

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

UNITED FARM WORKERS)	
OF AMERICA, AFL-CIO,)	
Respondent ,)	Case No. 79-CL-59-SAL
)	
and)	
)	13 ALRB No. 6
JUAN MART INEZ,)	(8 ALRB No. 103)
)	
Charging Party.)	
_____)	

SUPPLEMENTAL DECISION AND ORDER

On December 30, 1982, the Agricultural Labor Relations Board (Board) issued a Decision and Order in this case (Decision amended February 4, 1983). The Board found, in part, that the United Farm Workers of America, AFL-CIO (Respondent or UFW) had violated Labor Code sections 1154(b) and 1154(a)(D - by denying Juan Martinez due process in suspending his union membership and causing his discharge from Mann Packing in January of 1980 . The Board ordered Respondent to make Martinez whole for all losses of pay and other economic losses suffered as a result of Respondent's unlawful conduct.

A hearing was held on October 9, 1985, before Administrative Law Judge (ALJ) Arie Schoorl for the purpose of determining the amount of backpay due to the Charging Party. Thereafter, on March 28, 1986, the ALJ issued the attached Decision. Respondent filed timely exceptions to the ALJ's

-All section references herein are to the California Labor Code unless otherwise specified.

Decision. The General Counsel filed a reply brief to Respondent's

exceptions.^{2/}

We have considered the record and the ALJ's Decision in light of the exceptions and the supporting and reply briefs and have decided to affirm the ALJ's rulings, findings and conclusions, as modified herein, and to adopt his recommended Order, also as modified.

The UPW excepts to the ALJ's finding that the Union stipulated to gross and interim earnings figures and thereby agreed to the daily formula for calculating lost earnings. We find merit in this exception.

We agree that, the UFW representative stipulated to the interim and gross earnings figures listed in the proposed backpay specification. However, those figures may easily be used for either the daily or the quarterly method of calculating lost earnings. Moreover, the daily formula is not mentioned again in the record after Respondent adverted to it in the Answer to the Backpay Specification.

Stipulations must be given a reasonable construction with a view to giving effect to the intent of the parties. Unless it is clear from the record that both parties assented, there is no stipulation. (Palmer v. City of Long Beach (1948) 33 C.2d 134, 143-144.) We do not find any basis for concluding that, in stipulating to the amount of gross and interim earnings, the Union

^{2/}The brief was filed in May of 1986. A month later the General Counsel withdrew its opposition to Respondent's exception to the use of the daily formula for computing backpay.

thereby stipulated to a particular method of calculating backpay.

The UFW further excepts to the ALJ's finding that the daily

formula is the appropriate method of calculating backpay in this case.

In backpay cases, where the General Counsel has established at a hearing that the proposed backpay formula and calculations are reasonable and conform to the standards established in Board decisions, the Board normally adopts the General Counsel's methodology. The Board will reject or modify the methodology of the General Counsel only where the respondent proves it is arbitrary, unreasonable, or inconsistent with Board precedents, or where the respondent presents a more appropriate method of determining the backpay amount. (Robert H. Hickam (1983) 9 ALRB No. 6.)

In its Answer to Backpay Specification, Respondent reserved the right to establish that the daily formula was inappropriate. However, at the prehearing conference the UFW representative set forth several potential objections to the backpay specification without mentioning the method of computation. At the hearing there was again no stated opposition to the use of the daily formula.

The backpay specification is only an approximation and the Board has considerable discretion in selecting a methodology which is reasonably designed to approximate the amount of backpay a wrongfully discharged employee would have received absent Respondent's wrongful conduct. (Butte View Farms v. Agricultural Labor Relations Bd. (1979) 95 Cal.App.3d 961, 967-968; Rikai

West, Inc. (1985) 274 NLRB No. 170 [119 LRRM 1018].) A respondent bears the burden of establishing facts sufficient to reject or modify the formula of the General Counsel. (Robert H. Hickam, supra, 9 ALRB No. 6.) Here, Respondent failed to furnish any alternative formula or adduce evidence in support of the quarterly method as a more appropriate means of determining the backpay amount in this case. On the record before us, we can only view Respondent's exception, i.e., that the quarterly formula is more appropriate, as an unsupported, speculative assertion.^{3/}

The UFW's final exception takes issue with the ALJ's conclusion that the UFW is liable for backpay during the period of time when Martinez was out of the labor market due to a stroke. We find that this exception has merit.

In October 1981, Martinez developed dizziness and blurred vision while working on the lettuce wrap machine at an interim employer. He testified that his illness was diagnosed as a stroke. He was hospitalized for three days and sent home to rest for a month.

The general rule in backpay cases is that backpay is tolled during periods of disability. In American Manufacturing of Texas (1967) 167 NLRB 520 [66 LRRM 1122], the National Labor

^{3/}Citing Nish Noroian Farms (1984) 35 Cal.Sd 726, Respondent argues that Martinez found "true substitute employment," and therefore the daily formula is inappropriate. However, the record is inadequate for a determination that "true substitute employment" existed. Because the parties did not litigate this issue, we find the case before us to be an inadequate vehicle for considering the General Counsel's request that we reject the daily method as the preferred means of calculating backpay awards under our statute.

Relations Board (NLRB) set forth an exception to that rule on the basis of the following rationale:

The origins and causes of infections and organic infirmities, such as influenza and heart attacks, for example, are usually not known and cannot be determined or assumed. It is ordinarily reasonable to assume, however, that absences from work because of such illnesses would probably have occurred even if the employee had not been discharged. As the claimant's loss therefore cannot be said to have a likely relationship to the unlawful discrimination, disallowance of backpay for all periods of unavailability because of such illnesses is proper. (American Manufacturing, supra, p. 522.)

Thus, the NLRB ruled that time lost due to illness closely related to the nature of interim employment or arising out of the unlawful discrimination would be compensable, while time lost due to illness arising from the hazards of living generally would not be compensable.^{4/}

When compensation is sought for periods of illness during interim employment, the burden of proof has two components:

Respondent continues to have the burden of demonstrating that an excludable period of absence from work because of illness had taken place, and the General Counsel may rebut this by showing the unusual nature of the disability, its causes, probable relation to the unlawful discharge because of the hazards of interim employment, search for work, etc. (American Manufacturing, supra, p. 522.)

In this case, the ALJ has incorrectly placed the burden of proof on Respondent "to demonstrate that the stroke was the usual incident of the hazards of living generally and not a result

^{4/}As the ALJ correctly noted, this Board has adopted the rule of American Manufacturing, supra, 167 NLRB 520, in Abatti Farms, Inc. (1983) 9 ALRB No. 59.

of the interim employment." (ALJD p. 10.)^{5/} Respondent's burden was merely to demonstrate the existence of a period of absence from work because of illness. This burden was met by showing that Martinez was unavailable for work for a month because of his stroke. Under American Manufacturing, it then became the burden of the General Counsel to demonstrate the relationship of the disability to the peculiar hazards of the interim employment.

A stroke appears to be among those infirmities whose origins and causes cannot be assumed. (See American Manufacturing, supra.) The General Counsel must therefore establish that the stroke was related to the interim employment. Martinez stated that his interim employment was easier than his work for Mann Packing and that he had to bend down about the same amount in both jobs. He indicated that he received no warnings from his doctor to avoid cutting broccoli. The General Counsel was able to show only that the stroke occurred at the work site. We find that the General Counsel failed to meet his burden of demonstrating a probable relationship between the illness and the hazards of the interim employment.

Because the stroke was not shown to have resulted from the hazards of interim employment, the work time lost due to

^{5/}The ALJ referred to our Decision in Abatti Farms, Inc., supra, 9 ALRB No. 59. In that case a 70 year old discriminatee developed back pains and rheumatism while employed at lifting and pitching watermelons. His former employment had been as an irrigator. In that case, General Counsel met his burden of demonstrating the causal connection between the interim employment and the disability. To the extent that our Abatti Farms Decision misstates the burdens of proof established in American Manufacturing, it is disapproved.

hospitalization and recuperation is not compensable. We therefore assess no backpay liability against Respondent for the 33 days following October 18, the apparent date of the stroke.

ORDER

Pursuant to Labor Code section 1160.3, the Agricultural Labor Relations Board hereby orders the Respondent, United Farm Workers of America, AFL-CIO, its officers, agents, successors and assigns, to pay Juan Martinez the amount of \$7,988.17 in backpay and \$500.00 reimbursement for travel expenses, plus interest on such amounts computed at rates determined in accordance with the Board's Decision and Order in Lu-Ette Farms, Inc.

(1982) 8 ALRB No. 55.^{6/}

Dated: March 26, 1987

JOHN P. McCARTHY, Member^{7/}

PATRICK W. HENNING, Member

GREGORY L. GONOT, Member

^{6/}Appendix A reflects the ALJ's backpay award as modified by this decision. Appendix B reflects the ALJ's computation of expenses.

^{7/}The signatures of the participating Board members appear in order of seniority. Chairman Ben Davidian and Member Ivonne Ramos Richardson did not participate in the consideration of this case.

BACKPAY AWARD

January 1980

<u>Date</u>	<u>Gross</u>	<u>Interim</u>	<u>Total</u>
01 T	.00	.00	.00
02 W	.00	.00	.00
03 TH	.00	.00	.00
04 F	.00	.00	.00
05 S	.00	.00	.00
06 S	.00	.00	.00
07 M	.00	.00	.00
08 T	.00	.00	.00
09 W	.00	.00	.00
10 TH	.00	.00	.00
11 F	.00	.00	.00
12 S	.00	.00	.00
13 S	.00	.00	.00
14 M	112.22	.00	112.22
15 T	63.37	.00	63.37
16 W	63.37	.00	63.37
17 TH	.00	.00	.00
18 F	49.14	.00	49.14
19 S	.00	.00	.00
20 S	.00	.00	.00
21 M	.00	.00	.00
22 T	.00	.00	.00
23 W	.00	.00	.00
24 TH	.00	.00	.00
25 F	.00	.00	.00
26 S	.00	.00	.00
27 S	.00	.00	.00
28 M	.00	-.00	.00
29 T	.00	.00	.00
30 W	.00	.00	.00
31 TH	.00	.00	.00
	288.10	0.00	288.10

February 1980

<u>Date</u>	<u>Gross</u>	<u>Interim</u>	<u>Total</u>
01 F	.00	.00	.00
02 S	.00	.00	.00
03 S	.00	.00	.00
04 M	.00	.00	.00
05 T	.00	.00	.00
06 W	.00	.00	.00
07 TH	.00	.00	.00
08 F	.00	.00	.00
09 S	.00	.00	.00
10 S	.00	.00	.00
11 M	.00	.00	.00
12 T	.00	.00	.00
13 W	.00	.00	.00
14 TH	.00	.00	.00
15 F	.00	.00	.00
16 S	65.83	.00	65.83
17 S	65.83	.00	65.83
18 M	65.83	.00	65.83
19 M	.00	.00	.00
19 T	.00	.00	.00
20 W	.00	.00	.00
21 W	.00	.00	.00
21 TH	.00	.00	.00
22 F	65.83	40.50	25.33
22 F	65.83	40.50	25.33
23 S	65.83	40.50	25.33
24 S	.00	40.50	.00
25 M	.00	.00	.00
26 T	394.98	162.00	273.48
27 W			
28 TH			
29 F			

March 1980

<u>Date</u>	<u>Gross</u>	<u>Interim</u>	<u>Total</u>
01 S	43.22	22.50	20.72
02 S	.00	.00	.00
03 M	81.52	.00	81.52
04 T	81.52	40.50	41.02
05 W	81.52	36.00	45.52
06 TH	81.52	40.50	41.02
07 F	81.52	40.50	41.02
08 S	61.73	36.00	25.73
09 S	.00	.00	.00
10 M	81.52	40.50	41.02
11 T	81.52	20.25	61.27
12 W	81.52	40.50	41.02
13 TH	81.52	40.50	41.02
14 F	81.52	40.50	41.02
15 F	50.11	24.75	25.36
16 S	.00	.00	.00
17 M	81.52	40.50	41.02
18 T	81.52	40.50	41.02
19 W	81.52	40.50	41.02
20 TH	81.52	40.50	41.02
21 F	81.52	22.50	59.02
22 S	54.08	25.75	28.33
23 S	.00	.00	.00
24 M	81.52	40.50	41.02
25 T	.00	4.50	.00
26 W	.00	38.25	.00
27 TH	.00	40.50	.00
28 F	.00	40.50	.00
29 S	.00	24.75	.00
30 S	.00	.00	.00
31 M	.00	.00	.00
	1,513.46	822.25	839.71

April 1980

<u>Date</u>	<u>Gross</u>	<u>Interim</u>	<u>Total</u>
01 T	.00	.00	.00
02 W	.00	.00	.00
03 TH	.00	.00	.00
04 F	.00	.00	.00
05 S	.00	.00	.00
06 S	.00	.00	.00
07 M	.00	.00	.00
08 T	.00	.00	.00
09 W	.00	.00	.00
10 TH	.00	.00	.00
11 F	.00	.00	.00
12 S	.00	.00	.00
13 S	.00	.00	.00
14 M	.00	.00	.00
15 T	.00	.00	.00
16 W	.00	.00	.00
17 TH	76.70	.00	76.70
18 F	76.70	.00	76.70
19 S	76.70	.00	76.00
20 S	.00	.00	.00
21 M	.00	.00	.00
22 T	76.70	.00	76.70
23 W	76.70	40.50	36.20
24 TH	76.70	40.50	36.20
25 F	76.70	40.50	36.20
26 S	.00	24.75	.00
27 S	.00	.00	.00
28 M	76.70	9.00	67.70
29 T	76.70	40.50	36.20
30 W	76.70	40.50	36.20
	843.70	236.25	631.50

May 1980

<u>Date</u>	<u>Grass</u>	<u>Interim</u>	<u>Total</u>
01 TH	.00	40.50	.00
02 F	.00	40.50	.00
03 S	.00	24.75	.00
04 S	.00	.00	.00
05 M	.00	30.96	.00
06 T	.00	30.96	.00
07 W	.00	30.96	.00
08 TH	91.28	48.96	42.32
09 F	91.28	30.96	60.32
10 S	91.28	30.96	.00
11 S	.00	.00	.00
12 M	91.28	41.93	49.35
13 T	91.23	41.93	49.35
14 W	91.28	41.93	49.35
15 TH	91.28	41.93	49.35
16 F	91.28	41.93	49.35
17 S	91.28	41.93	49.35
18 S	.00	.00	.00
19 M	91.28	45.85	45.43
20 T	91.28	45.85	45.43
21 W	91.28	45.85	45.43
22 TH	91.28	45.85	45.43
23 F	91.28	45.85	45.43
24 S	.00	45.85	.00
25 S	.00	.00	.00
26 K	91.28	47.03	44.25
27 T	91.28	47.03	44.25
28 W	91.28	47.03	44.25
29 TH	.00	47.03	.00
30 F	.00	47.03	.00
31 S	.00	47.03	.00
	1,551.76	1,118.37	758.54

June 1980

<u>Date</u>	<u>Gross</u>	<u>Interim</u>	<u>Total</u>
01 S	.00	.00	.00
02 M	.00		
03 T	.00	44. 15	.00
04 W	91.46	44. 15	.00
05 TH	.00	44. 15	47.26
06 F	.00	44. 15	.00
07 S	.00	44. 15	.00
08 S	.00	00	.00
09 M	91.41	00	91.41
10 T	91.41	00	91.41
11 W	91.41	00	91.41
12 TH	91.41	00	91.41
13 F	91.41	00	.00
14 S	.00	00	.00
15 S	.00	00	91.41
16 M	91.41	00	91.41
17 T	91.41	00	91.41
18 W	91.42	00	.00
19 TH	91.42	00	.00
20 F	.00	00	.00
21 S	.00	38. 37	53.04
22 S	.00	38. 37	53.04
23 M	91.41	38. 37	53.04
24 T	91.41	38. 37	.00
25 W	91.41	38. 37	.00
26 TH	.00	00	.00
27 F	.00	32. 85	.00
28 S	.00		
29 S	.00		
30 M	.00		
	1,188.40		
		527. 97	1,029.07

6.

July 1980

<u>Date</u>	<u>Gross</u>	<u>Interim</u>	<u>Total</u>
01 T	85.94	32.85	53.09
02 W	85.94	32.85	53.09
03 TH	85.94	32.85	53.09
04 F	.00	32.85	.00
05 S	85.94.	32.85	53.09
06 S	.00	.00	.00
07 M	35.94	23.50	62.44
08 T	85.94	23.50	62.44
09 W	85.94	23.50	62.44
10 TH	85.94	23.50	62.44
11 F	.00	23.50	.00
12 S	.00	23.50	.00
13 S	.00	.00	.00
14 M	85.94	32.90	53.04
15 T	85.94	32.90	53.04
16 W	85.94	32.90	53.04
17 TH	85.94	32.90	53.04
18 F	85.94	32.90	53.04
19 S	.00	32.90	.00
20 S	.00	.00	.00
21 M	85.94	42.05	43.89
22 T	85.94	42.05	43.89
23 W	85.94	42.05	43.89
24 TH	85.94	42.05	43.89
25 F	.00	42.05	.00
26 S	.00	42.05	.00
27 S	.00	.00	.00
28 M	85.94	34.33	51.61
29 T	85.94	34.33	51.61
30 W	85.94	34.33	51.61
31 TH	.00	34.33	.00
	1,718.80	892.27	1,057.71

August 1980

<u>Date</u>	Gross	Interim	<u>Total</u>
01 F	.00	34.33	.00
02 S	.00	34.33	.00
03 S	.00	.00	.00
04 M	.00	36.83	.00
05 T	62.07	36.83	25.24
06 W	62.07	36.83	25.24
07 TH	62.07	36.83	25.24
08 F	62.07	36.83	25.24
09 S	.00	36.83	.00
10 S	.00	.00	.00
11 M	.00	23.19	.00
12 T	62.07	23.19	38.88
13 W	62.07	23.19	38.88
14 TH	62.07	23.19	38.88
15 F	62.07	23.19	38.88
16 S	.00	23.19	.00
17 S	.00	.00	.00
18 M	62.07	28.37	33.70
19 T	62.07	28.37	33.70
20 W	62.07	28.37	33.70
21 TH	62.07	28.37	33.70
22 F	.00	28.37	.00
23 S	.00	28.37	.00
24 S	.00	.00	.00
25 M	62.07	53.97	8.10
26 T	62.07	53.97	8.10
27 W	62.07	53.97	8.10
28 TH	.00	53.97	.00
29 F	.00	53.97	.00
30 S	.00	53.97	.00
31 S	.00	.00	.00
	931.05	922.82	415.58

September 1980

<u>Date</u>	<u>Gross</u>	<u>Interim</u>	<u>Total</u>
01 M	.00	40.53	.00
02 T	94.98	40.53	54.45
03 W	.00	40.53	.00
04 TH	.00	40.53	.00
05 F	94.98	40.53	54.45
06 S	94.98	40.53	54.45
07 S	.00	.00	.00
08 M	.00	44.94	.00
09 T	.00	44.94	.00
10 W	.00	44.94	.00
11 TK	.00	44.94	.00
12 F	.00	44.94	.00
13 S	.00	44.94	.00
14 S	.00	.00	.00
15 M	.00	29.19	.00
16 T	.00	29.19	.00
17 W	.00	29.19	.00
18 TH	.00	29.19	.00
19 F	.00	29.19	.00
20 S	.00	29.19	.00
21 S	.00	.00	.00
22 M	.00	53.40	.00
23 T	.00	53.40	.00
24 W	.00	53.40	.00
25 TH	.00	53.40	.00
26 F	.00	53.40	.00
27 S	.00	53.40	.00
28 S	.00	.00	.00
29 M	.00	39.18	.00
30 T	.00	39.18	.00
	284.94	1,086.72	163.35

October 1980

<u>Date</u>	<u>Gross</u>	<u>Interim</u>	<u>Total</u>
01 W	53.55	39.18	14.37
02 TH		39.18	14.31
03 F	53.55	39.18	14.37
04 S	53.55	39.18	.00
05 S	.00		.00
06 M	.00	.00	25.21
07 T	53.55	28.34	25.21
08 W	53.55	28.34	25.21
09 TH	53.55	28.34	25.21
10 F	53.55	28.34	.00
11 S	.00	28.34	.00
12 S	.00	.00	.00
13 M	.00	39.43	.00
14 T	.00	39.43	.00
15 W	.00	39.43	.00
16 TH	.00	39.43	.00
17 F	.00	39.43	.00
18 S	.00	39.43	.00
19 S	.00	.00	.00
20 M	.00	.00	.00
21 T	.00	.00	.00
22 W	.00	.00	.00
23 TH	.00	.00	.00
24 F	.00	.00	.00
25 S	.00	.00	.00
26 S	.00	.00	.00
27 M	.00	.00	.00
28 T	.00	.00	.00
29 W	428.40	.00	169.16
30 TH		.00	
31 F		.00	
		563.34	

November 1980

<u>Date</u>	<u>Gross</u>	<u>Interim</u>	<u>Total</u>
01 S	.00	.00	.00
02 S	.00	.00	.00
03 M	.00	.00	.00
04 T	.00	.00	.00
05 W	.00	.00	.00
06 TH	.00	.00	.00
07 F	.00	.00	.00
08 S	.00	.00	:∞
09 S	.00	.00	.00
10 M	.00	.00	.00
11 T	.00	.00	.00
12 W	.00	.00	.00
13 TH	.00	.00	.00
14 F	.00	.00	.00
15 S	.00	.00	.00
16 S	.00	.00	.00
17 M	.00	.00	.00
18 T	.00	.00	.00
19 W	.00	.00	.00
20 TH	.00	.00	.00
21 F	73.83	.00	73.83
22 S	.00	.00	.00
23 S	.00	.00	.00
24 M	73.83	.00	73.83
25 T	73.83	.00	73.83
26 W	73.83	.00	73.83
27 T	.00	.00	.00
28 F	.00	.00	.00
29 S	.00	.00	.00
30 S	.00	.00	.00
	<hr/> 235.32	n nn	<hr/> 295.32

December 1980

<u>Date</u>	<u>Gross</u>	<u>Interim</u>	<u>Total</u>
01 M	91 .63	.00	91.63
02 T	91 .63	.00	91.63
03 W	91 .63	.00	91.63
04 TH	91 .63	.00	91.63
05 TT	91 .63	.00	91.63
06 s	.00	.00	.00
07 s	.00	.00	.00
08 M	91 .63	.00	91.63
09 T	.00	.00	.00
10 W	.00	.00	.00
11 TH	.00	.00	.00
12 F	91 .63	.00	91.63
13 S	.00	.00	.00
14 S	.00	.00	.00
15 M	91 .63	.00	91.63
16 T	91 .63	.00	91.63
17 W	91 .63	.00	91.63
18 TH	91 .63	.00	91.63
19 F	91 .63	.00	91.63
20 S	.00	.00	.00
21 S	.00	.00	.00
22 M	.00	.00	.00
23 T	.00	.00	.00
24 W	.00	.00	.00
25 TH	.00	.00	.00
26 p	.00	.00	.00
27 S	.00	.00	.00
28 S	.00	.00	.00
29 M	91 .63	.00	.63
30 T	.00	.00	.00
31 W	.00	.00	.00
	1,191 .19	.00	1,191.19

January 1981

<u>Date</u>	<u>Gross</u>	<u>Interim</u>	<u>Total</u>
01 TH	110.68	.00	110.68
02 F	110.68	.00	110.68
03 S	.00	.00	.00
04 S	.00	.00	.00
05 M	.00	.00	.00
06 T	.00	.00	.00
07 W	.00	46.00	.00
08 TH	110.68	46.00	64.68
09 F	110.68	46.00	64.68
10 S	.00	28.75	.00
11 S	.00	.00	.00
12 M	.00	46.00	.00
13 T	.00	46.00	.00
14 W	.00	46.00	.00
15 TH	110.68	46.00	64.68
16 F	110.68	46.00	64.68
17 S	.00	28.75	.00
18 S	.00	.00	.00
19 M	110.63	46.00	64.68
20 T	110.68	46.00	64.68
21 W	110.68	46.00	64.68
22 TH	.00	31.62	.00
23 F	.00	.00	.00
24 S	.00	.00	.00
25 S	.00	.00	.00
26 M	.00	.00	.00
27 T	110.68	20.12	90.56
28 W	110.68	.00	110.68
29 TH	.00	.00	.00
30 F	.00	.00	.00
31 S	.00	.00	.00
	1,217.48	615.24	875.36

SUMMARY

January 1980	288.10
February	273.48
March	839.71
April	631.50
May	758.64
June	1,029.07
July	1,057.71
August	415.58
September	163.35
October	169.16
November	295.32
December	1,191.19
January 1981	<u>875.36</u>
	7,988.17

APPENDIX B
Expenses Award

January 14-18, 1980	\$22.50	
January 21-25	22.50	
January 28 -February 1	22.50	
February 4-8	22.50	
February 11-15	22.50	
February 18-22	22.50	
March 31-April 4	22.50	
April 7-11	22.50	
April 14-18	22.50	
April 21-22	10.00	
June 9-13	22.50	
June 16-20	22.50	
October 20-24	22.50	
October 27-31	22.50	
November 3-7	22.50	
November 10-14	22.50	
November 17-21	22.50	
November 24-28	20.00	(Thanksgiving Day)
December 1-5	20.00	
December 8-12	20.00	
December 15-19	20.00	
December 22-24	15.00	
December 26	5.00	(Christmas Day)
December 29- January 2,	20.00	(New Year's Day)
January 5-6	<u>10.00</u>	
Total	\$500.00	

1.

CASE SUMMARY

United Farm Workers
of America, AFL-CIO
(Juan Martinez)

13 ALRB No. 6
Case No. 79-CL-59-SAL

ALJ DECISION

A hearing was held for the purpose of determining the amount of backpay due the Charging Party as the result of the conduct found unlawful in 8 ALRB No. 103. The ALJ found that Respondent had stipulated to the daily formula of backpay calculation. He further determined that Charging Party had diligently sought work and was due travel expenses, that Charging Party's failure to appeal to the Union's Public Review Board was not a failure to mitigate damages and that Respondent's backpay liability included the time during which Charging Party was out of the work force due to a stroke.

BOARD DECISION

The Board first considered the ALJ's finding that Respondent had stipulated to the use of the daily formula. After examining the record, the Board determined that, although Respondent had stipulated to the gross and interim earnings of the backpay specification, there had been no stipulation to a particular method of calculating backpay. The Board then considered Respondent's allegation that use of the daily formula is unreasonable in this case. The Board determined that Respondent, who had not litigated the issue at the hearing, failed to carry its burden, under Robert H. Hickam (1983) 9 ALRB No. 6, of establishing facts sufficient to reject or modify the formula of the General Counsel. Finally, the Board analyzed the ALJ's determination that time spent recovering from a stroke was compensable. The Board concluded that the ALJ had incorrectly applied the rule of American Manufacturing of Texas (1967) 167 NLRB 520 [66 LRRM 1122] which had been adopted by the Board in Abatti Farms, Inc. (1983) 9 ALRB No. 59. The Board then found that, because the General Counsel had failed to demonstrate a probable relationship between the illness and the hazards of the interim employment, the time spent out of the work force, due to the stroke, was not compensable.

* * *

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:) Case No. 79-CL-59-SAL
)
) UNITED FARM WORKERS)
)
) OF AMERICA, AFL-CIO,)
) Respondent,)
)
) and)
)
) JUAN MARTINEZ,)
) An Individual,)
)
) Charging Party.))

Appearances:

Paul Lafranchise, Esq. for
the General Counsel

Ned Dunphy
Margarette Reyes
for Respondent

Before: Arie Schoorl
Administrative Law Judge

DECISION OF THE ADMINISTRATIVE LAW JUDGE

ARIE SCHOORL, Administrative Law Judge:

On December 20, 1982, and February 4, 1983, the Agricultural Labor Relations Board issued a Decision and Order and a Supplemental Decision and Order respectively in the above-captioned proceeding finding that Respondent United Farm Workers of America, AFL-CIO, violated Labor Code section 1154(b) by denying Juan Martinez due process in the suspension of union membership for one year which resulted in Mr. Martinez' discharge on January 13, 1980. The Board directed, inter alia, that Respondent make Juan Martinez whole for all losses of pay and other economic losses which he has suffered as a result of Respondent's UFW discrimination against him on January 13, 1980.

The parties were unable to agree on the amount of backpay due Mr. Martinez, and on August 21, 1985, the Salinas Regional Director of the ALRB issued a partial backpay specification.¹ The Respondent filed an answer on September 3, 1985. General Counsel filed an Amended Backpay Specification on September 26, 1985.

Respondent stipulated at the hearing that the amounts

¹The specification was issued without reference to insurance benefits, death benefits, and pension benefits, if any, due and owing Mr. Martinez. At the pre-trial hearing General Counsel contended that it had retained the right to claim pension benefits that might have accrued to Mr. Martinez during the period of suspension. However, I pointed out to the parties that Mr. Martinez worked more hours for interim employers who were parties to a UFW collective bargaining contract with the same pension benefits than the amount of hours he would have worked for Sun Harvest. In view of this fact, General Counsel agreed that Mr. Martinez did not incur any economic loss in respect to pension benefits during the period of suspension.

set forth in the Backpay Specifications General Counsel Exhibit No. 3 as to gross earnings and interim earnings are correct. In so stipulating Respondent has agreed to the daily method of calculating lost earnings and has not argued against such a method in its post-hearing brief. Respondent has not disputed that the gross earnings were based on the earnings of two employees who performed the same kind of work as the Charging Party and had a seniority date the same or within a very few days as that of the Charging Party.

A hearing was held before me on October 9, 1985, during which the specification was amended orally, the parties defined the areas of controversy and one witness, Juan Martinez, the Charging Party, was called to testify. All parties were given a full opportunity to participate in the hearing, and General Counsel and Respondent filed post-hearing briefs pursuant to 8 Cal. Admin. Code section 20278.

I. FINDINGS OF FACT

By way of pleadings, motions, stipulations or references to post-hearing briefs the parties have placed into issue the following:

a. Diligent Search for Work

Respondent contends that Martinez did not make diligent efforts to find interim employment.

b. Travel Expenses

Respondent contends that Martinez was inconsistent in his testimony in regard to the weekly amounts he paid for

transportation in search of employment and therefore his testimony is suspect in this regard.

c. Failure to Appeal Suspension

Respondent contends Martinez knew about his right to appeal his suspension and if he had taken advantage of such a right he would have reduced the period of suspension to 6 months. Respondent claims he thereby did not comply with his duty to mitigate his losses and therefore Respondent should be only responsible for a 6 month period of lost wages,

d. Out of Labor Market Due to Illness

Respondent contends Martinez was out of the labor market in October and November 1980 as he suffered a stroke early in the month of October and therefore was disabled and could not work during the remainder of October and the entire month of November.

1. Diligent Search for Work and Travel Expenses

A. Facts

In January of 1980 the UFW suspended Juan F. Martinez for a period of one year and requested his employer Mann Packing to discharge him in accordance with the union security provision in the collective bargaining agreement. Mann Packing complied with such request and discharged Martinez on January 13, 1980.

Martinez commenced his efforts to seek employment . immediately after the discharge and in fact signed up at the UFW hiring hall for job referrals. Martinez successfully secured

employment with two agricultural employers, General Vineyards (through a UFW referral) and Growers Exchange and worked at the two entities during all or part of the months of February, March, April, May, June, July, August, September, October 1980 and January 1981.

During the periods of time Martinez was not employed he searched for work 4 to 5 times a week during an accumulated period of approximately 5 months. Martinez paid \$5.00 to a driver each day (Martinez rode with over 20 different drivers during his search for employment) and the driver and he and perhaps another agricultural worker drove to various companies and labor contractors in the Salinas, Greenfield, Chualar, Gonzalez, Soledad area and requested employment.

Martinez credibly testified that he sought employment at such companies as Sun Harvest, Bud Antle, Hansen Farms and Nunez (by filing applications) and with such labor contractors as Bias Valenzuela, Segundino Garcia and Pascual Limas.

Respondent argues that Martinez failed to make a diligent effort to find interim employment. Respondent points out that Martinez could recall only a few names of employees and labor contractors whom he contacted for employment and could not remember the names of the drives' or the latters' pickup points.² However, Martinez' search for employment took place 4 years before the hearing, and it appears that Martinez does not have a

²Martinez credibly testified that there was no common pickup point.

good memory for names or dates of his discharge and rehire, the dates of his illness, the dates of his employment, the names of the drivers, etc.³ Moreover, Martinez remembered the names of some of the companies and labor contractors. Furthermore, the fact that he put his name on the union hiring hall list is an indication of his resolve and resourcefulness in seeking interim employment.

Accordingly, I find that Martinez testimony about searching for employment is true.

B. Analysis and Conclusion

The burden of proof is upon Respondent to prove that the discriminatee failed to mitigate his losses by not making a reasonable effort to seek and maintain interim employment. (S & F Growers (1979) 5 ALRB No. 50; Phelps Dodge Corp. v. N.L.R.B. (1941) 313 U.S. 177 (8 LRRM 439).)

I have found that Martinez looked for work 4 times a week and at times 5 times a week with numerous employers and even placed his name on the UFW hiring hall list even though he was not eligible for job referral. I categorize such efforts as a diligent effort to find interim employment and that Respondent has failed to show otherwise.

Respondent argues that Martinez' testimony as to his travel expenses was not rational because at times he claimed to have spent \$20 a week and at times \$25 a week (since he testified that he looked for work 5 days a week at \$5 a day). Any apparent

³Martinez testified that he only knew the drivers by sight.

inconsistency is easily explained by the fact that during some weeks Martinez search for work 4 days (\$5 a day times 4 = \$20) and other weeks 5 days (\$5 a day times 5 = \$25). Martinez never waivered in his testimony that his travel expenses consisted of \$5 a day paid to the driver with whom he rode in search of employment.

Although Martinez testified that he looked for work 5 days a week during the entire interim period, it is more credible that at times it was 4 times a week and at other times it was 5 times a week as that is consistent with his testimony that some weeks he spend \$20 a week on transportation and other weeks \$25 a week.

2. Failure to Appeal Suspension

A. Facts

In late 1979, Martinez attended his trial which was held before the UFW Ranch Committee of Mann Packing. The Ranch Committee found him guilty and informed him that the UFW had suspended membership and that he no longer had any rights at Mann Packing. At the beginning of January 1980 the UFW allegedly sent him a letter informing him that his suspension had been reduced to one year and that he had the right to appeal the suspension. Martinez testified that he did not remember receiving such a letter. Martinez admitted on cross-examination that he knew of his right to review but he did not "call them any more."

General Counsel argues that the interpreter had translated Martinez' answer about his lack of knowledge of this

right to review but later the interpreter was made to change the testimony to the effect he had such knowledge. The interpreter did not change her translation. On cross examination Respondent's representative asked whether Martinez had knowledge of his right to review the suspension. Martinez answered, "Yes, yes, but no I didn't call them any more". The interpreter translated only "No, I did not call them any more". Respondent requested that the tape be played back. The tape was played back and the interpreter translated the first three words of the answer "Yes, yes but". This was sufficient to clear up any confusion over the translation.⁴

B. Analysis and Conclusion

Respondent argues that the discriminatee, Juan Martinez, failed in his duty to mitigate damages by not taking advantage of his right to appeal his suspension. Respondent contends that Martinez knew about his right to appeal and if he had appealed he could have prevailed and had his suspension reduced to 6 months.

In the underlying case 8 ALRB No. 103, in which

⁴ Thereafter, General Counsel went on to request additional comment by the interpreter. I granted the request and the interpreter proceeded to explain that Martinez understood that he had a right to review but "culturally" speaking as a matter of pride since they did not want him back, he was not going back. At the moment I stopped the interpreter because it is not within the interpreter's province to explain why a witness acted in a certain way but to just translate accurately each word spoken. It is interesting to note that the interpreter's defense of her translation actually was prejudicial to General Counsel's contention that Martinez did not have knowledge of his right to review.

liability was determined, Respondent Union presented as a defense the failure on the part of Juan Martinez to exhaust his internal union procedures. The Board stated that Martinez had appealed his initial two-year union membership suspension to the Union's National Executive Board, on January 2, 1980, had obtained a decision reducing his suspension to one year, and thereafter had not appealed his suspension to the Public Review Board. The Board decided that Martinez' failure to appeal to the PRB was reasonable because, at the UFW's request, he was discharged by Mann Packing on January 14, 1980. The Board reasoned that since the Union lacked legal means to require that the employer Mann Packing Co. reinstate Martinez to his former job with his former seniority, only unfair labor practice charges against both the UFW and Mann Packing could result in the full relief sought by Martinez. The Appellate Court, First District, Division Two, upheld the Board's decision in this respect in 156 Cal.App.3d 312.

Since the Board has already decided that the discriminatee's failure to appeal to the PRB was reasonable, Respondent Union's argument in respect to the alleged failure of the discriminatee to mitigate damages is to no avail.

3. Out of Labor Market due to Illness

A. Facts

In October 1981 while Martinez was working for Grower's Exchange he suffered a stroke. He was operating the wrap machine in the lettuce harvest and as he straightened up after working in

a bent over position, he suffered an onset of dizziness and blurred vision. The doctor diagnosed his illness as a stroke. Martinez following the doctor's instructions and remained in the hospital for 3 days and then 30 days at home before returning to the labor market.

B. Analysis and Conclusion

Respondent contends that it is not responsible for Martinez' backpay during the fourth quarter of 1980. Respondent argues that Martinez had taken himself out of the labor market because of the disability caused by the stroke and therefore he is not entitled to backpay during October, November, December.

The law holds that an employer or a union has the burden of proof to demonstrate that the illness or accident, causing the disability, was the usual incident of the hazards of living generally and not a result of the interim employment in order to avoid liability for backpay.

The Board in Abatti Brothers 9 ALRB No. 59 quoted from American Manufacturing Company of Texas (1967) 167 NLRB 520, 66 LRRM 1122 "Where an interim disability is closely related to the nature of the interim employment or arises from the unlawful discharge and is not a usual incident of the hazards of living generally, the period of disability will not be excluded from back pay". In the Abatti case the Board pointed out that Respondent had failed to prove that the employee's rheumatism and back pains were a usual incident of the hazards of living generally and not a result of his interim employment and

determined that the period of disability would not be excluded from backpay. That would indicate that Respondent would have the burden of proof in respect to the cause of the disability.

In the instant case Respondent has failed to prove that Martinez' disability was an usual incident of the hazards of living generally and in fact it appears from the evidence that Martinez' efforts during the interim employment "stooping and bending over to cut lettuce" was the precipitating cause of the stroke.

Accordingly I find that Martinez is entitled to backpay for the period he was disabled to work due to the illness.

II. THE CALCULATIONS


I have attached (as Appendix A), a summary of the pertinent backpay period, gross backpay, interim earnings and net backpay due and owing the Charging Party Juan Martinez. The amounts are listed monthly, with daily breakdowns of gross backpay, interim earnings, and net pay owing. The compensation for travel expenses is contained in Appendix B. I have found that some weeks Martinez spent \$20 on transportation and other weeks he spent \$25. Consequently he is entitled to \$22.50 (the average of the 2 amounts) per week for travel expense reimbursement.

RECOMMENDED ORDER

Pursuant to Labor Code section 1160.3 the Agricultural Labor Relations Board hereby orders the Respondent United Farm Workers, AFL-CIO, its officers, agents, successors and assigns,

to pay to Juan Martinez the amount of \$8,800.30 in backpay and \$500.00 reimbursement for travel expenses, plus interest on such amounts computed at rates determined in accordance with the Board's Decision and Order in Lu-Ette Farms, Inc. (1982) 8 ALRB No.

55. DATED: March 28, 1986


ARIE SCHOORL Administrative
Law Judge

APPENDIX A

BACKPAY AWARD

January 1980

<u>Date</u>	<u>Gross</u>	<u>Interim</u>	<u>Total</u>
01 T	.00	.00	.00
02 W	.00	.00	.00
03 TH	.00	.00	.00
04 F	.00	.00	.00
05 S	.00	.00	.00
06 S	.00	.00	.00
07 M	.00	.00	.00
08 T	.00	.00	.00
09 W	.00	.00	.00
10 TH	.00	.00	.00
11 F	.00	.00	.00
12 S	.00	.00	.00
13 S	.00	.00	.00
14 M	112.22	.00	112.22
15 T	63.37	.00	63.37
16 W	63.37	.00	63.37
17 TH	.00	.00	.00
18 F	49.14	.00	49.14
19 S	.00	.00	.00
20 S	.00	.00	.00
21 M	.00	.00	.00
22 T	.00	.00	.00
23 W	.00	.00	.00
24 TH	.00	.00	.00
25 F	.00	.00	.00
26 S	.00	.00	.00
27 S	.00	.00	.00
28 M	.00	.00	.00
29 T	.00	.00	.00
30 W	.00	.00	.00
31 TH	.00	.00	.00
	288.10	0.00	288.10

February 1980

Date	<u>Gross</u>	<u>Interim</u>	<u>Total</u>
01 F	.00	.00	.00
02 S	.00	.00	.00
03 S	.00	.00	.00
04 M	.00	.00	.00
05 T	.00	.00	.00
06 W	.00	.00	.00
07 TH	.00	.00	.00
08 F	.00	.00	.00
09 S	.00	.00	.00
10 S	.00	.00	.00
11 M	.00	.00	.00
12 T	.00	.00	.00
13 W	.00	.00	.00
14 TH	.00	.00	.00
15 F	.00	.00	.00
16 S	.00	.00	.00
17 S	.00	.00	.00
18 M	65.83	.00	65.83
19 T	65.83	.00	65.83
20 W	65.83	.00	65.83
21 TH	.00	.00	.00
22 F	.00	.00	.00
23 S	.00	.00	.00
24 S	.00	.00	.00
25 M	65.83	40.50	25.33
26 T	65.83	40.50	25.33
27 W	65.83	40.50	25.33
28 TH	.00	40.50	.00
29 F	.00	.00	.00
	394.98	162.00	273.48

March 1980

<u>Date</u>		<u>Gross</u>		<u>Interim</u>			<u>Total</u>
01	S	43	22	22	.50	20	.72
02	S		00		.00		.00
03	M	81	52		.00	81	.52
04	T	81	52	40	.50	41	.02
05	W	81	52	36	.00	45	.52
06	TH	81	52	40	.50	41	.02
07	F	81	52	40	.50	41	.02
08	S	61	73	36	.00	25	.73
09	S	.	00		.00		.00
10	M	81	52.	40	.50	41	.02
11	T	81	52.	20	.25	61	.27
12	W	81	52	40	.50	41	.02
13	TH	81	52	40	.50	41	.02
14	F	81	52	40	.50	41	.02
15	F	50	11	24	.75	25	.36
16	S		00		.00		.00
17	M	81	52	40	.50	41	.02
18	T	81	52	40	.50	41	.02
19	W	81	52	40	.50	41	.02
20	TH	81	52	40	.50	41	.02
21	F	81	52	22	.50	59	.02
22	S	54	08	25	.75	28	.33
23	S		00		.00		.00
24	M	81	52	40	.50	41	.02
25	T		00	4	.50		.00
26	W		00	38	.25		.00
27	TH		00	40	.50		.00
28	F		00	40	.50		.00
29	S		00	24	.75		.00
30	S		00		.00		.00
31	M		00		.00		.00
		1,	46	822	.25	839	.71
		51					
		3					

April 1980

<u>Date</u>	<u>Gross</u>	<u>Interim</u>	<u>Total</u>
01 T	.00	.00	.00
02 W	.00	.00	.00
03 TH	.00	.00	.00
04 F	.00	.00	.00
05 S	.00	.00	.00
06 S	.00	.00	.00
07 M	.00	.00	.00
08 T	.00	.00	.00
09 W	.00	.00	.00
10 TH	.00	.00	.00
11 F	.00	.00	.00
12 S	.00	.00	.00
13 S	.00	.00	.00
14 M	.00	.00	.00
15 T	.00	.00	.00
16 W	76.70	.00	76.70
17 TH	76.70	.00	76.70
18 F	76.70	.00	76.00
19 S	.00	.00	.00
20 S	.00	.00	.00
21 M	76.70	.00	76.70
22 T	76.70	.00	76.70
23 W	76.70	40.50	36.20
24 TH	76.70	40.50	36.20
25 F	76.70	40.50	36.20
26 S	.00	24.75	.00
27 S	.00	.00	.00
28 M	76.70	9.00	67.70
29 T	76.70	40.50	36.20
30 W	76.70	40.50	36.20
	843.70	236.25	631.50

May 1980

<u>Date</u>	<u>Gross</u>	<u>Interim</u>	<u>Total</u>
01 TH	.00	40.50	.00
02 F	.00	40.50	.00
03 S	.00	24.75	.00
04 S	.00	.00	.00
05 M	.00	30.96	.00
06 T	.00	30.96	.00
07 W	.00	30.96	.00
08 TH	91.28	48.96	42.32
09 F	91.28	30.96	60.32
10 S	91.28	30.96	.00
11 S	.00	.00	.00
12 M	91.28	41.93	49.35
13 T	91.28	41.93	49.35
14 W	91.28	41.93	49.35
15 TH	91.28	41.93	49.35
16 F	91.28	41.93	49.35
17 S	91.28	41.93	49.35
18 S	.00	.00	.00
19 M	91.28	45.85	45.43
20 T	91.28	45.85	45.43
21 W	91.28	45.85	45.43
22 TH	91.28	45.85	45.43
23 F	91.28	45.85	45.43
24 S	.00	45.85	.00
25 S	.00	.00	.00
26 M	91.28	47.03	44.25
27 T	91.28	47.03	44.25
28 W	91.28	47.03	44.25
29 TH	.00	47.03	.00
30 F	.00	47.03	.00
31 S	.00	47.03	.00
	1,551.76	1,118.37	758.64

June 1980

<u>Date</u>		<u>Gross</u>		<u>Interim</u>		<u>Total</u>
01	S		.00		.00	.00
02	M		.00	44	.15	.00
03	T		.00	44	.15	.00
04	W	91	.46	44	.15	47
05	TH		.00	44	.15	.00
06	F		.00	44	.15	.00
07	S		.00	44	.15	.00
08	S		.00		.00	.00
09	M	91	.41		.00	91
10	T	91	.41		.00	91
11	W	91	.41		.00	91
12	TH	91	.41		.00	91
13	F	91	.41		.00	91
14	S		.00		.00	.00
15	S		.00		.00	.00
16	M	91	.41		.00	91
17	T	91	.41		.00	91
18	W	91	.42		.00	91
19	TH	91	.42		.00	91
20	F		.00		.00	.00
21	S		.00		.00	.00
22	S		.00		.00	.00
23	M	91	.41	38	.37	53
24	T	91	.41	38	.37	53
25	W	91	.41	38	.37	53
26	TH		.00	38	.37	.00
27	F		.00	38	.37	.00
28	S		.00	38	.37	.00
29	S		.00		.00	.00
30	M		.00	32	.85	.00
		1,188	.40	527	.97	1,029

July 1980

<u>Date</u>	<u>Gross</u>	<u>Interim</u>	<u>Total</u>
01 T	85.94	32.85	53.09
02 W	85.94	32.85	53.09
03 TH	85.94	32.85	53.09
04 F	.00	32.85	.00
05 S	85.94	32.85	53.09
06 S	.00	.00	.00
07 M	85.94	23.50	62.44
08 T	85.94	23.50	62.44
09 W	85.94	23.50	62.44
10 TH	85.94	23.50	62.44
11 F	.00	23.50	.00
12 S	.00	23.50	.00
13 S	.00	.00	.00
14 M	85.94	32.90	53.04
15 T	85.94	32.90	53.04
16 W	85.94	32.90	53.04
17 TH	85.94	32.90	53.04
18 F	85.94	32.90	53.04
19 S	.00	32.90	.00
20 S	.00	.00	.00
21 M	85.94	42.05	43.89
22 T	85.94	42.05	43.89
23 W	85.94	42.05	43.89
24 TH	85.94	42.05	43.89
25 F	.00	42.05	.00
26 S	.00	42.05	.00
27 S	.00	.00	.00
28 M	85.94	34.33	51.61
29 T	85.94	34.33	51.61
30 W	85.94	34.33	51.61
31 TH	.00	34.33	.00
	1,718.80	892.27	1,057.71

August 1980

<u>Date</u>		<u>Gross</u>		<u>Interim</u>		<u>Total</u>
01	F		.00	34	.33	.00
02	S		.00	34	.33	.00
03	S		.00		.00	.00
04	M		.00	36	.83	.00
05	T	62	.07	36	.83	25
06	W	62	.07	36	.83	25
07	TH	62	.07	36	.83	25
08	F	62	.07	36	.83	25
09	S		.00	36	.83	.00
10	S		.00		.00	.00
11	M		.00	23	.19	.00
12	T	62	.07	23	.19	38
13	W	62	.07	23	.19	38
14	TH	62	.07	23	.19	38
15	F	62	.07	23	.19	38
16	S		.00	23	.19	.00
17	S		.00		.00	.00
18	M	62	.07	28	.37	33
19	T	62	.07	28	.37	33
20	W	62	.07	28	.37	33
21	TH	62	.07	28	.37	33
22	F		.00	28	.37	.00
23	S		.00	28	.37	.00
24	S		.00		.00	.00
25	M	62	.07	53	.97	8
. 26	T	62	.07	53	.97	8
27	W	62	.07	53	.97	8
28	TH		.00	53	.97	.00
29	F		.00	53	.97	.00
30	S		.00	53	.97	.00
31	S		.00		.00	.00
		931	.05	922	.82	415

Q

September 1980

<u>Date</u>	<u>Gross</u>	<u>Interim</u>	<u>Total</u>
01 M	.00	40.53	.00
02 T	94.98	40.53	54.45
03 W	.00	40.53	.00
04 TH	.00	40.53	.00
05 F	94.98	40.53	54.45
06 S	94.98	40.53	54.45
07 S	.00	.00	.00
08 M	.00	44.94	.00
09 T	.00	44.94	.00
10 W	.00	44.94	.00
11 TH	.00	44.94	.00
12 F	.00	44.94	.00
13 S	.00	44.94	.00
14 S	.00	.00	.00
15 M	.00	29.19	.00
16 T	.00	29.19	.00
17 W	.00	29.19	.00
18 TH	.00	29.19	.00
19 F	.00	29.19	.00
20 S	.00	29.19	.00
21 S	.00	.00	.00
22 M	.00	53.40	.00
23 T	.00	53.40	.00
24 W	.00	53.40	.00
25 TH	.00	53.40	.00
26 F	.00	53.40	.00
27 S	.00	53.40	.00
28 S	.00	.00	.00
29 M	.00	39.18	.00
30 T	.00	39.18	.00
	284.94	1,086.72	163.35

October 1980

<u>Date</u>	<u>Gross</u>	<u>Interim</u>	<u>Total</u>
01 W	53.55	39.18	14.37
02 TH	53.55	39.18	14.37
03 F	53.55	39.18	14.37
04 S	.00	39.18	.00
05 S	.00	.00	.00
06 M	53.55	28.34	25.21
07 T	53.55	28.34	25.21
08 W	53.55	28.34	25.21
09 TH	53.55	28.34	25.21
10 F	53.55	28.34	25.21
11 S	.00	28.34	.00
12 S	.00	.00	.00
13 M	.00	39.43	.00
14 T	.00	39.43	.00
15 W	.00	39.43	.00
16 TH	.00	39.43	.00
17 F	.00	39.43	.00
18 S	.00	39.43	.00
19 S	.00	.00	.00
20 M	.00	.00	.00
21 T	.00	.00	.00
22 W	.00	.00	.00
23 TH	.00	.00	.00
24 F	.00	.00	.00
25 S	.00	.00	.00
26 S	.00	.00	.00
27 M	.00	.00	.00
28 T	.00	.00	.00
29 W	.00	.00	.00
30 TH	.00	.00	.00
31 F	.00	.00	.00
	428.40	563.34	169.16

<u>Date</u>	<u>Gross</u>
01 S	.00
02 S	.00
03 M	.00
04 T	.00
05 W	.00
06 TH	73.83
07 F	73.83
08 S	.00
09 S	.00
10 M	73.83
11 T	73.83
12 W	73.83
13 TH	73.83
14 F	73.83
15 S	.00
16 S	.00
17 M	73.83
18 T	73.83
19 W	73.83
20 TH	73.83
21 F	73.83
22 S	.00
23 S	.00
24 M	73.83
25 T	73.83
26 W	73.83
27 T	.00
28 F	.00
29 S	.00
30 S	.00
	1,107.45

December 1980

Date	<u>Gross</u>	<u>Interim</u>	<u>Total</u>
01 M	91.63	.00	91.63
02 T	91.63	.00	91.63
03 W	91.63	.00	91.63
04 TH	91.63	.00	91.63
05 F	91.63	.00	91.63
06 S	.00	.00	.00
07 S	.00	.00	.00
08 M	91.63	.00	91.63
09 T	.00	.00	.00
10 W	.00	.00	.00
11 TH	.00	.00	.00
12 F	91.63	.00	91.63
13 S	.00	.00	.00
14 S	.00	.00	.00
15 M	91.63	.00	91.63
16 T	91.63	.00	91.63
17 W	91.63	.00	91.63
18 TH	91.63	.00	91.63
19 F	91.63	.00	91.63
20 S	.00	.00	.00
21 S	.00	.00	.00
22 M	.00	.00	.00
23 T	.00	.00	.00
24 W	.00	.00	.00
25 TH	.00	.00	.00
26 F	.00	.00	.00
27 S	.00	.00	.00
28 S	.00	.00	.00
29 M	91.63	.00	91.63
30 T	.00	.00	.00
31 W	.00	.00	.00
	1,191.19	0.00	1,191.19

January 1981

Date	Gross		Interim		Total
01 TH	110	.68		.00	110.68
02 F	110	.68		.00	110.68
03 S		.00		.00	.00
04 S		.00		.00	.00
05 M		.00		.00	.00
06 T		.00		.00	.00
07 W		.00	46	.00	.00
08 TH	110	.68	46	.00	64.68
09 F	110	.68	46	.00	64.68
10 S		.00	28	.75	.00
11 S		.00		.00	.00
12 M		.00	46	.00	.00
13 T		.00	46	.00	.00
14 W		.00	46	.00	.00
15 TH	110	.68	46	.00	64.68
16 F	110	.68	46	.00	64.68
17 S		.00	28	.75	.00
18 S		.00		.00	.00
19 M	110	.68	46	.00	64.68
20 T	110	.68	46	.00	64.68
21 W	110	.68	46	.00	64.68
22 TH		.00	31	.62	.00
23 F		.00		.00	.00
24 S		.00		.00	.00
25 S		.00		.00	.00
26 M		.00		.00	.00
27 T	110	.68	20	.12	90.56
28 W	110	.68		.00	110.68
29 TH		.00		.00	.00
30 F		.00		.00	.00
31 S		.00		.00	.00
	1,217	.48	615	.24	875.36

APPENDIX B
Expenses Award

January 14-18, 1980	\$22.50
January 21-25	22.50
January 28 -February 1	22.50
February 4-8	22.50
February 11-15	22.50
February 18-22	22.50
March 31-April 4	22.50
April 7-11	22.50
April 14-18	22.50
April 21-22	10.00
June 9-13	22.50
June 16-20	22.50
October 20-24	22.50
October 27-31	22.50
November 3-7	22.50
November 10-14	22.50
November 17-21	22.50
November 24-28	20.00 (Thanksgiving Day)
December 1-5	20.00
December 8-12	20.00
December 15-19	20.00
December 22-24	15.00
December 26	5.00 (Christmas Day)
December 29-January 2, 1981	20.00 (New Year's Day)
January 5-6	10.00
Total	\$500.00

I find that the Charging Party did not seek employment on these holidays.