.00	9.00	183.60	-0-	11.40
6/26	186.00	9.00	47.60	-0-	147.40
6/30	58.90	3.00	3.00	-0-	58.90
2/80	1,985.55	102.00	1,520.75	18.00	634.70
7/8	155.00	7.50	35.94	.72	127.28
7/15	155.00	7.50	100.42	2.01	64.09
7/22	31.00	9.00	24.29	.49	16.20
7/29	192.20	9.00	30.50	.61	171.31
8/5	179.80	9.00	115.20	2.30	75.90
8/12	178.25	9.00	109.20	2.18	80.23
8/15	83.70	4.50	-0-	-0-	88.20
8/22	175.15	9.00	110.40	-0-	73.75
9/5	289.85	16.50	276.00	-0-	30.35
9/19	170.50	16.50	248.40	-0-	-0-
3/80	1,610.45	97.50	1,050.35	8.31	727.31
10/3	331.70	18.00	276.00	-0-	73.70
10/17	379.75	18.00	276.00	-0-	121.75
10/31	347.20	16.50	267.38	-0-	96.32
11/7	144.15	9.00	10.40	-0-	142.75
11/14	86.80	9.00	138.00	-0-	-0-
4/80	1,289.60	70.50	967.78	-0-	434.52

APPENDIX V

RESPONSE TO REQUEST FOR DISCOVERY RE: METHOD OF CALCULATION OF BACKPAY SPECIFICATION

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:		
KAWANO, INC.,	)	CASE NO. 76-CE-51-R 4 ALRB No. 104
Respondent,	)	
and	)	
UNITED FARM WORKERS OF AMERICA, AFL-CIO,	)	
Charging Party.	)	RESPONSE TO REQUEST FOR DISCOVERY RE: METHOD OF CALCULATION OF BACKPAY SPECIFICATIO

This case largely deals with the discharges of and failure to hire Kawano, Inc. tomato workers in 1976. Occasionally they worked in berries and cauliflower too. There are roughly two classes of workers in this case - year round vs. seasonal workers. The tomato harvest in 1975 ran from June 1975 to January 1976. Most of the workers were laid off in January 1976. For the year round workers (who make up perhaps 30% of the discriminatees) this lay off was irregular and their backpay calculations stem from this date. For the seasonal workers the lay off was normal, but when the next harvest period commenced in about June, 1976, the workers (neither the year-round <u>or</u> seasonal) were hired. The seasonal workers' backpay stems from some point in the harvest period. Both seasonal and year-round workers picked tomatoes during the harvest. The year-round or 9 months-per year workers did pre-harvest tying, stacking, and other preparatory work, as well as irrigating for the non-harvest time.

The Board directed the compliance calculations to be based on the 1975 records of the discriminatees. Thus, for the

most part, calculations for year-round workers are based on their year-round work (or virtually year-round work) in 1975 and calculations for the seasonal workers generally run from their respective entry dates in 1975 (typically June or July) through the termination of the harvest (January 1976). (With respect to the seasonal workers, although the Board narrowly directed us to use 1975 as our basis for calcuations - we have in fact used January 1976 as well, in as much as the harvest continued to that date. To cut off calculations for this group in December 1975 would artificially cut off the make whole period. The fact that year-round workers worked into January 1976 is irrelevant in so far as their 1975 record covers the complete year-round period.)

What we have done in most cases is we have xeroxed the workers' 1975 or 1975-76 time record (an example is attached hereto as Attachment One) to reflect the time on a daily basis they would have worked in 1976, 1977, 1978, 1979 and 1980. In most cases the workers' time is recorded in hours. For most people the hourly wage in 1975 was $2.90 and remained $2.90 until it was raised to $3.10 in 1980. There was no overtime paid at Kawano.

Apart from wages, most of the discriminatees received a daily ride compensation from the company of $1.50 to defray communting costs from the border to the fieds near Oceanside, California. These commuting workers were driven by drivers (who were also fellow workers) whom they paid the $1.50 plus an additional 50 cents out of their own pocket. The total ride payment to drivers was $2.00 daily. Thus the workers who received the ride subsidy are afforded $1.00 daily apart from wages in the gross Kawano column in the worksheets in so far as the $1.00 was the <u>net</u> travel

compensation lost due to the discrimination ($1.50 minus the worker payment of 50 cents = $1.00).

Of the discriminatees, only the drivers did not receive the company ride subsidy of $1.50 daily. Instead they earned $3.20 an hour, plus $2.00 from each worker whom they drove to work each day. Four discriminatees are in the driver classification. They are: Jose Juarez Aleman, Luis Chavez Gutierrez, Refugio Vasquez and Ignacio Hernandez. They are therefore compensated during the make-whole period at $3.20 an hour, and they are also afforded their net profits as drivers (minus their gas expenses). The actual amount of each profit for each driver varies with the gas expense and number of workers carried by each driver and is so indicated in each file.

In only a very few instances did any of the discriminatees work piece rate in 1975. Subsequent piece rate compensation for the make whole period was $1.15 per unit. The company indicates piece rate is only for picking freezer berries and that they had such berries in 1977-80.

In our use of the 1975 or 1975-1976 records to form the basis for our backpay calculations for 1976-1980 there is a "rebuttable presumption" established by the Board that each of the discriminatees would have subsequently (1976-1980) worked the same number of hours as the worker worked in 1975.

The company states that the harvest ended in each subsequent year in December, not January. On this point, however, we selected at random samples of size of employee labor force in January 1976-79, and at all times the number of field employees exceeded that of the discriminatees. See Attachment two on this issue.

There are some cases where we did not rely on the 1975 earnings. In the case of Catalina Barrios, she did not work in 1975 as she was not rehired. This was litigated and her make whole period will commence in 1975. Filiberta Escobedo asked for a 5 week leave in September 1975. She was granted the leave and returned in late October and was denied rehire. Thus her make whole period stems from her failure to be rehired, which was litigated. Two workers left early in 1975 due to illness, Gregorio Garcia and Silveria Juarez. Illness is distinguished from other personal reasons for leaving and therefore Gregorio (a year-round worker) will have a year-round make whole period and Silveria (a seasonal worker) will have a full harvest make whole period. When for various seasons we have not relied on 1975 work records either in part or at all (as in these cases), we have used an average of the earnings earned by fellow workers, as is indicated in each such file.

The backpay calculations for most workers are cut off on or about November 12, 1980 as the company sent out rehire letters on or about November 10, 1980. See Attachment 2A. In most instances even when a worker did not receive the letter he or she learned of the offer through other workers. Thus the cut off date for backpay applies to the majority of the discriminatees. There are a few instances, however, when workers actually did not hear of the recall until later, and their make whole period extends beyond November.

On another matter - there are special circumstances which correspond to four of the discriminatees. They are: Jose Juarez Aleman, Antonio Zamarippa, Javier Acosta and Refugio Vasquez. All four were laid off in early 1976 along with the rest of the workers.

However these workers were rehired in the summer of 1977--along with another worker named Felix Hernandez. All 5 worked until January 1978, at which time they quit.

All of the workers were assigned to cherry tomatoes in a group by themselves. They filed a charge on the isolation, and the charge was litigated an upheld by the Board as a part of Kawano 4 ALRB No. 104.

Felix Hernandez and Javier Acosta had originally filed charges in 1975. Felix Hernandez was discharged in the middle of the union campaign in 1975 and Javier Acosta was demoted from sprayer to general worker. These charges were litigated and upheld by the Board in Kawano 3 ALRB No. 54. The company agreed to settle at the Board level and (presumably) to comply with the Board Order, Felix Hernandez was paid backpay and reinstated and Javier Acosta who by this time has been discharged in 1976 was also rehired, but not to the sprayer truck as required by the Board Order.

Neither Javier Acosta or Antonio Zamarippa received the company ride subsidy upon their return in 1977-78. It is also true that during this rehire period Refugio Vasquez and Jose Juarez Aleman (both drivers) earned $2.90 an hour, instead of their former rate of $3.20. Also neither worker was able to receive the net compensation typically earned by them while driving workers to work. Obviously this was so because the rest of the pro-union commuters who normally paid the drivers were as of that time not yet rehired per Kawano 4 ALRB No. 104. So this represents compensation lost directly as a result of the unlawful company activity. Thus Antonio Zamarippa and Javier Acosta are to be afforded the ride subsidy for this period and Refugio Vasquez and Jose Juarez Aleman are to be afforded $3.20 an hour and the driver compensation monies

during their rehire period.

A few other discriminatees apart from the 4 mentioned above were rehired briefly either in 1976 or 1977, but their rehire and inability to continue working at the company for various reasons was litigated at the hearing and they are included in the Board Order. Their make whole period covers the entire period except for the brief period they returned at Kawano and even then they are to receive ride subsidy compensation during their period or rehire, (which they did not at the time) (Aurelio Higuera is one such worker who was rehired in the summer of 1976 but had to quit for lack of a driver).

An example of the work sheet we have used to calculate the specs is attached hereto as Attachment Three. Each page reflects one month. Please note that we have entered gross back pay information at the left (rate of pay, hours worked and gross earnings). Ride subsidy or driver profits were entered beside the gross hourly earnings. The middle columns reflect interim earnings and expenses incurred and the net backpay column is at the right. We have not used the season total column. Quarterly entries are entered at the bottom of each quarter ending period. A final page is attached to total the quarterly gross, interim, wages, expenses and net backpay. Kawano hours are entered on a daily basis.

The source for our interim wages is usually one or more of the following: interim company - provided information, worker-provided check stubs, and year-end wage and tax statements, EDD-provided quarterly information or interview notes.

Note that when we have year-end statements only to rely on for interim earnings we have divided the year earnings into 12 months. When our interim earnings information covers a large

period of time (e.g. several weeks or a month or a quarter) we have prorated the information when the given time period exceeds that of the applicable make whole period. For example if we have quarterly interim information for March (which covers January, February and March) and the make whole period ends on January 21, we prorate the quarterly figure to cover January 1-21.

We most often are dealing with quarterly or yearly interim wages when we have a non cooperative interim employer or when the discriminatee is presently employed at the interim company and does not wish us to contact that employer. In the latter case, when the worker has not saved his check stubs, we are forced to rely on EDD or tax statements.

Separate mention should be made about the reliability of the EDD material provided us. The 507 forms which provide the most recent quarterly information are generally accurate. The interim employer information which precedes the last 5 quarters (which is provided by the Employment Tax Branch) is often <u>not</u> reliable. For some reason earnings often incorrectly repeat themselves from quarter to quarter when in fact the worker only worked at a given employer once. In several instances, discriminatees have disavowed interim employer information which appears on the forms supplied by EDD.

As previously noted interim wages are either daily, weekly, bi-weekly, monthly or quarterly - depending on the form we receive the information in. Some interim employers paid a company subsidy and this is calculated in. For example North County Growers from 1976 to June 1979 paid $1.25 daily and from July 1979 to 1980 they paid $1.75 daily. If interim information is daily we compare daily Kawano gross with daily interim. (The interim information is of course adjusted to account for expenses). If the interim information

is weekly, we compare the same period for Kawano gross. We do accordingly if interim information is provided bi-weekly, monthly or quarterly.

If the interim information is daily - we simply compare day by day. If the interim information is other than daily, generally the days or dates of the week are not considered. Kawano is typically a 6 day a week employer, as are most farms. In some cases farms work Sunday through Friday, but in any event they too are 6 day employers. In those cases, then it is not necessary to know the days or dates of the make whole period because the comparison is between 2 employers who both work on a six day schedule. In the cases where workers only work Monday through Friday (mostly in urban jobs) we have designated the actual Saturday so that the worker will be credited for backpay on those days, if there 1975 record shows that they would have worked at Kawano on those days, from 1976-1980.

The obvious problem with crediting workers with specific Saturday work and with the day by day comparison (when interim information is daily) is that the 1975 records cannot show us accurate day by day information for 1976-1980. The days of the week change, for one thing, and this alone prevents an accurate daily accounting. Another problem with daily 1975 records is that leap years occurred in 1976 and 1980 and is generally not credited. There is also technical problem that the Kawano daily records sometimes do not reliably enter the day according to the indicated date per the particular week ending period. For example sometimes there are 6 daily entries in the week but the indicated week ending date does not allow sufficient spaces for entering the six days. When this occurs, we either adjust the indicated week ending date to reflect

the accurate one or occasionally we limit one entry to stay even with the week ending date.

In the expense column we have entered typically the union, ride, job searching and equipment expenses. Where a worker at a particular interim job has incurred two or more kinds of expenses, it was necessary to total the expenses together and then deduct them from interim wages to compute the adjusted interim figures. Note that there are no separate columns for totaling two or more expenses <u>or</u> for subtracting expenses from the interim wages. Usually the figures can be seen on the work sheet, but "silent" computations of these kind are also made.

A further note about expenses is that several workers are credited for out of county or even out of state job searching. This occurred in all instances when a worker was unable to find work in San Diego County.

Some workers indicate they have gone to Mexico. In most cases then ineligible during that period because they have gone to see relatives. In some cases however, the discriminatees have continued to seek work in Mexico and are therefore eligible for backpay calculation.

Also note that discriminatees seldom remember exact circumstances and dates of their interim job searching. Workers do recall at which companies they generally requested work. Workers are also able to recall approximately how often every week or month they looked for work. Generally workers paid drivers to go to the fields to request work. A few discriminatees own their own cars and they drove to seek work. In these instances workers are compensated at the <u>low</u> side of their own estimates or in the event they can't recall the gas expense, they are compensated at .20¢

a mile per general services State Regulation 68093.

Ride costs (for Kawano gross, job searching and per interim work) are all calculated from U.S. - Mexico border only, for simplicity sake.

Note that in addition to going to ranches in north or south county, workers have additionally sought work: 1) at the border with drivers who are hiring agents, 2) at EDD, 3) with acquaintances or relatives who then in turn question their employer's and 4) with the UFW as to the union ranches.

Interim expenses are prorated to cover the applicable make whole period. For example, if a worker spent $24.00 per month job searching, but would have worked at Kawano only from June 15-30 in June, we afford him only $12.00 compensation to cover the appropriate period. Likewise, if a worker pays $12.00 per week in ride costs to arrive at a 6 day a week interim job and earnings for a particular work are $65.00, we would only afford him $6.00 compensation for an estimated 3 days work.

Dated: Jan. 25, 1982

Barbara Dudley
BARBARA DUDLEY
for the General Counsel

NAME [illegible] ADDRESS EXAMPLE PAGE ___ OF ___

SOC. SEC. NO. 511-27-1761 DATE BEGAN ___

PAY ROLL NO. 4246 DATE ENDED ___

WEEK ENDING	AMTS FWD.	FRI.	SAT.	SUN.	MON.	TUES.	WED.	THU.	TOTAL
JUL 17 1975	HOURS	10	10	X	1	10	X	X	40
	TRAYS								
JUL 24 1975	HOURS	X	10	X	X	X	10	10	30
	TRAYS								
JUL 31 1975	HOURS	10	10	X	8½	9	9	9	55½
	TRAYS								
AUG 7 1975	HOURS	9	9	9	9	9	9	9	63
	TRAYS								
AUG 14 1975	HOURS	9	9	X	9	9	9	9	54
	TRAYS								
AUG 21 1975	HOURS	9	9	X	X	9	X	9	36
	TRAYS								
AUG 27 1975	HOURS	9	9	X	9	9	X	9	45
	TRAYS								
SEP 4 1975	HOURS	9	7½	X	9	9	9	9	52½
	TRAYS								
SEP 11 1975	HOURS	9	9	X	9	9	9	9	54
	TRAYS								
SEP 18 1975	HOURS	9	9	X	9	8	8	8	51
	TRAYS								
SEP 25 1975	HOURS	8	X	X	8	9	9	8	[illegible]
	TRAYS								
OCT 2 1975	HOURS	8	9	X	X	X	X	8	25
	TRAYS								
OCT 9 1975	HOURS	8	X	X	8	8	X	X	24
	TRAYS								

WEEK ENDING	AMTS FWD.	FRI.	SAT.	SUN.	MON.	TUES.	WED.	THU.	T
OCT 16 1975	HOURS	X	X	X	X	8	X	X	
	TRAYS								
OCT 23 1975	HOURS	9	7	X	X	8	8	X	
	TRAYS								
OCT 30 1975	HOURS	X	X	X	8	8	8	X	
	TRAYS								
NOV 6 1975	HOURS	8	X	X	8	8	8	X	
	TRAYS								
NOV 13 1975	HOURS	8	X	X	8	8	8	X	
	TRAYS								
NOV 20 1975	HOURS	8	X	X	8	8	8	X	
	TRAYS								
NOV 27 1975	HOURS	X	X	X	8	8	8	X	
	TRAYS								
DEC 4 1975	HOURS	X	X	8	8	8	8	X	
	TRAYS								
DEC 11 1975	HOURS	X	X	X	8	8	[illegible]	[illegible]	
	TRAYS								
DEC 18 1975	HOURS	5	X	X	8	8	8	X	
	TRAYS								
DEC 25 1975	HOURS	X	4½	8	8	8	8	X	
	TRAYS								
DEC 31 1975	HOURS	8	X	X	8	8	8	X	
	TRAYS								
JAN 7 1976	HOURS								
	TRAYS								

NAME Diaz Maria Delia ADDRESS

SOC. SEC. NO. 547-27-1761

PAY ROLL NO. 7246

PAGE ____ OF ____

DATE BEGAN ____

DATE ENDED ____

WEEK ENDING	AMTS FWD.	FRI.	SAT.	SUN.	MON.	TUES.	WED.	THU.	TOTAL
JAN 8 1976	HOURS	8	X	X	8	8	8	8	40
	TRAYS								
JAN 15 1976	HOURS	8	X	X	8	7½	8	8	39½
	TRAYS								
JAN 22 1976	HOURS	8	X	X	8	8	X	X	24
	TRAYS								
	HOURS								
	TRAYS								
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WEEK ENDING	AMTS FWD.	FRI.	SAT.	SUN.	MON.	TUES.	WED.	THU.
	HOURS							
	TRAYS							
	HOURS							
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	HOURS							
	TRAYS							

APPROXIMATE TOTALS FOR KAWANO FIELD LABOR FORCE SELECTED AT RANDOM

1976 Harvest

BEGIN:		END:	
(6-6, 6-7, 6-9, 6-10)	94	(12-26, 12-27, 12-29, 12-30)	103
(6-20, 6-22, 6-23, 6-24)	159	(1-30, 2-2, 2-3)	128

1977 Harvest

BEGIN:		END:	
(6-5, 6-8, 6-9)	187	(12-25, 12-28, 12-29)	216
		(1-29, 2-1)	133

1978 Harvest

BEGIN		END:	
(6-4, 6-7, 6-8)	195	(12-24, 12-27, 12-28)	173
		(12-31, 1-3, 1-4)	154
		(1-21, 1-24, 1-25)	194

1979 Harvest

BEGIN:		END:	
(6-10, 6-13, 6-14)	343	(12-30, 1-2, 1-3)	151
		(1-20, 1-23, 1-24)	127

1980 Harvest

BEGIN:	
(6-1, 6-3, 6-4, 6-5)	478
(7-20, 7-23, 7-24)	525

Attachment Two

Post Office Box 217
San Luis Rey, California 92068

November 10, 1980

Juan N. Rodriguez
Calle 3a Callejon O. Campo 709
Tijuana

Estimado Juan N. Rodriguez:

De acuerdo con la decisión del ALRB (4 ALRB No. 104) por la presente se le ofrece reposición. Sirvase de ponerse en contacto con Rose Mizushima en la oficinas de la companiá localizada en 4665 North River Road, Oceanside, California.

KAWANO, INC.

By Ron Abshire
Ron Abshire

Attachment Two A

BACKPAY SPECIFICATIONS

PERIOD _____ EMPLOYEE NAME _____

EXAMPLE SS# _____

DAY	GROSS BACK PAY			INTERIM EARNINGS	EXPENSES	NET BACKPAY	SEASON TOTA
	Rate of Pay	Hours	Gross Earnings				
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
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ATTACHMENT THREE

APPENDIX VI

RESPONDENT'S EXHIBIT "KK" - AN UNSUCCESSFUL EFFORT TO REBUT PRESUMPTION ON HOURS

APPENDIX VI

B. Respondent's Exhibit "KK" - An Unsuccessful Effort to Rebut Presumption on Hours

Respondent introduced as Exhibit "KK" a summary of seven discriminatees' hours at Kawano, Inc., 1973-1975, in an apparent effort to rebut the presumption that these particular individuals' hours in 1975 were representative of their hours in past, and presumably therefore future, years. These hours were taken from posting cards for the previous years. These figures, and the implications presumably to be drawn from them, are highly unreliable and misleading, however. The posting cards themselves were unreliable, often mixing up years or skipping months. (See for example, GCX 11, GCX 3.) In other instances

no posting card could be located for a given individual.

The seven individuals listed in RX "KK" each provide good examples of the unreliability of the posting and evidence for their 1973-75 hours:

Maria Mendez: First, the addition of the 1973 hours is incorrectly represented in RX "KK". The total for 1973 from the posting card (GCX 17-1) is 1286, not 1241.5. Secondly, thirty hours should be added according to the notation on page 2 of GCX 17-1. Thirdly, the first posting card in evidence starts on July 26, 1973, and we have no way of knowing if there is a preceding card. The posting cards then show that Mendez was "terminated" the week ending February 28, 1974, and skips to the week of June 27, 1974. The witness, however, testified that she worked year round from 1968 to 1976, with only a two week to one month break usually in February. She specifically testified that she worked year round in 1973 and 1974 with the exception of a short lay-off (XII: 38).[4] She was rehired by Kawano on February 3, 1981, and has worked consistently since then. (XII: 49.)

Francisco Rubio Vasquez: Vasquez was also a year round worker, who worked consistently from 1970 through January 22, 1976. (XX: 43-44; RX "O".) He worked as an irrigator, and "horse cultivator," as well as planting and picking tomatoes and picking up tomato stakes. Respondent's counsel indicated that

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4. The Reporter's Transcript will be cited with Roman numerals for volume, Arabic numerals for page.

he would later show that there was no longer horse cultivation work done at Kawano, but his own witness, Glen Imoto, testified that in the years he was with Kawano (January, 1976 to March, 1982, (XXVII: 1), the method of cultivation using horses continued to be utilized. (XXVII: 17-18.)

Furthermore, Vasquez's posting cards (introduced both as RX "O", and GCX 17-2) are an interesting example of how the cards were kept. Page 5 is marked "page 3"; June 27, 1974, is followed by August 7, 1974; and then four pages later in the midst of July, 1975, we find July 4, 1974, through July 24, 1974, followed by July 31, 1975. Hardly reliable data.

Antonio Zamarripa: Zamarripa's posting cards (GCX 17-3) start on September 19, 1973, showing either that he actually started late in the season that year (his first year with Kawano) or there are prior posting cards not introduced. In either case the 1973 hours in RX "KK" are obviously not representative. In 1974 the cards show hours from 6/27/74 to 12/18/74; in 1975, 5/8/75 to 12/10/75. In 1975 he left early due to family illness and was denied rehire on January 5, 1976, when he returned from his leave of absence. (XXIII: 93-94.) There is no reason to believe that in subsequent years, absent discrimination, Zamarripa would not have worked a full season at Kawano.

Javier Acosta: Acosta worked with Kawano from 1970 through January, 1976, generally seven to eight months out of the year. However, in 1973, he voluntarily quit in September for a better paying job, and didn't return to Kawano until July 1, 1974. (VI: 14-16.) Thus, Respondent's Exhibit "KK" reflects that period of absence, in 1973 and 1974, but does not reflect prior years' hours.

Julian R. Gonzalez: Respondent's summary (RX "KK") shows hours in 1973 for Julian Gonzalez under a different social security number than 1974 and 1975. The underlying documents from 1973 were not available to the General Counsel, nor was Gonzalez asked if he had used another social security number. The company records show an employment date of 9/12/72. (GCX 17-5.) The witness testified that he started in June, 1974. (XI: 34-35.) He then worked without a break until January 22, 1976.[5/] Therefore, the disparity between the 1974 and 1975 hours is accounted for by the fact that only half of 1974 is recorded.

Aurelio Higuera: Higuera first started with Kawano on September 30, 1971. He worked six to eight months out of the year with Kawano and the other months at Chula Vista Farms ("Kosaka".) In mid-1974, Higuera left Chula Vista Farms because he preferred the hours at Kawano, and had been asked to work there full time by foreman Joaquin Haro. Higuera then stayed at Kawano until laid off in March, 1976. (VII: 111-112; also see RX "Y", pp. 28-32, Higuera's testimony in the underlying case.) Higuera's posting cards (RX "X") drop an entire year, skipping from February 15, 1973, to July 18, 1974. However, Higuera clearly testified in the prior hearing that he left Kawano in March, 1973, to work for "Kosaka," and then returned to Kawano in October of 1973 as he had in each previous year. (RX "Y", pp. 30-31.) Higuera confirmed this in his testimony

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5. One entire page of the posting cards, reflecting December 18, 1974, to March 4, 1975, had been temporarily lost. (See XI, 31-33.) The missing page was by error, not included in GCX 17-5 either. It has been submitted separately as a proposed addition to GCX 17-5.

in the compliance hearing (VI: 110). Respondent did not dispute these dates, and in fact stipulated to them (VI: 109-110). Therefore, the summary of the posting cards obviously gives a very distorted picture of comparative hours, with only six weeks, rather than six months in 1973; and at least three months (Jan.-March) missing from 1974. Higuera was credited with year round backpay because he had obviously made a decision to work year round at Kawano as of July, 1974, and did so until discriminatorily laid off in March, 1976.

Domingo Santos: Santos testified that he started with Kawano in 1969 and worked from April to November or December each year thereafter, until 1975 when he left early, on October 8, because his wife and elder daughter were ill in Michoacan, Mexico. (III: 2-4.) General Counsel therefore extended the liability period for Santos to an average of his prior years' hours. (See Exhibit "A".)

Respondent's Exhibit "KK" shows only 733 hours for Santos in 1974. The posting cards (GCX 17-6) from which the summary was made give another example of disarray. They show work from April 5, 1973 to November 21, 1973, confirming Higuera's testimony about his work pattern. Then on page 3, October 16, 1974, follows November 21, 1973, but two pages later, out of the blue, we find a few weeks of August and September, 1974, followed by May, 1975. Once again the posting cards do not provide even remotely reliable evidence as to hours worked in 1974, and we must rely on the clear and uncontradicted testimony of the witness.

APPENDIX VII

NICKNAMES

INTERIM EMPLOYERS

RANCHES	NICKNAMES
SKF American Foods/Seabreeze/Calif. Leasing Chula Vista Farms TMY	Lopez La Puerta Blanca Kosaka & Los Caballos Yanicura
Cozza	Terones
Sunwest Inc. Sun Valley Harvest Inc. Horizon Harvest	El Bus Blanco or Avila
Camp Pendleton Ranch-Pacific View Farms	El Rey
Skyline	Wachitas
Ukegawa Bros.	Los Diablos
Harry Singh	El Hindu
Sugio Imoto	Sugio
George Imoto	George
Yoshio Imoto	Yoshio
Charlie Imoto	Charlie
Egger & Ghio	Bobbi
EK Farms	Koucovelis
Piper Ranch	Pipas
Koichi Yamamoto	Kochi
Takara International	Niedens
Tabata	La Costa
Oceanview Farm	Yasucochi
John Helm	El Muerto
Double D Cattle Ranch	Jamul Ranch
Robert Hall	El Chivo
San Bernardino - Vista Farms	Sugi

EXHIBIT: Gen Coun 14
IDENTIFIED: 3/31/82
ADMITTED: 3/31/82
4A ALRB 104 KAWANO B/P