

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

BRUCE CHURCH, INC.,)	
)	
Respondent,)	Case No. 76-CE-124-E
)	
and)	
)	
UNITED FARM WORKERS)	9 ALRB No. 19
OF AMERICA, AFL-CIO,)	
)	
Charging Party.)	
)	

SUPPLEMENTARY DECISION AND ORDER

On June 29, 1979, the Agricultural Labor Relations Board (Board) issued a Decision and Order in this proceeding (5 ALRB No. 45), concluding, inter alia, that Respondent Bruce Church, Inc., had discriminatorily discharged employee Jose Rosales, in violation of Labor Code section 1153(c) and (a),^{1/} in early October 1976. The Board ordered Respondent to reinstate Rosales to "... a loader's job or comparable employment" and make him whole for all losses of pay and other economic losses he suffered as a result of his discriminatory discharge.

On April 19 and 20, 1982, a hearing was held before Administrative Law Judge^{2/} (ALJ) Thomas Sobel for the purpose

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

^{2/}At the time of the issuance of the ALJ's Decision, all ALJ's were referred to as Administrative Law Officers. (See Cal. Admin. Code, tit. 8, § 20125, amended eff. Jan. 30, 1983.)

of determining the amount of backpay due Rosales.^{3/} Thereafter, on July 30, 1982, the ALJ issued the attached Supplemental Decision on backpay. Respondent, General Counsel, and the Charging Party each timely filed exceptions and a supporting brief, and the General Counsel filed a reply brief.

Pursuant to the provisions of section 1146 of the Agricultural Labor Relations Act (Act), the Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the ALJ's Supplemental Decision in light of the exceptions and briefs and has decided to affirm the ALJ's rulings,^{4/} findings, and conclusions as modified herein, and to adopt his recommended Order

^{3/}The ALJ found that the backpay period commenced on October 11, 1976, and the parties stipulated that Respondent's liability was tolled on November 6, 1980. The ALJ found that Respondent's liability was also tolled from October 1976 to January 1977 as Rosales did not diligently seek work during that period.

^{4/}The ALJ declined to rule on the General Counsel's motion to adjust the backpay award for inflation. Although the Board generally rejected the concept of an inflation factor in Lu-Ette Farms, Inc., (1982) 8 ALRB No. 55, we adopted the practice of periodically adjusting the interest rate on backpay awards. (See Florida Steel Corp. (1977) 231 NLRB 651 [96 LRRM 1070].) In High & Mighty Farms (1982) 8 ALRB No. 100, we held that where a petition for review of our decision is summarily denied, this Board is free to modify its original remedial Order as though no appeal had been filed. Although the Board has authority to modify its remedial Orders, under these circumstances, in any manner necessary to effectuate the policies of the Act, we chose to modify the interest rate in High & Mighty prospectively only. The decision to give prospective effect to that modification was based on our concern over the potential increase in litigation of our Orders and the resulting delay in payment of backpay to discriminatees. As these policy considerations apply equally to the instant case, in which Respondent's petition for review was summarily denied, we shall order Respondent to pay interest on any backpay owed in accordance with our decision in Lu-Ette Farms from the date of issuance of our Order attached hereto.

with modifications.

Backpay for Work in Salinas

Rosales' work history indicates that he worked for Respondent in Respondent's Salinas lettuce harvest for five months in 1973, five months in 1974, and for one month in 1975. Rosales testified, however, that he would have worked for Respondent in Salinas during the backpay period (1977, 1978, 1979, and 1980), but for his discharge.

The ALJ held that Rosales' work history from 1973 to 1976 must be taken into account in computing the backpay owed to him, given the general fluctuations in agricultural employment patterns. The ALJ therefore took the total amount Rosales earned in 1973, 1974, and 1975, divided by three (3) to obtain an average yearly earnings figure, and then divided by the five and one half ($5\frac{1}{2}$) months in the Salinas season and obtained a monthly average earnings figure of \$441.40. That monthly figure was thereafter used by the ALJ, instead of the daily gross backpay amount proposed by the General Counsel, as the measure of Respondent's gross backpay liability to Rosales for each month of the Salinas season during the backpay period.

We find it more appropriate to measure Respondent's gross backpay liability by the daily earnings of a representative employee in Rosales' crew. We consider the ALJ's averaging technique too speculative, given the facts of this case. Rosales worked for Respondent the entire season in Salinas in 1973 and 1974, then worked one month in Salinas in 1975. We do not find it reasonable to assume from that history that Rosales would

not have worked for Respondent in Salinas at all during the backpay period, nor is it reasonable to create an average from such an uneven history. Since the discriminatee testified that he would have worked in Salinas during the backpay period and since Respondent has countered that testimony only with unpersuasive arguments, we find that Respondent has failed to prove that Rosales is not entitled to backpay equal to the daily wages earned by a representative lettuce-harvest employee from Rosales' former crew, as stipulated by the parties.

Deduction of Interim Earning From Gross Backpay

In High & Mighty Farms, supra, 8 ALRB No. 100, we reaffirmed our conclusion that computation of net backpay on a daily basis (i.e., reducing the gross backpay that a discriminatee would have earned absent the discrimination by the amount he earned on the same day from an interim job), is reasonable and appropriate, given the sporadic work patterns of agricultural employees. We also held in High & Mighty that the respondent has the burden of producing evidence of interim earnings, or other factors in diminution of gross backpay, in a form that can be compared to the gross backpay figures. Where the respondent provides interim earnings data in weekly, monthly, or other nondaily form, without proof that such data were the only data available, we shall convert the nondaily data into daily data based on either a six-day work week (excluding Sundays) or the interim employer's regular work week if less than six days.

In the instant case, General Counsel offered daily gross backpay data for the entire backpay period. Evidence of

interim earnings was introduced by Respondent in various forms; daily, weekly, monthly, and annually. However, as Respondent failed to prove that daily interim earnings data were unavailable, we have converted all the interim earnings in this case to daily figures based on a six-day work week and deducted those interim earnings on a daily basis from the daily gross backpay data. (See Appendix A.)

ORDER

Pursuant to Labor Code section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent Bruce Church, Inc., its officers agents, successors, and assigns, shall pay to Jose Rosales the amount of \$48,099.83, plus interest computed at the rate of seven (7) per cent per annum until the date of this Order, and thereafter computed in accordance with our Decision and Order in Lu-Ette Farms, Inc. (1982) 8 ALRB No. 55.

Dated: April 21, 1983

JOHN P. McCARTHY, Member

JEROME R. WALDIE, Member

JORGE CARRILLO, Member

BACKPAY COMPUTATION WORKSHEET

EMPLOYEE NAME: Mr. Ronald SSAN: _____

Case Name and No: Balla, Michael, CAP. TO LEAVE

Year: 1977 Quarter: 1 Month: 3

Date/ Hours Worked	Employer	Gross	Interim	Total	Expenses	Net
		Backpay	Earnings			
			(-)	(=)	(+)	(=)
1		0	0			0
2		0	0			0
3	Mike Urczak	7933	2174			5815
4	Mike Urczak	7931	2646			5285
5	Mike Urczak	0	3024			0
6		0	0			0
7	Mike Urczak	3750	2646			6104
8	Mike Urczak	7342	2457			4885
9	Mike Urczak	7624	3024			4660
10	Mike Urczak	6177	2363			3816
11	Michael Urczak	7281	3024			4177
12		5112	0			5112
13	Mike Urczak	0	1890			0
14	Mike Urczak	8184	2268			5916
15		2844	0			2844
16		5757	0			5757
17		7936	0			7936
18		8745	0			8745
19	Butts View	5136	2177			2009
20		0	0			0
21	Butts View	6220	2177			4043
22	Butts View	7201	2177			5024
23	Butts View	5388	2177			3211
24	Butts View	4232	2177			2055
25	Butts View	4384	2177			2207
26	Butts View	0	2177			0
27		0	0			0
28	Butts View	5774	2177			3597
29						
30						
31						
32						
33						
34						
35						
36						
37						
38						
39						
40						
		129041	35841			13112

APPENDIX - A

BACKPAY COMPUTATION WORKSHEET

EMPLOYEE NAME: ANDY FARMER

SSAN:

Case Name and No: Butts View (CWA) '76-15-124-E

Year: 1977

Quarter: 1

Month: 7/1977

Date/ Hours Worked	Employer	Gross		Interim	Total	Expenses	Net			
		Backpay	Earnings	(-)			(-)	(+)	Backpay	(-)
1	Butts View		4416	2179			2237			
2	Butts View		7015	3442			3573			
3	Butts View		0	3442			0			
4	Butts View		6152	3442			2710			
5	Butts View		4995	3442			1453			
6			0	0			0			
7	Butts View		5284	3442			1842			
8	Butts View		5059	3442			1617			
9	Butts View		5774	3442			2332			
10	Butts View		5611	3442			2169			
11	Butts View		0	3442			0			
12	Butts View		0	3442			0			
13			0	0			0			
14	Butts View		0	3442			0			
15	Butts View		0	3442			0			
16			0	0			0			
17			0	0			0			
18			0	0			0			
19			0	0			0			
20	Butts View		0	3325			0			
21	Butts View		5923	3325			2598			
22	Butts View		6452	3325			3127			
23			5882	0			5882			
24	Butts View		6367	4200			2167			
25	Butts View		6230	4200			2030			
26	Butts View		0	4200			0			
27			0	0			0			
28	Butts View		5522	4200			1322			
29	Butts View		4441	4200			241			
30	Butts View		5433	2942			2491			
31	Butts View		4633	2942			1691			
32										
33										
34										
35										
36										
37										
38										
39										
40										
			415875	55205			40620			

BACKPAY COMPUTATION WORKSHEET

EMPLOYEE NAME: JAN ROYAL

SSAN:

Case Name and No: Baugh Chilson, Inc, 76-CE-124-E

Year: 1977

Quarter: 2

Month: April

Date/ Hours Worked	Employer	Gross		Interim		Net	
		Backpay	Earnings	Total	Expenses	Backpay	
			(-)	(=)	(+)	(=)	
1	Butts View		7393	2742			4651
2	Butts View		0	2742			0
3			0	0			0
4	Butts View		8978	2742			6236
5	Butts View		8210	2742			5468
6	Butts View		5748	3500			2248
7	Butts View		5805	3500			2305
8	Butts View		4503	3500			1003
9	Butts View		0	3500			0
10			0	0			0
11	Butts View		8142	3500			4642
12	Butts View		5178	3500			1678
13	Butts View		4480	3780			700
14	Butts View		8735	3780			4955
15	Butts View		5798	3780			2018
16	Butts View		7872	3780			4092
17			0	0			0
18	Butts View		6023	3780			2243
19	Butts View		4555	3780			775
20	Butts View		6891	3930			2961
21	Butts View		4044	3930			114
22	Butts View		8427	3930			4497
23	Butts View		6560	3930			2630
24			0	0			0
25	Butts View		7573	3930			3643
26	Butts View		5676	3730			1746
27			4719	0			4719
28	Butts View		6150	3930			2220
29	Butts View		2476	3930			0
30	Butts View		0	3930			0
31							
32							
33							
34							
35							
36							
37							
38							
39							
40							
			141460	75916			65544

BACKPAY COMPUTATION WORKSHEET

EMPLOYEE NAME: Joni Bonnia

SSAN:

Case Name and No: Burton Church, Vano, 76-CF-124-E

Year: 1977

Quarter: 2

Month: 7 Nov

Date/		Gross	Interim			
Hours	Employer	Backpay	Earnings	Total	Expenses	Net
Worked			(-)	(-)	(+)	(=)
1						
2	Butte View	10144	3930			6114
3	Butte View	4364	3930			434
4	Butte View		3930			
5	Butte View	6024	3930			2094
6	Butte View	4387	3930			5457
7	Butte View		3930			
8						
9	Butte View		3930			
10	Butte View	7955	3930			4025
11	Butte View	7603	3930			3673
12	Butte View	12726	3930			3796
13	Butte View	10555	3930			6625
14	Butte View	7332	3930			3402
15						
16	Butte View	8376	3930			4446
17	Butte View	6238	3930			2308
18	Butte View		3930			
19	Butte View	10918	3930			6978
20	Butte View	11856	3930			7926
21	Butte View		3930			
22						
23	Butte View	10085	3930			6155
24	Butte View	8969	3930			5039
25	Butte View	10431	3897			6534
26	Butte View	10058	3897			6161
27	Butte View	7182	3897			3285
28	Butte View	9085	3897			5188
29						
30	Butte View	14654	3897			10757
31	Butte View	8105	3897			4208
32						
33						
34						
35						
36						
37						
38						
39						
40						
			82332			109609

BACKPAY COMPUTATION WORKSHEET

EMPLOYEE NAME: Butts, Vann SSAN: _____

Case Name and No: Butts, Vann 1000 76-13-21-E

Year: 1976 Quarter: 1 Month: 11

Date/ Hours Worked	Employer	Gross		Interim		Net	
		Backpay	Total	Earnings	Total	Expenses	Backpay
			(=)	(-)	(=)	(+)	(=)
1	Butts Vann		62.49		62.49		62.49
2	Butts Vann		81.58		81.58		81.58
3	Butts Vann		73.75		73.75		73.75
4	Butts Vann		72.39		72.39		72.39
5			102.40		102.40		102.40
6			0		0		0
7			148.22		148.22		148.22
8			0		0		0
9			27.14		27.14		27.14
10			110.59		110.59		110.59
11			66.31		66.31		66.31
12			0		0		0
13			62.25		62.25		62.25
14			78.01		78.01		78.01
15			72.72		72.72		72.72
16			67.56		67.56		67.56
17			111.49		111.49		111.49
18			91.12		91.12		91.12
19			0		0		0
20			87.56		87.56		87.56
21			69.05		69.05		69.05
22			0		0		0
23			75.91		75.91		75.91
24			66.20		66.20		66.20
25			0		0		0
26			0		0		0
27			69.57		69.57		69.57
28			60.00		60.00		60.00
29			68.59		68.59		68.59
30			16.73		16.73		16.73
31							
32							
33							
34							
35							
36							
37							
38							
39							
40							
			1787.21		1787.21		1787.21

BACKPAY COMPUTATION WORKSHEET

EMPLOYEE NAME: _____

SSAN: _____

Case Name and No: _____

Year: JCC

Quarter: 3

Month: 11/11/11

Date/ Hours Worked	Employer	Gross	Interim	Total	Expenses	Net
		Backpay	Earnings			
			(-)	(-)	(+)	(=)
1	Bidnet ERM	1.0	21.20			49.61
2	Bidnet ERM	52.33	60.15			22.18
3		0	0			0
4	Bidnet BAK	0	40.00			0
5	Bidnet BAK	76.15	52.50			24.17
6	Bidnet BAK	81.05	52.00			24.33
7	Bidnet ERM	87.33	68.40			31.47
8	Bidnet ERM	82.02	45.65			38.37
9	Bidnet BAK	0	29.90			0
10		0	0			0
11	Bidnet ERM	110.40	46.35			64.05
12	Bidnet BAK	103.51	47.30			61.21
13	Bidnet ERM	111.81	27.35			88.96
14	Bidnet BAK	105.00	64.10			40.60
15	Bidnet ERM	100.51	43.35			54.23
16	Bidnet ERM	0	19.80			0
17		0	0			0
18	Bidnet ERM	96.50	18.00			78.50
19		97.24	0			97.24
20		93.24	0			93.24
21		112.53	0			112.53
22		109.94	0			109.94
23		47.02	0			47.02
24		0	0			0
25		112.35	0			112.35
26	KORIC ERM	59.03	31.00			19.03
27	KORIC ERM	36.15	35.00			49.15
28	KORIC ERM	32.11	38.00			44.11
29	KORIC ERM	67.65	38.00			24.65
30	KORIC ERM	0	21.70			0
31	KORIC ERM	0	38.00			0
32						
33						
34						
35						
36						
37						
38						
39						
40						
		129.15	21.45			129.15

BACKPAY COMPUTATION WORKSHEET

EMPLOYEE NAME: John J. [unclear] SSAN: _____

Case Name and No: [unclear]

Year: 2002 Quarter: 3 Month: October

Date/ Hours Worked	Employer	Gross	Interim	Total	Expenses	Net
		Backpay	Earnings			Backpay
			(-)	(=)	(+)	(=)
1	Rogers Foods	2	2470			2
2		2	2			2
3		2	2			2
4		2	2			2
5		2	2			2
6		624	2			624
7		5024	2			5024
8		5917	2			5917
9		10216	2			10216
10		6497	2			6497
11		2	2			2
12		7565	2			7565
13		6091	2			6091
14		6510	2			6510
15		5227	2			5227
16		4275	2			4275
17		2	2			2
18		2	2			2
19		4815	2			4815
20		2	2			2
21		2	2			2
22		3812	2			3812
23		6913	2			6913
24		2	2			2
25		2	2			2
26		2	2			2
27		2	2			2
28		2	2			2
29		2	2			2
30		2	2			2
31						
32						
33						
34						
35						
36						
37						
38						
39						
40						
		7710	2			7710

BACKPAY COMPUTATION WORKSHEET

EMPLOYEE NAME: John R. ...

SSAN:

Case Name and No: Bush ... 76-15...

Year: 1971

Quarter: 2

Month: July

Date/ Hours Worked	Employer	Gross	Interim	Total	Expenses	Net
		Backpay	Earnings (-)	(=)	(+)	Backpay (=)
1		4551	0			4551
2		0	0			0
3		5728	0			5728
4		5692	0			5692
5		0	0			0
6		0	0			0
7		7069	0			7069
8		0	0			0
9		7304	0			7304
10		6733	0			6733
11		7570	0			7570
12		0	0			0
13		0	0			0
14		5087	0			5087
15		7228	0			7228
16		7562	0			7562
17		8653	0			8653
18		5092	0			5092
19		7535	0			7535
20		0	0			0
21		5097	0			5097
22		3216	0			3216
23		4503	0			4503
24		0	0			0
25		3241	0			3241
26		4515	0			4515
27		0	0			0
28		5883	0			5883
29		4233	0			4233
30		5703	0			5703
31						
32						
33						
34						
35						
36						
37						
38						
39						
40						
		124087	0			124087

BACKPAY COMPUTATION WORKSHEET

EMPLOYEE NAME: MR. FORD

SSAN:

Case Name and No: BLVD. MUM, NO. 75-15-2-E

Year: 1977

Quarter: 1

Month: Dec

Date/ Hours Worked	Employer	Gross	Interim	Total	Expenses	Net
		Backpay	Earnings			
			(-)	(=)	(+)	(=)
1		5792	0			5792
2		6400	0			6400
3		0	0			0
4		0	0			0
5		6444	0			6444
6		4000	0			4000
7		5528	0			5528
8		4545	0			4545
9		0	0			0
10		0	0			0
11		0	0			0
12		8091	0			8091
13		4207	0			4207
14		6433	0			6433
15		5040	0			5040
16		9113	0			9113
17		4604	0			4604
18		0	0			0
19		11351	0			11351
20		6051	0			6051
21		6138	0			6138
22		7995	0			7995
23		6276	0			6276
24		0	0			0
25		0	0			0
26		0	0			0
27		8540	0			8540
28		7710	0			7710
29		9561	0			9561
30		9962	0			9962
31		4653	0			4653
32						
33						
34						
35						
36						
37						
38						
39						
40						
		14761	0			14761

BACKPAY COMPUTATION WORKSHEET

EMPLOYEE NAME: Art Granje SSAN: _____

Case Name and No: Bella Vista San 76CE-124-E

Year: 1978 Quarter: 1 Month: 1

Date/ Hours Worked	Employer	Gross	Interim	Total	Expenses	Net
		Backpay	Earnings			Backpay
			(-)	(=)	(+)	(=)
1		0	0			0
2		4802	0			4802
3		3755	0			3755
4		3008	0			3008
5	Granje	6372	1837			4435
6	Granje	3602	1837			1765
7	Granje	0	1837			1837
8		0	0			0
9	Granje	5372	1837			3535
10	Granje	0	1837			1837
11	Granje	0	1837			1837
12	Granje	9059	5637			3422
13	Granje	8077	5637			2440
14	Granje	7013	5637			1376
15		0	0			0
16	Granje	3472	5637			2165
17	Granje	4278	5637			1361
18	Granje	7324	1637			1611
19	Granje	7982	4504			3478
20	Granje	9762	4504			5258
21	Granje	4457	4504			1003
22		0	0			0
23	Granje	10218	4504			5714
24	Granje	4771	4504			2267
25	Granje	6772	4504			2268
26	Granje	7826	3872			3954
27	Granje	8857	3872			4985
28	Granje	3134	3872			758
29		0	0			0
30	Granje	1440	3872			2432
31	Granje	8224	3872			4352
32						
33						
34						
35						
36						
37						
38						
39						
40						
		12214	1762			10452

BACKPAY COMPUTATION WORKSHEET

EMPLOYEE NAME: JOE RIZZO

SSAN:

Case Name and No: F. I. M. T. M. O. M. 76-CE-124-E

Year: 1973

Quarter: 1

Month: February

Date/ Hours Worked	Employer	Gross	Interim	Total	Expenses	Net
		Backpay	Earnings			
			(-)	(=)	(+)	(=)
1	Caratti	8603	3862			4741
2	Caratti	8386	5724			2662
3	Caratti	12939	5724			7215
4	Caratti	4130	5724			0
5		0	0			0
6	Caratti	8042	5724			2318
7	Caratti	4956	5724			0
8	Caratti	5218	5724			0
9	Caratti	10931	1572			9359
10	Caratti	6417	1572			4845
11	Caratti	0	1572			0
12		0	0			0
13	Caratti	5115	1572			3543
14	Caratti	0	1572			0
15	Caratti	7602	1572			6030
16	Caratti	5990	4614			1376
17	Caratti	5269	4614			650
18	Caratti	0	4614			0
19		0	0			0
20	Caratti	5679	4614			1065
21	Caratti	5125	4614			511
22	Caratti	5231	4614			617
23	Caratti	7672	6010			1662
24	Caratti	5859	6010			0
25	Caratti	0	6010			0
26		0	0			0
27	Caratti	6278	6010			268
28	Caratti	1440	6010			0
29						
30						
31						
32						
33						
34						
35						
36						
37						
38						
39						
40						
		107374	62416			44958

BACKPAY COMPUTATION WORKSHEET

EMPLOYEE NAME: Mr. Krohn

SSAN:

Case Name and No: Public Union, 76-25-1225

Year: 1978

Quarter: 1

Month: 7/1978

Date/ Hours Worked	Employer	Gross	Interim	Total	Expenses	Net
		Backpay	Earnings	(=)	(+)	(=)
			(-)	(=)	(+)	(=)
1	Crosatti		6010			
2	Crosatti		1289			
3	Crosatti	9958	1289			8669
4	Crosatti		1289			
5						
6	Crosatti	9333	1289			8044
7	Crosatti	8875	1289			7586
8	Crosatti	5515	1289			4226
9		6480				6480
10		9362				9362
11		6972				6972
12						
13		8721				8721
14		3944				3944
15						
16	Mr. Krohn	14223	1388			12835
17	Mr. Krohn	6243	1388			4855
18	Mr. Krohn		1388			
19	Mr. Krohn		1388			
20	Mr. Krohn	5579	1388			4191
21	Mr. Krohn	11068	1388			9680
22		4214				4214
23		9121				9121
24		6917				6917
25						
26						
27						
28						
29		7217				7217
30		4182				4182
31						
32						
33						
34						
35						
36						
37						
38						
39						
40						
			10708			12676

BACKPAY COMPUTATION WORKSHEET

EMPLOYEE NAME: Paul R. ...

SSAN: _____

Case Name and No: Bureau of ... 76-15124-E

Year: 1978

Quarter: 2

Month: 11

Date/ Hours Worked	Employer	Gross	Interim	Total	Expenses	Net
		Backpay	Earnings			Backpay
			(-)	(=)	(+)	(=)
1		0	0			0
2		0	0			0
3		10931	0			10931
4		7951	0			7951
5		7237	0			7237
6		720	0			720
7		8247	0			8247
8		6142	0			6142
9		0	0			0
10		0	0			0
11		0	0			0
12		0	0			0
13		0	0			0
14		0	0			0
15		0	0			0
16		0	0			0
17		12535	0			12535
18		11775	0			11775
19		0	0			0
20		10472	0			10472
21		585	0			585
22		0	0			0
23		0	0			0
24		0	0			0
25		0	0			0
26		0	0			0
27		0	0			0
28		0	0			0
29		0	0			0
30		0	0			0
31		0	0			0
32						
33						
34						
35						
36						
37						
38						
39						
40						
		585	0			585

BACKPAY COMPUTATION WORKSHEET

EMPLOYEE NAME: John ...

SSAN: _____

Case Name and No: ... 76-15-124-E

Year: 1978

Quarter: 1

Month: 11

Date/ Hours Worked	Employer	Gross	Interim	Total	Expenses	Net
		Backpay	Earnings			
			(-)	(=)	(+)	(=)
1		0	0			0
2		0	0			0
3		0	0			0
4		0	0			0
5		0	0			0
6		0	0			0
7		0	0			0
8		0	0			0
9		0	0			0
10		0	0			0
11		0	0			0
12		4561	0			4561
13		11050	0			11050
14		0	0			0
15		8902	0			8902
16		10715	0			10715
17		11571	0			11571
18		8025	0			8025
19		6556	0			6556
20		5770	0			5770
21		0	0			0
22		11234	0			11234
23		17432	0			17432
24		4234	0			4234
25		6567	0			6567
26		6430	0			6430
27		0	0			0
28		0	0			0
29		6204	6843			13047
30		7167	6846			14013
31		0	0			0
32						
33						
34						
35						
36						
37						
38						
39						
40						
		111280	6843			118123

BACKPAY COMPUTATION WORKSHEET

EMPLOYEE NAME: LOW, R. A.

SSAN:

Case Name and No: BALDU CHURCH, U.M.W., 76-LE-12-E

Year: 1978 Quarter: 2 Month: 11/78

Date/ Hours Worked	Employer	Gross	Interim	Total	Expenses	Net
		Backpay	Earnings			Backpay
			(-)	(=)	(+)	(=)
1	L.P. 7.5107	5471	6846			0
2	U.P. 7.5107	10451	6846			210
3	U.P. 7.5107	3792	6846			0
4	V	0	0			0
5	L.P. 7.5107	9440	6846			2504
6	U.P. 7.5107	4961	6846			0
7	U.P. 7.5107	5194	6846			0
8	U.P. 7.5107	6400	6846			0
9	U.P. 7.5107	4427	6846			0
10	U.P. 7.5107	0	6846			0
11	V	0	0			0
12	U.P. 7.5107	4817	6846			0
13	U.P. 7.5107	6567	6846			0
14	U.P. 7.5107	5351	6846			0
15	U.P. 7.5107	5072	6846			0
16	U.P. 7.5107	5448	6846			0
17	U.P. 7.5107	0	6846			0
18	V	0	0			0
19	U.P. 7.5107	5822	6846			0
20	U.P. 7.5107	0	6846			0
21	U.P. 7.5107	5518	6846			0
22	U.P. 7.5107	5971	6846			0
23	U.P. 7.5107	6703	6846			0
24	U.P. 7.5107	3566	6846			0
25	V	0	0			0
26	U.P. 7.5107	3572	6846			173
27	U.P. 7.5107	3805	6846			0
28	U.P. 7.5107	7052	6846			210
29	U.P. 7.5107	7676	6846			850
30	U.P. 7.5107	5771	6846			0
31	V					
32						
33						
34						
35						
36						
37						
38						
39						
40						
		43721	34730			3911

BACKPAY COMPUTATION WORKSHEET

EMPLOYEE NAME: 76-1515

SSAN:

Case Name and No: 76-1515

Year: 78 Quarter: 3 Month: 11

Date/ Hours Worked	Employer	Gross	Interim	Total	Expenses	Net
		Backpay	Earnings			Backpay
			(-)	(=)	(+)	(=)
1	76-1515	0	6846			0
2		0	0			0
3	76-1515	6090	6846			0
4	76-1515	11062	6846			4216
5		6439				6439
6		4891				4891
7		6742				6742
8		0				0
9		0				0
10		3466				3466
11		0				0
12		4272				4272
13		5947				5947
14		5300				5300
15		0				0
16		0				0
17		6058				6058
18	76-1515	0	6215			0
19	76-1515	4866	6215			0
20	76-1515	7581	6215			1366
21	76-1515	3747	6215			0
22	76-1515	0	6215			0
23		0	0			0
24	76-1515	6668	6215			0
25	76-1515	0	6215			0
26	76-1515	3402	6215			0
27	76-1515	6310	7764			0
28	76-1515	7517	7764			0
29		0	7764			0
30		0	0			0
31	76-1515	8679	7764			915
32						
33						
34						
35						
36						
37						
38						
39						
40						
		70437	2753			42884

BACKPAY COMPUTATION WORKSHEET

EMPLOYEE NAME: Alan K. ...

SSAN:

Case Name and No: Police Church, Inc 76-5E-124-E

Year: 1978

Quarter: 3

Month: June

Date/ Hours Worked	Employer	Gross	Interim	Total	Expenses	Net
		Backpay	Earnings			
			(-)	(=)	(+)	(=)
1	8/10	8448	7764			684
2	8/10	0	7764			0
3	8/10	6671	4101			2570
4	8/10	7547	4101			3448
5	8/10	0	4104			0
6	8/10	0	0			0
7	8/10	5206	4104			6102
8	8/10	725	4101			0
9	8/10	6058	4101			11957
10		5614	0			5614
11		7651	0			7651
12		0	0			0
13		0	0			0
14		0	0			0
15		0	0			0
16		5736	0			5736
17		6387	0			6387
18		5221	0			5221
19		0	0			0
20		0	0			0
21		7000	0			7000
22		6644	0			6644
23		5548	0			5548
24		9472	0			9472
25		7493	0			7493
26		7734	0			7734
27		0	0			0
28		7122	0			7122
29		0	0			0
30		0	0			0
31		7374	0			7374
32						
33						
34						
35						
36						
37						
38						
39						
40						
		72848	24151			102757

BACKPAY COMPUTATION WORKSHEET

EMPLOYEE NAME: Dr. C. K. ...

SSAN: _____

Case Name and No: ... 76-25-124-E

Year: 1978

Quarter: 3

Month: September

Date/ Hours Worked	Employer	Gross Backpay	Interim Earnings (-)	Total (=)	Expenses (+)	Net Backpay (=)
1		5948	0			5948
2		6547	0			6547
3		0	0			0
4		0	0			0
5		1159	0			1159
6		6183	0			6183
7		355	0			355
8		3207	0			3207
9		0	0			0
10		0	0			0
11		4273	0			4273
12		0	0			0
13		425	0			425
14		0	0			0
15		0	0			0
16		0	0			0
17		0	0			0
18		0	0			0
19		0	0			0
20		7876	0			7876
21		5593	0			5593
22		5057	0			5057
23		0	0			0
24		0	0			0
25		6786	0			6786
26		0	0			0
27		6941	0			6941
28		4832	0			4832
29		8151	0			8151
30		0	0			0
31						
32						
33						
34						
35						
36						
37						
38						
39						
40						

BACKPAY COMPUTATION WORKSHEET

EMPLOYEE NAME: L. J. D... SSAN: _____

Case Name and No: F. J. ...

Year: 1973 Quarter: 4 Month: October

Date/ Hours Worked	Employer	Gross	Interim	Total	Expenses	Net
		Backpay	Earnings	(=)	(+)	Backpay
			(-)	(=)	(+)	(=)
1		0	0			0
2		0	0			0
3		0	0			0
4		6275	0	6275		6275
5		5433	0	5433		5433
6		7214	0	7214		7214
7		0	0			0
8		0	0			0
9		4832	0	4832		4832
10		5745	0	5745		5745
11		5846	0	5846		5846
12		7200	0	7200		7200
13		5011	0	5011		5011
14		0	0			0
15		0	0			0
16		4612	0	4612		4612
17		5433	0	5433		5433
18		0	0			0
19		0	0			0
20		6657	0	6657		6657
21		0	0			0
22		0	0			0
23		0	0			0
24		0	0			0
25		0	0			0
26		0	0			0
27		0	0			0
28		0	0			0
29		0	0			0
30		5954	0	5954		5954
31						
32						
33						
34						
35						
36						
37						
38						
39						
40						
		8200	0	8200		8200

BACKPAY COMPUTATION WORKSHEET

EMPLOYEE NAME: W. J. [unclear] SSAN: _____

Case Name and No: EMILY J. [unclear] 76-5124-E

Year: 1973 Quarter: 4 Month: 7

Date/ Hours Worked	Employer	Gross	Interim	Total	Expenses	Net
		Backpay	Earnings	(=)	(+)	Backpay
			(-)	(=)	(+)	(=)
1		0	0			0
2		7945	0			7945
3		7779	0			7779
4		0	0			0
5		0	0			0
6		9043	0			9043
7		3937	0			3937
8		7694	0			7694
9		6365	0			6365
10		8459	0			8459
11		0	0			0
12		0	0			0
13		6956	0			6956
14		4137	0			4137
15		0	0			0
16		4390	0			4390
17		3426	0			3426
18		5707	0			5707
19		0	0			0
20		0	0			0
21		0	0			0
22		0	0			0
23		0	0			0
24		0	0			0
25		0	0			0
26		0	0			0
27	G. F. [unclear]	7127	648			6533
28	G. F. [unclear]	5815	648			5233
29	L. F. [unclear]	5178	648			4478
30	L. F. [unclear]	0	648			5587
31						
32						
33						
34						
35						
36						
37						
38						
39						
40						
		100369	2592			97767

BACKPAY COMPUTATION WORKSHEET

EMPLOYEE NAME: W. J. [unclear] SSAN: _____

Case Name and No: 7-15-1971 UN 70-15-1-1

Year: 1971 Quarter: 4 Month: December

Date/ Hours Worked	Employer	Gross	Interim	Total	Expenses	Net
		Backpay	Earnings	(=)	(+)	Backpay
			(-)	(=)	(+)	(=)
1	Wm Moorhead	5262	648			4614
2	Wm Moorhead	0	648			0
3		0	0			0
4		0	0			0
5		0	0			0
6		0	0			0
7		0	0			0
8		0	0			0
9		0	0			0
10		0	0			0
11		5858	0			5858
12		0	0			0
13	Mike Farms	0	5116			0
14	Mike Farms	6086	5116			970
15	Mike Farms	0	5116			0
16	Mike Farms	0	5116			0
17		0	0			0
18		0	0			0
19		0	0			0
20	Mike Farms	0	6456			0
21	Mike Farms	0	6456			0
22	Mike Farms	0	6456			0
23	Mike Farms	0	6456			0
24	Mike Farms	0	2632			0
25		0	0			0
26		5925	0			5925
27		5954	0			5954
28		2780	0			2780
29		6290	0			6290
30		9725	0			9725
31		0	0			0
32						
33						
34						
35						
36						
37						
38						
39						
40						
		45381	5764			37617

BACKPAY COMPUTATION WORKSHEET

EMPLOYEE NAME: JOHN KRANIK

SSAN:

Case Name and No: 30102 10100 1010 76-1E-174-E

Year: 1979

Quarter: 1

Month: SEPTEMBER

Date/ Hours Worked	Employer	Gross Backpay	Interim Earnings (-)	Total (=)	Expenses (+)	Net Backpay (=)
1		8	0			0
2		6123	0			6123
3		6764	0			6764
4		6167	0			6167
5		5491	0			5491
6		5287	0			5287
7		0	0			0
8		7176	0			7176
9		3672	0			3672
10		4748	0			4748
11	Kranick	7723	806			6917
12	Kranick	6840	806			6034
13	Kranick	0	806			0
14		0	0			0
15	Kranick	7105	806			6299
16	Kranick	3826	806			3020
17	Kranick	6719	806			5913
18	Kranick	4917	7125			0
19	Kranick	7775	7125			650
20	Kranick	8283	7125			1158
21		7933	0			7933
22	Kranick	8281	7125			1156
23	Kranick	10177	7125			3052
24	Kranick	7285	7125			160
25	Kranick	0	3222			0
26	Kranick	8636	3222			5414
27	Kranick	7068	3222			3846
28		0	0			0
29	Kranick	7474	3222			4252
30	Kranick	6218	3222			2996
31	Kranick	4673	3222			1451
32						
33						
34						
35						
36						
37						
38						
39						
40						
		161623	5505			145318

BACKPAY COMPUTATION WORKSHEET

EMPLOYEE NAME: JOHN ROSARIO

SSAN:

Case Name and No: Baugh v. Board, & Co., 76-1E-124-E

Year: 1979

Quarter: 1

Month: JULY

Date/ Hours Worked	Employer	Gross	Interim			Net
		Backpay	Earnings	Total	Expenses	Backpay
			(-)	(=)	(+)	(=)
1		4796	0			4796
2		775	0			775
3		0	0			0
4		0	0			0
5		2434	0			2434
6		0	0			0
7		11566	0			11566
8		7292	0			7292
9		1490	0			1490
10		0	0			0
11		0	0			0
12		0	0			0
13		0	0			0
14		0	0			0
15	Casotti	0	1778			0
16	Casotti	0	1778			0
17	Casotti	0	1778			0
18		0	0			0
19	Casotti	0	1778			0
20	Casotti	0	1778			0
21	Casotti	0	1778			0
22	Casotti	0	311			0
23	Casotti	0	311			0
24	Casotti	0	311			0
25		0	0			0
26	Casotti	0	311			0
27	Casotti	0	311			0
28	Casotti	0	311			0
29						
30						
31						
32						
33						
34						
35						
36						
37						
38						
39						
40						
		28353	0			28353

BACKPAY COMPUTATION WORKSHEET

EMPLOYEE NAME: JOJO P. ALLEN

SSAN:

Case Name and No: Baugh Church, Inc, 76-PE-124-E

Year: 1979

Quarter: 1

Month: March

Date/	Employer	Gross	Interim	Total	Expenses	Net
Hours		Backpay	Earnings	(=)	(+)	Backpay
Worked			(-)	(=)	(+)	(=)
1		0	0			0
2		0	0			0
3		0	0			0
4		0	0			0
5		0	0			0
6		0	0			0
7		0	0			0
8	Croatti	0	575			0
9	Croatti	0	575			0
10	Croatti	0	575			0
11	Croatti	0	575			0
12	Adm. Serv. Probity	0	10626			0
13	Adm. Serv. Probity	0	10626			0
14		0	0			0
15	Vega Farms	0	775			0
16		0	0			0
17		0	0			0
18		0	0			0
19		0	0			0
20		0	0			0
21		0	0			0
22		0	0			0
23		0	0			0
24		0	0			0
25		0	0			0
26		0	0			0
27		0	0			0
28		0	0			0
29		7322	0			7322
30		11438	0			11438
31		5548	0			5548
32						
33						
34						
35						
36						
37						
38						
39						
40						
		74308	0			74308

BACKPAY COMPUTATION WORKSHEET

EMPLOYEE NAME: Jose Rosalis

SSAN:

Case Name and No: Baldor Truck, Inc, 76-CE-124-E

Year: 1979

Quarter: 2

Month: April

Date/	Employer	Gross	Interim	Total	Expenses	Net
Hours		Backpay	Earnings	(-)	(+)	Backpay
Worked			(-)	(-)	(+)	(=)
1		0	0			0
2		9712	0			9712
3		7466	0			7466
4		9825	0			9825
5		9809	0			9809
6		110430	0			110430
7		3912	0			3912
8		0	0			0
9		9809	0			9809
10		8848	0			8848
11		11770	0			11770
12		8820	0			8820
13		4923	0			4923
14		0	0			0
15		0	0			0
16		0	0			0
17		0	0			0
18		0	0			0
19		0	0			0
20		0	0			0
21		0	0			0
22		0	0			0
23		0	0			0
24		0	0			0
25		0	0			0
26		0	0			0
27		0	0			0
28		0	0			0
29		0	0			0
30		0	0			0
31						
32						
33						
34						
35						
36						
37						
38						
39						
40						
		95324	0			95324

BACKPAY COMPUTATION WORKSHEET

EMPLOYEE NAME: ANDY KOALIE

SSAN:

Case Name and No: BALDWIN CHURCH, CORP. 76'E-124-E

Year: 1979

Quarter: 2

Month: JULY

Date/ Hours Worked	Employer	Gross		Interim	Total	Expenses	Net
		Backpay	Earnings				Backpay
			(-)	(=)	(+)	(=)	
1			0	0			0
2			0	0			0
3			0	0			0
4			0	0			0
5			0	0			0
6			0	0			0
7			0	0			0
8			0	0			0
9			0	0			0
10			0	0			0
11			0	0			0
12			0	0			0
13			0	0			0
14			0	0			0
15			0	0			0
16			0	0			0
17			0	0			0
18			0	0			0
19			0	0			0
20			0	0			0
21			0	0			0
22			0	0			0
23			0	0			0
24			0	0			0
25			0	0			0
26			0	0			0
27			0	0			0
28			0	0			0
29			0	0			0
30			0	0			0
31			0	0			0
32							
33							
34							
35							
36							
37							
38							
39							
40							

BACKPAY COMPUTATION WORKSHEET

EMPLOYEE NAME: JOHN B. BROWN

SSAN:

Case Name and No: BROWN CHURCH, INC., 76-CE-124-E

Year: 1979

Quarter: 2

Month: JUNE

Date/ Hours Worked	Employer	Gross		Interim		Total		Expenses		Net	
		Backpay	Earnings	(-)	Earnings	(-)	Expenses	(+)	Backpay	(-)	
1			0		0						0
2			0		0						0
3			0		0						0
4			0		0						0
5			0		0						0
6			0		0						0
7			0		0						0
8			0		0						0
9			0		0						0
10			0		0						0
11			0		0						0
12			0		0						0
13			0		0						0
14			0		0						0
15			0		0						0
16			0		0						0
17			0		0						0
18			0		0						0
19			0		0						0
20			0		0						0
21			0		0						0
22			0		0						0
23			0		0						0
24			0		0						0
25			0		0						0
26			0		0						0
27			0		0						0
28			0		0						0
29			0		0						0
30			0		0						0
31											
32											
33											
34											
35											
36											
37											
38											
39											
40			0		0						0

BACKPAY COMPUTATION WORKSHEET

EMPLOYEE NAME: JOHN FRANK

SSAN:

Case Name and No: BALTIMORE UNION CITY, 76-15-124-E

Year: 1979

Quarter: 3

Month: JULY

Date/ Hours Worked	Employer	Gross		Interim	Total	Expenses	Net
		Backpay	Earnings	Earnings			
			(-)	(-)	(=)	(+)	(=)
1			0	0			0
2			0	0			0
3			0	0			0
4			0	0			0
5			0	0			0
6			0	0			0
7			0	0			0
8			0	0			0
9			0	0			0
10			0	0			0
11			0	0			0
12			0	0			0
13			0	0			0
14			0	0			0
15			0	0			0
16			0	0			0
17			0	0			0
18			0	0			0
19			0	0			0
20			0	0			0
21			0	0			0
22			0	0			0
23	Fullt. Void		5503	3825			1678
24	Fullt. Void		7374	3825			3549
25	Fullt. Void		5605	3825			1780
26	Fullt. Void		7373	3825			3548
27	Fullt. Void		7834	3825			4009
28	Fullt. Void		6187	3825			2362
29			0	0			0
30	Fullt. Void		7133	3825			3308
31	Fullt. Void		5757	3825			1932
32							
33							
34							
35							
36							
37							
38							
39							
40							
			52766	3020			22166

BACKPAY COMPUTATION WORKSHEET

EMPLOYEE NAME: James K. ...

SSAN:

Case Name and No: BUTTS VIEW CO., 76-CE-124-E

Year: 1979

Quarter: 3

Month: March

Date/ Hours Worked	Employer	Gross		Interim		Net	
		Backpay	Earnings	Total	Expenses	Backpay	
			(-)	(-)	(+)	(-)	(-)
1	Butts View		8291		3825		4466
2	Butts View		7093		3825		3268
3	Butts View		7417		3825		3592
4	Butts View		0		3825		0
5	Butts View		0		3825		0
6	Butts View		6610		3825		2785
7	Butts View		0		3825		0
8	Butts View		0		3825		0
9	Butts View		5865		3825		2040
10	Butts View		9047		3825		5222
11	Butts View		0		3825		0
12	Butts View		0		3825		0
13	Butts View		0		3825		0
14	Butts View		0		3825		0
15	Butts View		0		3825		0
16	Butts View		0		3825		0
17	Butts View		0		3825		0
18	Butts View		0		3825		0
19	Butts View		0		3825		0
20	Butts View		6035		3825		2210
21	Butts View		4815		3825		990
22	Butts View		5443		3825		1618
23	Butts View		6001		3825		2176
24	Butts View		8165		3825		4340
25	Butts View		7650		3825		3825
26	Butts View		0		3825		0
27	Butts View		8141		3825		4316
28	Butts View		7937		3825		4112
29	Butts View		4526		3825		5701
30	Butts View		6951		3825		3126
31	Butts View		8422		3825		4657
32							
33							
34							
35							
36							
37							
38							
39							
40							
			1123471		65025		57244

BACKPAY COMPUTATION WORKSHEET

EMPLOYEE NAME: ANDERSON

SSAN:

Case Name and No: PULLMAN, W.C. '76-PF-124-E

Year: 1979

Quarter: 3

Month: October

Date/ Hours Worked	Employer	Gross		Interim		Net	
		Backpay	Earnings	Total	Expenses	Backpay	
			(-)	(-)	(+)	(-)	(=)
1	Butte View		6436	3825			1611
2			0	0			0
3	Butte View		9359	3825			5534
4	Butte View		7247	3825			3422
5	Butte View		8144	3825			4319
6	Butte View		6038	3825			2213
7	Butte View		5700	3825			1875
8	Butte View		0	3825			0
9			0	0			0
10	Butte View		8851	3825			5026
11	Butte View		5909	3825			2084
12	Butte View		8698	3825			4873
13	Butte View		4438	3825			613
14	Butte View		5941	3825			2116
15	Butte View		6053	3825			2228
16			0	0			0
17	Butte View		6572	3825			2747
18	Butte View		4597	3825			1772
19	Butte View		3719	3825			94
20	Butte View		8153	3825			4328
21	Butte View		6652	3825			2827
22	Butte View		0	3825			0
23			0	0			0
24			7064	0			7064
25			0	0			0
26			3176	0			3176
27			6769	0			6769
28			3099	0			3099
29			0	0			0
30			0	0			0
31							
32							
33							
34							
35							
36							
37							
38							
39							
40			32815	65025			67710

BACKPAY COMPUTATION WORKSHEET

EMPLOYEE NAME: Jim Fimalia

SSAN:

Case Name and No: Bullock Church, Inc, 76-CE-174-E

Year: 1979

Quarter: 4

Month: OCTOBER

Date/ Hours Worked	Employer	Gross	Interim	Total	Expenses	Net
		Backpay	Earnings			
			(-)	(=)	(+)	(=)
1		5616	0			5616
2		3974	0			3974
3		1740	0			1740
4		9903	0			9903
5		9469	0			9469
6		7159	0			7159
7		0	0			0
8		7637	0			7637
9		7235	0			7235
10		6385	0			6385
11		8139	0			8139
12		10422	0			10422
13		7169	0			7169
14		0	0			0
15		8212	0			8212
16		7466	0			7466
17		5228	0			5228
18		4536	0			4536
19		435	0			435
20		0	0			0
21		0	0			0
22		7425	0			7425
23		8198	0			8198
24		5087	0			5087
25		9438	0			9438
26		9354	0			9354
27		9040	0			9040
28		0	0			0
29		10378	0			10378
30		6970	0			6970
31		6990	0			6990
32						
33						
34						
35						
36						
37						
38						
39						
40						
		183555	0			183555

BACKPAY COMPUTATION WORKSHEET

EMPLOYEE NAME: JOHN RASALA

SSAN:

Case Name and No: BANK CHURCH, INC, 76-124-E

Year: 1979

Quarter: 4

Month: NOVEMBER

Date/ Hours Worked	Employer	Gross Backpay	Interim Earnings (-)	Total (=)	Expenses (+)	Net Backpay (=)
1		8085	0			8085
2		12531	0			12531
3		0	0			0
4		0	0			0
5		8166	0			8166
6		5058	0			5058
7		0	0			0
8		8475	0			8475
9		9486	0			9486
10		0	0			0
11		0	0			0
12		7800	0			7800
13		6801	0			6801
14		5435	0			5435
15		6313	0			6313
16		9315	0			9315
17		0	0			0
18		0	0			0
19		9615	0			9615
20		8972	0			8972
21		4937	0			4937
22		0	0			0
23		7149	0			7149
24		0	0			0
25		0	0			0
26		11283	0			11283
27		0	0			0
28		8573	0			8573
29		4942	0			4942
30		6482	0			6482
31						
32						
33						
34						
35						
36						
37						
38						
39						
40						
		149324	0			149324

BACKPAY COMPUTATION WORKSHEET

EMPLOYEE NAME: JOE KOZAK SSAN: _____

Case Name and No: BAUM Church, UMC, 76-CE-124-E

Year: 1979 Quarter: 4 Month: December

Date/ Hours Worked	Employer	Gross	Interim	Total	Expenses	Net
		Backpay	Earnings			Backpay
			(-)	(=)	(+)	(=)
1		0	0			0
2		0	0			0
3		8176	0			8176
4		4031	0			4031
5		6619	0			6619
6		5590	0			5590
7		3857	0			3857
8		0	0			0
9		0	0			0
10		0	0			0
11		0	0			0
12		0	0			0
13		0	0			0
14		0	0			0
15		0	0			0
16		0	0			0
17		6790	0			6790
18		6716	0			6716
19		0	0			0
20		0	0			0
21		0	0			0
22		0	0			0
23		0	0			0
24		5517	0			5517
25		0	0			0
26		5994	0			5994
27		5560	0			5560
28		7229	0			7229
29		0	0			0
30		0	0			0
31		9677	0			9677
32						
33						
34						
35						
36						
37						
38						
39						
40						
		75776	0			75776

BACKPAY COMPUTATION WORKSHEET

EMPLOYEE NAME: John P. Allen

SSAN:

Case Name and No: Bank of America, 762E-124-E

Year: 1980

Quarter: 1

Month: January

Date/ Hours Worked	Employer		Gross	Interim	Total	Expenses	Net
			Backpay	Earnings			Backpay
				(-)	(=)	(+)	(=)
1			0	0			0
2			8425	0			8425
3			10378	0			10378
4			12905	0			12905
5			7316	0			7316
6			0	0			0
7			10029	0			10029
8			7191	0			7191
9			0	0			0
10			11048	0			11048
11			10907	0			10907
12			7656	0			7656
13			0	0			0
14			9376	0			9376
15		Travel Exp	6330	3866			2464
16		Travel Exp	6319	3866			2453
17		Travel Exp	3744	3866			4878
18		Travel Exp	10593	3866			6727
19		Travel Exp	8333	3866			4467
20		0	0	0			0
21		Travel Exp	9394	3866			5528
22		Travel Exp	10754	3866			6888
23		Travel Exp	6310	3866			2444
24		Travel Exp	8812	3866			4946
25		Travel Exp	17523	3866			7657
26		Travel Exp	7118	3866			3252
27		0	0	0			0
28		Travel Exp	11913	3866			7852
29		Travel Exp	7153	3866			3287
30		Travel Exp	0	3866			0
31		Travel Exp	12281	3866			8415
32		0					
33							
34							
35							
36							
37							
38							
39							
40							
			32271	54124			16637

BACKPAY COMPUTATION WORKSHEET

EMPLOYEE NAME: A. J. ...

SSAN: _____

Case Name and No: Ball ... 76-15-124-E

Year: 1930

Quarter: 1

Month: 2 11 11

Date/ Hours Worked	Employer	Gross		Interim	Total	Expenses	Net
		Backpay		Earnings			Backpay
				(-)	(-)	(+)	(-)
1	Throat Pro		11823	3866			17962
2	Throat Pro		8376	3866			4510
3	Throat Pro		0	0			0
4	Throat Pro		9005	3866			5139
5	Throat Pro		9967	3866			6101
6	Throat Pro		8019	3866			4153
7	Throat Pro		8042	3866			4176
8	Throat Pro		11842	3866			7976
9	Throat Pro		5596	3866			1730
10	Throat Pro		0	0			0
11	Throat Pro		10993	3866			7127
12	Throat Pro		8690	3866			4824
13	Throat Pro		0	3866			3866
14	Throat Pro		9440	3866			5574
15	Throat Pro		11666	3866			7800
16	Throat Pro		9732	3866			5866
17	Throat Pro		0	0			0
18	Throat Pro		9732	3866			5866
19	Throat Pro		7181	3866			3315
20	Throat Pro		11100	3866			7234
21	Throat Pro		12819	3866			8953
22	Throat Pro		10896	3866			7030
23	Throat Pro		0	3866			3866
24	Throat Pro		0	3866			3866
25	Throat Pro		10816	0			10816
26	Throat Pro		12821	3866			8955
27	Throat Pro		12115	0			12115
28	Throat Pro		12124	0			12124
29	Throat Pro		600	0			600
30							
31							
32							
33							
34							
35							
36							
37							
38							
39							
40							

BACKPAY COMPUTATION WORKSHEET

EMPLOYEE NAME: Jose Ferrer SSAN: _____

Case Name and No: Bowie Finch, Inc, 76-CE-124-E

Year: 1980 Quarter: 1 Month: March

Date/ Hours Worked	Employer	Gross	Interim	Total	Expenses	Net
		Backpay	Earnings			
			(-)	(-)	(+)	(=)
1		9490	0			9490
2		0	0			0
3		15105	0			15105
4		11883	0			11883
5		13179	0			13179
6		10177	0			10177
7		11952	0			11952
8		0	0			0
9		0	0			0
10		11837	0			11837
11		6614	0			6614
12		13768	0			13768
13		14535	0			14535
14		11488	0			11488
15		7614	0			7614
16		0	0			0
17		13969	0			13969
18		6951	0			6951
19		0	0			0
20		11768	0			11768
21		6509	0			6509
22		7184	0			7184
23		0	0			0
24		13200	0			13200
25		14053	0			14053
26		15520	0			15520
27		8997	0			8997
28		0	0			0
29		12073	0			12073
30		0	0			0
31		7642	0			7642
32						
33						
34						
35						
36						
37						
38						
39						
40						
		255528	0			255528

BACKPAY COMPUTATION WORKSHEET

EMPLOYEE NAME: JOSE K. ALVA

SSAN:

Case Name and No: BRUCE J. WOOD, VINC, 76-DE-124-E

Year: 1980

Quarter: 2

Month: APRIL

Date/ Hours Worked	Employer	Gross	Interim	Total	Expenses	Net
		Backpay	Earnings			Backpay
			(-)	(=)	(+)	(=)
1		7265	0			7265
2		7001	0			7001
3		8072	0			8072
4		3900	0			3900
5		0	0			0
6		0	0			0
7		0	0			0
8		0	0			0
9		0	0			0
10		0	0			0
11		0	0			0
12		0	0			0
13		0	0			0
14		9740	0			9740
15		11849	0			11849
16		12594	0			12594
17		13245	0			13245
18		10421	0			10421
19		0	0			0
20		0	0			0
21		15909	0			15909
22		8971	0			8971
23		10870	0			10870
24		14970	0			14970
25		6014	0			6014
26		0	0			0
27		0	0			0
28		4933	0			4933
29		11215	0			11215
30		14565	0			14565
31						
32						
33						
34						
35						
36						
37						
38						
39						
40						
		171534	0			171534

BACKPAY COMPUTATION WORKSHEET

EMPLOYEE NAME: Jose Ponce

SSAN:

Case Name and No: Bruce Church, Mrs., 762E-124-E

Year: 1980

Quarter: 2

Month: July

Date/	Employer	Gross	Interim	Total	Expenses	Net
Hours		Backpay	Earnings	(=)	(+)	Backpay
Worked			(-)			(=)
1		16775	0			16775
2		7575	0			7575
3		7004	0			7004
4		0	0			0
5		15594	0			15594
6		11755	0			11755
7		11610	0			11610
8		11599	0			11599
9		9426	0			9426
10		0	0			0
11		0	0			0
12		8371	0			8371
13		0	0			0
14		10192	0			10192
15		7167	0			7167
16		11371	0			11371
17		7787	0			7787
18		0	0			0
19		17109	0			17109
20		12410	0			12410
21		13063	0			13063
22		14016	0			14016
23		13064	0			13064
24		8778	0			8778
25		0	0			0
26		0	0			0
27		6110	0			6110
28		17007	0			17007
29		12153	0			12153
30		9951	0			9951
31		0	0			0
32						
33						
34						
35						
36						
37						
38						
39						
40						
		254787	0			254787

BACKPAY COMPUTATION WORKSHEET

EMPLOYEE NAME: OMI FOALLO

SSAN:

Case Name and No: BULLOCK Church, Inc, 76-CE-124-E

Year: 1980

Quarter: 2

Month: June

Date/ Hours Worked	Employer	Gross Backpay	Interim Earnings (-)	Total (=)	Expenses (+)	Net Backpay (-)
1		0	0			0
2		13393	0			13393
3		7907	0			7907
4		12463	0			12463
5		12616	0			12616
6		10518	0			10518
7		0	0			0
8		0	0			0
9		13594	0			13594
10		13433	0			13433
11		14887	0			14887
12		15420	0			15420
13		13400	0			13400
14		8792	0			8792
15		0	0			0
16		10628	0			10628
17		11282	0			11282
18		17087	0			17087
19		15629	0			15629
20		16813	0			16813
21		10037	0			10037
22		0	0			0
23		14415	0			14415
24		17731	0			17731
25		17260	0			17260
26		12707	0			12707
27		13338	0			13338
28		6897	0			6897
29		0	0			0
30		12215	0			12215
31						
32						
33						
34						
35						
36						
37						
38						
39						
40						
		312414	0			312414

BACKPAY COMPUTATION WORKSHEET

EMPLOYEE NAME: OMI KOWAL

SSAN:

Case Name and No: Bald Church, Inc., 76-CE-129-E

Year: 1980

Quarter: 3

Month: July

Date/Hours Worked	Employer	Gross Backpay	Interim Earnings (-)	Total (=)	Expenses (+)	Net Backpay (=)
1		11095	0			11095
2		0	0			0
3		12815	0			12815
4		11506	0			11506
5		7730	0			7730
6		0	0			0
7		14858	0			14858
8		11677	0			11677
9		17134	0			17134
10		13126	0			13126
11		13988	0			13988
12		7568	0			7568
13		0	0			0
14	1/20/80	16001	4050			11951
15	1/20/80	14240	4050			10190
16	1/20/80	14678	4050			10628
17	1/20/80	9693	4050			5643
18	1/20/80	8772	4050			4722
19	1/20/80	0	4050			0
20	1/20/80	0	0			0
21	1/20/80	116603	4050			12559
22	1/20/80	14021	4050			9971
23	1/20/80	8613	4050			4563
24	1/20/80	14815	4050			10765
25	1/20/80	14017	4050			9967
26	1/20/80	0	4050			0
27	1/20/80	0	0			0
28	1/20/80	11305	4050			7255
29	1/20/80	10498	4050			6448
30	1/20/80	7079	4050			3029
31	1/20/80	10216	4050			6166
32						
33						
34						
35						
36						
37						
38						
39						
40						
		292054	56700			235354

BACKPAY COMPUTATION WORKSHEET

EMPLOYEE NAME: JOSE RODRIGUEZ SSAN: _____

Case Name and No: BARRY J. JAMES, CO. R 76-CE-124-E

Year: 1980 Quarter: 3 Month: QUARTER

Date/ Hours Worked	Employer	Gross	Interim	Total	Expenses	Net
		Backpay	Earnings			
			(-)	(-)	(+)	(-)
1	J. RODRIGUEZ	8945	4050			4895
2	J. RODRIGUEZ	0	4050			0
3	J. RODRIGUEZ	0	0			0
4	J. RODRIGUEZ	10468	4050			14518
5	J. RODRIGUEZ	7882	4050			3832
6	J. RODRIGUEZ	8404	4050			4354
7	J. RODRIGUEZ	7356	4050			3306
8	J. RODRIGUEZ	12943	4050			8893
9	J. RODRIGUEZ	8296	4050			4246
10	J. RODRIGUEZ	0	0			0
11	J. RODRIGUEZ	9998	4050			5948
12	J. RODRIGUEZ	7212	4050			3162
13	J. RODRIGUEZ	10839	4050			6789
14	J. RODRIGUEZ	9152	4050			5102
15	J. RODRIGUEZ	10171	4050			6121
16	J. RODRIGUEZ	6821	4050			2771
17	J. RODRIGUEZ	0	0			0
18	J. RODRIGUEZ	10358	4050			6308
19	J. RODRIGUEZ	7742	4050			3692
20	J. RODRIGUEZ	11183	4050			7133
21	J. RODRIGUEZ	10457	4050			6407
22	J. RODRIGUEZ	14471	4050			10421
23	J. RODRIGUEZ	0	4050			0
24	J. RODRIGUEZ	0	0			0
25	J. RODRIGUEZ	10816	4050			6766
26	J. RODRIGUEZ	0	4050			0
27	J. RODRIGUEZ	9752	4050			5702
28	J. RODRIGUEZ	11250	4050			7200
29	J. RODRIGUEZ	12022	4050			7972
30	J. RODRIGUEZ	0	4050			0
31	J. RODRIGUEZ	0	0			0
32						
33						
34						
35						
36						
37						
38						
39						
40						
		21652	87100			127436

BACKPAY COMPUTATION WORKSHEET

EMPLOYEE NAME: OMI RONALD

SSAN:

Case Name and No: Bain Church, Inc., 76-CE-124-E

Year: 1980

Quarter: 4

Month: October

Date/ Hours Worked	Employer	Gross	Interim	Total	Expenses	Net
		Backpay	Earnings			Backpay
			(-)	(=)	(+)	(=)
1	Q. Ronal		4050			
2	Q. Ronal	17584	4050			13534
3	Q. Ronal	11945	4050			7895
4	Q. Ronal	11708	4050			7658
5	Q. Ronal	12983	4050			8933
6	Q. Ronal		4050			
7	Q. Ronal		4050			
8	Q. Ronal	14888	4050			10838
9	Q. Ronal	8022	4050			3972
10	Q. Ronal	10312	4050			6262
11	Q. Ronal	11684	4050			7634
12	Q. Ronal	16683	4050			12633
13	Q. Ronal	12720	4050			8670
14	Q. Ronal		4050			
15	Q. Ronal	17056	4050			13006
16	Q. Ronal	16107	4050			12057
17	Q. Ronal		4050			
18	Q. Ronal		4050			
19	Q. Ronal		4050			
20	Q. Ronal		4050			
21	Q. Ronal		4050			
22	Q. Ronal		4050			
23	Q. Ronal		4050			
24	Q. Ronal	12222	4050			8172
25	Q. Ronal	17947	4050			13897
26	Q. Ronal	11656	4050			7606
27	Q. Ronal		4050			
28	Q. Ronal		4050			
29	Q. Ronal	14906	4050			10856
30	Q. Ronal		4050			
31	Q. Ronal					
32	Q. Ronal					
33	Q. Ronal					
34	Q. Ronal					
35	Q. Ronal					
36	Q. Ronal					
37	Q. Ronal					
38	Q. Ronal					
39	Q. Ronal					
40	Q. Ronal					
		218423	64800			153623

BACKPAY COMPUTATION WORKSHEET

EMPLOYEE NAME: JOHN KIRK SSAN: _____

Case Name and No: BALLOU Church, Room 767E-124-E

Year: 1980 Quarter: 4 Month: APRIL

Date/ Hours Worked	Employer	Gross	Interim	Total	Expenses	Net
		Backpay	Earnings			Backpay
			(-)	(=)	(+)	(=)
1	J. Kirk	14191	4050			10141
2	J. Kirk	12617	4050			8567
3	J. Kirk	15098	4050			10948
4	J. Kirk	9245	4050			5195
5	J. Kirk	0	0			0
6	J. Kirk	12463	4050			8413
7	J. Kirk	0	4050			0
8	J. Kirk	9521	4050			5471
9	J. Kirk	11739	4050			7689
10	J. Kirk	10499	4050			6449
11	J. Kirk	0	4050			0
12	J. Kirk	0	0			0
13	J. Kirk	11277	4050			7227
14	J. Kirk	7230	4050			3180
15	J. Kirk	7394	4050			3344
16	J. Kirk	7994	4050			3944
17	J. Kirk	12055	4050			8005
18	J. Kirk	0	4050			0
19	J. Kirk	0	0			0
20	J. Kirk	11604	4050			7554
21	J. Kirk	0	4050			0
22	J. Kirk	14952	4050			10902
23	J. Kirk	10636	4050			6586
24	J. Kirk	13689	4050			9639
25	J. Kirk	7795	4050			3745
26	J. Kirk	0	0			0
27	J. Kirk	14411	4050			10361
28	J. Kirk	10423	4050			6373
29	J. Kirk	0	4050			0
30	J. Kirk	11347	4050			7297
31	J. Kirk	14524	4050			10474
32	J. Kirk					
33	J. Kirk					
34	J. Kirk					
35	J. Kirk					
36	J. Kirk					
37	J. Kirk					
38	J. Kirk					
39	J. Kirk					
40	J. Kirk					
		255213	89100			166113

CASE SUMMARY

Bruce Church, Inc.

9 ALRB No. 19
Case No. 76-CE-124-E

ALJ DECISION

In this backpay proceeding, the ALJ decided that the discriminatee did not look for work until February 1977 and did not leave his job at Butte View Farms without good cause. These factors affected the duration of the backpay period. The ALJ also decided that, due to the discriminatee's uneven work history in Salinas, an average monthly earnings figure should be used to calculate gross backpay for work in Salinas. Finally, the ALJ decided that the discriminatee had failed to produce adequate evidence of expenses incurred in seeking interim employment.

BOARD DECISION

The Board adopted the ALJ's Decision except for the portion regarding gross backpay for work in Salinas. The Board rejected the monthly average method and utilized the daily earnings of a representative employee. The Board then recalculated the net backpay liability by deducting interim earnings from gross backpay on a daily basis. The Board also modified the interest rate on the backpay award, to be consistent with the formula in Lu-Ette Farms, Inc. (1982) 8 ALRB No. 55, from the date of the Decision in this case.

* * *

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

* * *

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD



In the Matter of:)
)
BRUCE CHURCH, INC.,)
)
Respondent)
)
and)
)
UNITED FARM WORKERS)
OF AMERICA, AFL-CIO,)
)
Charging Party.)
)
_____)

Case No. 76-CE-124-E

APPEARANCES:

William D. Claster, Esq.
Gibson, Dunn & Crutcher
of Newport Beach, California
for Respondent

Richard Rivera, Esq., and
Jose Antonio Barbosa
Agricultural Labor Relations Board
of El Centro, California
for General Counsel

DECISION OF THE ADMINISTRATIVE LAW OFFICER

THOMAS M. SOBEL, Administrative Law Officer: This case was heard by me in El Centro, California, on April 19 and 20, 1982. On June 29, 1975, the Agricultural Labor Relations Board issued its Decision and Order directing Respondent Bruce Church, Inc., to ". . . make whole Jose Rosales for any loss of pay or other economic losses suffered by reason of his termination, plus interest thereon computed at the rate of 7 percent per annum and to reimburse him for travel expenses or other expenses he has incurred in his efforts to obtain interim employment as prescribed in Butte View Farms, 4 ALRB No. 90 (1979). . . ." (5 ALRB No. 45 (1979), p. 8.) Pursuant to Labor Code Section 1160.8, Respondent sought review of the Board decision and order. On December 4, 1979, Respondent's Petition for Review was summarily denied by the Court of Appeal.

These supplemental proceedings became necessary when Respondent and the General Counsel could not informally resolve the amount of backpay owing to Jose Rosales. Despite the parties' disagreement about some elements of the backpay equation, there was agreement on others, including the date backpay was tolled (which was the subject of a stipulation), the gross wages a representative loader in Rosales' former crew would have earned during the period between his discharge and the date Respondent's liability was tolled, and the amount of certain interim earnings.^{1/} Among the issues which divided the parties were: Rosales' entitlement to backpay during the Salinas harvest season; the amount of his interim earnings, and the amount of expenses incurred by him in seeking

1. No backpay specification was issued, however; hence, neither complaint nor answer appears on the record.

other employment after his discharge.^{2/}

At the hearing, all parties were given full opportunity to participate, to call and examine witnesses, to present documentary evidence and to argue their positions.^{3/} Based upon the entire record, including my observation of the demeanor of the witnesses, I make the following:

/

/

/

2. General Counsel also moved at the close of testimony for an adjustment of the backpay award to take account of inflation. Respondent opposes the motion. As the Board has the matter of its authority to make such an adjustment before it (In the Matter of Kawano, Inc., 76-CE-51-R), I will not presume to rule on it in this case.

3. Additionally, I left the record open until April 30 to give Respondent time to obtain information about interim employment which Rosales' testimony at the hearing, as well as information he had apparently previously supplied to General Counsel, indicated he might have had, but about which his current memory was not strong enough to recall any details.

At the hearing, General Counsel vigorously objected to my use of this procedure, arguing that Respondent had the opportunity to meet its burden of proof concerning elements in mitigation of liability at the hearing. In view of General Counsel's objections, I requested briefing on the propriety of the procedure. General Counsel now argues that the procedure, in effect, constituted a reopening of the record without the kind of showing ordinarily required to reopen. I am not persuaded by the analogy. Since the record was never closed, I fail to see that it was reopened. I can't see that the procedure constituted anything more than a continuance which I felt was necessary because of the peculiar circumstances of this case.

Rosales' whereabouts were unknown to Respondent -- even to General Counsel -- until shortly before the prehearing conference. (See TR. Prehearing Conference, pp. 13-14.) Although General Counsel did locate him, so that he was available to testify and to be cross-examined, his memory was understandably hazy about the

(Footnote continued----

(Footnote 3. Continued----)

details of his work history from 1976 to 1980. The right to examine seems merely formal when a witness doesn't remember very much. More important, General Counsel represented that he "probably" obtained the names of certain other companies where Rosales worked during the backpay period from an EDD slip supplied by Rosales. (II:55-56.) Shortly before the hearing, General Counsel had given the names of these companies to Respondent and Respondent had sent letters of inquiry to the employers named by General Counsel. II:54. By the time of the hearing, Respondent had not received responses from some of the employers named by the General Counsel and Rosales could not provide any details about any earnings he might have had at the places named in the by-then missing EDD slip. In view of the brief period of time between the giving of those names to Respondent and the apparent trustworthiness of the now-missing document, I decided to give Respondent ten additional days (until April 30th) to obtain further information. (II:64.)

The procedure I devised had two steps. The first entailed keeping the record open for obtaining evidence until April 30th; the second, required General Counsel and Respondent to jointly prepare "a backpay specification which took into account the additional evidence of earnings, as well as any interim expenses that Mr. Rosales had in obtaining these earnings. [This phase of the] procedure [was] to be accomplished by May 7th." (II:64.) Ostensibly pursuant to this procedure, I received two documents from Counsel for Respondent, one dated May 4, 1982, the other dated June 10, 1982, which I have marked for identification as R-1 and R-2 respectively. R-2, which purports to be a letter from the Alexander Packing Company indicating interim earnings for Rosales in the amount of \$1,741.26 during February and March, 1979, was received well outside the date I set for the close of the record, and as it was not accompanied by a motion to reopen the record, I am rejecting it. (Moreover, as R-2 indicates on its face, Respondent's inquiry was received by the Alexander Packing Company prior to the opening of the hearing, but was mislaid. I am not sure these circumstances would justify my reopening the hearing.)

R-1, which contains evidence of additional earnings in the amount of \$33.45 on July 17, 1978 at Le Cap Inc., is rejected for a different reason. As noted, the second step of the procedure required Respondent and General Counsel to jointly prepare some form of specification based upon whatever evidence was forthcoming. In the way, General Counsel would have the opportunity to question its authenticity, if he doubted it -- in which case further proceedings might have become necessary, -- or to obtain his own evidence relating to interim expenses. Instead, the information was simply forwarded directly to me without the intermediate step which I felt was necessary to satisfy the demands of the adversary process. Accordingly, I am rejecting R-1, as well.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Jose Rosales was unlawfully discharged in October of 1976. (Bruce Church, Inc. (1979) 5 ALRB No. 45.) The backpay period runs from the date he was discriminated against until he was reinstated to his former employment or until Respondent's liability was otherwise tolled.^{4/} GC 2 indicates that, after Rosales discovered he had been discharged, his crew next worked on October 11, 1976; therefore, backpay will be computed from that date. Since the parties stipulated that Respondent's liability was tolled November 6, 1980, the backpay period runs from October 11, 1976 through November 6, 1980.

Before embarking on the calculations leading to a net backpay figure, some threshold questions must be resolved.^{5/} They

4. The NLRB Compliance Manual defines the backpay period as "the period of time during which backpay accrues, usually between the date of discrimination and the date a bona fide offer of reinstatement is made." Section 10530.1(b).

5. At the hearing, Respondent adduced evidence relating to a number of other contentions which it has apparently abandoned. Thus, it appeared ready to argue that unemployment insurance benefits were deductible as interim earnings, see II:50, but it has not made such a contention in its brief and I will consider it waived. (In any event, the point has been settled against Respondent, see Arnaudo Bros. (1981) 7 ALRB No. 25 and authorities cited.)

Also, it presented evidence about Rosales' leaving the fields during the lettuce strike as though to argue that Rosales is not entitled to any backpay during the 1979 lettuce strike. However, Respondent devotes only a single line in its post-hearing brief to the evidence of Rosales' "strike activity" and offers no legal argument on the issue. I regard this contention as waived also. (In any event, the ordinary rule is that backpay is not tolled during an economic strike. See, e.g., Pilot Freight Carriers

(Footnote continued----)

are:

1. Respondent's contention that Rosales is not entitled to any backpay during the period between October 11, 1976 through the end of January 1977 because he did not seek work;
2. Respondent's contention that Rosales is not entitled to any backpay during the Salinas harvest;
3. Respondent's contention that Rosales did not have good cause to leave his employment at Butte View Farms;
4. Respondent's contention that Rosales is not entitled to any interim expenses.6/

1

WHETHER SR. ROSALES IS ENTITLED TO BACKPAY FOR THE
PERIOD OCTOBER 11, 1976 THROUGH JANUARY, 1977

Rosales discovered he had been discharged in October,

(Footnote 5. continued----)

(1978) 238 NLRB 382, 383, 99 LRRM 1617. Moreover, the evidence appears to indicate that Rosales was not unwilling to work during the strike since he sought and found employment at both Admiral and Crosetti after the strike began. Although he worked only briefly for both employers, there is not sufficient evidence to determine whether this was the result of his choice or of the strike's halting their operations.

6. Before considering Respondent's specific contentions, Respondent's general argument that Rosales' inability to remember many details of his job-seeking during parts of the backpay period means that he was not seeking work during those periods warrants comment. In the first place, I consider his vagueness understandable in view of the length of time between the periods in question and the date he testified. Secondly, it is respondent's burden to prove elements in mitigation of its liability, and I do not believe it may satisfy that burden by pointing to Rosales' poor memory, without, in effect, shifting that burden to him. (See N.L.R.B. v. Miami Coca-Cola Bottling Co. [5th Cir. 1966] 360 F.2d 569, 575, 62 LRRM 2155, 2159: "It is not practical, and it would significantly hamper the backpay remedy, if each discriminatee were required to prove the propriety of his efforts during the entire backpay period.")

1976.^{7/} He testified that he spent the first months after his discharge trying to get his job back. He went to the Teamsters' office to seek help, continuing his visits at least through the end of January, 1977. According to Rosales, he was initially encouraged by the Teamsters to think that something was being done for him.

Q: Why were you at the Teamster's office?

A: Because they would tell me that the company person would be coming in to speak to me so that we could talk together.

Q: What was going to be discussed . . . ?

A: The issue of why I was terminated, and if the company was right to have me terminated. (I:24)

As a result, he spent approximately a month or a month and a half visiting the office, waiting there from the time it opened until the time it closed. (I:24-26, 77.) Finally, he became discouraged because "there were a lot of bad things going on that was not going to resolve my case and that's when I stopped going." (I:26.) This was "around the last days of January or the beginning of February." (I:26.)^{8/} Rosales also testified that he "possibly" visited the EDD office during this period. I:76.

Respondent contends this testimony establishes that Rosales failed to seek any work for the four-month period between October 1976 - January 1977. General Counsel, on the other hand, contends

7. See 5 ALRB No. 45 for a complete exposition of the events surrounding Rosales' discharge. For present purposes, it is sufficient to point out that Rosales did not know he had been discharged until many months after he voluntarily left work.

8. It appears likely, then, that the time Rosales spent at the Teamsters' office was in late December through the end of January.

that Rosales' reliance on the Teamsters in getting his job back constituted a search for work in itself. Moreover, General Counsel argues, the law does not require a discriminatee to begin to search for work immediately upon his discharge. In support of the "search for work" argument, General Counsel relies upon Pilot Freight Carriers (1978) 238 NLRB 382, 99 LRRM 1617. In that case the national Board adopted the decision of the Trial Examiner which held that a Respondent's backpay liability would not be tolled for the two months in which the discriminatee did not seek work because he was assisting at the trial of his unfair labor practice case.

Johnston was vitally interested in the outcome of the entire case and was manifestly an appropriate person to assist counsel in the preparation and conduct of the litigation. He thus reasonably spent those two months attending the hearing and assisting and consulting with, or being readily available to assist and consult with . . . the General Counsel

* * *

Perhaps most important is the fact that Johnson's efforts were addressed to regaining the job he had been unlawfully denied. In other words, the litigation itself was a search for employment. (238 NLRB at 385.)

The Court of Appeal enforced the Board's order, although it explicitly avoided the question whether Johnston's participation in the unfair labor practice proceedings could be considered a search for employment. (N.L.R.B. v. Pilot Freight Carriers, Inc. (1979) 604 F.2d 375, 378, [102 LRRM 2579, 2580].) The court noted that the mere fact that Johnston was present at the unfair labor practice hearing was not sufficient to meet Respondent's burden that Johnston was not otherwise seeking employment. Equally important, in the court's view, was the fact that Johnston had been subpoenaed to attend the hearing and the Court refused to construe his presence

there as either voluntary, or in derogation of his statutory rights:

If his presence was not "voluntary," then his participation was not a willful withdrawal from the labor market. Whether or not his participation in the litigation was a search for employment . . . we need not decide [as] the law is clear that an employee who has been the target of an unfair labor practice need not choose between mitigation of damages and the vindication of his statutory rights. Ibid.

I cannot regard either the Board's or the court's rationale as controlling my decision in this case because I do not believe I can reasonably equate Johnston's reliance on formal Board proceedings with Rosales' reliance on the Teamsters.^{9/}

The NLRB has addressed the question of delay in seeking work a number of times. In Monroe Feed Store (1959) 122 NLRB 1479, 43 LRRM 1334, Respondent contended that its liability should be tolled for two weeks because discriminatee Webster Sams "made no search for employment until two weeks after his discharge. . . ." The Board noted that Sams had registered for work with his state's Unemployment Commission and had received unemployment benefits for the period in which Respondent claimed he failed to seek work -- such benefits being payable under Oregon law only if, among other things, the applicant for them has actively sought work. In light of the presumption that Sams must have complied with state law in

9. General Counsel suggests that the distinction between Johnston's activities in Pilot Freight Carriers, supra, and those of Rosales in this case is that Johnston was sophisticated enough to have "gone directly to the Board rather than trying to resolve the discharge without first filing charges" However, it was not the filing of charges which was considered critical in Johnston's case, but his active participation in an unfair labor practice hearing pursuant to subpoena. Indeed, if General Counsel's suggested distinction were accepted, the mere filing of a charge would be considered a search for work. I can find no authority for such a proposition and General Counsel cites none.

order to have received benefits, and in further consideration of evidence that he found work during the backpay period, the Board concluded:

While the Respondent may be correct that there is no indication that Sams' search for employment began the very day after he was discharged, we cannot say that the Respondent has thereby sustained its burden of proving Sams' willful idleness. It is not necessary, in showing due diligence, that an employee prove specifically that he searched for employment within a day or two of his discharge. It is sufficient that the record as a whole indicates due diligence. . . .

Id. at 1482. Emphasis supplied.

Similarly, in Keller Aluminum Chairs Southern, Inc. (1968) 171 NLRB 1252, 69 LRRM 1348, the Board adopted the decision of the Trial Examiner that a discriminatee's delay of one week in seeking work after his discharge did not constitute willful idleness. In Nickey Chevrolet (1972) 195 NLRB 395, 79 LRRM 1460, the Board upheld the conclusion of the Trial Examiner that a discriminatee's failure to personally apply for work for 40 days after his discharge did not constitute willful idleness when the record showed that he had registered for work with the United State's Employment Service and that he reported to the claims office every week. "Sergott may well have hoped that his agency would be able to refer him to employment" Ibid., at 398.^{10/}

10. Nickey Chevrolet is a curious case since the Court of Appeals, in reviewing the Board's decision, held that the Board had no jurisdiction to issue it. (N.L.R.B. v. Nickey Chevrolet (7th Cir. 1974) 493 F.2d 102, 85 LRRM 2826, cert. den. _____ U.S. _____, 87 LRRM 2398. The question of delay is not specifically addressed by the court which proceeds to treat the Trial Examiner's decision as one prepared by a special master. The precedential value of the Board's decision seems somewhat clouded.

In none of these cases did a discriminatee's delay in seeking work approach the length of time we encounter in this case, and in each of them there was stronger evidence^{11/} than we have here that the discriminatee took other steps to obtain work.^{12/} Even assuming the veracity of Rosales' account of his day-after-day, month-and-a-half vigil at the Teamsters' office (which would appear to call for reserves of patience or passivity quite out of the ordinary), there is no evidence that he made any effort to obtain other employment during the period from October 11, 1976 to at least mid-December, except for his testimony that he "possibly", or "might have" visited the EDD office during this period.

Rosales' actions do not appear much different from those of the discriminatee whose backpay claim was disallowed by the court in N.L.R.B. v. Midwest Hanger Co. (8th Cir. 1977) 550 F.2d 1101, 94 LRRM 2878, 2881, cert. den. 434 U.S. 830:

Ms. Puekert testified that from November 6 1972 to January 22, 1973, she was laid off from her employment at Whitaker Cable. She further testified that she did not look for work during the layoff period because she knew she would

11. The national Board has long considered registration with the state employment service to be one indicia of reasonable diligence in seeking work. See NLRB Casehandling Manual, Section 10616, and cases cited.

12. Even if I were to consider Rosales' delay in seeking work as a reaction to the shock of finding himself discharged, the period of his recovery seems excessive. See e.g., Erlich's Inc. (1979) 241 NLRB 1114, 101 LRRM 1068, in which the Board affirmed the decision of the ALJ that a discriminatee's "shock-induced" delay of 3 days in seeking work after being discharged from her job of 24 years was not unreasonable.

eventually be recalled.^{13/} Under these circumstances, since by her own admission she was not in the job market from November 5, 1972 to January 22, 1973, this period must be excluded from the backpay computation.

Accordingly, I conclude that Respondent's liability should be tolled for the period between October 1976 and the date Rosales first found employment.^{14/}

2

WHETHER ROSALES IS ENTITLED TO BACKPAY
DURING THE SALINAS HARVEST SEASON

So far as Rosales' entitlement to Salinas wages is concerned, GC 13, a compilation of Respondent's weekly earnings printouts for the years 1973, 1974, and 1975, indicates that he worked during May, June, July, August, and September during 1973;

13. In contrast to the "certainty" of Mrs. Puekert's expectations, Rosales only hoped he would be rehired. The question involved in both Midwest Hanger, supra, and in this case is not whether the failure to seek work was reasonable in light of all the circumstances, but whether the discriminatee was reasonably diligent in seeking other employment.

14. In drawing this conclusion, I am mindful of the decision in Saginaw Aggregates, Inc. (1972) 198 NLRB 598, 81 LRRM 1025 in which the Board stated: "It is now well-settled that an employee discriminatorily laid off or discharged need not instantly seek work, rather the test is whether on the record as a whole, the employee has diligently sought work during the entire backpay period." This test appears to permit me to ignore Rosales' lack effort during the period October 1976 thru January 1977 and to focus, instead, on his efforts throughout the backpay period. In assessing claims of a few days idleness, or, as in Saginaw Aggregates itself, of only two weeks, this appears reasonable for it allows a trier of fact to put the delay in perspective; however, in considering such lengthy periods as we encounter here, it does not seem appropriate. See also, NLRB Casehandling Manual section 10616: "Although a reasonable grace period is allowable . . . a discriminatee is expected to make reasonable efforts to obtain other work at least within several weeks after discharge . . .", citing Saginaw Aggregates.

that he worked May, June, July, August and October 1974; and that he worked May of 1975.^{15/} Thus, Rosales worked five months of the Salinas season in 1973, four months of the Salinas season in 1974 and one month of the Salinas season in 1975. There is obviously a history of diminishing or inconsistent employment during the Salinas harvest in these figures^{16/} and Respondent argues from it that Rosales is not entitled to any wages for the period in which his crew worked the Salinas harvest. Obviously, one cannot conclude from the 1973-1975 work history, considered alone, that Rosales would not have worked in Salinas at any time during the backpay period since he worked at least part of the Salinas harvest during those years. Accordingly, Respondent relies on two additional factors to buttress its contention that Rosales would not have worked in Salinas during the backpay period: the fact that he did not work in Salinas in 1971 and 1972, (see GC 14 and 15), and his testimony that he would not have returned to work as a cutter for Bruce Church after his discharge. (I:74-75.)

For the reasons stated below, I reject both arguments. First, as noted, since the record showed that Rosales had worked in Salinas, one cannot reasonably infer from his not having worked

15. The Salinas harvest typically runs from the first of May through mid-October. (II:85-86.)

16. The reason for this is not clear from the record. We know from the liability phase of the case that Rosales only took a two-week vacation in 1976, so it appears inappropriate to attribute whatever decline we see in the duration of his Salinas employment to vacation time. The only other evidence that bears upon his leaving Salinas during harvest concerns the 1973 season. Rosales testified he left because work was getting slow and he thought he could make more money elsewhere. (I:66-67)

there at some other time in the past that he would never again work there in the future. Second, despite Rosales' testimony that he would not have worked as a cutter for Bruce Church, a "waiver of reinstatement carrying with it a consequent termination of liability for backpay normally does not occur until after reinstatement is first offered." Browning Industries (1975) 221 NLRB 949, 952, 90 LRRM 1651, quoting Heinrich Motors, Inc. (1967) 166 NLRB 783, 65 LRRM 1668, enf'd (2nd Cir. 1968) 403 F.2d 145. Since the earliest date a "refusal" to work in Salinas would have tolled Respondent's liability would be the date of Respondent's offer of reinstatement,^{17/} Respondent's argument is moot.

If I cannot agree with Respondent that Rosales is not entitled to any wages for the Salinas harvest, nevertheless I agree with Respondent that Rosales' work history in Salinas must be taken into account in computing backpay owing to him. However, I do so for a slightly different reason than that urged by Respondent, who treats Rosales' inconsistent history as "absenteeism." Instead, I regard Rosales' work history in Salinas as more characteristic of the nature of agricultural labor generally, than of any characteristic peculiar to Rosales himself. Our Board has repeatedly recognized that employment patterns in agriculture are

17. The NLRB has tolled backpay liability when an employee reached a firm decision not to return to a Respondent's employ. See English Freight Company (1946) 67 NLRB 643, 18 LRRM 1013. In this case, however, we do not have clear evidence of such an intention since Rosales also testified he would have returned to Respondent's employ as a loader. Even if, as Respondent would have it, cutting and loading are substantially equivalent, there is no showing by Respondent that only cutting would have been available to Rosales during the backpay period.

different from those prevalent in the industries subject to the national Board's jurisdiction. In Seabreeze Berry Farm (1981) 7 ALRB No. 40 the Board noted that not only do seasonal patterns determine when employees can work, but also that, within the patterns fixed by the seasonal needs of agriculture, employees themselves choose when to move in and out of the labor pool:

The constantly changing needs for workers have resulted in a variety of employment patterns Many farm workers travel throughout the state, obtaining work during peak harvest seasons with several different growers. [Citation] Examples are lettuce-harvest workers who migrate from the Imperial to the Salinas Valley, and grape-harvest workers who migrate from the Coachella to the San Joaquin Valley. Some of these migrant workers may find work for the entire season with one grower, while others may work only during the most lucrative peak periods before seeking other employment.

7 ALRB No. 40, at 5.

In view of our Board's recognition of this, and of the evidence concerning Rosales' work history in Salinas, I shall include in the gross-backpay only the average amount of wages earned by Rosales when he worked in the Salinas harvest.^{18/} GC 13 shows that Rosales earned \$112.74 in Salinas in 1975; that he earned \$3,343.77 during the Salinas season in 1974;^{19/} and that he earned

18. I am not ignoring Rosales' testimony that he would have worked in Salinas (except as a cutter) during the backpay period. I:16 The question, however, is: How long would he have worked? As discussed above, the evidence presented does indicate that he did not typically work the entire Salinas harvest. I am excluding the years 1971 and 1972 in view of Rosales' testimony that he would have worked the Salinas season.

19. I am including Rosales' October 1974 earnings as shown in GC 13 only through 10/15/74 because of the testimony that the Salinas season runs through mid-October.

\$3,826.51 during the Salinas season in 1973.^{20/} Average earnings for the entire Salinas season then are \$2,427.67, which figures to be \$441.40 monthly (\$2,427.67 divided by 5½ months; wages for the first two weeks of October, then, would amount to \$220.70; wages for one week of October would be \$110.35.)

3

WHETHER ROSALES LEFT BUTTE VIEW
FARMS WITHOUT GOOD CAUSE

The record reveals that Rosales found employment at Butte View Farms in February of 1972. He worked there until July 5, 1977, when, according to his testimony, he voluntarily quit. Had he not quit, he would have had full-time permanent employment at Butte View. (I:90.)

The most reasonable inference is that personal difficulties between his wife and his family was the principal reason for his quitting.^{21/} (Rosales' father and his brother also worked at Butte View (I:89) and there was apparently a conflict between either, or both of them, and Rosales' wife.) When first asked about why he quit his employment at Butte View, Rosales testified:

There were two reasons that I left. First, at the end, the last days there was very little work and very little money; that was one of the reasons. The other reason was I was having family problems, and I wasn't -- I just couldn't work there with having family problems with my wife.

I:90 (Emphasis added)

20. GC 13 does not have an area code breakdown for the months worked for 1973 and 1974 as it does for 1975. (Area 500 is Salinas, II:92) I am assuming, therefore, that Rosales' earnings in 1973 and 1974 during the usual period of the Salinas harvest reflect his work in Salinas.

21. It was obvious that discussing this matter was quite painful to the witness; indeed, at one point, he abruptly left the witness chair in order to compose himself. II:74.

Later, he asserted that "If I had not had any family problems with my wife and family I would have stayed and worked for them." I:91

It appears that the problems which caused him to quit did not cause difficulties between him and his relatives on the job, but awaited him at home:

Well, I've said it already once. I would come out of work tired, not only just out of my body, but also of my head, my mind, and then I still had to discuss with my wife, with my family and with my father, because of the problem that I was having where they didn't like my wife. (II:74.)

Rosales returned to work for Butte View in July of 1979. (G.C. Ex. 6.) Not surprisingly, General Counsel and Respondent view Rosales' reason for quitting work at Butte View quite differently, with Respondent contending that it amounts to willful loss of earnings and General Counsel contending that it does not.

General Counsel first argues that Rosales would not have been forced to quit his job at Butte View if he hadn't had to work there in the first place: ". . . Rosales emotional crisis, resulting in his departure from Butte View Farms, would never have occurred if Respondent had not discriminatorily fired him." This argument proves too much; under General Counsel's formulation, willful loss of earnings would never be attributable to a discriminatee.^{22/} General Counsel also argues that Rosales

22. Cases do hold that "a claimant who obtains a job but then leaves it for justifiable reason is not deprived of all further claims; the assumption is that the reason for his quitting the job would not have been present at Respondent's plant and therefore the job is not substantially equivalent." (See, e.g. Artim Transportation System, Inc. (1971) 193 NLRB 179, 183, 78 LRRM 1607, and cases cited.) This rationale applies after it has been determined that an employee quit for justifiable reasons, not as a rule for concluding that the reasons themselves were justifiable.

was not required to remain at Butte View Farms because it was not substantially equivalent employment. Had Rosales quit for that reason, I would consider it in determining whether his quitting Butte View was justifiable; but he never testified to that and I do not believe I am free to assess the reasonableness of his quitting by attributing to him motives he never had.^{23/} The question remains, then, whether Rosales willfully incurred a loss of earnings for which Respondent will be entitled to an offset.

For his part, General Counsel relies on a number of NLRB cases which, he contends, establish the principle that a discriminatee may justifiably quit interim employment when the job causes "substantial disruption in his personal life or is overly stressful for the individual."^{24/} However, I do not believe General Counsel's cases give rise to the broad rule he has constructed from them. In each of them there appears to have been some feature or condition of the work itself which justified the employee's quitting. (See My Store Inc. (1970) 181 NLRB 321, 76 LRRM 1773, enf'd as modified, N.L.R.B. v. My Store Inc. (7th Cir. 1972) 468 F.2d 1146, 81 LRRM 2225, cert. den. 410 U.S. 910, (discriminatee's

23. See, Alamo Express Inc. (1975) 217 NLRB 402, 404; 89 LRRM 1543, enf'd Alamo Express v. N.L.R.B. 5th Cir. 1975, 523 F.2d 1053, 90 LRRM 3138: "A discriminatee is entitled to change from one interim job to another in order to improve earnings or conditions, particularly where, as here, he had been holding less than substantially equivalent employment."

24. General Counsel also relies upon California Portland Cement Co. v. Unemployment Insurance Appeals Board (1960) 178 Cal.App.2d 263, for a similar proposition. However murky NLRA law in this area may be, so long as there is precedent available, I believe I am bound by Labor Code section 1148 to consider its implications rather than those arising from the construction of another statute with a different purpose.

quitting work in a coal mine justified by his aversion to underground work); Mansion House Center Mgmt. Corp. (1974) 208 NLRB 684, 85 LRRM 1555 (absence of automobile justifies elderly discriminatee in quitting work requiring extended periods of time in cold weather); John S. Barnes (1973) 205 NLRB 585, 84 LRRM 1254 (discriminatee's quitting work because he did not like the job or the night shift he was forced to work, held, justifiable.)^{25/}

Respondent, on the other hand, principally relies on Knickerbocker Plastic Co., Inc. (1961) 132 NLRB 1209, 48 LRRM 1505, for the conflicting contention that "purely personal reasons" do not justify quitting interim employment. The rule in Knickerbocker Plastic seems plainly designed to rule out the insubstantial or frivolous reason as good cause for quitting work; but, to my mind, it does not rule out all "personal" reasons. Indeed, in describing what will justify quitting interim employment, the Board explicitly recognizes that some undefined "necessity", as distinct from "difficulties inherent in the job", is within the class of justifiable reasons.

From the foregoing, it is clear that the jobs which the above-listed claimants quit paid wages at least comparable to the ones they had held with the Respondent. None of these jobs appear to have been more burdensome than those with the Respondent, nor do they appear to have been unsuited to persons of the claimants' skill and experience. We find that in none of the cases discussed above has the claimant quit her employment for sufficient and justifiable cause. In all these cases, the claimants appear to have

25. Barnes, supra, also holds that another discriminatee's leaving work because the foreman made him "nervous" will not affect the employer's liability, but it does not hold that leaving work for that reason is justifiable. Instead, the ALJ treats the quitting as immaterial because the discriminatee found steady work at a higher paying job the day after he quit. (See n. 6, at 205 NLRB 586.)

been motivated more by personal convenience, preference, or accommodation than by necessity or difficulties inherent in the jobs which they quit. (Knickerbocker Plastic Co., Inc., 132 NLRB at 1214-15; emphasis added.)

The Board goes on to suggest that, in determining whether a discriminatee incurred willful loss, we must look, not just to the circumstances surrounding the quit, but to the discriminatee's prospects and difficulties in obtaining other employment as well:

On this record, we cannot mitigate the backpay damages by finding that these jobs were unsuitable ways of earning a living, or that the claimants were justified in quitting them with no prospect of other employment. Once these claimants had obtained jobs, they could not voluntarily relinquish such employment under the circumstances herein involved without incurring what constitutes a willful loss of earnings for the period subsequent to their quitting. (Knickerbocker Plastic Co., Inc., Ibid.)

And in Florida Steel Corp. (1978) 234 NLRB 1089, 1094-5, 98 LRRM 1080, a discriminatee named Martin was held not to have unjustifiably quit interim employment when he left an interim employer in order to return to Kentucky where his family lived in view of his active job search while he was in Kentucky.^{26/}

In this case, even after Rosales left Butte View, he soon found other employment, and over the course of the next few years, he secured approximately a dozen other jobs, before he once again returned to work for Butte View in July of 1979. Thus, it is clear from consideration of his entire work history that Rosales not only was reasonably diligent in seeking work, but also that he was

26. See also, East Texas Steel Castings Company, Inc. (1956) 116 NLRB 1336, 38 LRRM 1470, "The Trial Examiner found and we agree, that in those instances when Newsome voluntarily quit employment, he did so either for some justifiable personal reason . . . or without any lost time intervening [between quitting and his next employment.]"

reasonably successful in finding it, throughout the entire backpay period. In view of his demonstrated overall diligence, and the obvious difficulty his family problem caused him, I do not find his decision to leave Butte View to be indicative of willful idleness.

4

WHETHER THE GENERAL COUNSEL HAS MET HIS BURDEN OF
ESTABLISHING THE AMOUNT OF HIS INTERIM EXPENSES

Respondent contends that Rosales is not entitled to be reimbursed for any interim expenses because he failed to meet his burden of proof as to the amounts actually incurred. At the hearing, Rosales testified that he would drive his pickup to look for work; testifying, first, that he would spend between \$40 to \$50 per week (I:28) and, later, that he would spend between \$50 to \$60 per week looking for work (I:84). He justified the precision of the latter figure by stating that, "What I base that I spent that much money was because my money was so well counted as to what it was going to be used for and that's where I based the fact that's what I used." (I:84.)^{27/} However, Rosales' testimony was extremely vague and indefinite regarding the points he might have travelled to and from and I do not find he has met his burden of establishing interim expenses in the amount of \$40 to \$60 per week (the range he testified to) for every week he was unemployed.

Indeed, in his post-hearing brief General Counsel has abandoned (and I conclude that he has waived) any reliance on the figures to which Rosales testified. Instead, he now proposes that I

27. Rosales also gave a \$60 to \$70 figure in connection with driving from Yuba City to Bakersfield. (I:34.)

permit interim expenses based upon reasonable mileage and the IRS reimbursement rate, only as to trips which Rosales' testimony establishes were work-related. According to General Counsel, Rosales' expenses computed in this way amount to approximately \$300.00. General Counsel put on no evidence of the mileage claimed nor of the rate at which he now claims reimbursement ought to be made. Even if I could take official notice of the former sua sponte, Evidence Code Section 451, I believe the sounder practice with respect to the claimed rate of reimbursement would be to offer Respondent a "reasonable opportunity to present information as to the propriety of [my] taking notice [of it] and . . . the tenor of the matter noticed." (See Comment, Evidence Code Section 452, Compare Evidence Code sections 451, 452.) This, in turn, would require me to reopen the record which General Counsel vigorously contends I may not do for the sake of receiving additional evidence from Respondent. Having rejected Respondent's evidence for procedural reasons, I believe I am bound to reject General Counsel's "offer" as well.

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BACKPAY CALCULATION

Introduction

In computing net backpay, both parties have utilized a daily formula pursuant to the Board's order in J & L Farms (1980) 6 ALRB No. 43, see also, Kophammer Farms (1982) 8 ALRB No. 21. However, the Board has also permitted the use of other, reasonable formula according to the type of evidence available. (Butte View Farms (1978) 4 ALRB No. 90, enf'd 95 Cal.App.3d 961.) In this case, the parties have presented several different kinds of evidence. GC-2 contains a daily breakdown of the wages Rosales would have received had he not been discriminated against; GC-5 contains similar, daily wage breakdowns for a number of interim employers. A number of other exhibits, however, do not contain daily wage information; see, e.g., GC-6, GC-10; rather, these contain daily wage totals over various periods of time, some, as in GC-6, for as short a period as 3 days, see line 4, p. 2; others, for a period of several months. (See, e.g., GC-10.) Both parties have attempted to convert all wage data to daily wages, but they do not always agree on how to apply a daily formula.

For example, Rosales' first employment was at Mike Yurosek, from February 3-14, 1977. G.C. 3 indicates that during the same period, Rosales' former crew did not work on February 5, 6 and 13. Applying the J & L Farms formula, General Counsel does not deduct what Rosales' earned at Yurosek on February 5th and 13th. (The 6th was a Sunday and Respondent's crews did not work either.) Respondent, on the other hand, has first totalled the entire amount of Rosales' Yurosek earnings, and then prorated that amount over

every day his former crew worked. Although this seems unnecessary in view of the fact that the actual daily wages have apparently been supplied in GC 5, the result, of course, is that all of Rosales' Yurosek earnings are deducted from gross backpay, rather than, as application of the J & L Farms' formula would have it, only those interim earnings received on a day Rosales would have worked for Respondent.

Another example: Rosales' second job was at Butte View. He began work there on February 19 and worked 56 hours from the 19th through the 1st of March. His wages totalled \$196.00, but the record does not show what days he worked. Assuming a six-day work week (every day but Sunday), General Counsel discounts the number of Sundays in the period between 2/19-3/1, and prorates the wages over nine days. Since Rosales' former crew worked only 8 days during the same period, according to the Board's J & L Farms formula, one day's wages is not considered interim earnings. Respondent, on the other hand, once again prorates the total wages over the exact number of days Rosales' former crew worked and once again deducts the total amount of Rosales' Butte View earnings from gross backpay for the same period.

Since adherence to the Board's J & L Farms daily formula means that interim earnings for days on which Rosales would not have worked for Respondent will not be considered interim earnings,^{28/}

28. There is another consequence to using the daily formula. Any longer period permits the amount of interim earnings for the whole period to be deducted from gross earnings for the same period. Under a daily formula, however, a Respondent does not obtain a "credit" for the amount of interim earnings in excess of the exact wage the discriminatee would have earned on that day.

the difference between the parties' approach is obviously motivated by their conflicting desires to maximize or to minimize the amount of backpay owing to Rosales. In selecting a suitable formula for the type of evidence available in this case, I cannot be motivated by either purpose to increase or to decrease Rosales' award. To be guided in my selection of a formula solely by the aim of decreasing liability would be to ignore the principle that uncertainties are to be resolved against a wrongdoer, see e.g., N.L.R.B. v. Miami Coca-Cola Bottling Co. (5th Cir. 1966) 360 F.2d 569, 62 LRRM 2155; to be guided by the aim of increasing liability would be to ignore the countervailing principles that the purpose of the Act is not punitive, Republic Steel Corp. v. N.L.R.B. (1940) 311 U.S. 7, 9, 7 LRRM 287, Giumarra Vineyards (1977) 3 ALRB No. 21, and that an award of backpay is not designed merely for the correction of private injuries:

The Board was not designed for such a limited function. It is the agency of [the Legislature] for translating into concreteness the purposes of safeguarding and encouraging the right of self-organization. The Board, we have held recently, does not exist for the "adjudication of private rights"; It "acts in a public capacity to give effect to the declared public policy. . . ." (Phelps Dodge Corp. v. N.L.R.B. (1941) 313 U.S. 177, 184, 8 LRRM 439.)

As the Supreme Court said in J.R. Norton v. Agricultural Labor Relations Board (1979) 26 Cal.3d 1, 39-40: "The Board's remedial powers do not exist simply to reallocate monetary loss to whomever it considers to be most deserving; they exist, as appears from the statute itself, to effectuate the policies of the Act."

When I have been presented evidence of daily wages, I will apply the daily formula described in J & L Farms where it is

otherwise suitable;^{29/} but I will not uniformly convert all wage date to daily data. For example, because I have utilized an average-wage approach to determine Rosales' Salinas earnings, I will not break down the monthly wage I have computed into daily wages. The average wage I have derived is an estimate and, except for the impermissible purpose of either maximizing or minimizing Rosales' backpay, I can see no point in trying to extract more refined daily wages from such an approximate base.

Secondly, in order to use a daily formula, I must either know how many days Rosales worked or which days he worked. Such evidence is not always available on the record. General Counsel suggests that I simply adopt a six-day work week convention (excluding Sunday) because the evidence indicates that Respondent's crews in the main worked every day but Sunday and Respondent cannot be prejudiced by eliminating Sunday.^{30/} Although this appears to be true, I am not sure I can treat a possibly agreeable assumption as though it were a fact. Moreover, as a logical matter, there seems little connection between the fact that Respondent's crews did not work Sundays and the conclusion that when Rosales did not work for Respondent, he did not work Sundays either -- unless I assume that

29. GC-5, however, does not always consist of actual wage data; its daily breakdown of 1979 Butte View earnings is obviously taken from the figures supplied in GC-6.

30. The six-day work week convention under a J & L Farms approach does more than simply eliminate Sunday: as noted earlier, it can result in the elimination of any other day's earnings from the net backpay calculation if Respondent's crews did not also work on that day.

Respondent's work week is typical of all of California agriculture, which only begs the question.^{31/}

In the calculations that follow, then, I will apply whatever technique appears suitable in light of the quality of the evidence available. I shall detail my reasons for adopting one technique or another as I consider the evidence. I realize that this will create a patchwork of techniques, but the nature of the available evidence does not always admit of a standardized practice.

A. Net Backpay (Wages)

October, 1976 - January, 1977

I have concluded that Respondent's liability is tolled during this period when Rosales was not reasonably diligent in seeking work. Therefore, no backpay is owing for this period.

February 1977

a.

February 3 - February 18, 1977

Rosales first found work at Mike Yurosek on February 3, 1977. He worked there until February 14, 1977. GC-5 provides a daily breakdown of his earnings there. With this information I can obtain a figure for net backpay of \$865.13, according to the J & L Farms approach for the period between February 1 and February 18, 1977.

31. GC-5, which contains a daily breakdown of half-a-dozen interim employers, indicates that Rosales worked some Sundays at Globe Farms and Mike Yurosek. Rosales himself testified he worked Sundays at Joaquin Leal Farms. (II:30.) GC-7 indicates he worked Sundays at Rogers Food.

b.

Rosales next worked at Butte View earning \$196.00 between 2/19-3/1. (GC-6.) Without some convention, there is no way I can allocate these earnings on a daily basis. As I understand it, the principle behind J & L Farms, which essentially creates a backpay period of one day, was designed to put the discriminated-against employee in the same position he would have been had he not been discriminated against; however, when it cannot be reasonably determined when an employee actually worked during the interim period, application of the exacting single-day period technique of J & L Farms simply becomes an arbitrary exercise.^{32/} It is one thing to resolve uncertainties against a wrongdoer and another to incorporate uncertainties into a system in the name of an illusory exactitude.

Accordingly, I will treat Rosales' Butte View earnings on a monthly basis. Since, as a result of my using a monthly technique, the whole amount of Rosales' Butte View earnings will be deducted from gross backpay, it makes no difference whether I apportion earnings to one month or another. Thus, I will deduct the \$196.00 earned by Rosales between 2/19-3/1 from the total of gross wages taken from GC-2 for that same period, giving a net backpay figure for the period of \$177.86, which, when added to the net figure for the first part of the month (2/1-2/18), provides total net backpay

32. Since Rosales' Butte View employment was steady employment there does not appear to be any reason under the J & L Farms rationale to refuse to consider certain wages in mitigation of damages merely because they were earned on one day as opposed to another.

of \$1,042.99 for February, 1977.

March, 1977

Once again utilizing a monthly technique, I will simply deduct Rosales net interim earnings for 3/2-3/29, 1977 (taken from GC-6) from the total of gross backpay for the month from GC-2 (\$958.31 - \$918.75). Net backpay for March, 1977 is \$39.56.

April, 1977

Deducting Rosales' net earnings from 3/30-4/26 (See GC-6) from the gross wages contained in GC-2 (\$1,439.36 - \$837.10), provides a net backpay figure of \$602.26 for April, 1977.

May, 1977

May begins the Salinas harvest. Since Rosales earned more at Butte View for May, 1977 (\$1,177.03, GC-6) than his average monthly wage at Salinas (\$441.40), there is no net backpay due.

June, 1977

Rosales is entitled to the difference between his average monthly wage in Salinas, \$441.40, and the amount he earned at Butte View, \$149.34. Net backpay for June, 1977 is \$292.06.

July, 1977

Since Rosales earned more at Bidart Bros., Inc. during July (GC-5, \$628.10) than he would have earned in the Salinas harvest, there is no net backpay for this month.^{33/}

August, 1977

Rosales worked at Rogers Food throughout August, earning

33. Since Rosales' earnings at Bidart taken alone are in excess of his average Salinas wage, I do not have to consider the July earnings at Rogers Foods. (GC-7.)

\$3.80/hr. and working 279.5 hours (GC-7 daily time cards). Since his August wage at Rogers is in excess of his average Salinas wage, no net backpay is due for August, 1977.

September, 1977

Rosales is entitled to the difference between the average monthly wage in Salinas and the amount he earned at Rogers Foods (\$441.39-\$24.70).^{34/} Rosales is entitled to \$416.69 net backpay for the month.

October, 1977

Rosales is entitled to half-a-month's Salinas wages (\$220.69) plus \$664.25 in Huron wages (GC-2), in the total amount of \$884.94. There are no interim earnings to be deducted.

November, 1977

Rosales is entitled to \$1,244.86 gross wages. (GC-2.) There are no interim earnings to be deducted.

December, 1977

Rosales is entitled to \$1,476.91 gross wages. There are no interim earnings to be deducted.

January-March, 1978

Rosales next found interim employment at J. J. Crosetti. He worked there from 1/10/78 until March 8, 1978. (GC-8.) He also worked for Don Moorehead during the week of March 21, 1978, earning a total of \$83.29. (GC-9.)

General Counsel and Respondent have broken down Rosales wages in this period into daily wages, although, as noted earlier,

34. GC-7 reveals he worked 6.5 hours at \$3.80/hour in September.

they have not agreed on which formula is to be applied. Because I cannot always ascertain on what days Rosales worked during the period of his Crosetti employment, I will treat his Crosetti earnings on a quarterly basis. Thus, I conclude that Rosales is entitled to net backpay for the period between January, 1978 and the end of March, 1978 in the amount of \$2,186.01, being the difference between the gross wages he would have received and his total interim earnings.

April, 1978

Rosales had no interim earnings in April, 1978. He is entitled to \$818.54 for this month.

May, 1978-July, 1978

Rosales worked for J.R. Norton for less than a week in May, 1978. (See GC-10. He was hired 5/28/78; he was laid off 7/4/78 earning a total of \$2,023.12.)^{35/} However, this wage is spread over four days in May, the entire month of June and once again, over 4 days in July, for a total of 38 days. Accordingly, to determine the amount of money Rosales earned each day, I will divide the total earned by 38 which provides a daily earnings figure of \$53.24.

For May, 1977, then, Rosales is owed the difference between his average Salinas wage (\$441.40) and 4 days earnings at \$53.24/day or \$228.44.

Since his earnings for June are in excess of his average

35. GC-10 itself supplies the short answer to Respondent's contention that Rosales left Norton's employ in Salinas without justifiable cause. See Respondent's Brief, p. 7. Although, it is true that Rosales testified he left because the wages were not very good, see II:13, GC-10 reveals he was laid off "due to lack of work."

wage for Salinas, no net backpay is due for the month.

In July, Rosales had \$228.44 for four days earnings at Norton and an additional \$853.09 at Sam Andrews (GC-5). Since those figures indicate earnings in excess of his average wage for Salinas, no net backpay is due for this month.

August, 1978

Rosales worked approximately two weeks in August, 1978 for Sam Andrews, earning \$401.40. His average monthly wage at Salinas would have been \$441.40. He is entitled to the difference between \$441.40-\$401.40, or \$40.00 as net backpay for the month of August.

September, 1978

Rosales had no interim earnings for September, 1978. he is entitled to his average Salinas wage, \$441.40, as net backpay for this month.

October, 1978

Rosales had no interim earnings in October, 1978. He is entitled to a quarter of his average Salinas wage, since Respondent's crew only worked one week in Salinas, or \$110.35, plus the amount he would have earned in Huron, \$563.19, see GC-2, in the total amount of \$673.54.

November, 1978

Rosales had interim earnings in November 1978 of \$167.78 from J.R. Norton, see GC-10. General Counsel uses a daily formula and a six-day week to break down Rosales Norton earnings to \$6.45/day, thus assuming that Rosales worked for an entire month for less than the minimum wage. For my part, I shall simply deduct all of Rosales' Norton earnings, \$167.78, from gross backpay for

November which yields a net backpay figure of \$835.91.

December, 1978

GC-5 contains a daily breakdown of Rosales' wages at Globe Farms for December 1978. Since I have daily information for this month, I will apply the J & L Farms formula and additionally deduct the total amount of Rosales' Moorehead earnings for the week ending December 2, 1978, in the amount of \$38.93. (See GC-9.) that Rosales is entitled to \$363.12 net backpay for December, 1978.

January, 1979

Rosales had interim earnings in the amount of \$677.27 from J. J. Crosetti in January, 1979. (GC-8.) For reasons stated earlier, I will not arbitrarily break down Rosales total wages into daily wages. Rosales' net backpay for this month is \$988.19.

February, 1979

The strike began February 9, 1979. See Bruce Church (1981) 7 ALRB No. 20. Respondent's crews only worked a few days in February, earning a total of \$283.53, before they went out on strike. Rosales is due net backpay in the total amount of his gross backpay, or \$283.53.

March, 1979

GC-2 reveals that Respondent's crews earned \$243.08 during a few days at the end of the month. GC-5 indicates Rosales earned a total of \$212.52 at Admiral on days he would not have worked for Respondent; GC-8 indicates he earned \$32.04 from Crosetti on a day he would not have worked for Respondent, and GC-11 indicates he earned \$9.75 from Hector de la Vega on a day he would not have worked for Respondent. Applying the J & L Farms rationale, I will

not deduct any of these interim earnings. A more difficult question of where to place interim earnings is posed by Rosales' testimony that he earned \$110-\$120/day working for a labor contractor for three or four days approximately two weeks after he worked for de la Vega. (II:25-26.) Unlike the situations discussed above in which J & L Farms could only be applied arbitrarily, because of the peculiar state of the evidence pertaining to this month, I do not believe that Respondent has met its burden of proving that Rosales had these earnings on a day he would have worked for Respondent. Accordingly, I conclude he is entitled to the entire \$243.08 for March, 1978.

April, 1979

Rosales had no interim earnings for April, 1979.^{36/} He is entitled to net backpay in the amount of \$952.24 for April, 1975. See GC-2.

May, 1979-June, 1979

No gross wages accrued during this period. Accordingly, no backpay is due.

July, 1979

Since July is part of the Salinas season, I will once again apply Rosales' average wage as the measure of his damages. Rosales earned a total of \$392.83 at Butte View during this period. GC-6.^{37/} Net backpay for this month, therefore, is \$48.56.

36. Respondent attributes \$120 in earnings to April, 1979. However, I do not believe it has proved such earnings.

37. I am using the more precise figures in GC-6 as opposed to those in GC-5.

August, 1979-September, 1979

Since Rosales earned more at Butte View during these months than his average Salinas wage, no net backpay is owing him.

October, 1979

Rosales is entitled to half his average monthly wage for the Salinas harvest as well as \$728.30 as wages due from Huron. (GC-2.) Since he had no interim earnings, his net backpay for October, 1979 is \$948.99.^{38/}

November, 1979

Rosales had no interim earnings in November. He is entitled to \$1,493.24.^{39/}

December, 1979

Rosales had no interim earnings for December. He is entitled to \$757.76. Rosales had earnings in 1979 of \$14.80 from El Don, GC-12. However, there is no indication of when these were earned. Accordingly, I will simply deduct them from December, leaving net backpay in the amount of \$742.96.

January, 1980-February, 1980

Gross backpay for this period was \$4,439.73. Total interim earnings were \$1,391.65. GC-18. Rosales is entitled to \$3,048.08.

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38. I do not believe Respondent has met his burden of proving interim earnings in cotton during October and November, 1979.

39. See footnote above.

March^{40/}-April, 1980

Rosales had no interim earnings for any of these months. Net backpay is the total amount of wages from GC-2: \$2,555.28 (March) plus \$1,715.34 (April) in the total amount of \$4,270.62.

May, 1980-June 1980

These are the months of the Salinas harvest when Rosales' average may and June wage is \$441.40. Rosales also would have earned an additional \$913.35 in area 820 and 810 during May. He had no interim earnings for these months. Net backpay for these months is \$1,796.15.

July, 1980-November 6, 1980

Rosales worked for J. Leal Farms from the middle of July 1980 (II:30) to November or December 1980. He earned \$4.50 hour for 8-10 hour days, working 6 days a week (excluding Saturday). (II:29-30.) Since Rosales' average monthly wage in Salinas during these months is less than his average monthly wage at Leal, no net backpay is due for the months of July, August and September. Rosales' crew earned \$1,916.54 in Huron in October. Assuming Rosales averaged 9 hours a day at Leal, for a total of \$40.50 daily, I will apply a J & L Farms formula for the remainder of the month, subtracting \$40.50 from earnings for each day Rosales' crew worked

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40. I do not believe Respondent has met his burden of proving wages in the grape harvest during March. II:38-43.

at Bruce Church except for February 25th, which was a Saturday.^{41/}
Rosales is entitled to \$1,268.54 for October 1980.

Since GC-2 contains no gross earnings for November 1980 when the backpay period was tolled, I cannot compute any backpay owing Rosales for this month.

NET BACKPAY (WAGES)

The total amount of Rosales net backpay (wages) is \$26,880.11.

B. PENSION CONTRIBUTION

Larry Silva, Respondent's Employee Relations Manager, testified that, beginning in 1975, Rosales would have accrued pension benefits equal to 6% of his gross earnings up to \$18,900 and 13% of his earnings over that amount.

In 1980, the formula was changed to provide for contributions equal to 6% of gross earnings up to \$20,400, and 13% of earnings over \$20,400.

According to these formulae, Rosales is entitled to:

6% x 5,715.39 (wages for 1979) =	\$342.92
6% x 5,726.96 (wages for 1980) =	<u>343.76</u>
Total	\$686.68

General Counsel recommends I remit this money directly to Rosales since he has refused reinstatement. (Stip. I:21-22.) The NLRB Casehandling Manual suggests this is an appropriate procedure

41. Respondent's crew worked approximately one week in Salinas during October. Since his wage at Leal Farms for a comparable period would be higher than his average Salinas earnings for one week, I will not figure these days in my calculation for October.

in such circumstances.

C. Vacation Benefits

Rosales is also entitled to vacation pay, which according to GC 4 was equal to 2% of gross earnings for 1976 and 4% of gross earnings for each year thereafter. Since I have determined that Respondent's liability is tolled for the period between 1976 until February 1977, his vacation pay equals 4% of his total interim earnings for the remainder of the backpay period, or \$1,075.88.

D. Medical Expenses

Rosales testified he incurred a bill of 3500 pesos for the birth of his child and certain other expenses for treatment of his wife's asthma. Because I cannot conclude Respondent's insurance would have covered the treatment for asthma -- and, in any event, General Counsel has apparently waived any claim for it -- I conclude that General Counsel has not met his burden of proving reimbursable expenses for this purpose. However, GC-19, a copy of various insurance plans, does contain a schedule for maternity benefits. Since neither party offered any record evidence of the conversion rate from pesos to dollars, I will simply take Respondent's figure of \$140.00 as a judicial admission.

E. Total Amount Owing Rosales

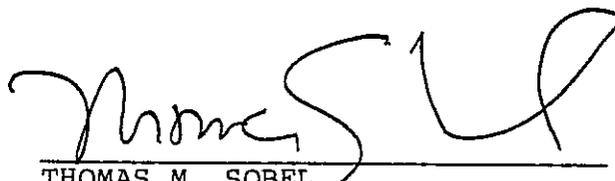
The total amount owing Rosales is:

Wages	\$26,880.91
Pension Benefits	686.68
Vacation Pay	1,075.88
Medical Expenses	<u>140.00</u>
Total	\$28,783.47

RECOMMENDED REMEDY

Respondent's obligation to make Rosales whole will be discharged by payment of \$28,797.47, plus interest at the rate of 7% per annum owing until the date the decision is complied with.

DATED: July 30, 1982

A handwritten signature in black ink, appearing to read 'Thomas M. Sobel', written over a horizontal line.

THOMAS M. SOBEL
Administrative Law Officer