

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

PLEASANT VALLEY VEGETABLE CO-OP,)	
)	
Respondent,)	Case Nos. 82-CE-16-OX
)	82-CE-128-OX
and)	83-CE-2-OX
)	83-CE-160-OX
UNITED FARM WORKERS)	83-CE-160-1-OX
OF AMERICA, AFL-CIO,)	
)	
Charging Party.)	16 ALRB No. 12
)	(12 ALRB No. 31)

SUPPLEMENTAL DECISION ON CASE CLOSING

Pursuant to Labor Code section 1142(b),^{1/} the United Farm Workers of America, AFL-CIO (UFW or Union) filed a request for review by the Agricultural Labor Relations Board (ALRB or Board) of the General Counsel's determination that Respondent had complied with the Board's Order in Pleasant Valley Vegetable Co-op (1986) 12 ALRB No. 31, and that therefore the case should be closed.

In accordance with its discretionary authority to review such matters under the provisions of section 1142(b), the Board requested all parties to submit their positions on the question of closure, granted the Union's Request for Review, advised the parties of the extent of the record on review, and, as prescribed by section 1142(b), now issues its decision.

On December 29, 1986, the Board issued a Decision in which it determined that, as alleged in the underlying unfair

^{1/} All section references are to the California Labor Code unless otherwise specified herein.

labor practice charge and complaint, Respondent failed to bargain in good faith with the certified bargaining representative of its agricultural employees in violation of section 1153(e) by such acts as failing or refusing to honor the Union's request for bargaining related information, implementing unilateral changes in its employees' terms and conditions of employment, failing to notify and bargain with the Union about the effects, if any, of its decision to cut back on production of specified crops in seasons between 1981 and 1984 and, with adverse consequences for one employee, failing to honor its agreement to permit senior cutters to transfer to a packing crew. (Pleasant Valley Vegetable Co-op (1987) 12 ALRB No. 31.)

Of particular relevance to the instant proceeding is the Board's additional finding that Respondent granted the relatively higher paying assignments involving the harvesting of cabbage and head lettuce to new labor contractor-supplied crews, which assignments traditionally had been performed by the Company's permanent H-I crew. The Board concluded that Respondent implemented the change in practice as retaliation for the Union activities of the H-I crew.

To remedy what the Board deemed a discriminatory deprivation of favored work to the H-I crew in violation of section 1153(c), Respondent was ordered to compensate the crew for all losses suffered as a result of the diversion of cabbage and head lettuce harvest work from July 7, 1982 to June 4, 1984, and thereafter until such time as Respondent and the Union reach agreement as to an alternative method of allocating such work in

the future.

On March 4, 1988, the California Court of Appeal for the Second District summarily denied Respondent's Petition for Review of Pleasant Valley Vegetable Co-op (1986) 12 ALRB No. 31. Respondent did not seek further review in the California Supreme Court.

Thereafter, on behalf of the General Counsel, the Regional Director of the Board's El Centro Region commenced the compliance phase of this proceeding for the purpose of determining Respondent's monetary liability for the unfair labor practices. Following an investigation, he concluded that no loss of pay had been incurred by the H-I crew as a result of the work allocation, and that Respondent had satisfied all other provisions of the Board's Order in 12 ALRB No. 31. Accordingly, on September 29, 1988, he advised the Union that he was closing the case.

The Union objected to the proposed closing with a request that the Board consider its dual contentions that General Counsel should have calculated backpay according to an hourly rather than a seasonal formula, and that General Counsel prematurely terminated the backpay period.

Following an initial review of the proposed closing in light of the Union's objections, the Board, on December 27, 1988, remanded the matter to the Regional Director for additional information and briefing with a specific request that he provide the Board the data and methodology which served as the basis for his conclusion that the H-I crew was not entitled to any

monetary relief, either in the form of backpay or makewhole.^{2/} In light of the Union's contention that backpay for the crew should have been measured according to an hourly rather than a seasonal formula, the Board directed the Regional Director's attention to Arnaudo Brothers (1981) 7 ALRB No. 25 for his assessment as to whether the Arnaudo principle should be applied here.^{3/}

On November 20, 1989, the Regional Director complied with the Board's remand directive by providing the Board with the payroll data on which he based his backpay analysis and filing a supplemental statement in support of his initial decision to close the case.

On January 26, 1990, the Board granted the Union's Request for Review of the Regional Director's proposed closing and identified for the parties the record upon which the Board intends to rely in its ruling.^{4/}

The purpose of backpay under the National Labor

^{2/} The Board differed with the Union with regard to the Regional Director's termination of the backpay period, finding that his December, 1984 cut-off date was proper and thereby removing that question from further consideration. The Union did not except to the Regional Director's determination that no bargaining makewhole was due, and therefore that issue also is not under consideration.

^{3/} As will be discussed more fully below, Arnaudo appears to authorize a backpay formula based on an hourly computation of wages under certain limited circumstances.

^{4/} That record consists of the Board's Decision and Order at 12 ALRB No. 31, the Regional Director's September 29, 1988 Closing Letter, the Union's October 11, 1988 Request for Review, the Board's December 27, 1988 Order remanding the instant matter to the Regional Director for additional information on briefing and the Regional Director's response thereto.

Relations Act (NLRA) is "to vindicate the public policy of the [NLRA] by making the employee whole for losses suffered on account of an unfair labor practice." (NLRB v. Dodson's Market, Inc. (9th Cir. 1977) 553 F.2d 617, 620 [95 LRRM 2579], quoting Nathanson v. NLRB (1952) 344 U.S. 25, 27 [29 LRRM 2430].) A finding of a discriminatory discharge, for example, "is presumptive proof that some backpay is owed by the violating employer." (NLRB v. Madison Courier, Inc. (D.C. Cir. 1972) 472 F.2d 1307, 1316 [80 LRRM 3377]. Accord NLRB v. Mastro Plastics Corp. (2nd Cir. 1965) 354 F.2d 170, 178 [60 LRRM 2578], cert.den. (1966) 384 U.S. 972 [62 LRRM 2292].)

In Brown & Root, Inc. (8th Cir. 1963) 311 F.2d 447, 452, [52 LRRM 2115], the court acknowledged the difficulties facing the National Labor Relations Board (NLRB) when seeking to accurately measure a backpay award, stating:

Obviously, in many cases, it is difficult for the Board to determine precisely the amount of backpay which should be awarded to an employee. In such circumstances the Board may use as close approximations as possible, and may adopt formulas reasonably designed to produce such approximations. We have held that with respect to the formula for arriving at backpay rates or amounts which the Board may deem necessary to devise in a particular situation, our inquiry may ordinarily go no further than to be satisfied that the method selected cannot be declared to be arbitrary or unreasonable in the circumstances involved. (Citations omitted.)

Accordingly, federal courts have vested the NLRB with broad authority when devising procedures and methods by which to compute backpay.

(NLRB v. Brown & Root, Inc., supra, 311 F.2d 447; NLRB v. Seven-Up Bottling Co. (1953) 344 U.S. 344, 73 S.Ct. 287 [31 LRRM 2237].)

Because the Agricultural Labor Relations Act (ALRA or

Act) is patterned after the NLRA, California courts recognize that this Board must similarly be accorded broad authority in backpay matters. As expressed in Butte View Farms v. ALRB (1979) 95 Cal.App.3d 961 [157 Cal.Rptr. 476]:

In framing a remedy, the Board has wide discretion, subject to limited judicial scrutiny. We can reverse only if we find that the method chosen was so irrational as to amount to an abuse of discretion....

A backpay award is only an approximation necessitated by the employer's wrongful conduct. In any case, there may be several equally valid methods of computation, each yielding a somewhat different result....The fact that the Board necessarily chose to proceed by one method rather than another hardly makes out a case of abuse of discretion. (Bagel Bakers Council of Greater N.Y. v. NLRB (2nd Cir. 1977) 555 F.2d 304, 305. Accord see National Labor Relations Board v. Carpenters Union, Local 180 (9th Cir. 1970) 433 F.2d 934, 935; NLRB v. Brown and Root, Inc. (8th Cir. 1963) 311 F.2d 447, 452.)

(See also Jasmine Vineyards, Inc. v. ALRB (1980) 113 Cal.App.3d 968, 982 [170 Cal.Rptr. 510].)

As a general rule, the NLRB calculates backpay on the basis of calendar quarters within the backpay period. (F. W. Woolworth Co. (1950) 90 NLRB 289 [26 LRRM 1185].) Thus, each quarter during the backpay period is considered a separate unit, with the backpay award for a given quarter being the difference between an employee's loss of pay as a result of the unfair labor practice and his or her interim earnings from other employment, if any.^{5/} In this instance, the remedy is the difference between what the crew members actually earned and what they would have earned from the same employer but for the discrimination against

^{5/} Net backpay is determined for each quarter independent of and not affected by the sum found applicable to a different quarter.

them.

In Lane Construction Corp. (1976) 226 NLRB 1035 [94 LRRM 1205], the NLRB acknowledged occasional seasonal fluctuations in the construction industry, but concluded that they were not so pervasive as to typify the industry generally and thus warrant exempting the industry as a whole from application of the quarterly formula. In the agricultural context on the other hand, where seasonal fluctuations are the norm and employment patterns are generally less stable than in the industrial context, this Board, with court approval, has eschewed the NLRB's standardized quarterly format in favor of various computational periods the Board believes more accurately reflect the sporadic nature of employment patterns in the industry which our statute addresses. Moreover, those periods may vary from case to case. (Nish Noroian Farms v. ALRB (1984) 35 Cal.Sd 726 [201 Cal.Rptr. 1]; see also Sunnyside Nurseries, Inc. (1977) 3 ALRB No. 42.)

When exercising discretion in backpay matters, this Board continues to be guided by the four basic formulas set forth by the NLRB in its Casehandling Manual to estimate the amount of backpay due discriminatees (Arnaudo Brothers (1981) 7 ALRB No. 25), but when it is not possible to readily determine the exact amount due the discriminatees on the basis of standard formulas, the Board, consistent with the NLRB, uses any formula or combination of formulas considered equitable in light of the nature of agricultural labor in California and the type of payroll data available. (See, e.g., Sunnyside Nurseries, Inc.

(1977) 3 ALRB No. 42; Butte View Farms (1978) 4 ALRB No. 90, affirmed (1979) 95 Cal.App.3d 961 [157 Cal.Rptr. 476]; Arnaudo Brothers (1981) 7 ALRB No. 25; Kawano, Inc. (1978) 4 ALRB No. 104, affirmed (1980) 106 Cal.App.3d 937 [165 Cal.Rptr. 492].)

Thus, General Counsel may present backpay formulas calculated on a daily or weekly basis or by any method that is practicable and reasonable and which accords with the purposes and policies of the Act. (Frudden Produce, Inc. (1982) 8 ALRB No. 26.) In Mario Saikhon, Inc. (1983) 9 ALRB No. 51, the Board affirmed computation of backpay on a daily basis. In Gramis Brothers Farms, Inc. (1988) 14 ALRB No. 12, the Board followed a weekly computation since the Respondent as well as the interim employers had paid employees on either a weekly or bi-weekly basis. In Verde Produce Co., Inc. (1984) 10 ALRB No. 35, the Board applied a seasonal approach to computing backpay where a discriminatee's interim employment fit the same overall seasonal pattern as did his gross backpay earnings. In that same case, however, with regard to a different discriminatee, the Board utilized a combination of methods since the employee's history of employment showed periods of sporadic day-to-day employment as well as periods of longer term or more stable employment patterns.

Once a regional director issues a specification setting forth the gross amount of backpay which he estimates is due the discriminatees, the burden of proof shifts to an employer to establish facts which would negate the existence of monetary liability to a given employee or mitigate that liability. Here,

however, the Regional Director, without issuance of a specification, determined at the outset that Respondent owed no monies to the H -I crew either for losses which the crew may have incurred due to Respondent's denial of higher paying work (backpay) or for losses due to Respondent's failure to bargain in good faith regarding the employees' terms and conditions of employment, including overall wages and benefits (bargaining makewhole). As Respondent had no cause to challenge the Regional Director's determination, the matter did not reach the stage where a respondent normally would seek to mitigate monetary liability. Thus, the only question now before the Board is whether the formula utilized by the Regional Director is reasonably calculated to remedy Respondent's violation of the Act.

Although the Regional Director had access to Respondent's weekly payroll data, he appears to have compared the availability of preferred work to other work on a percentage basis over the entire season. In excepting to the Regional Director's methodology, the UFW contended that a more appropriate formula would require calculation on an hourly basis, relying on the Board's decision in Arnaudo Brothers (1981) 7 ALRB No. 25.^{6/}

^{6/} In that case, the Board found that the Respondent had discriminatorily failed to transfer an irrigation worker to a higher paying position of machine operator before completely terminating his employment, also for discriminatory reasons. In order to determine what he would have earned had he remained in Respondent's employ, the Regional Director selected a representative employee in each of those categories and computed their actual earnings. The difference in total earnings between the two representatives was only \$8.38, a relatively small sum

(fn. 6 cont. on p. 10)

The Regional Director, however, in responding in his supplemental report to a direct inquiry from the Board concerning whether he would find Arnaudo applicable in this case, expressed the view that excess hours worked may be treated as overtime only in those situations where a significant increase in the number of hours worked in the new position would be required to achieve the same earnings realized in the former position.^{7/} Finding no substantial difference between the hours of employment provided to the members of the H-I crew and their subsequent earnings while harvesting mixed and romaine lettuce and their hours of employment and earnings derived from harvesting the more remunerative head lettuce and cabbage crops, he would not apply Arnaudo.

We agree with the Regional Director's analysis insofar as he found the disparity between hours worked by the H-I crew prior to and after the discrimination insufficient to compel

(fn. 6 cont.)

but for the fact that the irrigator had to work longer hours, at a lower rate of pay, in order to approximate the earnings of the machine operator. The irrigator worked 371 hours for \$1,009.75 whereas the machine operator worked 271.5 hours at higher hourly rate of pay for a total of \$1,018.13. The Administrative Law Judge (ALJ), with Board approval, characterized the 100 extra hours which an irrigator would have to work in order to equal the earnings of the machine operator as tantamount to an additional (or overtime) job which would not enter into the computation of either gross or net backpay.

^{7/}The Arnaudo principle is predicated on the NLRB's Compliance Manual section 10604.4 which provides that since such additional work normally takes the form of overtime, "a discriminatee is not obliged to work additional hours over and above those which would have been worked for the [wrongdoing] employer [in order] to reduce the discriminatee's own backpay" award.

adherence to the Arnaudo principle. We depart, however, from the Regional Director's adherence to a percentage-based seasonal formula since that approach does not, in our view, properly take into account the fact that the crew's overall earnings should have been greater, even with no increase in the total number of hours worked, had the crew continued to be accorded preferential assignment in the higher paying crops. That in essence is the finding which the Board reached in 12 ALRB No. 31.^{8/}

Since our remedial purpose herein is to restore "the economic status quo that would have obtained but for the company's wrongful [allocation of work]..." (Golden State Bottling Co. v. NLRB (1973) 414 U.S. 168, 188 [84 LRRM 2839]), the Board has reexamined the record in order to review Respondent's operations and in particular, the data provided by the Regional Director. Using the same weekly payroll data as that available to the Regional Director, the Board has determined the precise number of units which were harvested by each crew in each category of crops in order to determine, on a weekly basis, whether the H-I crew was denied its usual preferential assignment in the higher paying crops.

Utilizing the pre-discrimination 1980-1981 season as a benchmark, we find that of the total of 647,084 units of crops harvested that season, the H-I crew received 63 percent of the work overall with 75 percent of those assignments representing work in the higher paying crops. Although less work was

^{8/} See id. at p. 5.

available in the subsequent season (a total of 527,457 units, down more than 100,000 units from the year before), the allocation of work to the various crews in terms of overall percentages remained the same. Thus, the H-I crew continued to receive 63 percent of all available work, just as it had in the prior season, but the amount of higher paying work allocated to the crew decreased to just 11 percent while the amount of lower paying work increased from 25 percent in 1980-1981 to 89 percent in 1982-1983. That trend continued and in fact intensified in the season which followed. While the units of work increased only slightly (up 8,728 units), and the total amount of work assigned to the H-I crew also increased slightly, there was a disproportionate increase in the amount of lower paying work. Thus, although the crew was allocated 73 percent of all work, 95 percent of that work was in lower paying assignments.

Attached herewith as an Appendix is the result of the Board's week-by-week analysis of the allocation of work to all crews during the 1982-1983 and 1983-1984 seasons according to crop. The Case Type designations specified therein identify those weeks in which no backpay is due (Case Types A, B, C and F) as well as those weeks in which backpay is due (Case Types D and E). The ultimate question as to whether the H-I crew was denied preferred work can be tested only in those weeks in which such work was available and all crews were employed, that is, weeks in which Respondent had a choice in specifying which crews, the H-I or the labor contractor's, would receive the favored crop assignments.

To facilitate review, we have designated two types of instances where Respondent had such a choice:

1. CASE TYPE D

Weeks in which the H-I crew and at least one, or perhaps both, labor contractor crews worked and head lettuce and/or cabbage work was available, but the harvesting of those crop(s) was allocated exclusively to the labor contractor crews while the H-I crew was assigned solely to harvest mixed and/or romaine lettuce.

2. CASE TYPE E

Weeks in which both the H-I and the labor contractor crew(s) worked and both were assigned work either in head lettuce or cabbage, but the labor contractor crews were given a higher number of units of such work.

In both of the above-described cases, the H-I crew was available to work and was given work, but was deprived of the preferred work which it normally would have received but for Respondent's discrimination, and thus was denied the opportunity to reap higher overall earnings.

With regard to Type D cases, as demonstrated in the attached Appendix for the 1982-1983 season, we find 15 weekly periods in which the H-I crew was employed along with one or both labor contractor crews. Although head lettuce and cabbage harvest work was available in all of those weeks, it was

allocated solely to the labor contractor crews.^{9/} Again as to Type D cases, we find a similar result in eight weeks of the following 1983-1984 season.^{10/} For all of those weeks, backpay would be equal to the number of units of work which the crew would have received but for Respondent's failure to accord it preferential treatment multiplied by the higher piece rate.

We also find a number of Type E cases in each of the two relevant seasons. Thus, in the 1982-1983 season, we find six weekly periods in which the H-I crew as well as one or both of the labor contractor crews worked, and all were assigned work in all crops including head lettuce and/or cabbage.^{11/} The labor contractor crews, however, received the greater share of the preferred work at times when the H-I crew clearly was available to work and normally would have been allocated the preferred work assignments. For the subsequent season, there are 10 such weeks.^{12/} Backpay in those instances would be measured by the difference between what the H-I crew actually received and what it would have received but for Respondent's discriminatory practices.

Finally, there is one weekly period in the 1982-1983

^{9/} Those weekly periods ended on November 23 and 30, 1982 and on the following dates in 1983: January 4, 11, 18, 25, February 1, 22, March 1, 8, 15, 29, and April 5, 12, and 19.

^{10/} December 17 and 31, 1983 and January 7, 28, February 11, March 10, 24 and 31, 1984.

^{11/} All dates are 1983: February 15, March 22, April 26, May 3, 10 and 17.

^{12/} All dates are 1984: January 2, February 4, 18, 25, March 3, 17, April 7, 14, 21 and 28.

season (February 8, 1983) and three such weeks the next season (November 5 and 19 and December 3, 1983) in which the H-I crew and one or both labor contractor crews worked, but the H-I crew alone was assigned to work in head lettuce or cabbage while no such work was allocated to the labor contractor crews. No backpay is due for these Type F cases since it was the H-I crew which actually received the preferential work assignments. Similarly, no backpay could be owing in those weeks which we have characterized in the attached Appendix as Case Types A, B or C because no head lettuce or cabbage work was available at all, and thus there could be no opportunity for Respondent to favor one crew over another.

We believe the above data, based on the payroll records available to the Regional Director, clearly establishes the propriety of using a weekly rather than a seasonal basis for computing backpay. For the reasons indicated above, the daily basis using hourly wages and employing the Arnaudo approach, is inappropriate. We will set aside the Regional Director's case closing decision based on a seasonal percentage methodology, and remand for a re-calculation based on the weekly approach indicated herein. After the Regional Director has determined the backpay owing under the weekly methodology, he shall proceed in

accordance with established Board practice as set forth in Title 8,
California Code of Regulations, section 20290.

DATED: August 30, 1990

BRUCE J. JANIGIAN, Chairman^{13/}

GREGORY L. GONOT, Member

IVONNE RAMOS RICHARDSON, Member

JIM ELLIS, Member

JOSEPH C. SHELL, Member

^{13/}The signatures of Board Members in all Board Decisions appear with the signature of the Chairperson first, if participating, followed by the signatures of the participating Board Members in order of their seniority.

APPENDIX

PLEASANT VALLEY VEGETABLE CO-OP
12 ALRB No. 31, Case Nos. 82-CE-16-OX, et al.

SUMMARY OF UNITS OF VARIOUS CROPS HARVESTED BY ALL CREWS
IN THE 1982-1983 AND 1983-1984 SEASONS

1982-1983 Season

Week Ending	H-I Crew Units of Work By Crop	GC ^{1/} Units of Work By Crop	IM ^{2/} Units of Work By Crop	Case ^{3/} Type	Preferred ^{4/} Units	Rate ^{5/} Differential
9/27/82	480 (c) ^{6/}	0	0	A	0	N/A
10/05/82	2196 (c)	0	0	A	0	N/A
10/12/82	4391 (c)	0	0	A	0	N/A
10/19/82	4126 (c)	0	0	A	0	N/A
	<u>1277</u> (m)					
	5403					

^{1/} Labor contractor crew of Greg Cheveres.

^{2/} Labor contractor crew of Larry Martinez.

^{3/} A - H-I crew employed during week. No backpay owing because no preference in assignment; B - Only labor contractor crew or crews employed during week. No backpay owing because no preference in assignment; C - H-I and labor contractor crew or crews employed during week but no cabbage or head lettuce work available. No backpay owing because no preference in assignment; D - H-I and labor contractor crew or crews employed during week. H-I crew assigned mix or romaine lettuce or both. Labor contractor crew or crews assigned cabbage or head lettuce or both. Backpay owing. Backpay equals number of units H-I would have harvested in cabbage or head lettuce or both but for failure of preferential assignment. (Preferential units not to exceed H-I's unit totals for week); E - H-I and labor contractor crew or crews employed during week and assigned work either in cabbage or head lettuce or both. If H-I crew received a larger amount of harvesting work in cabbage or head lettuce or both than labor contractor crew or crews, backpay owing equals the number of units H-I would have harvested in cabbage or head lettuce or both but for the failure of preferential assignment. (Preferential units not to exceed H-I's unit totals for week); F - Both H-I and labor contractor crew or crews employed during week. Only H-I assigned work in cabbage or head lettuce or both. No backpay owing since H-I crew received preferential work assignment.

^{4/} Denotes number of units of higher paying head lettuce and cabbage crops harvested that week.

^{5/} Difference between what H-I crew actually earned and what it should have earned in the absence of discrimination.

^{6/} Symbols denote crops, as follows lettuce. c, cabbage; m, mixed lettuce; r, romaine lettuce; hi, head

Week Ending	H-I Crew Units of Work By Crops	GC Units of Work By Crops	LM Units of Work By Crops	Case Type	Preferred Units	Rate Differential
10/26/82	2920 (m) <u>599</u> (r) 3519	0	0	A	0	N/A
11/02/82	3630 (m) <u>3985</u> (r) 7615	0	0	A	0	N/A
11/09/82	5876 (m) <u>1309</u> (r) 7185	0	0	A	0	N/A
11/16/82	8672 (m) <u>4339</u> (r) 13011	0	0	A	0	N/A
11/23/82 (H-I)	9640 (m) <u>5857</u> (r)	2446 (c) <u>4724</u> (m)	0	D	2446(c)	.21
11/29/82 (GC)	9062	<u>7170</u>				
11/30/82 (H-I)	4242 (m) <u>4820</u> (r)	851 (c) <u>2090</u> (m)	0	D	851(c)	.21
11/29/82 (GC)	9062	<u>2941</u>				
12/07/82 (H-I)	6038 (m) <u>2891</u> (r)	2086 (m) <u>2707</u> (r)	0	C	0	N/A
12/06/82 (GC)	8929	<u>4793</u>				
12/14/82 (H-I)	1845 (c) 119 (m) <u>617</u> (r) 2581	0	0	A	0	N/A
12/21/82 (H-I)	278 (c) 8298 (m)	5064 (c) <u>549</u> (m)	556(hl)	E	4786 c) <u>556</u> (m)	.21
12/20/82 (GC)	<u>1324</u> (r) 9900	<u>5613</u>			5342	
12/23/82 (LM)						
12/28/82 (H-I)	2412 (c) 6099 (m) <u>2553</u> (r) 11064	0	0	A	0	N/A

Week Ending	H-I Crew Units of Work By Crops	GC Units of Work By Crops	LM Units of Work By Crops	Case Type	Preferred Units	Rate Differen tial
01/04/83 (H-I) (GC)	9373 (m)	7304 (c) <u>1512</u> (m) 8816	0	D	7304 (c)	.21
01/11/83 (H-I)	5778 (m) <u>6581</u> (r)	903 (c) 1953 (c)	0	D	2856 (c)	.21
01/07/83 01/11/83 (GC)	12359	5053 (m) <u>1593</u> (m) 9502				
01/18/83 (H-I) (GC)	7944 (m) <u>4909</u> (r) 12853	4720 (c)	0	D	4720 (c)	.21
01/25/83 (H-I) (GC)	12895 (m)	6705 (c) <u>726</u> (m) 7431	0	D	6705 (c)	.21
02/01/83 (H-I) (GC)	7660 (m) <u>1121</u> (r) 8781	4467 (c) <u>1444</u> (r) 5911	0	D	4467 (c)	.21
02/08/83 (H-I)	200 (c) 7596 (m)	2005 (m)	0	F	0	N/A
02/04/83 (GC)	<u>1942</u> (r) 9738					
02/15/83 (H-I)	584 (c) 8652 (m)	744 (c) <u>321</u> (r)	0	E	160 (c)	.21
02/10/83 (GC)	<u>2517</u> (r) 11753	1065				
02/22/83 (H-I) (GC)	3069 (m) <u>1079</u> (r) 4148	323 (c) <u>1087</u> (r) 1410	0	D	323 (c)	.21
03/01/83 (H-I)	2555 (m) <u>1099</u> (r)	1048 (c) <u>1459</u> (r)	0	D	0	N/A
02/28/83	3654	2507				
03/08/83 (H-I)	11728 (m) <u>2006</u> (r)	5512 (c) <u>1426</u> (r)	4829 (hl)	D	10341(c&hl)	.21
03/07/83 (GC)	13734	6938				
03/05/83 (LM)						

Week Ending	H-I Crew Units of Work By Crops	GC Units of Work By Crops	LM Units of Work By Crops	Case Type	Preferred Units	Rate Differential
03/15/83 (H-I)	7835 (m) <u>2048</u> (r)	2480 (c)	0	D	2480 (c)	.21
03/14/83 (GC)	9883					
03/22/83 (H-I) (GC)	827 (c) 10124 (m) <u>3396</u> (r)	4538 (c) <u>785</u> (m) 5323	0	E	3711 (c)	.21
03/29/83 (H-I) (GC)	14347 10369 (m) <u>4529</u> (r)	8612 (c) <u>550</u> (r)	5628 (hl)	D	8612 (c) <u>5628</u> (hl)	.21
04/01/83 (LM)	14898	9162			14240	
04/05/83 (H-I) (GC)	11254 (m) <u>5312</u> (r)	6047 (c) <u>4185</u> (r)	7163 (hl)	D	6047 (c) <u>7163</u> (hl)	.21
04/07/83 (LM)	16566	10232			13210	
04/12/83 (H-I) (GC)	9703 (m) <u>7188</u> (r)	480 (c) 5858 (m) <u>4251</u> (r)	17198 (hl)	D	450 (c) <u>16411</u> (hl)	.21
04/16/83 (LM)	16891	10589			16891	
04/19/83 (H-I)	11177 (m) <u>2477</u> (r)	4424 (c) 674 (c)	14673 (hl)	D	13654 (hl)	.21
04/21/83 (GC)	13654	2547 (r) 1666 (m)				
04/22/83 (LM)		<u>900</u> (m) 10211				
04/26/83 (H-I)	740 (c) 3780 (m)	0	9695 (hl)	E	7626 (hl)	.21
04/29/83 (LM)	<u>3126</u> (r) 7646 (7626)					
05/03/83 (H-I)	2067 (c) 3617 (m)	0	9050 (hl)	E	9050 (hl)	.21
05/04/83 (LM)	<u>7007</u> (r) 12691					

Week Ending	H-I Crew Units of Work By Crops	GC Units of Work By Crops	LM Units of Work By Crops	Case Type	Preferred Units	Rate Differential
05/10/83 (H-I)	4693 (c) 480 (m)	0	3746 (hl)	E	3746 (hl)	.21
05/13/83 (LM)	<u>4645</u> (r) 9718					
05/13/83 (H-I)	1132 (c) 2530 (r)	0	3574 (hl)	E	2120 (hl)	.21
05/20/83 (LM)	<u>1454</u> (hl) 5116					
05/24/83 (H-I)	1017 (c) 963 (r) <u>8335</u> (hl) 10315	0	0	A	0	N/A
05/31/83 (H-I)	720 (r)					
<u>TOTALS:</u>	332546	118819	76112	-	132243	.21

PLEASANT VALLEY VEGETABLE CO-OP
12 ALRB No. 31, Case Nos. 82-CE-16-OX, et al.

1983-1984 Season

Week Ending	H-I Crew Units of Work By Crops	GC Units of Work By Crops	LM Units of Work By Crops	Case Type	Preferred Units	Rate Differential
10/08/83	2554 (m) <u>1891</u> (r) 4445	0	0	A	0	N/A
10/15/83	1517 (m) <u>545</u> (r) 2062	0	0	A	0	N/A
10/22/83	1668 (m) <u>1185</u> (r) 2853	0	0	A	0	N/A
10/29/83 (H-I)	5068 (m) <u>1980</u> (r)	199 (m) <u>2135</u> (r)	0	C	0	N/A
11/01/83 (GC)	7048	2334				
11/05/83 (H-I)	701 (c) 10724 (m)	902 (r)	0	F	0	N/A
11/08/83 (GC)	<u>2782</u> (r) 14207					
11/12/83 (H-I)	6965 (m) <u>4066</u> (r)	731 (m) <u>1096</u> (r)	0	C	0	N/A
11/15/83 (GC)	11031	1827				
11/19/83 (H-I)	449 (c) 14993 (m)	1016 (m) <u>1807</u> (r)	0	F	0	N/A
11/21/83 (GC)	<u>3567</u> (r) 19009	2823				
11/26/83 (H-I)	8842 (m) <u>757</u> (r)	196 (m) <u>1091</u> (r)	0	C	0	N/A
11/12/83 (GC)	9599	1287				
12/03/83 (H-I)	187 (c) 3227 (m)	1709 (r)	0	F	0	N/A
12/05/83 (GC)	<u>7912</u> (r) 11326					

Week Ending	H-I Crew Units of Work By Crops	GC Units of Work By Crops	LM Units of Work By Crops	Case Type	Preferred Units	Rate Differential
12/10/83 (H-I)	9764 (m) <u>3751 (r)</u> 13515	0	0	A	0	N/A
12/17/83 (H-I)	3676 (m) <u>3183 (r)</u>	1872 (c) 200 (m)	0	D	1872 (c)	.21
12/20/83 (GC)	6859	<u>726 (r)</u> 2798				
12/24/83 (H-I)	13958 (m) <u>717 (r)</u>	301 (m) <u>2785 (r)</u>	0	C	0	N/A
12/27/83 (GC)	<u>14675</u>	<u>3086</u>				
12/31/83 (H-I)	11713 (m) <u>1191 (r)</u>	2427 (c) 329 (m)	0	D	2427 (c)	.21
12/30/83 (GC)	<u>12904</u>	<u>5054 (r)</u> 7810				
01/07/84 (H-I)	9152 (m) <u>1278 (r)</u>	1578 (c)	0	D	1578 (c)	.21
01/10/84 (GC)	<u>10430</u>					
01/14/84 (H-I)	1281 (c) 6787 (m) <u>2039 (r)</u> 10107	0	0	A	0	N/A
01/21/84 (H-I)	172 (c) 10745 (m)	1492 (c)	0	E	1320 (c)	.21
01/24/84 (GC)	<u>4091 (r)</u> 15008					
01/28/84 (H-I)	13088 (m) <u>3586 (r)</u>	3786 (c) 1012 (m)	0	D	3786 (c)	.21
01/31/84 (GC)	<u>16674</u>	<u>1707 (r)</u> 6505				
02/04/84 (H-I)	100 (c) 8527 (m)	4579 (c)	0	E	4579 (c)	.21
02/02/84 (GC)	<u>5517 (r)</u> 14144					
02/11/84 (H-I)	7102 (m) <u>6135 (r)</u>	4767 (c) 783 (m)	0	D	4767 (c)	.21
02/14/84 (GC)	<u>13237</u>	<u>5550</u>				

Week Ending	H-I Crew Units of Work By Crops	GC Units of Work By Crops	LM Units of Work By Crops	Case Type	Preferred Units	Rate Differential
02/18/84 (H-I) (GC)	152 (c) 11108 (m) 6133 (r) 17393	7636 (c) 862 (m) 8488	0	E	7484 (c)	.21
02/25/84 (H-I)	188 (c) 11270 (m)	1187 (c)	0	E	1187 (c)	.21
02/22/84 (GC)	1079 (r) 12537					
03/03/84 (H-I)	199 (c) 11778 (m)	1632 (c) 1167 (m)	0	E	1433 (c)	.21
03/06/84 (GC)	2518 (r) 14495	2799				
03/10/84 (H-I)	9902 (m) 800 (r)	4199 (c)	0	D	4199 (c)	.21
03/13/84 (GC)	10702					
03/17/84 (H-I)	823 (c) 12163 (m)	7951 (c) 1282 (m)	0	E	7128 (c)	.21
03/19/84 (GC)	7047 (r) 20033	2078 (r) 11311				
03/24/84 (H-I)	8979 (m) 6409 (r)	4257 (c)	9979 (hl)	D	4257 (c) 9979 (hl)	.21
03/27/84 (GC)	15388				14236	
03/23/84 (LM)						
03/31/84 (H-I)	10415 (m) 7904 (r)	0	11485 (hl)	D	11485 (hl)	.21
03/30/84 (LM)	18319					
04/02/84 (GC)	0	4727 (c) 765 (m) 5492	0	B	0	N/A
04/07/84 (H-I)	794 (c) 16165 (m)	2579 (c) 1380 (r)	8645 (hl)	E	1785 (c) 8645 (hl)	.21
04/09/84 (GC)	5217 (r) 22176	3959			10430	
04/05/84 (LM)						

Week Ending	H-I Crew Units of Work By Crops	GC Units of Work By Crops	LM Units of Work By Crops	Case Type	Preferred Units	Rate Differential
04/14/84	532 (c)	362 (m)	6583 (hl)	E	6567 (hl)	.21
(H-I)	8270 (m)	<u>1082</u> (r)				
04/12/84	5282 (r)	1444				
(GC)	<u>2016</u> (hl)					
04/13/84	<u>16100</u>					
(LM)						
04/21/84	644 (c)	0	15556 (hl)	E	13335 (hl)	.21
(G-I)	6507 (m)					
04/20/84	<u>6828</u> (r)					
(LM)	<u>13979</u>					
04/28/84	279 (c)	858 (c)	4316 (hl)	E	579 (hl)	.21
(H-I)	2828 (m)	<u>208</u> (m)			200 (hl)	
04/26/84	4320 (r)	1066			779	
(GC)	<u>4116</u> (hl)					
04/27/84	<u>11543</u>					
(LM)						
05/05/84	563 (m)	0	0	A	0	N/A
(H-I)	2614 (r)					
	<u>1680</u> (hl)					
05/12/84	1207 (hl)	0	0	A	0	N/A
(H-I)						
05/19/84	1775 (c)	0	0	A	0	N/A
(H-I)	<u>1502</u> (hl)					
	<u>3277</u>					
06/02/84	1111 (c)	0	0	A	0	N/A
(H-I)						
06/23/84	8531 (hl)	0	0	A	0	N/A
(H-I)						
<u>TOTAL:</u>	400781	88486	56564	-	96592	.21

CASE SUMMARY

Pleasant Valley Vegetable Co-op
(UFW)
31)

16 ALRB No. 12
(12 ALRB No.

Case Nos. 82-CE-16-OX,
et al.

Background

In Pleasant Valley Vegetable Co-op (1986) 12 ALRB No. 31, the Agricultural Labor Relations Board (ALRB or Board) determined that Respondent Pleasant Valley had failed to bargain in good faith with the United Farm Workers of America, AFL-CIO (UFW or Union), the certified bargaining representative of its agricultural employees, by engaging in certain conduct proscribed by the Agricultural Labor Relations Act (ALRA or Act). The Board also found that Respondent retaliated against the permanent H-I crew for its union activities by depriving the crew of the relatively higher paying head lettuce and cabbage harvest work which it traditionally had been granted. The Board found that Respondent began allocating such work to new crews supplied by outside labor contractors after the H-I crew had demonstrated its support for the Union. The Board ordered Respondent to compensate the crew for all losses which it may have suffered as a result of the diversion of the more remunerative work assignments during the 1982-1983 and 1983-1984 seasons. On March 4, 1988, the California Court of Appeal, Second Appellate District, summarily denied Respondent's Petition for Review and the matter proceeded to the compliance phase of this proceeding. Thereafter, the Regional Director of the Board's El Centro Region, acting for the General Counsel, concluded that no loss of pay had been incurred by the H-I crew and that Respondent had satisfied all other provisions of the Board's Order. The Board granted the Union's Request for Review of the Regional Director's subsequent determination to close the case.

Board Decision on Review

As a threshold matter, the Board determined that the Regional Director's comparison of earnings between the various crews, measured over an entire season, failed to adequately address the Board's findings at 12 ALRB No. 31. There, the Board concluded that had Respondent continued to assign work to the H-I crew as it had prior to the discrimination, the crew would have realized higher overall earnings. Relying on the payroll data supplied by the Regional Director, the Board compared the allocation of work week by week. In the first of the two relevant seasons, the Board found 15 weekly periods in which the H-I crew was employed along with one or both labor contractor crews and all head lettuce and cabbage work was allocated solely to the contract crews. A similar result obtained during eight weeks of the following season. For those weeks, backpay would be equal to the number of units of work which the crew would have received

multiplied by the higher piece rate. Examining all weeks in the two seasons in which the H-I crew as well as one or both of the contract crews worked and all received head lettuce and/or cabbage work, the Board found six weeks in the 1982-1983 season in which the contract crews were accorded a disproportionately greater amount of the higher paying work and 10 such weeks the next year. Backpay would be equal to the difference between what the crew actually received and what it would have earned but for the discriminatory assignments.

* * *

The Board remanded the matter to the Regional Director with directions to recompute backpay in accordance with the Board's findings on review and to thereafter proceed in accordance with standard Board practice in compliance matters.

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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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