Fresno, California

STATE OF CALIFORNIA AGRICULTURAL

LABOR RELATIONS BOARD

GRAMIS BROTHERS FARMS, INC. and GRO-HARVESTING, INC., Respondent, and HECTOR CHAVEZ, an individual, and JAVIER NAVARRO, an individual, Charging Parties.	Case Nos . 82-CE-4-F 82-CE-5-F 14 ALRB No. 12 (9 ALRB No. 60)

SUPPLEMENTAL DECISION AND ORDER

On October 24, 1983, the Agricultural Labor Relations Board (ALRB or Board) issued a Decision and Order in which it concluded, inter alia, that Gramis Brothers Farms, Inc. and Gro-Harvesting, Inc. (Respondent) had unlawfully discharged Hector Chavez in violation of the Agricultural Labor Relations Act (ALRA or Act) in retaliation for his participation in protected concerted activities. The Board further found that Respondent had unlawfully ceased to provide Jose Sepulveda, Javier Navarro, and Enrique Aquino with transportation from Respondent's employee housing facilities to the work sites in retaliation for Navarro' s having earlier filed an unfair labor practice charge against Respondent. The Board ordered Respondent to reinstate Chavez to his former or a substantially equivalent position and to make him whole for lost wages and other economic losses. The Board further ordered Respondent to reimburse Navarro, Sepulveda, and Aquino for transportation

expenses at the rate of 25 cents per mile from April 2, 1982, until such time as Respondent resumed providing transportation or changed its transportation policy. (Gramis Brothers Farms, Inc. and Gro-Harvesting, Inc. (1983) 9 ALRB No. 60.)

In October, 1984, the California Court of Appeal, Fifth District, affirmed the Board's Decision and Order in the underlying proceeding. Thereafter, the Regional Director issued a proposed Backpay Specification setting forth the amounts of Respondent's monetary liability to the discriminatees. As Respondent contested the Proposed Backpay Specification, the matter was set for a full evidentiary hearing in which all parties participated.

On June 19, 1987, Administrative Law Judge (ALJ) Barbara D. Moore issued the attached Supplemental Decision and Order. Thereafter, Respondent and General Counsel each timely filed exceptions to the ALJ's Decision and Order along with their respective supporting briefs. The General Counsel and Respondent each timely filed reply briefs.

The Board has considered the ALJ's Decision in light of the exceptions and briefs of the parties and has decided to affirm her rulings, findings, and conclusions, except as modified herein,[1/] and to adopt her Order, with modifications.

[1/]We hereby modify certain findings by the ALJ in light of the exceptions and briefs of the parties, as follows: (a) We find merit in General Counsel's exception to the ALJ's computation of expenses incurred by Chavez while living at a labor camp during his employment with Pajaro Co-Op. Thus, we have corrected the computation to reflect the $70 per week housing

(fn. 1 cont. on p. 3)

ORDER

Pursuant to Labor Code section 1160.3, the Agricultural Labor Relations Board (ALRB or Board) hereby orders that Gramis Brothers Farms, Inc., and Gro-Harvesting, Inc., their officers, agents, successors, and assigns, shall pay to each of the discriminatees whose names are listed below the amounts listed next to each name plus interest computed in accordance with the decision in E.W. Merritt Farms (1988) 14 ALRB No. 5:

1. Hector Chavez[1] award, exclusive of interest, is $19,756.14 based on the following:

a. Transportation	$ 2,475.00
b. Housing	4,085.00
c. Uniforms	62.50
d. Net Backpay	13,133.64

2. Javier Navarro's award, exclusive of interest, is $1,033.50 based on the following:

(fn. 1 cont.)

expense for five months (or 20 weeks) in our Order;
(b) As the record reveals that Respondent as well as interim employers required shop employees to provide their own tools, and that Chavez met this condition of employment, the Board can only conclude that the storage of such tools while seeking interim employment was necessary. We further find that the $100 which Chavez paid in storage fees was reasonable and not gratuitous, as Respondent contends.
(c) The Board believes that the ALJ inadvertently overlooked a $100 housing expense paid by Chavez for the rental of a room in a private home and we have corrected the Order accordingly.
(d) Both General Counsel and Respondent filed exceptions to the ALJ's computation of the mileage reimbursement. General Counsel contends the ALJ inadvertently failed to utilize a round trip mileage figure (42 miles) regarding the distance from the Respondent's housing to the Douglas and Shaw Avenues fields and

(fn. 1 cont. on D. 4)

a. Travel to Lincoln/
Washoe Fields 198.75

b. Travel to Douglas/
Shaw fields 834.75

3. Jose Sepulveda's award, exclusive of interest, is $793.13 based on the following:

a. Travel to Lincoln/
Washoe fields $325.00

b. Travel to Douglas/
Shaw fields 367.50

c. Changing fields 100.63

4. Enrique Aquino's award, exclusive of interest, is $27.50 for travel to the Lincoln/Washoe fields.

Dated: October 27, 1988

BEN DAVIDIAN, Chairman[2/]

JOHN P. MCCARTHY, Member

GREGORY L. GONOT, Member

IVONNE RAMOS RICHARDSON, Member

WAYNE R. SMITH, Member

(fn. 1 cont.)

to add interest to all three transportation expense awards. Respondent contends the mileage figures used by the ALJ were incorrect and urges the Board to adopt figures not litigated at hearing but which it believes are more accurate. We find merit only in the General Counsel's exceptions. Therefore, in light of the record and the parties' briefs, we have corrected the mileage calculation as reflected in the attached Order and added interest thereon in accordance with standard Board practice.

[2/]The signatures of Board Members in all Board Decisions appear with the signature of the Chairman first, if participating, followed by the signatures of the participating Board Members in order of their seniority.

CASE SUMMARY

Gramis Brothers Farms, Inc.
and Gro-Harvesting, Inc.

14 ALRB No. 12
Case Nos. 82-CE-4-F
82-CE-5-F
(9 ALRB No. 60)

BACKGROUND

In Gramis Brothers Farms, Inc. and Gro-Harvestinq, Inc. (1983) 9 ALRB No. 60 the Agricultural Labor Relations Board (Board or ALRB) found that Respondent Gramis Brothers (Respondent or Company) had unlawfully discharged Hector Chavez because of his participation in protected concerted activities. Respondent was ordered to reinstate Chavaz to his former or a substantially equivalent position and to make him whole for lost wages and all other economic losses. The Board further found that the Company had unlawfully discriminated against Jose Sepulveda, Javier Navarro, and Enrique Aquino in retaliation for Navarro's having earlier filed an unfair labor practice charge against his employer. Respondent was ordered to reimburse these three employees for transportation expenses at the rate of 25 cents per mile from April 2, 1982 to such time as it resumed providing transportation or changed its transportation policy. In October, 1984, the California Court of Appeal, Fifth District, affirmed the Board's Decision and Order. Thereafter, the Regional Director issued a Backpay Specification setting forth Respondent's financial liability to the discriminatees. As Respondent contested the proposed Backpay Specification, the matter was set for a full evidentiary hearing in which all parties participated.

ALJ DECISION

As to the transportation reimbursements, the ALJ calculated the round trip mileage from the Company's housing to the work sites based upon the unrebutted measured distance established by the General Counsel to one of the fields and the witnesses' testimony and a section map (Respondent's exhibit) to the other fields and awarded reimbursements accordingly. She calculated the mileage due and owing to Sepulveda for changing fields during the course of a work day based upon his credible, unrebutted testimony and included this award in Sepulveda's total transportation award.

Based upon the record, the ALJ found Chavez had been laid off as part of a general company layoff from his first interim employment and he had not voluntarily and unjustifiably quit as contended by the Respondent Company. Since Respondent failed to meet its burden of proof, an offset in wages was inappropriate. The ALJ also found the first interim employment was not substantially equivalent to that at Respondent due to the differences in wages, duties, supervision, and hours. Thus, an offset was, again,

inappropriate. She found that subsequent interim employment was not substantially equivalent for similar reasons and that Chavez did not sustain a willful loss of earnings for leaving each of these jobs to find a better position. Furthermore, based on Chavez[1] testimony, the ALJ found he had reasonably and diligently searched for work during a seven month period of unemployment since he had registered with the State unemployment offices in three areas of the the state and with several union offices, searched for work on a daily basis, and had travelled to other geographic areas searching for work. Since the General Counsel had met its burden on job search, Chavez did not need to prove he had applied at all possible job sources. Therefore, Chavez was entitled to the entire amount of backpay and for the entire period recommended in the General Counsel's specification. Lastly, in accordance with Board precedent, the ALJ found appropriate and reasonable the General Counsel's calculation of backpay on a weekly basis because the Respondent and interim employers' pay periods were weekly or bi-weekly.

As to expenses, the ALJ found the General Counsel had met its burden in proving Chavez' expenses (actual or estimates) and awarded Chavez reimbursements for: transportation costs incurred while searching for interim employment and payment for rides to work; housing and utility costs incurred during interim employment and searching for work; uniform costs expended at interim employment; and tool storage.

BOARD DECISION

In light of the record and parties' briefs, the Board adopted the ALJ's findings, conclusions, and recommended Order, with modifications as to her computation of Chavez' housing award by correcting a mathematical error and including a rental expense which had been inadvertently omitted. The Board concluded the tool storage payment was a reasonable expense since shop employees, including Chavez, were required to provide their own tools as a condition of employment and storage of the tools was necessary while Chavez sought interim employment. The Board also modified the transportation reimbursement computation by calculating a round trip mileage figure from Respondent employee housing to the work site as to Sepulveda's and Navarro's awards and added interest, in accordance with standard Board policy, to all of the awards.

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This Case Summary is furnished for information only and is not an official statement of the case, or the Agricultural Labor Relations Board.

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STATE OF CALIFORNIA AGRICULTURAL

LABOR RELATIONS BOARD

In the Matter of:

GRAMIS BROTHERS FARMS, INC., AND GRO-HARVESTING, INC., Respondent, and HECTOR CHAVEZ, an individual and JAVIER NAVARRO, an individual, Charging Parties.	}	Case Nos. 82-CE-4-F 82-CE-5-F (9 ALRB No. 60

Appearances :

Juan F. Ramirez
Delano, California
for the General Counsel

Michael J. Hogan
Littler, Mendelson, Fastiff & Tichy
Fresno, California
for the Respondent

Before: Barbara D. Moore
Administrative Law Judge

SUPPLEMENTAL DECISION OF ADMINISTRATIVE LAW JUDGE

BARBARA D. MOORE, Administrative Law Judge:

On October 24, 1983, the Agricultural Labor Relations Board (ALRB or Board) issued its decision and order in Gramis Brothers Farms, Inc., and Gro Harvesting, Inc. 9 ALRB No. 60 wherein the Board found inter alia, that Respondent, Gramis Brothers (Respondent, Gramis or the Company) had unlawfully discharged Hector Chavez in violation of Labor Code section 1153(a) of the Agricultural Labor Relations Act (Act or ALRA).[1] The Board further found that Respondent discriminated against Javier Navarro, Enrique Aquino and Jose Sepulveda in violation of section 1153(d) of the Act by ceasing to provide them with transportation to their work sites because Mr. Navarro previously had filed an unfair labor practice charge alleging that Respondent had unlawfully discriminated against him, Aquino and Sepulveda.

The Board directed Respondent to make whole Hector Chavez for all economic losses suffered as a result of his unlawful discharge on March 13, 1982, and to reimburse Navarro, Aquino and Sepulveda for their automobile expenses incurred in providing their own transportation to their work sites. Reimbursement was ordered at the rate of 25 cents per mile from April 2, 1982, until Respondent resumes providing transportation or changes its general practice of providing same.

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

Respondent's petition for review was denied by the Court of Appeals for the Fifth Appellate District on October 19, 1984. No petition for hearing was filed with the California Supreme Court.

The parties were unable to resolve the amounts due under the Board's order, and, on October 7, 1986, the Regional Director of the Board's Delano office issued a Backpay Specification and Notice of Hearing.[2] Subsequently, a First Amended Backpay Specification-* was issued on November 26, 1986. Respondent filed its answer on October 20, 1986. [4]

A hearing was held before me on December 2, 3 and 4, 1986. All parties were given full opportunity to participate in the hearing. The General Counsel and Respondent filed post-hearing briefs.[5]

Upon the entire record, including my observation of the demeanor of the witnesses, and after full consideration of the

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[2]G.C. Ex 1A. (hereafter referred to as the Specification.)

[3]G.C. Ex. ID. (hereafter referred to as the Amended Specification.) At hearing, Respondent moved to strike the Amended Specification. I denied the motion. There was no showing Respondent was prejudiced by the timing of the filing of the Amended Specification, and General Counsel had not unreasonably delayed in filing same. I cautioned General Counsel, however, that the Pre-Hearing Conference would have been more productive had he ascertained facts prior to that time rather than including them in the Amended Specification only shortly before hearing.

[4]G.C. Ex. 1C. (hereafter Answer.)

[5]General Counsel's brief was submitted with page 6 missing. General Counsel was unable to supply the missing page.

briefs filed by the parties, I make the following findings of fact and conclusions of law.

I. Transportation Expenses Due Javier Navarro, Enrique Aquino and Jose Sepulveda.

A. FACTS

The parties agreed that the Amended Specification accurately sets forth the total number of days for which reimbursement is owed to each discriminatee; to wit, Navarro 159 days; Aquino 11 days[6] and Sepulveda 165 days. The rate of reimbursement is established in the Board's order as twenty five cents per mile. The only issue is the number of miles for which each discriminatee is owed reimbursement.

The parties disagree how far it is from the company housing area to the fields where the discriminatees worked. They also disagree as to the extent the discriminatees incurred mileage driving from one field to another during the course of a day's work.

Respondent had two sets of fields to which the discriminatees could have been assigned. One set of fields was bounded by Lincoln Avenue and Washoe Avenue, and the other set was bounded by Douglas Avenue and Shaw Avenue. Respondent's housing area is located at the point where Lincoln Avenue and Jerrold

[6]The parties stipulated that Mr. Aquino worked 11 days. General Counsel's brief refers to 10 days. I conclude that is an inadvertent error and rely on the stipulated figure of 11 days.

Avenue intersect.[7] Respondent did not introduce any work records or other evidence to show in which fields the discriminatees worked.

Respondent's obligation to reimburse the discriminatees begins on April 2, 1982. From that date until the end of his employment at Gramis in December 1983, discriminatee Jose Sepulveda worked as an irrigator and tractor driver.

Mr. Sepulveda estimated he worked a little over a month, approximately 35 days, at the fields at Douglas and Shaw. Respondent has offered no evidence to rebut his estimate. I find Mr. Sepulveda is entitled to round trip mileage to those fields for 35 days and for round trip mileage to the Lincoln/Washoe fields for the remaining 130 days.

During the entire time period, Mr. Sepulveda drove his car to work every day and always drove alone. He did not drive with other workers because they were assigned to different fields than those in which he was assigned to work.

In addition to the miles driven from the housing area to the fields and returning, Mr. Sepulveda drove his vehicle from one field to another during the work day. He particularly changed fields during the workday when he was working as a irrigator

[7]See G. C. Exs. 2A and 2B; Resp. Exs. 1 and 2 which are maps of the area. Although G.C. Ex. 2A does not show that Lincoln Avenue extends west to Washoe and beyond, G.C. Ex. 2B was drawn to reflect that, as all parties agree, Lincoln does cross Washoe and extends westward to where it intersects with Jerrold Avenue.

because he had to move from one field to another in order to connect or disconnect main irrigation lines.

He estimated he averaged 2 or 3 miles per day in moving between fields. Sometimes he would change fields as often as every hour or hour and a half.

He further estimated that there were probably only 4 or 5 days during the entire period for which expenses are due when he did not change fields. Those occasions were primarily when he was driving a caterpillar when he usually would stay in the same field all day long.

Respondent's foreman, Fausto Ruiz, estimated that Mr. Sepulveda would not have needed to change fields more than once a week. (II:14-15.) He testified the work of an irrigator consisted of taking the main line, hooking it up to the Westlands Water District meter and then running lines of pipe to each row. (I: 43 et seq.) Lines would typically stay in a row for 12 to 24 hours. (III: 36) Once an irrigator finished moving the lines, that would be the end of his work day.

I credit Mr. Sepulveda's estimate that he changed fields on all but 4 or 5 of the 165 days he worked. I found him to be a generally credible witness. He appeared to carefully consider his estimates, and I am persuaded they are based on this best recollection of events which occurred up to 4 years prior to the hearing.

Respondent is in the better position to establish whether Mr. Sepulveda worked typically worked in one field all day by

providing work records. Respondent's only evidence to rebut Mr. Sepulveda's testimony was the testimony of Ranch Foreman Fausto Ruiz. His testimony was general, and I was not convinced by his demeanor at trial that he had any actual recollection of Mr. Sepulveda's work assignments.

Discriminatee Javier Navarro was employed regularly from October 18, 1981 to November 1982. During this time, he sometimes worked as an irrigator. He also drove a tractor, a caterpillar, and the mechanical cotton pickers.

During the period from April 2, 1982, until he left Gramis in November 1982, Mr. Navarro regularly drove his car to his work site and always drove alone. He estimated he worked approximately half the time at the fields located along Washoe and Lincoln. (I: 78) While he did not specifically testify that the remainder of his time was spent in the fields near Douglas and Shaw, he referred to these as the other fields of Gramis. (I: 77.) I infer that he divided his time approximately equally between the fields along Lincoln and Washoe Avenues and those along Douglas and Shaw Avenues. General Counsel does not claim reimbursement for travel between fields for Mr. Navarro.

Discriminatee Enrique Aquino did not testify. Mr. Navarro testified that he saw Mr. Aquino working primarily in the fields near Lincoln and Washoe. He also observed Mr. Aquino drive to work alone. (I: 78.)

Mr. Sepulveda testified he saw Mr. Aquino moving pipelines, doing hoeing and other brief jobs. Mr. Sepulveda said

that, in addition to checking sprinklers and moving pipes, hoeing and the other jobs Mr. Aquino performed would cause one to change fields.

Based on the testimony of Mr. Sepulveda and Mr. Navarro, I find that Mr. Aquino worked in the fields near Lincoln and Washoe throughout the relevant time period. I find the evidence insufficient to establish how often he might have changed fields and note that General Counsel has made no claim in this regard.

Respondent calculated the miles traveled from the housing area to the fields based in part on Resp. Ex. 2 which is *a* xerox copy of part of a document known as a section map. (III: 55-56.) Each section is identified with a printed number in the upper right hand corner of the section. Jim Gramis credibly testified that each section on the map is one square mile.

The company housing area is located in the bottom southwest corner of section two (2) as indicated on Resp. Ex. 2. The fields in section 2 are immediately adjacent to the housing area, i.e., within 1 square mile. The fields at Douglas and Shaw are in section 12. Sections 6, 31 and 32 contain the fields in the Washoe and Lincoln areas.

Mr. Gramis estimated that the distances from the housing area to section 6 is two miles; to the lower half of section 32 about 4 miles; and to section 12 approximately 14 miles. (III: 55-64).

The distance from the company housing to the farthest of the fields near Douglas and Shaw is 21 miles as measured by a car

odometer driving along San Diego and California Avenues and then on a dirt road. The roads in the area are primarily dirt roads and sometimes do not run straight through areas since there are natural barriers. (I: 12; 14.) The distance from the housing area to the farthest of the fields located along Lincoln and Washoe is approximately 6 miles also measured by car odometer. This distance was measured traveling along Lincoln Avenue.

B. ANALYSIS AND CONCLUSIONS

General Counsel has the burden of proving expenses claimed, but estimates are sufficient to carry that burden. (High and Mighty Farms (hereafter High and Mighty) (1982) 8 ALRB No. 100 aff'd in unpublished decision High and Mighty v. Agricultural Labor Relations Board, hearing den. October 18, 1984; Aircraft and Helicopter Leasing and Sales, Inc. (hereafter Aircraft) (1976) 227 NLRB 644 [94 LRRM 1556].) Thus, travel expenses are recoverable even though a discriminatee is unable to "set forth in detail the amounts of expense or the exact manner in which they were incurred. ..." (Mastro Plastic Corp.) (hereafter Mastro I) (1962) 136 NLRB 1342, 1384 [50 LRRM 1006], enf'd. in relevant part (2d Cir. 1965) 354 F.2d 170 [60 LRRM 2578], cert. den. (1966) 384 U.S. 97 [62 LRRM 2292].)

The transportation expenses herein were incurred in 1982 and 1983. The fact that Mr. Navarro and Mr. Sepulveda could not establish precisely to what portion of a field they drove or exactly how many days they worked in each group of fields does not prevent them from recovering transportation expenses.

I reject General Counsel's argument that mileage should be measured to the farthest point in each field. Although it is true that in a compliance proceeding all uncertainties are resolved against the Respondent whose violation of the law has caused the uncertainty,[8] I find it inappropriate to presume the greatest measure of liability when the probability is that the discriminatees worked in different parts of the field areas to which they were assigned.

Respondent, however, simply asserts that I should calculate mileage at 3 miles even though the one way distance from the southwest corner of section 2 where the housing area is located to the southwest corner of section 6, which is the closest point of the nearest fields, is 2 miles. (See, Resp. Ex. 2.) The minimum round trip distance would be 4 miles.

Moreover, Mr. Sepulveda's unrebutted testimony established that he worked 35 days in the fields along Douglas and Shaw which by Respondent's own estimate is 14 miles. A fair measure falls somewhere between the positions of General Counsel and Respondent.

The evidence establishes that one may drive east on Lincoln from the housing area and thence north on Washoe. I

[8]McCann Steel Company Inc., (1974) 212 NLRB 394 [87 LRRM 1155]; NLRB v. Miami Coca-Cola Bottling Co. (hereafter Miami Coca-Cola) (5th Cir. 1966) 360 F.2d 569 [62 LRRM 2155].

will use the distance from the southwest corner of section 2 to the southeast corner of section 32 as the appropriate measure. It is the nearest approximation to *a* mid-point using what has been testified to as a viable route.

The distance to this point along Lincoln and Washoe Avenues, measured according to Resp. Ex. 2, is 5 miles. Thus, I will use 10 miles round trip as the appropriate distance to the Lincoln/Washoe fields.

With regard to the fields at Douglas and Shaw (section 12 on Resp. Ex. 2), Mr. Gramis estimated the distance from thera to the housing area as 14 miles but did not describe how he arrived at that estimate. I decline to simply split the difference between the two mileage figures to these fields put forth by General Counsel and Respondent since I have no reliable evidence that a route exists which would yield such a figure. Thus, I feel constrained to choose one distance over the other.

In this instance, General Counsel has established a measured distance to the fields, and there is no evidence of an appropriate alternate route. Thus, I will use General Counsel's figure of 21 miles from the housing area to the Douglas/Shaw fields.

Using the above described measurements, Mr. Sepulveda is entitled to $325.00 for travel to the Lincoln/Washoe fields. (130 days times 10 miles times $.25 per mile.) He is entitled to $183.75 for travel to the Douglas/Shaw fields. (35 days times 21 miles times $.25 per mile.)

The issue of changing fields arises only with regard to Mr. Sepulveda. I find he is entitled to reimbursement for 2.5 miles per day for 161 days based on his testimony that he traveled between 2 and 3 miles on all but 4 or 5 days. He is entitled to $100.63. (161 days times 2.5 miles times $.25 per mile.) The total award to Mr. Sepulveda amounts to $609.38. ($325.00 plus $183.75 plus $100.63.)

I have found that Mr. Navarro worked approximately one half of the time at the fields along Lincoln and Washoe and the other half in the fields along Douglas and Shaw. Thus, he is entitled to reimbursement for 79.5 days at each field area. For work in the Lincoln/Washoe area, he is entitled to $198.75. (79.5 days times 10 miles time $.25 per mile.) He is entitled to $417.38 for mileage to the Douglas/Shaw fields. (79.5 days times 21 miles time $.25 per mile.) His total award is $616.13.

Mr. Aquino is entitled to reimbursement for 11 days of travel to the Lincoln/Washoe fields at 10 miles per day at $.25 per mile. His total award amounts to $27.50.

II. Hector Chavez

A. ISSUES

1. The Backpay Period

The Board's Order specifies that the backpay period begins on March 13, 1982, the date Respondent discharged Mr. Chavez. Respondent does not dispute General Counsel's contention that the backpay period ended on April 20, 1985, when Mr. Chavez did not accept Respondent's offer of reinstatement.

2. The Amount of Gross Backpay

Respondent and General Counsel have stipulated to the gross backpay amounts. They agree that Mr. Chavez was on salary at the time he was unlawfully fired and that he was earning $600.00 every 2 weeks. (III: 1)

3. Method of Computing Backpay

General Counsel computed backpay on a weekly basis because gross backpay was in a weekly form. Respondent, in its answer, asserts that backpay should be calculated on an annual or quarterly basis because Chavez was a year-round employee. This argument is not raised in Respondent's brief, but I presume it is still Respondent's position.

4. Net Backpay

General Counsel and Respondent agree that Respondent has no net backpay liability beyond July 31, 1984, when Mr. Chavez unjustifiably quit his employment at Ochoa. General Counsel has not sought expenses beyond this point and has offset the wages Mr. Chavez would have earned at Ochoa against gross backpay which results in no net backpay.

Respondent contends that Mr. Chavez unjustifiably quit his first interim employer, Cardella, and argues that the amount of his wages at Cardella should be offset against gross backpay throughout the backpay period. Respondent argues it has no net backpay liability at all since Chavez earned $5.50/hr. at Cardella and $5.00/hr. at Gramis.

Alternatively, Respondent contends Mr. Chavez unjustifiably quit his employment at Harris Ranch, the second interim employer, and claims that interim wages at Harris should be offset against gross backpay owed. Gramis further contends that no expenses are owed subsequent to Mr. Chavez leaving Harris.

General Counsel's position is that Mr. Chavez was laid off at Cardella and justifiably quit his job at Harris. Therefore, Respondent still has a net backpay liability from the date of Mr. Chavez[1] discharge until he began work at Ochoa.

There is a further component to the net backpay liability. General Counsel contends that Mr. Chavez worked only 44 hours per week at Gramis and has deducted interim earnings only for the first 44 hours per week. Respondent contends that Mr. Chavez typically worked 60 and sometimes up to 70 hours per week during his employment there and thus argues that all interim earnings should be offset.

5. Expenses

Respondent argues it is not liable for any of Mr. Chavez[1] expenses for housing or utilities because the housing it provided to Mr. Chavez was substandard. It also argues the housing was not an employment benefit because the company did not reduce the wages of those employees to whom it provided housing, nor did it increase the wages of the employees to who it did not provide housing. Alternatively, Respondent claims it is not liable for housing costs after late 1982 because the housing was shut down.

General Counsel contends Respondent should reimburse Mr. Chavez for housing and utility costs because they were expenses he did not have while employed by Gramis. After he was unlawfully fired, he had to provide both and incurred costs to do so.

Respondent also disputes the amount of gasoline expenses incurred by Mr. Chavez when he was searching for work.

6. Search for Work

Respondent asserts Mr. Chavez did not make a diligent search for work from January 1, 1983, through July 2, 1983. Therefore, it contends no backpay is owed for this period.

B. FACTS

1. The Backpay Specification

Mr. Ricardo Ornelas, a Field Examiner in the Board's Delano Regional Office, prepared the original and amended backpay specifications. He used the wages Mr. Chavez earned at Gramis as the measure of gross backpay throughout the backpay period.

Mr. Chavez was the only shop mechanic while he was employed at Gramis, and the company did not replace him after he was discharged. Thus, there is no replacement or representative employee whose earnings could be used as a measure for gross backpay. There is no evidence of any salary increases or bonuses which Mr. Chavez would have received had he remained working at Gramis.

Since gross backpay was in a weekly form, Mr. Ornelas used a weekly format for interim earnings as well. When interim

earnings were provided in a bi-weekly or quarterly form (from the Employment Development Department), Mr. Ornelas divided the total wages by 2 weeks and 12 weeks, respectively, to obtain a weekly amount.

After the original backpay specification issued, Mr. Ornelas was informed that Mr. Chavez had worked only 44 hours per week for Gramis. Mr. Ornelas did not have any records from Gramis specifically for Mr. Chavez when he prepared the original specification. (I: 99.) Respondent never provided any records showing that Mr. Chavez worked more than 44 hours per week. (I: 115.) Consequently, Mr. Ornelas amended the specification and offset only the first 44 hours per week of interim earnings.

Mr. Ornelas had access to records showing the actual hours worked by Mr. Chavez at two of the interim employers, namely, Cardella and Harris. (I: 109-110.) He simply deducted all the interim earnings from the remaining interim employers since he could not break them down by hours. (I: 110.)

Mr. Ornelas calculated expenses for uniforms based on the recollections of Mr. Chavez and, in some cases, notations on check stubs. The transportation expenses were based on estimates from Mr. Chavez of how much money he spent rather than a number of miles multiplied by a mileage rate.

2. Employment At Gramis

During 1981-82, Mr. Gramis had overall responsibility for running Gramis Brothers and was usually at the ranch 4 days a

week and sometimes more often. Mr. Ruiz was the ranch foreman and was supervised only by Jim Gramis. There are no supervisors under Mr. Ruiz.

Mr. Chavez began working at Gramis in late June or early July 1981. He was driving throughout the area looking for work, and he stopped at Gramis and spoke to foreman Fausto Ruiz. He asked for work as a mechanic and was hired on the spot. (I: 121.) He began work the next morning and was told he would be paid $4.00 per hour on a trial basis to see if he knew his job. (I: 123.)

Mr. Gramis said he and Mr. Ruiz jointly determined they would offer Mr. Chavez $1200.00 per month in salary. Mr. Ruiz and Mr. Chavez discussed the matter several times, and, approximately 4 to 6 weeks after he began at Gramis, Mr. Chavez was placed on a salary of $600.00 each two weeks.

Mr. Chavez testified that when he was placed on salary, Mr. Ruiz also gave him regular hours. He said Ruiz told him he would have a regular 44 hour work week with a work schedule of 8 a.m. to 5 p.m. from Monday through Friday and four hours on Saturday. He was to receive one hour for lunch.

Prior to going on salary, Mr. Chavez said there were many occasions when he worked more than 8 hours per day. After he went on salary, there were only a few such occasions such as when there was some special task which needed to be done. On many such occasions, Mr. Ruiz told Mr. Chavez he could come in later the next day. (I: 126-131.)

Mr. Ruiz denied that he ever told Mr. Chavez that he would work only 44 hours per week. The typical work week for most employees began at 7:00 a.m. and consisted of 60 or 70 hours per week, approximately 10 hours per day, although sometimes the weeks would be shorter than 60 hours. (III: 11.) Mr. Ruiz said that, as the shop mechanic, Mr. Chavez was required to report to work the same time as other employees. (III: 9.) He also denied ever telling Mr. Chavez that if he worked more than 8 hours in a day, he could come in later the next day. (III: 13.)

Mr. Gramis testified he never authorized Mr. Ruiz to allow Mr. Chavez to work only 44 hours. (III: 53.) He estimated that Mr. Chavez worked roughly 60 hours per week prior to being put on salary and said he expected him to work approximately the same number of hours thereafter. (III: 47-48.) When he and Mr. Ruiz decided on the salary, he calculated that he would be paying Mr. Chavez approximately $5.00 per hour.

Gramis admitted that he was not at the shop every day and that he did not specifically keep track of Mr. Chavez[1] hours. He indicated, however, that he knew generally the kind of work that Mr. Chavez did and that it took more than 44 hours per week. (III: 66.) He said he believed Mr. Reyes kept payroll sheets and did not simply keep the employees' hours in his head. (III: 66.) Respondent provided no such records to the regional office; nor was any such evidence offered at hearing.

While he was working at Gramis, discriminatee Javier Navarro typically began work about 6:30 or 7:00 a.m. and worked

ten to twelve hours a day from approximately October 1981 through mid-March 1982. He testified that during this same time frame, he usually saw Mr. Chavez still in his room when Mr. Navarro was leaving for work. When he returned home in the evening, usually at 5:30 p.m., Mr. Chavez was already home. Only during the cotton harvest, October and part of November 1981, did Mr. Chavez work about the same hours as Mr. Navarro. (I: 88-89.)

While I generally found Mr. Chavez to be a credible witness, I do not credit his testimony that he regularly worked only 44 hours per week at Gramis. Although I am troubled by Respondent's failure to introduce any payroll records reflecting Mr. Chavez' hours of work, especially in view of the fact that such records are required by state law,[9] I am persuaded that it is improbable that Mr. Chavez had such a regular schedule.[10]

Mr. Chavez said after he was put on salary only rarely did he work more than 8 hours per day or more than a 5£ day week. (II: 107.) Mr. Navarro, however, indicated that Mr. Chavez worked more or less the same hours as other employees during the cotton harvest which lasted about a month and half. Mr. Navarro's testimony is more credible.

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[9]See Labor Code sections 1171 and 1174.

[10]I do not find Mr. Navarro's testimony helpful since there is no indication how long Mr. Chavez might have remained in the housing area after Mr. Navarro left or how long Mr. Chavez might have been there before Mr. Navarro returned.

I also note that Mr. Chavez obtained jobs as a mechanic with three interim employers. In none of these instances did he have a regular schedule such as described at Gramis. General Counsel conceded the job at the Ochoa Company was substantially equivalent employment, and Mr. Chavez sometimes worked 7 days a week, 9 to 12 hours per day, for a salary of $400.00 per week, plus $75.00 per week for expenses. (II: 84, 88.) Moreover, as Respondent points out, a salary of $300.00 per week for 44 hours of work amounts to an hourly rate of $6.82. That is a very substantial increase from the $4.00 per hour which Mr. Chavez was being paid. I find such a large increase unlikely.

Based on demeanor, I found Mr. Chavez and Mr. Gramis equally believable and thus resort to logical inference based on probabilities to resolve the issue. I recognize that Mr. Gramis testified only that he did not authorize Mr. Ruiz to allow Mr. Chavez to work only 44 hours. I do not believe Mr. Ruiz would have done so on his own accord. I note that in the underlying unfair practice case, he believed Mr. Gramis should not have agreed to share with the workers the cost of cleaning up the unsanitary conditions in the housing area.

At the time he was put on salary, Mr. Chavez said he was given the use of a pickup truck. He did not have a car, and it was his understanding that he could use the pickup on the work site and also to run small personal errands such as buying groceries and going to the doctor.

Mr. Chavez said Mr. Ruiz observed him in town with the pickup getting groceries on several of occasions and never said anything to him about using the pickup for personal errands. He retained use of the pickup until the last few months of his employment at Gramis when the various difficulties which resulted in the underlying unfair labor practice case began.

Mr. Chavez was provided with seven shirts and seven pants every two weeks as uniforms at Gramis. He had these available the entire time he worked at Gramis and did not pay anything for the use of the uniforms. (I: 127.)

Respondent does not dispute that the uniforms were provided at no cost. It does dispute that Mr. Chavez was allowed to use the pickup truck for incidental personal use. Mr. Gramis testified such use would not have been permitted because of liability concerns.

I credit Mr. Chavez. While officially he may not have been officially allowed to use the truck for personal errands, I believe his testimony that he was observed by Mr. Ruiz and not cautioned against so using the truck.

3. Interim Employment

A. Cardella

While he worked for Respondent, Mr. Chavez became acquainted with Pete Vasquez the foreman at Cardella, a nearby farming operation. After he was fired by Respondent, Mr. Chavez spoke to Mr. Vasquez and was hired immediately as a journeyman mechanic.

Mr. Chavez had some 10 years of experience working on farm equipment. In general, he was used to working on all kinds of farm equipment. He was capable of making both major and minor repairs including overhauling engines. He also could do work fabricating welding; e.g. making modifications on farm implements and spray rigs. He could assemble and disassemble diesel engines, do field tests, and make hydraulic repairs of electric systems. (II: 4-8.)

Mr. Vasquez was Mr. Chavez[1] immediate supervisor. Mr. Vasquez in turn reported directly to Ron Cardella the owner. Mr. Chavez was hired at the rate of $5.55 per hour. He earned slightly more ($6.00 per hour) during the tomato harvest. (II: 13.) The tomato harvest season ran from mid-July through August or early September. (II: 14-15.)

His work week at Cardella consisted of nine or ten hours per day six days a week. During the 1982 tomato harvest season, Mr. Chavez worked from July 5 through August 7 without a day off.[11] During this time, he often worked 13 or 14 hours per day and occasionally more.[12] Sometimes he worked as many as

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[11]See, G.C. Ex. 5A. I note that the first few days in August (August 1 - August 9) are shown as July dates in the payroll records. Mr. Cardella testified that personnel often forgot to change the month or day on the time stamp machine. I infer that this was the case with the aforementioned dates.

[12]On one occasion, Mr. Chavez worked more than 36 consecutive hours to overhaul a tomato harvester which broke down in the middle of the harvest. (II: 14.) Cardella 's payroll records show he worked from 6 a.m. Sunday, July 25, until after 7:30 p.m. on Monday. While not directly ordered to do so, I find Mr. Vasquez expected Mr. Chavez to work to resolve the problem and that Mr. Chavez did what was expected of him.

sixteen hours per day. (II: 13-14.)

While he was working at Cardella, Mr. Chavez was provided with seven pairs of clothes every two weeks for use as a mechanic's uniform. (II: 13.) This was the same as he was provided at Gramis.

Mr. Chavez was not provided with a pickup or other vehicle at Cardella. (II: 13.) He usually rode to work with an irrigator who had the use of a company truck. When he could not do so, he paid $5.00 per day for a ride to work. He estimated this occurred 8 to 10 times while he was working there. (II: 11-12.)

Mr. Chavez characterized his work duties at Cardella and Gramis as essentially the same. The major difference was that at Gramis his foreman, Fausto Ruiz, would tell Mr. Chavez what work needed to be done and the priority of various tasks. (II: 17.) Mr. Chavez was then left on his own to do the work. At Cardella, Mr. Vasquez supervised Mr. Chavez more directly. Mr. Vasquez was not a mechanic, and his supervision sometimes led to disagreements between them as to how a job should be done.

Mr. Chavez described an incident when Mr. Vasquez questioned Mr. Chavez[1] judgment in replacing a broken chain on a tomato harvest machine with a new chain rather than simply repairing the chain on the spot. Mr. Chavez had determined it was faster to put on a new chain and repair the broken one later rather than keeping the harvester idle while he made the repairs.

Although Vasquez ultimately concurred in Mr. Chavez' judgment, it is clear Mr. Chavez was distressed that, as a competent mechanic, his judgment was questioned by Mr. Vasquez who was not a trained mechanic. Mr. Chavez' competence was never criticized by anyone at Gramis or at Cardella. There were no complaints that Mr. Chavez was not a good mechanic or that he did not do his work well.

The company shut down after the tomato harvest ended, and all but a few of the employees were laid off. (II: 175-176.) The parties stipulated that September 11, 1S82, was the last full day of work for Mr. Chavez at Cardella. Mr. Vasquez told Mr. Chavez the company would be shutting down for a while, and may have said it would be for about two weeks. (I: 61; II: 31.) Mr. Vasquez did not tell Mr. Chavez whether there would be steady work after the layoff period. (II: 32.) Mr. Chavez told Mr. Vasquez that he would use the time to look for another job. (I: 64; II: 32.)

Although some employees were recalled on September 27, there is no evidence Mr. Chavez was recalled. Although the company did not hire another mechanic until approximately 6 to 9 months after Mr. Chavez was laid off, Mr. Vasquez, credibly testified that if Mr. Chavez had returned he would have been rehired. (I: 71; 73.)

Mr. Chavez decided to look for another job for several

reasons. His main complaint at Cardella was the work: schedule.[13] His complaint was that with long hours and weeks without a day off, he had no chance to recuperate and no time to look for a better job. (III: 22-24.)

His other major concerns at Cardella were that many of his tools were stolen, that he was concerned about layoffs and that he was assigned menial tasks such as washing the tomato harvesters which he believed were inappropriate to his position as a mechanic. He was also displeased that he had less freedom to exercise his own judgment of how to get the work done.

Mr. Chavez estimated he lost tools worth several hundred dollars. (II: 15.) While he was working during the day, his tool box was out in the shop, and it was impossible to keep an eye on everyone who walked into the shop. At night, he locked the tool box.

Mr. Cardella and Mr. Vasquez corroborated Mr. Chavez' testimony that theft of tools was a serious problem. Mr. Chavez never asked for reimbursement for the lost tools, although he did complain to Mr. Vasquez about the situation.

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[13]Mr. Chavez testified that several times he believed Mr. Vasquez was spying on him. (II: 19-22.) I was not persuaded by Mr. Chavez' demeanor at trial that these episodes were a major concern to Mr. Chavez. My distinct impression from observing the manner in which he recounted the episodes was that they were annoying to him but were not reasons he left Cardella. Rather, I find that Mr. Chavez simply recounted all his dissatisfactions with his job at Cardella.

Mr. Chavez was assigned to wash the tomato harvesters on two or three occasions. High pressure hoses are used to wash them and flush out the tomatoes which get struck in the machine. The ground gets very muddy, and one must lie in the mud among the which then fall onto the person washing the machine. The washing process takes 2 or 3 hours, and Mr. Chavez was not provided with any kind of protective clothing as boots while washing the machines. In an understatement, Mr. Chavez described the job as a very distasteful procedure. (II: 24-26.) There is no showing that Mr. Chavez ever performed similar tasks at Gramis.

Throughout his testimony on this and other issues, Chavez was very low key and generally did not seek to magnify or exaggerate incidents. On most points, he impressed me as a truthful witness who did not try to stretch facts in order to serve his own cause.

I credit Mr. Chavez testimony that he decided not to return to Cardella because of the long hours, the loss of tools, the concern of whether there would be more layoffs, and the more direct supervision that he received at Cardella.

B. Search For Work After Cardella

After being laid off from Cardella, Mr. Chavez began looking for work immediately. He went out every day in search of employment beginning about 7:00 a.m. Sometimes he stayed out as late as 8:00 p.m. looking for work.

His method of seeking work was to drive around the countryside and look for ranches and farms that had shop buildings. He would then apply for work in person. It will be recalled that this was the way he obtained his job with Respondent.

Mr. Chavez drove all over the west area of Fresno County, meaning the area west of the city of Fresno. He specifically recalled going to the communities of Huron, Los Banos and Hanford. (II: 37.) He recalled the names of several of the places he stopped to look for work; specifically, Boston Ranch, Airways and Sinker Ranch. (II:38.) He credibly testified that there were other places he went that had no name on the shop or on the mail box.

During this time, Mr. Chavez did not have a car. He paid approximately $10.00 to $12.00 per day for someone to drive him to look for work. He estimated that he spent an average of $50.00 per week on gasoline searching for work. (II: 37.)

C. Harris Ranch

Although he freely admitted that he had no specific evidence that anyone from Respondent ever gave him a bad recommendation, Mr. Chavez noted he never obtained work from anyone to whom he mentioned Respondent as a prior employer. He decided to use his two middle names when seeking employment.

He applied for work at Harris Ranch and used the name Emeterio Ayala. Mr. Chavez' full name is Hector Emeterio Chavez

Ayala. (II: 39.)[14] He also indicated he had just come to the United States from Mexico and indicated that he spoke only Spanish although he speaks English quite well.

After not having been able to obtain work for over two weeks, he was hired immediately by Harris. (II: 38-40.) He began work on September 29, 1982.

As at Gramis, Mr. Chavez was told he would be hired on a trial basis. He was hired as a journeyman mechanic. His initial salary was $4.75 per hour. The shop foreman, Julius, promised they would talk about a raise in one month and that if Mr. Chavez were doing a good job he would be given a raise. (II: 44-45.) No specific amount was discussed, but Mr. Chavez took the job because he felt sure he would earn the raise.

Mr. Chavez reminded Julius that they had discussed a raise if Mr. Chavez did his job well. (II: 52.) He asked Julius if his work was satisfactory. Julius said it was, but he was noncommittal about a raise. (II: 52-53.) They had two or three similar conversations, and Mr. Chavez never received any indication that he would receive a raise.

Mr. Chavez estimated he worked approximately nine hours per day at Harris. (II: 46.) His work duties were typical for a farm mechanic. He was not provided with a pickup truck. (II: 46.) Nor was he provided uniforms.

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[14]I credit Mr. Chavez that this was the reason he worked under a different name. *I* find no evidence to support Respondent's contention that Mr. Chavez sought to conceal his interim earnings

He bought two new coveralls for work which he estimated cost $20.00 each. (II: 45.) He discussed the matter of uniforms with Julius who told him to order them. Approximately a week or ten days before he quit Harris, he was provided the uniforms.

At that time, Mr. Chavez received his paycheck, and there was a deduction of $30.00 as a deposit for the uniforms. There was also a deduction for the cost of cleaning the uniforms. Mr. Chavez was extremely upset because nothing had been said to him about taking money out of his check to pay for the uniforms.

Mr. Chavez complained bitterly to Julius that he was being put off about his promised raise and now, instead of a pay increase, he was receiving a pay reduction because the uniform cost was being taken out of his paycheck. He complained and was issued a new check but could not recall if the new check still had the deductions. (II: 59, 60.) As *a* result of this dispute, Mr. Chavez quit. (II: 55-59.)

The primary reason Mr. Chavez left Harris was that he was dissatisfied with his wages and benefits. (II: 64.)[15] He complained to another supervisor that other mechanics were being paid $6.00 per hour, had the use of a pickup truck and received housing either free or at a minimal cost, and they were not doing as good a job as he was. (11:62-63.) He said he believed he should be compensated for his abilities. (II: 59.) He left work November 11, 1982.

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[15]Mr. Chavez described an incident at Harris where he was recognized by a salesman who told Julius, the shop foreman, who Mr. Chavez was and that he was not from Mexico. A few days later, a man who

D. George Brothers

After leaving Harris, Mr. Chavez looked for work every day. He drove to Tulare County and to the southeastern portion of Fresno County. He estimated he spent $40.00 in gas for the week he was searching for work. (II: 61.)

Mr. Chavez found work with George Brothers pruning trees and vines. He took the job because he thought it would give him a chance to talk to the superintendent about becoming a mechanic. Twice he asked the field superintendent about being employed as a mechanic and was told that the company did not need any at that time. (II: 65-67.)

Mr. Chavez left George Brothers because they pay was too low and the working conditions were terrible. There were no benefits other than his pay of $4.00/hour. (II: 67-69.)

He was required to work in the fields in the rain with water up to his knees. He was given no boots and no coat. At Gramis, he never had to work in the rain. (II: 92-93.) He told the foreman that he would not work under those conditions, and, since there was no possibility that he could move into a mechanic's position, he left.

(Footnote 15 Continued)
identified himself as from Harris came to Mr. Chavez and told him the company did not need a union. (II: 49.) Mr. Chavez said this incident did not influence his leaving Harris, and there is no evidence that this incident was related to the factors which did cause Mr. Chavez to leave. That is, there is no showing, for example, that Mr. Chavez did not receive his promised raise because of this episode.

While working at George Brothers, he paid $4.00 per day for transportation and worked six days per week. (II: 69.) He began work the week ending November 17, 1982, and left the week ending December 25, 1982.

E. Search For Work After George Brothers

After leaving George Brothers, Mr. Chavez looked for work every day; sometimes even on Sundays. He drove to San Jose where a friend lived to see if he could obtain work through his friend. From San Jose, he went to Salinas and King City in an unsuccessful effort to find work. He specifically recalled checking at the Almaden Ranch. He also checked newspaper ads in King City and in Salinas. (II: 146.)

Normally, he did not use newspaper ads because he had to fill out an application and list Gramis. Because of the circumstances under which his employment there ended, he did not like to list Gramis as a reference. He also preferred to apply for work in person. Since many ads list only post office boxes, he did not often check the ads. (II: 142-144.) He acknowledged that the Fresno Bee newspaper probably carried ads for mechanics' jobs regularly and said he sometimes checked them. He believed he went to look for work at the Papagni Company because of reading an ad. (II: 143.)

He repeatedly drove to Hanford and throughout Fresno County and Tulare County. He recalled checking at various ranches and farms including Airways, Boston, Sinker, Warner and Papagni.

(II: 77.) A number of these companies told him to check back. Sometimes he returned two or three times, and he telephoned them repeatedly. Although many of the companies said there was a possibility of work, he was never offered employment.

Mr. Chavez also drove to Los Banos and Madera seeking work. (II: 77.) Twice he drove to Stockton. On one occasion, he stayed overnight. He had no money to stay in a motel, so he had to sleep in his car.

He estimated he spent $15.00 to $20.00 in gas driving to Stockton and back. (II: 74-75.) He estimated he sometimes drove 120 to 125 miles per day and averaged $50.00 per week for gas looking for work after he left George Brothers. (II: 77.) When looking for work, he borrowed cars from friends. He drove a Ford pickup truck approximately two-thirds of the time. He also drove a Ford Mustang. Both of these vehicles had large V-8 engines. On long trips, such as to San Jose or Stockton, he used a Volkswagon. (II: 150-151.)

In addition to going out to farms and ranches on his own to apply for work, Mr. Chavez registered at the state unemployment insurance offices in Fresno, Salinas and King City. (II: 78.) He recalled a referral from the Salinas office to an Allis-Chalmers farm equipment dealer, but when he went there, the position had been filled. He also recalled going to a few jobs which were posted on the bulletin board in the Fresno office, but he was unsuccessful.

Mr. Chavez also registered with the United Farm Workers office in Salinas and another town. He received two referrals, but did not obtain either job. (II: 78-79.)

Respondent's counsel asked Mr. Chavez why he did not apply for work at various companies such as Fresno Equipment, Massey-Ferguson and John Deere. (II: 126; 131-132.) Mr. Chavez[1] response was that he had gone to all of those places to obtain parts when he worked for Gramis Brothers. He believed that, because all those people knew Mr. Gramis, he would not be able to obtain a job with them considering the circumstances under which he left his employment at Gramis. (II: 164.)

F. Pajaro Co-op

Ultimately, Mr. Chavez was offered a job as a mechanic at Pajaro Co-op. He began work on July 9, 1983. He was paid between $4.00 and $5.00 per hour. (II: 154.) He received no benefits other than his wages.

He provided his own tools. (II: 80-81.) He also bought three used overalls which cost approximately $7.00 or $8.00 each.

Typically, he worked between eight and nine hours per day when there was work available for him. (II: 152.) Sometimes, there was work available only 2 or 3 days per week. He estimated he averaged 5 days' work per week. He paid $5.00 per day for a ride to work. (II: 83-84.)

When he did not work a full week, he spent the time looking for more regular employment. He traveled to the

communities of Salinas, Gonzales, Watsonville, Soledad and King City. (II: 81-82.) He estimated he traveled approximately 50 miles per day looking for work and spent $30.00 per week on gas. (II: 81.)

He left Pajaro after a month and a half or perhaps two months. He estimated he spent between $20.00 and $30.00 a week in gasoline searching for work. According to the Amended Specification, he began work at Pajaro on July 9, 1983, worked through the first week of September, and then found work with the Ochoa Company during the week of November 12, 1983.

G. Ochoa

Mr. Ochoa was hired by Ochoa as a mechanic and was paid $400.00 per week. (II: 84.) He was provided an additional $75.00 per week to cover travel expenses since the job required him to travel from town to town. (II: 84-85.) He worked approximately nine to twelve hours per day, sometimes 7 days per week, at Ochoa. (II: 89.) He was provided a pickup truck for use on the job and for transportation. (II: 84.)

4. Housing

At the time Mr. Chavez was hired by Respondent in 1981, he was living in Mendota. Mr. Ruiz told him that he could have a room at Gramis, and Mr. Chavez moved into a room on Gramis property. G.C. Ex. 3 is a drawing reflecting the layout of Respondent's housing area. Mr. Chavez[1] name has been written in a space to designate the room where he lived.

Gramis provided housing in barracks and also in duplexes (herein referred to as houses). Mr. Chavez' accommodations consisted of one room and an entry hall. The room had electricity, and he believes it had water.

He used the cooking facilities in the kitchen at the barracks nearby. The kitchen had gas and hot water. There was a separate building with showers and bathrooms.

Mr. Chavez was not charged any rent for the room, nor was he charged for any of the utilities. (I: 127-128; III: 8-9.) Employees at Gramis were not paid any extra money as a compensation for not being provided with company housing. (III: 49.)

Mr. Chavez remained in the room until March 13, when he was terminated at Gramis. (I: 24) He considered the room as part of his employment and believed he had no right to be there once his employment with Gramis was terminated. Thus, approximately four or five days after his termination, he left. (I: 138).[16]

From September 1980 to December 1983, discriminatee Jose Sepulveda lived in the Gramis housing area in the building marked with his name on G.C. Ex. 3. Discriminatee Javier Navarro lived in the barracks in the housing area.

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[16]Although Respondent made an issue of the fact that neither Gramis nor Ruiz told Chavez to leave, Ruiz admitted that Chavez was not entitled to stay in the housing unless he were an employee. (III: 28-29.)

Both Mr. Navarro and Mr. Sepulveda testified that after Mr. Chavez left, another employee, Jose Marquez, moved into the place were Mr. Chavez had lived and was still living there at the time they left work at Gramis. Mr. Navarro left in November 1982, and Mr. Sepulveda left in December 1983.

In April 1985, Mr. Sepulveda went back to the Gramis housing area with a friend who was visiting an individual named Ascencion Aquino (as distinguished from Enrique Aquino who is a discriminatee in this case.) There were single men living in the house where Mr. Sepulveda previously had lived. Three vehicles, including Mr. Aquino's car, were parked outside the house.

Mr. Sepulveda returned again in April 1986 with an individual named Martin Sedano. At this point, Ascencion Aquino and his family were living in the house where Mr. Sepulveda had previously lived when he worked at Gramis.

In the house where Mr. Chavez used to live, there were people in the house and lights were on. Through the open door, Mr. Sepulveda could see a man standing in the entry hall to the room where Mr. Chavez used to live. In approximately May of 1985, Mr. Navarro went to visit Ascencion Aquino in the room where Hector Chavez had lived.

Approximately 20 days prior to the hearing, Mr. Navarro drove by the Gramis housing site and noted that Ascencion Aquino[f]s car was parked in the housing compound. There were approximately 4 or 5 cars parked around Jose Sepulveda's former house. In front

of where Mr. Chavez used to live, there were two cars and a small house-trailer parked.

Mr. Ruiz testified that the barracks at Gramis were closed sometime in 1981 or 1982. (III: 16-17.) Mr. Navarro testified he moved in with the Sepulveda's in approximately April 1982 because Gramis had closed the barracks where Mr. Navarro had been living. The doors were locked, the gas and lights were shut off, and a sign saying not to drink from the fountain was put up after the barracks were shutdown, (I: 92-93.)

After that time, the employees with the most seniority were entitled to the houses located near the barracks. Mr. Navarro said it did not matter whether the employees had a family or not in terms of housing assignment. (III: 17.)

Ruiz indicated that both Ascencion Aquino and Jose Marquez had worked at Gramis longer than Mr. Chavez intimating that Mr. Chavez would have been evicted in favor of the more senior employees. (III: 17-18.) Mr. Ruiz said he did not remember if Mr. Aquino had more seniority than Mr. Sepulveda, but later, Mr. Ruiz indicated that Mr. Aquino had been with the company for 11 years when the barracks were closed down. Mr. Sepulveda had been with the company only about two years. Mr. Sepulveda was not moved out of his house in order to allow Mr. Aquino to move in.

Similarly, Mr. Aquino had more seniority than an employee

named Jose Castillo. However, Mr. Castillo and his family remained in the company housing until his employment ended in approximately mid-1985. (III: 71.) In fact, after the barracks closed, all three families living in company housing remained there until their respective employment ended.

It is clear that employees residing in company housing were not displaced. New people were moved in only as others moved out. (III: 71-72.) Mr. Gramis in fact acknowledged that it was not often that housing opened up, so there was not often an occasion to assign housing on the basis of seniority. (III: 49.) Thus, Respondent's contention that Mr. Chavez would have been evicted is without merit.

Although the barracks were closed, Jose Sepulveda's house was not. (III: 29-30.) People were, still living there as of the time of the hearing by which time Mr. Chavez' old room had been incorporated into what had been Mr. Sepulveda's house. (III: 30.)

I credit Mr. Sepulveda's testimony that the room in which Mr. Chavez lived was occupied until December 1983. Based on the evidence, I find it reasonable to infer that Mr. Chavez[1] room remained available for occupancy and, unlike the barracks, was not closed. I note there is no direct evidence that it was ever closed.

After he left Gramis, Mr. Chavez moved into a motel room which included a small kitchen. He lived there for

approximately six weeks and paid $75.00/week. (II: 10.) Thereafter, he moved to a low income housing project in Firebaugh where he paid approximately $160.00 per month for rent and utilities. (II: 10-11.) He remained there until he left his employment with Cardella.

The day after Mr. Chavez was laid off at Cardella, he moved to a room in Fresno. He rented it from a couple with whom he was acquainted. He testified he did not know whether he could have stayed there without paying rent. He never asked because he felt it was only right to offer to pay rent since he was not performing any services for them in return for living there. (II: 36-37; 163; 167-168.) He lived there until he went to work at Harris Ranch which was approximately three weeks. He paid them $100.00. (II: 41.)

When he began work at Harris, he moved into a room on Harris property. He was charged $15.00 for the room. He was also charged $25.00 or $30.00 for a mattress. (II: 42-43.) The room was barely large enough to hold a bed. It was about one-third the size of the room he lived in while working at Gramis.

The room had electricity. There were no cooking facilities nor any bathroom facilities. Because there were no cooking facilities and because he could not use a heater in the room, Mr. Chavez moved out.

He then rented a room from a couple who had a trailer near the shop at Harris. He paid $70.00 per week for the room

which included one meal a day for six days of the week. He received a second meal 2 or 3 days a week. He remained living there until he left his job at Harris. (II: 43-44.)

After he left Harris, he returned to Fresno and moved in with the couple with whom he had lived after he left Cardella. At this point in time, he did not pay them rent. (II: 64-65.)

He found work at George Brothers within a week after he left Harris. At that time, he moved to the town of Cutler. He rented a large room with a kitchen. There was also a bathroom. He paid $150.00 per month for the room, including utilities. (II: 70.)

When he left George Brothers, Mr. Chavez returned to Fresno to live with the same couple with whom he had previously lived. He paid $100.00 per month rent and an additional $15.00 to $25.00 for utilities each month. His food costs were over and above these amounts. He continued to live with the couple until the end of May or the beginning of June 1983. (II: 71.)

Thereafter, he moved to Salinas and lived in a labor camp where he paid $70.00 per week for room and board. (II: 154.) He obtained two meals per day for six days of the week. There were no meals on Sundays. (II: 72.) He lived at the labor camp from about one month before he began work at Pajaro Co-op, which was in early July, and stayed there until he began work at Ochoa in November 1983. (II: 72.)

Although he was not paying rent in Fresno after early June, he left some of his heaviest tools in the room he had

been renting from the couple in Fresno. When he stopped living in the labor camp and began work with Ochoa, he returned to Fresno to obtain his tools and paid the couple $100.00 for the use of the room. He had left the tools there because some were as large as a foot and a half long and were too awkward to carry around. (II: 156.)

No housing costs are claimed after he began work with Ochoa.

C. ANALYSIS AND CONCLUSIONS

It is well settled that General Counsel has the burden of establishing the amount of gross backpay, and Respondent has the burden of establishing facts which reduce the amount of backpay owing. (Chem Fab Corporation) (hereafter Chem Fab) (1985) 275 NLRB 21 [119 LRRM 1142]).

It is also a well established principle in backpay cases that an unfair labor practice having been found is "'presumptive proof that some backpay is owed.'"[117]It is Respondent's burden to prove any interim earnings which are to be deducted from gross backpay. (P.P. Murphy Co. Inc. (1982) 8 ALRB No, 54).

Respondent may further reduce its backpay liability by proving that a discriminatee failed to make a diligent search for

[17]United Aircraft Corporation (hereafter United Aircraft) (1973) 204 NLRB 1068, 1078 [83 LRRM 1616], quoting from NLRB v. Mastro Plastics Corp. (hereafter Mastro II) (2d Cir. 1965.) 354 F.2d 170, 178 [60 LRRM 2578] cert. den. (1966) 384 U.S. 972 [62 LRRM 2292].

work. (S & F Growers (hereinafter S & F) (1979) 5 ALRB No. 50, review den. by Ct.App., 2d Dist., Div. 1, November 29, 1979). In this regard, it is well established in both the courts and the NLRB that discriminatees must make reasonable efforts to seek work but are not held to the highest standard of diligence.[18] "Nor is success the measure of the sufficiency of ... discriminatees' search for interim employment, for the law requires only an honest and good-faith effort."[19]

Thus, Respondent's burden is not met simply by showing a lack of success on the part of a discriminatee in finding interim employment. Rather, Respondent must affirmatively prove facts which establish that a discriminatee did not make a reasonable search.[20]

The discriminatee[1]s obligation is to make a diligent search for employment which is substantially equivalent to the position held with Respondent and which is suitable to a person of his background and experience.[21] if a discriminatee fails to

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[18]United Aircraft, supra; NLRB v. Louisville Typographical Union No. 10, International Typographical Union, AFL-CIO [Madison Courier, Inc.3 (hereafter Madison Courier) [C.A.D.C. 1972) 472 F.2d 1307 [80 LRRM 3377] .

[19]Chem Fab, supra, at p. 21. See also, United Aircraft, supra; NLRB v. Cashman Auto Company (1st Cir. 1955) 223 F.2d 832 [36 LRRM 2269]

[20]International Brotherhood of Boilermakers, Iron Shipbuilders/ Blacksmiths, Forgers and Helpers, Local No. 27 (1984) 271 NLRB 1038 [117 LRRM 1342] .

[21]Miamii Coca-Cola, supra.

do so, his claim for backpay will be denied for the time the discriminatee was removed from the labor market. Further, if a discriminatee incurs a willful loss by unjustifiably quitting or by refusing substantially equivalent interim employment, gross backpay will be reduced by deducting the amount the discriminatee would have earned had s/he taken or retained the interim job.[22]

The courts and the NLRB both adhere to the principle that the backpay claimant should receive the benefit of any doubt rather than Respondent. The rationale underlying this rule is that it is Respondent's violation of the law which has created the situation responsible for the existence of the uncertainty, and it is an appropriate balance of the equities for Respondent, as the wrongdoer, to bear the burden of that uncertainty.[23]

Having set forth the general principles applicable to a backpay hearing, I turn now to their application to the facts of the instant case. Here, the amount of gross backpay is not an issue. It is stipulated that Mr. Chavez earned $600.00 every two weeks.

Mr. Chavez was the only mechanic at Gramis, and Respondent did not employ a mechanic after Mr. Chavez was fired. Thus, there is no way to measure what Mr. Chavez would have earned by examining actual earnings of a representative or replacement

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[22]Mastro I, supra, (1962) 136 NLRB 1342.

[23]ijnited Aircraft, supra; NLRB v. Miami Coca-Cola, supra.

employee, for example. There is also no evidence, based on past practice for example, to show whether Mr. Chavez could have expected any increase in his wages. Thus, I find the Amended Specification reasonably calculates gross backpay at $600.00 every two weeks.

The backpay period begins on March 13, 1982, when Respondent discriminatorily discharged Mr. Chavez. It ends on April 20, 1985, the date Respondent's offer of reinstatement to Mr. Chavez expired.

Willful Loss of Earnings

Respondent contends that Mr. Chavez unjustifiably quit interim employment and that, from January 1, 1983, to July 2, 1983, he did not make a diligent search for work. Consequently, its backpay obligation should be reduced, it argues.

General Counsel has already agreed that Respondent has no net backpay liability beyond July 31, 1984, when Mr. Chavez quit his job at the Ochoa company. General Counsel acknowledges that Mr. Chavez[1] job there was substantially equivalent to his job with Respondent. Since his earnings at Ochoa exceed his gross backpay due, offsetting those amounts results in no net backpay owing. Respondent of course concurs with General Counsel's position.

Respondent argues, however, that it has no net backpay liability from the time Mr. Chavez began work at Cardella Ranch which was almost immediately after he was fired by Respondent. Respondent's argument has two components.

It disputes Mr. Chavez' position that he worked only 44 hours per week for Gramis and asserts that he was required to work approximately 60 hours per week. Thus, his hourly wage was $5.00 per hour. The $5.50 per hour he earned at Cardella exceeded his earnings at Gramis. Based on my finding that Mr. Chavez did not work 44 hours per week with Respondent, it is correct that he earned $5.00 per hour.

The second component of Respondent's argument is that Mr. Chavez unjustifiably quit his job with Cardella. In such a situation, gross backpay is reduced by the amount the discriminatee would have earned at the interim employer.[24] Thus, Respondent argues, since Mr. Chavez' wages at Cardella exceeded his wages with Respondent, there is no net backpay liability for the remainder of the backpay period.

I find, contrary to Respondent's position, that Mr. Chavez did not incur a willful loss of earnings. Despite Respondent's characterization that Mr. Chavez willfully quit his job with Cardella, it is patently clear that he was laid off as part of a general layoff at the company.

Mr. Chavez told the foreman at Cardella, Mr. Vasquez, that he would look for another job while on layoff, and he immediately began a search for work as soon as he was laid off.

[24]Miamii Coca-Cola, supra; Knickerbocker Plastics Company, Inc. (1961) 132 NLRB 1209 [48 LRRM 1505].

He found a mechanic's position at Harris Ranch only two days after most workers returned to Cardella.

Respondent would have me find that Mr. Chavez was required to turn down a firm job offer at Harris, return to Cardella to determine if the layoff had ended and, if so, if he would be rehired.[25] I find such a requirement inappropriate.

In Midwest Hangar,[26] the court disallowed backpay for a 21/2 month period when a discriminatee was on layoff. She knew she would be recalled to work and simply waited.[27] if Mr. Chavez had not looked for work after being laid off, there would be an issue as to whether backpay should be awarded.

Mr. Chavez credibly testified that, although his starting pay at Harris was less than what he earned at Cardella, he assessed his opportunities for advancement as greater at Harris than at Cardella. There were other mechanics at Harris who were earning substantially more than he had at Gramis and who had housing and transportation benefits as well. Thus, Mr.Chavez was not unreasonable in hoping that he could advance to a position even better than at Cardella.

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[25]Despite the fact that Respondent recalled some workers, it did not recall Mr. Chavez.

[26](8th Cir. 1973) 474 F.2d 1155 [82 LRRM 2693] cert. den. (1973) 414 U.S. 823 [84 LRRM 2421] .

[27]Compare Saginaw Aggregates Inc. (1972) 198 NLRB 598 [81 LRRM 1025] enf.d (6th Cir. 1973) 482 F.2d 946 [84 LRRM 3023] where the NLRB found no willful loss of earnings.

Both the witnesses for Respondent and Cardella testified that Mr. Chavez was a competent mechanic, and they had no complaints about his work. He has many years of experience, and he speaks English very well which would facilitate his ordering parts and performing other duties.

Under the circumstances, I find he did not incur a willful loss of earnings by taking the job with Harris rather than attempting to return to Cardella. In appraising discriminatees[1] conduct in this regard, the case law is well settled that doubts are resolved to the discriminatees' not the wrongdoer's benefit. (Fire Alert Company (hereafter Fire Alert) (1976) 223 NLRB 129 [92 LRRM 1002] enf'd. (10th Cir. 1977) 96 LRRM 3381.)

Further, I find that Mr. Chavez voiced several legitimate objections to his work at Cardella. He not only worked very long hours, he sometimes worked weeks at a time without a day off. There is no evidence he worked for weeks without a break at Gramis.

His hours at Cardella were substantially longer than his typical 60 hour week at Gramis. From the job cards at Cardella reflecting his hours of work, he often worked more than 11 hours per day. This was true early in his employment and in July and August 1982, the last months for which there are job cards.[28]

Thus, I find that Mr. Chavez[1] claim that his work at Cardella was more demanding due to longer hours is substantiated

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[28]See for example the periods April 15 - April 29 and July 5 through August 7. In this later period, he averaged almost 13 hours per day. Even factoring out the marathon thirty six and one half

by Cardella's work records. On this point, the work at Cardella was more onerous than his job with Respondent.

Further, Mr. Chavez did not have the use of a pickup truck and was not provided company housing at Cardella. There is also no evidence that he knew how frequently layoffs occurred at Cardella, and there is no evidence he was ever laid off at Gramis. Thus, his work at Cardella was less desirable to him than his job with Respondent and was not substantially equivalent to his work at Gramis.

I find this case factually different from the case of United Farm Workers of America, AFL-CIO, (Odis William Scarbrough) (hereafter Scarbrough) (1986) 12 ALRB No. 23 cited by Respondent. There, the Board found Mr. Scarbrough left interim employment without a justifiable reason. The Board found his conflict with a fellow employee did not justify his quitting his job where he had not tried to be transferred away from the co-worker, and there was no evidence other employees had similar problems with the individual. The Board found Mr. Scarbrough left because of a

(Footnote 28 Continued)
(36.5) hours he worked repairing the tomato harvester, he still averaged more than twelve and one half (12.5) hours per day. (403.9 hours divided by 32 days equals 12.62 hours per day.) The remaining 16 days in the exhibits after this period average 10 hours and 53 minutes per day. (173.8 hours divided by 16 days equals 10.86 hours per day.) On only three days (August 19, 20 and 23) did he work less than ten and one half (10.5) hours per day. If one deletes the unrepresentative day of August 20 when he worked only 7.8 hours, then the average hours per day for this period is boosted to slightly over 11 hours per day. (166 hours divided by 15 days equals 11.07 hours per day.)

personal dispute and that his reasons were "not based on necessity or difficulties inherent in the job." (at p. 7.)

In this case, Mr. Chavez' primary reasons for leaving Cardella were the long hours and long periods without a day off, the lack of benefits (no pickup and no housing) and the assignment of menial tasks – washing the tomato harvester.[29] it is one thing to perform mechanical work on machines and become dirty in the process. That is part of being a mechanic. It is quite another to do that job and also be assigned the task of washing harvesters, clearly requiring no mechanical skills, and contending with water and mud as well as rotten tomatoes, grease, oil, etc. A discriminatee is not required to accept interim work which is more burdensome than his work with Respondent. (Fire Alert, supra, Madison Courier, supra, and Kawano, Inc. (1983) 9 ALRB No. 62.

Based on the fact that Cardella was not substantially equivalent employment, that Mr. Chavez began looking for work immediately after he was laid off from Cardella and that he found work at Harris which offered the prospect of employment comparable to, or better than that at Gramis, I find Mr. Chavez did not incur a willful loss of earnings by not returning to Cardella.

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[29]I do not believe the closer supervision and "spying" by Mr. Vasquez were substantial factors in Mr. Chavez' decision to leave Cardella. My impression from his demeanor was that these were annoyances but not major issues. Mr. Chavez said even after he left Cardella he still considered Mr. Vasquez a friend. These reasons are similar to the personal conflict discussed by this Board in Scarbrough, supra.

His obligation was to remain in the labor market, to diligently seek employment which was substantially similar to that he had with Respondent, and not to unjustifiably leave such employment if found. (Mastro II, supra.) I find he met that obligation.

The mere fact that his job at Harris paid less than Cardella is not sufficient to meet Respondent's burden that Chavez incurred a willful loss of earnings by not returning to Cardella. (United Aircraft, supra.)[30] I find no justification for reducing Mr. Chavez' backpay award by offsetting his earnings at Cardella beyond the last date he worked there.

Respondent also asserts Mr. Chavez unjustifiably quit his job with Harris Ranch. I find Mr. Chavez was justified in quitting that job.

He had been promised a wage increase if his work were satisfactory. Despite acknowledging that Mr. Chavez met the precondition, the shop foreman at Harris repeatedly put off Chavez' requests for an increase. From his demeanor at trial, it is evident that Mr. Chavez takes pride in his abilities as a mechanic and expects to be fairly compensated for his years of experience and competence.

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[30]See also, Harvest Queen Mill & Elevator Company (1950) 90 NLRB 320 [26 LRRM 1189] where the NLRB found no willful loss when the discriminatee quit a salaried job for self-employment where he earned less money.

Absent an unlawful reason, the shop foreman was permitted not to fulfill his promise of a wage increase. Mr. Chavez, however, was free conclude from this inaction that he was not going to advance to the wage level and benefits he had hoped to achieve.

He was completely sincere at trial in describing the deduction for uniforms as the last straw. He was clearly still offended as of the time of trial that his wages not only were not increased but were reduced.

Based on the legal standards previously stated, I find Mr. Chavez was justified in leaving Harris in order to find a better job. It was not necessary for him to wait until he had found another job before he left.

In United Aircraft, supra, no willful loss was found even though a discriminatee quit several jobs. On two occasions, he quit because he did not receive pay increases he had been told he would receive. (at p. 1076.)

In that same case, the same discriminatee quit another job because he had been promised he would be made foreman and was not. Without the benefits which accompanied the foreman position (company housing and a vehicle,) he felt he was not earning enough. The NLRB found his leaving justified.

Further, I find Mr. Chavez[1] job at Harris was not substantially equivalent to his work at Gramis. His wages were lower, and he did not have the use of a pickup truck. Nor was he provided housing at Harris.

Unlike the discriminatee in Scarbrough, supra, Mr. Chavez did not leave for reasons which were not an inherent part of the job. Rather, his complaints were directly related to his working conditions. Moreover, he had asked the shop foreman and another supervisor at Harris to modify them before he quit.

Respondent does not contend that the other two jobs held by Mr. Chavez were comparable to his employment at Gramis, and they clearly were not. At George Brothers, he was a field worker, and at Pajaro his work was not steady.

Respondent does not contest Mr. Chavez[1] diligence in searching for work with the exception of the period of January 1, 1983 through July 2, 1983. This is the time period between when he quit George Brothers and when he found work at Pajaro.

As noted previously, a discriminatee is required to make a reasonable search for work. Mr. Chavez registered with state unemployment offices in 3 areas of the state. He traveled throughout the area surrounding Fresno, even going into surrounding counties. He sought work through friends and sometimes consulted newspaper classified ads although, since he believed it was best to apply in person, he did not often use the latter technique. Mr. Chavez also registered with several offices of the United Farm Workers of America, AFL-CIO (UFW). He credibly testified that he looked for work on a daily basis.

He recalled some employers by name and gave details regarding several of the potential jobs to which he was referred.

He gave a specific account of the various communities where he looked for work. Mr. Chavez' testimony establishes that he made a diligent search for work. (S & F Growers/ supra; Midwest Hangar, supra.)

The fact that Mr. Chavez was not successful in obtaining a job does not give rise to a presumption that he failed to diligently seek work or willfully incurred a loss of earnings. (Miami Coca-Cola, supra.) Nor does the fact that a discriminatee does not apply to every possible job source demonstrate a lack of diligence. (Lozano Enterprises (1965) 152 NLRB 258 [59 LRRM 1076] enf'd (9th Cir. 1966) 356 F.2d 483 [61 LRRM 2357]; United Aircraft, supra, at pp. 1075-1076.)

Thus, the fact that Mr. Chavez did not check or respond to any ads there may have been in the Fresno newspaper during this time does not warrant denying him backpay so long as the efforts he did make were reasonable.[31] (Seligman & Associates, Inc. (1984) 273 NLRB 1216, 1223 [118 LRRM 1309]. I find his efforts were reasonable. (S & F Growers, supra.) Consequently, Mr. Chavez is entitled to backpay for the entire period claimed in the Amended Specification.

Method Of Calculating Net Backpay

Respondent argues that a quarterly or annual method of

[31]See Champa Linen, supra, where the NLRB found no willful loss since Respondent did not prove that the discriminatee would have obtained the other jobs. (at. p. 942.)

computing backpay is appropriate because Mr. Chavez was a steady, year-round employee at Gramis. Mr. Chavez worked only some 9 months with Gramis before he was unlawfully discharged. His jobs with interim employers were of even shorter duration. He did not ever actually work year-round.

I note first that the NLRB specifically decided not to use periods longer than quarters because doing so resulted in later higher earnings offsetting earlier losses of backpay. (F.W. Woolworth Company (hereafter Woolworth) (1950) 90 NLRB 289 [26 LRRM 1185]). Thus, I reject the suggestion of calculating on a yearly basis.

I also decline to calculate backpay quarterly. Gross backpay was calculated on a weekly basis.. Mr. Chavez was paid weekly or bi-weekly by interim employers. The weekly calculation selected by General Counsel is reasonable, appropriate and in accord with Board precedent. (Butte View Farms (1978) 4 ALRB No. 90, enf.d Butte View Farms v. Agricultural Labor Relations Board (1979) Cal. App.3d 961.)

This method of calculation is also appropriate because it comports with the NLRB's concerns set forth in Woolworth, supra. Mr. Chavez[1] hourly wage at Cardella was higher than with Respondent, and he worked longer hours. Respondent thus has no net backpay liability except during 3 weeks.

Sixty hours of work at Cardella will always result in no net backpay owing. To the extent Mr. Chavez worked more hours at

Cardella than at Gramis, it is inappropriate to use the higher earnings due to extra hours to offset backpay liability in weeks where he earned less at Cardella. Doing so results in Respondent reaping the benefit of Mr. Chavez' additional work – which is inappropriate. (Eastgate I.G.A. Foodliner (1980) 253 NLRB 735 [105 LRRM 1687].)

Mr. Chavez earned less every week at Harris, George Brothers, and Pajaro Co-op than he would have earned at Gramis. Thus, a quarterly calculation does not yield any different result than a weekly calculation.

I find Mr. Chavez is entitled to backpay as calculated in the original specification since that calculation is not limited to the first 44 hours of interim wages per week. Mr. Chavez is entitled to net wages in the amount of $13,133.64.

Expenses

Transportation

Reasonable expenses incurred in obtaining and keeping interim employment are recoverable whether or not the discriminatee obtained work. (High and Mighty Farms, supra, citing Aircraft and Helicoper Leasing and Sales, Inc., (1976) 227 NLRB 644 [94 LRRM 1556].) Transportation expenses are clearly reimbursable. Respondent does not contend otherwise but simply disputes the amount of some of the gasoline expenses claimed.

General Counsel has the burden of proving expenses. (Chem Fab, supra.) However, estimates are sufficient to establish

the amounts of expenses. (High and Mighty, supra; Mastro *I,* supra; W.C. Nabors d/b/a W.C. Nabors Company (1961) 134 NLRB 1073 [49 LRRM 1289], enforced sub nom. Nabors v. NLRB (5th Cir. 1963) 323 P.2d 686 [54 LRRM 2259].)

I do not find it appropriate to simply select the highest amount where Mr. Chavez has estimated a range of expenses. Nor is it reasonable to select the lowest amount. In such situations, I have averaged the estimates.

Respondent objects to reimbursing Mr. Chavez for his "random and aimless trips." (Resp. brief p. 28) Trips to other cities to seek work are clearly reimbursable. (Nabors, supra; Maggio-Tostado (1978) 4 ALRB No. 36.) Mr. Chavez credibily testified his trips were to find work. There is absolutely no evidence that they were for any other purpose.

Even moving expenses to different cities and states are recoverable so long as they constitute a cost of seeking interim work. (M. Restaurants, Incorporated d/b/a The Mardarin (1978) 238 NLRB 1575, enf'd (9th Cir. 1980) 621 F.2d 336 [104 LRRM 2818]. Thus, *I* find Mr. Chavez is entitled to costs incurred in seeking work in Stockton, San Jose, King City, etc. I note that the job he ultimately obtained was in the Salinas area.

Mr. Chavez credibly testified he paid $50.00 per week for someone to drive him in order to seek work after he left Cardella. That testimony is unrebutted. I find he is entitled to $50/week for the $2^{1/2}$ weeks between his leaving Cardella and beginning work

at Harris (September 12, 1982 to September 29, 1982). This amounts to $125.00 not $140.00 as claimed by the General Counsel. ($50.00 per week times 2i weeks equals $125.00.)

His unrebutted testimony is that he spent $40.00 per week for gas looking for work between the time he quit Harris and began work with George Brothers. I find he is entitled to the $35.00 claimed in the specification since this period was slightly less than one week.

After Mr. Chavez quit George Brothers, he searched for work from the beginning of January 1983 until early July 1983. He estimated he spent between $15.00 and $20.00 for gas each trip and made two trips to Stockton. I find he is entitled to $35.00. ($17.50 per trip times 2 trips equals $35.00.)

I have credited his testimony that he averaged 120 to 125 miles per day throughout this period searching for work. His estimate of $50.00 per week for gas when he typically drove vehicles with a V-8 engine is not inherently incredible as argued by Respondent. I find he is entitled to recover this amount. The total for gasoline expenses for this period amounts to $1,275.00 as claimed in the Amended Specification.

Mr. Chavez also spent approximately $30.00 per week for gas while working at Pajaro Co-op because he often did not work full-time. This was especially true in September, October and November 1983. This time period is approximately 18 weeks (from July 9, 1983 until November 12, 1983). He is entitled to $540.00. ($30.00 per week times 18 weeks equals $540.00).

There are no other search for work expenses. His total entitlement is $2,010.00. ($540.00 plus $1,275.00 plus $35.00 plus $125.00 equals $2,010.00.)

Respondent has not contested the commute to work expenses, and I find they are recoverable as claimed. Mr. Chavez had no commute to work expenses at Gramis so the amounts claimed are recoverable in full.

He paid $5.00 per day on 8-10 days to commute to Cardella for a total of $45.00. He spent $120.00 to commute to Harris, paying $4.00 per day. He averaged 5 days per week at Pajaro Co-op and paid $5.00 per day. He worked there 12 weeks. His expenses at Pajaro are $300.00 ($25.00 per week times 12 weeks equals $300.00) His total commute to work expenses are $465.00. ($45.00 plus $120.00 plus $300.00 equals $465.00.)

His total transportation expenses amount to $2,475.00. This total reflects $2,010.00 in search for work expenses plus $465.00 in commute to work expenses.

Housing Expenses

Respondent's argument that Mr. Chavez is not entitled to reimbursement for housing fails. Gramis provided Mr. Chavez with housing and utilities. These are no less a benefit to him because other employees did not receive the same benefits or alternative compensation.

I also reject Respondent's argument that the housing it provided was so bad that, in effect, it was worthless and

therefore Mr. Chavez is not entitled to any reimbursement for his costs to obtain substitute housing.

General Counsel has made a prima facie case for recovery of the expenses claimed. There is obviously no way Mr. Chavez could have obtained housing precisely comparable to that he had at Gramis. The record shows that he rented roughly equivalent quarters, i.e. one room in an apartment; a room in a trailer, and a motel room.

Although in two instances Mr. Chavez was also provided at least one meal per day, Respondent established no evidence which would allow a reasonable deduction for these meals. Thus, I find Mr. Chavez is entitled to recovery of his costs for rent and utilities as claimed except where I have noted different amounts.

I find no merit in Respondent's argument that it should not reimburse Mr. Chavez for the $100.00 per month he paid to friends in Fresno for renting their room. The fact that Mr. Chavez offered to pay rather than waiting until asked does not alter the fact that he paid for renting a room and that it is an expense he would not have had if Respondent had not unlawfully discharged him. His obligation to mitigate does not require him to take advantage of friends or relatives to reduce Respondent's liability.

Further, I find he should recover the $100.00 he paid this same couple to store his larger tools during the 6 months he was driving about seeking work. Mr. Chavez credibly testified

that the tools were too heavy to move around -- some being $1^{1/2}$ feet long. It is reasonable that he would not want to carry them in his car where they could be stolen. Were it not for his unlawful discharge, Mr. Chavez would not have been in a situation where he had no place to keep tools while he crisscrossed several counties in an effort to find a job. (Mastro I, supra.)

Mr. Chavez is entitled to the $75.00 per week he spent to rent a motel room for 6 weeks after he was fired by Gramis. This expense totals $450.00. He is entitled to recover $160.00 per month for housing costs while working at Cardella. The Amended Specification claims $200.00 per month. His total entitlement for this expense is $720.00 for the months of May, June, July, August and nearly half of September 1982. ($160.00 per month times 4i months equals $720.00).

After he was laid off at Cardella, he paid $100.00 until he began work at Harris. Then, he paid $42.50 for a room and mattress for one week. ($15.00 plus $27.50 (average of $25.00 and $30.00 estimate by Mr. Chavez.) Next, he paid $70.00 per week for a room during the time he worked at Harris — which was 7 weeks. His expenses for this period amount to $490.00 not $330.00 as claimed in the Amended Specification.

While working at George Brothers, he paid $150.00 per month. I find he is entitled to the $195.00 claimed in the Amended Specification which covers approximately 5 weeks. From the time he left George Brothers in late December 1982 until the

end of May or early June 1983, he paid $100.00 per month for rent and $15.00 or $20.00 per month for utilities. I will use the figure of $117.50 per month for this 5 month period. Thus, Mr. Chavez is entitled to $587.50.

From early June until he began work with Ochoa in November, 1983, Mr. Chavez stayed in a labor camp and paid $70.00 per week. This period covers 5 months, and he is entitled to $350.00.

No further housing expenses are claimed. The total expense for housing costs due to Mr. Chavez is $2,935.00. ($350.00 + $587.50 + $195.00 + $490.00 + $42.50 + $100.00 + $720.00 + $450.00 equals $2,935.00.)

Uniforms

Respondent does not contest Mr. Chavez' claim for uniforms. He paid $40.00 for 2 coveralls at Harris Ranch. At Pajaro Co-op he paid between $7.00 and $8.00 each for 3 pair of coveralls. Averaging these two estimates, I will use $7.50 per pair for a total cost of $22.50 for uniforms at Pajaro Co-op. Coupled with his $40.00 expense at Harris, Mr. Chavez is entitled to $62.50 for costs of uniforms.

The total of expenses due Mr. Chavez is $62.50 for uniforms, $2,935.00 for housing and $2,475.00 for transportation. His total recoverable expenses amount to $5,472.50.

CONCLUSION

Mr. Chavez is entitled to net backpay in the amount of $13,133.64, plus transportation expenses of $2,475.00, and

housing expenses of $2,935.00 and expenses for uniforms in the amount of $62.50. His total entitlement then amounts to $13,606.14.

ORDER

Respondent, Gramis Brothers Farms, Inc., and Gro-Harvesting, Inc. (Gramis) its officers, agents, successors and assigns, shall pay

1. To Hector Chavez the amount of $18,606.14, plus interest thereon computed in accordance with the Decision and Order of the Agricultural Labor Relations Board in Lu-Stte Farms, Inc. (Lu-Ette) (1982) 8 ALRB No. 55;

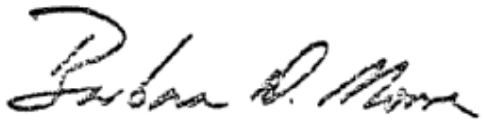
2. To the following discriminatees the amounts set forth beside their names:

Javier Navarro $616.13

Enrique Aquino $27.50

Jose Sepulveda $609.38

DATED: June 19, 1987



BARBARA D. MOORE
Administrative Law Judge