

STATE OF CALIFORNIA
 AGRICULTURAL LABOR RELATIONS BOARD

OASIS RANCH MANAGEMENT, INC.,)	
a California Corporation,	)	Case Nos. 90-CE-20-EC
	)	90-CE-21-EC
Respondent,	)	90-CE-34-EC
	)	90-CE-34-1-EC
and	)	90-CE-55-EC
	)	90-CE-58-EC
UNION DE TRABAJADORES	)	90-CE-59-EC
AGRICOLAS FRONTERIZOS; and	)	90-CE-61-EC
MANUEL ANGEL RAMIREZ, JOSE	)	90-CE-70-EC
LUIS ESTRADA, JORGE CHAVEZ,	)	90-CE-72-EC
OSCAR SALAZAR, RIGOBERTO	)	90-CE-74-EC
MARTINEZ JAUREGUI, and MIGUEL	)	90-CE-75-EC
RODRIGUEZ, Individuals,	)	90-CE-91-EC
	)	90-CE-98-EC
Charging Parties.	)	90-CE-115-EC
	)	(18 ALRB No. 11)
	)	(20 ALRB No. 19)
)	
	)	21 ALRB NO. 11
	)	(October 31, 1995)

DECISION AND ORDER

On July 5, 1995, Administrative Law Judge (ALJ) Douglas Gallop issued his second supplemental decision in the above-entitled case, following a hearing on remand as ordered by the Agricultural Labor Relations Board (Board) in *Oasis Ranch Management, Inc.* (1994) 20 ALRB No. 19. In 20 ALRB No. 19, which followed the initial compliance hearing, the Board affirmed, for the most part, the findings of the ALJ related to the proper calculation of the amounts owing to Vidal Lopez.¹ However, the Board determined that it was necessary to remand for further

¹In the Board's decision on liability, *Oasis Ranch Management, Inc.* (1992) 18 ALRB No. 11, which was upheld on appeal to the courts, the Board found that Lopez had been discriminatorily denied irrigation assignments. While the irrigation work paid the same hourly rate as the general labor work Lopez also performed, those who irrigated usually worked more hours, resulting in higher pay.

hearing to allow Oasis Ranch Management, Inc. (Employer or Respondent) the opportunity to rebut the reasonableness of the ALJ's use of Lopez' 1989 earnings as the basis for calculating backpay. The ALJ had adopted that approach after rejecting the methodologies offered by the General Counsel and Respondent. The Board also allowed the parties the opportunity to address whether Marciel Ibanez and Ramon de la Torre might be considered comparable employees.

At the reopened hearing, Respondent recalled its general manager, Dennis Maroney, and submitted several new exhibits offered to show both that Lopez' 1989 earnings would not be an appropriate measure of earnings during the backpay period in the absence of the discrimination and that daily comparisons of hours worked in flood irrigation² and Lopez' actual hours would be a more reasonable measure. The General Counsel did not present any additional evidence.

The Board has considered the record and the attached decision of the ALJ in light of the exceptions and briefs submitted by the parties and affirms the ALJ's findings of fact and conclusions of law, except as modified below.

ALJ DECISION

Neither party introduced any evidence on the issue of comparable employees. Since there was no evidence presented on this issue (and the Board had rejected in its earlier decision

²It was determined in the previous case that Respondent had no duty to assign drip irrigation work to Lopez.

Respondent's suggestion that Joe Garcia was a comparable employee), the ALJ concluded that the record did not support the use of a comparable employee's earnings as the basis for calculating backpay.

For the initial period of backpay, from July 3, 1990 to July 10, 1991, the ALJ essentially adopted the Respondent's suggested approach, as reflected in Respondent's Exhibit 18.³ This approach is based generally on the Board's previous finding that Lopez should have been assigned backup work at the various flood irrigation ranches when those with regular assignments at those ranches prior to the discrimination did not perform the irrigation. However, resolving uncertainty against the wrongdoer, the ALJ did not agree with Respondent that the amount should be reduced by \$126 because the exhibit included hours worked by Juan Jose Estrada that were not clearly denoted as flood irrigation. The ALJ did agree with Respondent that Pedro Lugo's hours were improperly included because he appeared just to be continuing a regular assignment he had prior to the discrimination, and the ALJ's actual figures excluded Lugo's hours.

For the second part of the backpay period, i.e., the period after Yepis was replaced at Indio-80 and Lopez should have

³This period represents the time beginning with when Lopez was available to do irrigation work and ending with the removal of Lopez' replacement, Miguel Yepis, from Lopez' former regular assignment at Indio-80 Ranch. The Board had previously found that it was lawful for Respondent not to remove Yepis because of evidence that the ranch owner requested that Yepis remain.

regained his old assignment, the ALJ again concluded that the best available measure was Lopez' 1989 earnings. The ALJ concluded that the evidence Respondent submitted in order to show a general reduction in hours among its work force after 1989 was insufficient to show that the use of 1989 as the benchmark was improper. Specifically, the ALJ pointed out that some of the evidence as to the average hours per week worked by de la Torre and Juan Resendiz and the discontinuance of overtime and Saturday hours was belied by the records previously admitted into the record. In addition, it appears that the ALJ rejected the use of Respondent's Exhibit 19⁴ due to his view that the underlying payroll records do not reliably indicate which irrigation work was flood as opposed to drip. However, the ALJ did note that the W-2s submitted for Resendiz and de la Torre reflected some reduction in hours worked after 1989. In recognition of this, the ALJ did not augment Lopez' gross backpay by the wage increases received by employees during the period, as he had done in his previous decision. In the ALJ's view, this would roughly account for any general reduction of hours.

DISCUSSION

The Period From July 3, 1990 to July 10, 1991

Respondent generally accepts the ALJ's use of exhibit 18 as the basis for backpay for the initial period. Respondent does, however, contest the inclusion of the hours worked by

⁴Exhibit 19 compares the number of hours worked each day irrigating at Indio-80 with Lopez' actual hours on that date.

Estrada, claiming that the records do not indicate that his irrigation hours were at flood irrigation ranches. This exception is rendered moot by the Board's adoption, explained below, of its own calculations based on an independent review of the payroll records.

In our review, we examined the records in order to isolate the days in which Lopez worked fewer hours than another employee who performed flood irrigation, other than Yepis at Indio-80 or at a ranch where the employee had a regular assignment prior to the discrimination.⁵ Exhibit 18, while it improperly includes all of Estrada's and Lugo's hours, also excludes hours worked by several employees not listed. For example, it does not include the hours of irrigators such as Resendiz, de la Torre, Yepis, and Jesus Salazar where they performed flood irrigation other than at their regularly assigned locations. Our calculations include only those hours where it can be ascertained that the irrigation was performed at one of the flood irrigated ranches. Thus, the methodology we have applied is basically the same as that adopted by the ALJ and accepted by Respondent, but we believe the application of that methodology has been performed more accurately. The figure we have arrived at for the period from July 3, 1990 to July 9, 1991 is \$450.00.

⁵In the previous Board decision, it was found that Resendiz had a regular assignment at Myers Ranch and Salazar had such an assignment at Village Date.

The Period Beginning With July 10, 1991

Respondent argues that it is always improper to use prior earnings in a seasonal industry and that the Board and the National Labor Relations Board have stated a preference for the use of comparable employees during the backpay period in order to account for seasonal fluctuations that might affect earnings. While it is true that the Board has expressed a preference for formulas based on comparable employees, the Board has never stated that prior earnings could never be a reasonable basis-for calculation where earnings of comparable employees during the backpay period are not available. In fact, in recognition of the fact that reliable comparable employee information is not always available, the Board has expressly declined to adopt the comparable employee approach as the standard to be applied in all cases. (*Ukegawa Brothers* (1990) 16 ALRB No. 18, p. 4.)

Calculation of backpay is by definition an estimate and can be based only upon the information that is available. Since significant fluctuation in labor needs from year to year is not unusual in agriculture, the use of a comparable employee formula, which accounts for such fluctuation, should be used whenever possible. However, the Board will not rule out the use of a prior earnings formula when circumstances are such that more accurate methods, such as the use of comparable employees, are not available. Where a prior earnings formula must be used, the Board expects that attempts will be made to account in some manner for annual fluctuations in available work. Indeed, in the

present case, the ALJ believed that a more reasonable method was not available and made an effort to adjust the prior earnings formula (by not including wage increases) in an attempt to account in some fashion for annual fluctuations in the amount of available work.

Assuming the accuracy of the ALJ's belief that the record did not provide a more reasonable alternative to the use of Lopez' 1989 earnings to calculate gross backpay, the use of a prior earnings formula was not unreasonable. But that does not end the inquiry, for Respondent argues that Exhibit 19 does provide a more reasonable basis for calculation. Once a reasonable formula for calculating backpay is presented, the burden shifts to the respondent to demonstrate that it has provided a more appropriate formula. (*Ukegawa Brothers, supra*, at p. 5, fn. 5.) For the reasons stated below, we believe the formula based on Exhibit 19 satisfies this burden.

There are two critical findings in the previous Board decision. One, Respondent had refused to reinstate Lopez as ordered in the liability decision in that he was not assigned irrigation work in the manner he was prior to the onset of the discrimination. Two, there were sufficient hours available at Indio-80 (after Yepis was removed from the assignment), the largest flood irrigated ranch, to make Lopez whole. Consequently, in the peculiar circumstances of this case, the most accurate measure of loss to Lopez after July 9, 1991 would be a comparison of the hours worked by others irrigating at

Indio-80 with the hours Lopez actually worked on those days (the loss being the additional hours that accrue to those performing irrigation). This would best approximate his status prior to the discrimination, which was that he performed general labor along with the regular irrigation assignment at Indio-80.

The formula described above is reflected in the methodology underlying Exhibit 19. The ALJ concluded that a formula based on 1989 earnings was preferable because, in his view, the underlying records make it impossible to distinguish what type of irrigation is being performed by the various employees. Assuming this was true, the ALJ's conclusion would be fully sustainable. However, our own comparison of Exhibit 19 with the underlying payroll records convinces us that Exhibit 19 provides a reasonably accurate calculation of additional hours Lopez would have worked had he regained his regular irrigation assignment at Indio-80 after Yepis was reassigned. Our review revealed that Indio-80 irrigation assignments were denoted with reasonable accuracy, as were the hours worked each day by Lopez, thus providing an adequate basis for comparison. Under this methodology, the amount owing for the period from July 10, 1991 to June 9, 1994, the date of the initial compliance hearing,⁶ is \$3,474.50. The total amount owing, including the period of July 3, 1990 to July 10, 1991, is therefore \$3924.50.

⁶It was found in the Board's prior decision (20 ALRB No. 19] that, as of the date of hearing, Respondent had not reinstated Lopez to the same or a substantially equivalent position as ordered by the Board in 18 ALRB No. 11.

ORDER

Consistent with the findings and conclusions set forth above, Respondent shall pay Vidal Lopez, to make him whole for the period of July 3, 1990 to June 9, 1994, the sum of \$3924.50, less standard payroll deductions, plus interest calculated in accordance with *E. W. Merritt Farms* (1988) 14 ALRB No. 5. In the event that Lopez has not been fully reinstated after June 9, 1994, backpay shall continue to accrue until such reinstatement.

DATED: October 31, 1995

MICHAEL B. STOKER, Chairman

IVONNE RAMOS RICHARDSON, Member

LINDA A. FRICK, Member

CASE SUMMARY

OASIS RANCH MANAGEMENT, INC.
(UTAF, etc.)

21 ALRB No. 11
Case Nos. 90-CE-20-EC
90-CE-21-EC
90-CE-34-EC
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90-CE-70-EC
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90-CE-74-EC
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90-CE-98-EC
90-CE-115-EC

Background

On July 5, 1995, Administrative Law Judge (ALJ) Douglas Gallop issued his second supplemental decision, following a hearing on remand as ordered by the Agricultural Labor Relations Board (Board) in *Oasis Ranch Management, Inc.* (1994) 20 ALRB No. 19. In the Board's decision on liability, *Oasis Ranch Management, Inc.* (1992) 18 ALRB No. 11, which was upheld on appeal to the courts, the Board found that Lopez had been discriminatorily denied irrigation assignments, resulting in the assignment of fewer hours. In 20 ALRB No. 19, which followed the initial compliance hearing, the Board affirmed, for the most part, the findings of the ALJ related to the proper calculation of the amounts owing to Vidal Lopez. However, the Board determined that it was necessary to remand for further hearing to allow Oasis Ranch Management, Inc. (Employer or Respondent) the opportunity to rebut the reasonableness of the ALJ's use of Lopez' 1989 earnings as the basis for calculating backpay. The ALJ had adopted that approach after rejecting the methodologies offered by the General Counsel and Respondent. The Board also allowed the parties the opportunity to address whether Marciel Ibanez and Ramon de la Torre might be considered comparable employees. However, no evidence on comparable employees was offered at the reopened hearing.

Based on the evidence offered at the reopened hearing, the ALJ concluded that, for the period from July 3, 1990 to July 10, 1991, while Lopez' former irrigation assignment was lawfully assigned to another employee, Lopez' losses should be measured by a daily comparison of Lopez' hours with those of other employees given back up irrigation assignments that should have gone to Lopez (the Board had previously held that Respondent was under no obligation to displace those who had regular flood irrigation assignments at the time the discriminatory conduct commenced). Respondent had offered an exhibit purporting to apply this

methodology, which the ALJ utilized after disregarding the hours of one irrigator who was improperly included. For the period beginning July 10, 1991, the ALJ concluded, based on his view that the record did not provide any reliable alternative, that a backpay formula based on Lopez' 1989 earnings was the most reasonable.

Board Decision

The Board affirmed the general methodology used by the ALJ for the first period, but relied on its own calculations instead, after finding that the calculations reflected in the exhibit submitted by Respondent and relied on by the ALJ both incorrectly included the hours of some employees while incorrectly excluding the hours worked by irrigators with regular assignments while working at other than their regularly assigned locations.

The Board rejected Respondent's argument that the use of a prior earnings formula is always improper in a seasonal industry like agriculture, finding that such a formula could be appropriate where more accurate methods are not available. However, the Board did state that, due to annual fluctuations in labor needs, a comparable employee formula is inherently more accurate and should be utilized whenever possible. The Board pointed out that, in the present case, the ALJ used a prior earnings formula after concluding that the record provided no reasonable alternative, and attempted to make adjustments to account for a subsequent drop in available work. However, the Board concluded that the daily comparison method reflected in Respondent's Exhibit 19 (a comparison of Lopez' hours with those worked by others performing flood irrigation at the ranch to which Lopez was assigned prior to the discrimination) was inherently the most accurate, and after conducting its own review of the underlying payroll records, the Board concluded that Exhibit 19 provided a reasonably accurate calculation based on that methodology. Therefore, the Board concluded that Respondent had satisfied its burden to provide a more reasonable formula. The Board's order calculates back pay through June 9, 1994, the date of the initial compliance hearing, since it was found in the previous decision that Lopez, as of that date, had not been reinstated.

* * *

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

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:)	
	)	Case Nos. 90-CE-20-EC
OASIS RANCH MANAGEMENT INC.,)	90-CE-21-EC
a California Corporation,)	90-CE-34-EC
)	90-CE-34-1-EC
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FRONTERIZOS; and MANUEL ANGEL)	90-CE-72-EC
RAMIREZ, JOSE LUIS ESTRADA,)	90-CE-74-EC
JORGE CHAVEZ, OSCAR SALAZAR,	)	90-CE-75-EC
RIGOBERTO MARTINEZ JAUREGUI, and	)	90-CE-91-EC
MIGUEL RODRIGUEZ, Individuals,)	90-CE-98-EC
)	90-CE-115-EC
Charging Parties.)	(18 ALRB No. 11)
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Appearances:

Theodore R. Scott
Littler, Mendelson, Fastiff,
Tichy & Mathiason
San Diego, California
for Respondent

Kristine Rodriguez
El Centro Regional Office
El Centro, California
for General Counsel

DOUGLAS GALLOP: The hearing in this matter was reopened on May 9, 1995, pursuant to a Decision and Order of the Agricultural Labor Relations Board (ALRB or Board), in 20 ALRB No. 19. In that Decision and Order, the Board ordered that the parties be permitted to present evidence as to whether the gross backpay of discriminatee Vidal Lopez should be based on his 1989 gross earnings, as found in the undersigned's Supplemental Decision, or on some other basis; in particular, whether it should be based on the earnings of a comparable employee, such as Marcial Ibanez or Ramon de la Torre. In addition, the Board affirmed various findings and conclusions in the Supplemental Decision, but disagreed with the conclusion that Respondent was obligated to provide Lopez with general labor work when irrigation hours were not available. The Board noted that given Respondent's lawful replacement of Lopez in his irrigation assignment at Indio 80 for the period July 1990 to July 1991, such a requirement might result in a windfall to him.

Respondent recalled General Manager, Dennis Maroney, as a witness, and introduced various additional documents into evidence. General Counsel declined to present additional evidence. Upon the entire record, including my observations of the witnesses, and after careful consideration of the brief filed by Respondent, I make the following supplemental findings of fact and conclusions of law.

SUPPLEMENTAL FINDINGS OF FACT

Respondent, through Maroney and the documents, presented the following evidence at the reopened hearing:

1. Billings for work done at the Myers, Indio 80 and Loma Fuerte ranches for the years 1990 - 1994, and the hourly rate charged to Respondent's clients during those years for irrigation work.

2 . The locations where flood irrigation work has been performed since 1989, including the conversion of some ranches to drip irrigation during that period, and the discontinuance of any work by Respondent at the Loma Fuerte ranch in November or December 1994 .

3. Various documents showing the wages of several employees and their hours spent on irrigation work.

4. Documents showing general trends in Respondent's workforce, including the number of total employees and Respondent's total payroll.

5. Charts showing the number of irrigation hours Lopez has lost, based on Respondent's positions concerning the availability of irrigation work for him.

6. Maroney's testimony that in an effort to lower labor costs, Respondent has substantially reduced overtime hours and Saturday work, eliminating the latter entirely after 1991. Maroney's contention regarding the elimination of Saturday work is totally contradicted by the timesheets in evidence at the prior hearing, which show that employees continued to work Saturdays

after 1991, including irrigation work. Therefore, his assertion is not credited.

7. Maroney's testimony that because other irrigators lived closer to Indio 80, Lopez should not have been assigned that work. This assertion was rejected in the prior decision, and upheld by the Board. It is further noted that prior to July 1990, Lopez irrigated at Indio 80, apparently commuting from the same residence.

8. Other testimony by Maroney concerning work assignments for irrigators at the ranches managed by Respondent.

SUPPLEMENTAL ANALYSIS AND CONCLUSIONS

Neither Respondent nor General Counsel contends that Marcial Ibanez or Ramon de la Torre was a comparable employee. As noted in the Supplemental Decision, Maroney, at the prior hearing, denied that any employee, with the possible exception of Joe Garcia, was comparable, because Lopez knows how to perform flood, but not drip irrigation.¹ Furthermore, it is clear that prior to Respondent's discrimination against Lopez, he performed more non-irrigation work than any other irrigator, with the possible exception of Garcia. No testimony was presented concerning the job duties of Ibanez, and his wage history was not placed into evidence. No testimony was presented concerning the job duties of de la Torre or Juan Resendiz, other than their irrigation duties. Therefore, the evidence fails to support a finding that Lopez's

¹Joe Garcia was rejected as a comparable employee because his hours were reduced due to his age. Furthermore, Garcia has died, and therefore had no wages during much of the backpay period.

Therefore, the evidence fails to support a finding that Lopez's backpay should be based on the wages of any other employee.

Respondent contends that Lopez's gross backpay should be determined solely on the basis of the average number of flood irrigation hours available on a daily basis, throughout the backpay period, other than those previously worked by other irrigators. It contends that Lopez's net backpay should be determined by deducting his wages from all sources, on a daily basis.

With respect to the period July 3, 1990 through June 30, 1991, Respondent's position will, for the most part, be accepted.² In light of the fact that a major source of income for Lopez in 1989, his irrigation work at Indio 80 has been found to have been lawfully taken away from him for that period, and the Board's conclusion that Respondent was not obligated to replace those hours with other work, Lopez's 1989 wages would not

²Respondent's Exhibit 18 calculates irrigation hours lost for this period. In its brief, Respondent contends that the irrigation hours worked by Pedro Lugo should be deducted, because he was an irrigator prior to the commencement of the backpay period. Although the weekly timesheets do not show where Lugo was irrigating prior to July 3, 1990, he was a regular irrigator, and it may be assumed he at least roughly continued those same duties in the following months. On the other hand, Respondent, in its brief, deducts irrigation hours performed by Juan Jose Estrada, shown in its exhibit, where the irrigation work is not specified to have been performed at a flood irrigation ranch. Maroney gave vague, conflicting testimony as to the type of irrigation work Estrada performed, and Respondent's Exhibit 18 shows he performed some flood irrigation work during the backpay period. Given the haphazard nature of the notations on the underlying timesheets, and the unreliability of Maroney as a witness, it will not be assumed that such work took place at drip irrigation ranches. Therefore, 28 hours (or \$126.00) will be added to Respondent's total, in its brief, for this period.

In determining Lopez's net backpay for this period, there is a fundamental inconsistency in considering only his lost irrigation hours for gross backpay, and then deducting pay for non-irrigation work. Nevertheless, it is clear that Lopez's non-irrigation work substantially increased, since much of his earlier work involved irrigating at Indio 80. Given this, and the unusual circumstances presented in calculating his backpay for the period, all of Lopez's interim earnings will be deducted.

Inasmuch as the Board has affirmed the conclusion that Lopez should have been reinstated to his irrigation duties at Indio 80 once Miguel Yepis was replaced,³ it once again becomes appropriate to use his 1989 wages to determine gross backpay, for the period commencing July 10, 1991. As noted above, the evidence fails to establish a comparable employee, and if all of Lopez's interim earnings are to be deducted, it is only appropriate that all of his earnings be considered in determining gross backpay, absent the issue of Lopez's replacement by Yepis at Indio 80.⁴

Respondent's other arguments against using the 1989 wages are not persuasive. It was found in the prior decision that despite not being laid off after the harvest in 1989, Lopez's hours in

³Respondent, nevertheless, continues to dispute Lopez's entitlement to backpay for irrigation work performed at Indio 80 after July 9, 1991.

⁴At the hearing, Respondent recognized that if only the flood irrigation work were considered for gross backpay, and only flood irrigation work were deducted to determine net backpay, Lopez's net backpay would be considerably higher than found herein. This is because Lopez was assigned very little irrigation work during the backpay period.

that year were representative, because he had been laid off earlier. The data concerning Respondent's workforce as a whole is mostly irrelevant, and raises more questions than it answers. Certainly, the work patterns of seasonal employees who did no irrigation work are irrelevant. Furthermore, no pattern can be discerned correlating numbers of employees and total wages paid.

A summary prepared by Respondent shows that total Saturday and ten-hour days worked by all employees declined during the second half of 1990 and in 1991, but the summary does not cover the period thereafter. As found above, contrary to Maroney's testimony, Resendiz and de la Torre continued to work substantial overtime and Saturday hours after 1991. Although Resendiz and de la Torre have not been found to be comparable employees, their wage histories are relevant, to an extent, in determining whether 1989 is an appropriate year to use in determining gross backpay.

At the outset, it should be noted that Lopez's attendance record has been almost perfect, and no testimony was presented showing whether fluctuations in the wages of Resendiz or de la Torre were influenced by absences. Respondent's summary shows that there was a decline in their average hours after 1989, but the decline in Lopez's average hours was much more substantial. In addition, the reduction in average hours does not appear to correlate to the employees' annual gross wages. For example, Respondent contends that de la Torre averaged 50 hours per week in both 1990 and 1992, but his gross wages for those years were \$8,671 and \$12,815, respectively. Respondent contends that

Resendiz's average weekly hours in 1990 were 51, compared to 46 : 1992. Resendiz's gross wages for those years, however, were \$8,417 and \$12,415, respectively.

Although the gross wages of Resendiz and de la Torre plunged in 1990,⁵ Resendiz earned 77% of his 1989 wages in 1991, 94% in 1992 and 92% in 1993. De la Torre earned 99% of his 1989 wages in 1991, 103% in 1992 and 93% in 1993. Lopez, on the other hand, earned 66% of his 1989 wages in 1991, 77% in 1992 and 78% in 1993. It is also noted that Lopez's gross wages in 1989 were higher than Resendiz's and de la Torre's, but significantly lower after that year.

Accordingly, while there may have been some reduction in average hours worked, it is still more appropriate to use Lopez's 1989 wages to determine gross backpay, commencing July 10, 1991, particularly if all interim earnings are to be deducted.⁶ It has already been found that the irrigation hours available at Indio 80 alone would have provided enough work to make up for the hours Lopez lost during the backpay period. That finding was upheld by the Board. In recognition of the fact that there has been some

⁵It is clear that this sharp decline in wages was far more than a mere reduction in overtime and Saturday work, although Respondent chose not to explain this at the hearing. The wages in 1990 are so much lower than in the other years covered that it, and not 1989 is the atypical year. Since Lopez's backpay for 1990 is not based on his prior wages, the outcome is unaffected.

⁶As noted in the Supplemental Decision, this methodology is also preferable due to the state of the documentary evidence, which in many instances makes it impossible to determine, with any degree of accuracy, what type of irrigation work was being performed.

reduction in the hours of similarly situated employees since 1989, which has largely been made up by hourly increases, Lopez's gross backpay will not be augmented by the wage increases, as was done in the Supplemental Decision. This will, approximately, take into account the reduction in hours. As previously found, Lopez's net backpay for the period commencing July 10, 1991 will consist of his gross backpay, less all interim earnings.⁷

ORDER

In accordance with the findings and conclusions herein, and the calculations contained in the Appendix, attached hereto, Respondent's obligation to make Vidal Lopez whole, as of March 31, 1994, will be discharged by paying him the sum of \$8,970.50 less standard payroll deductions, plus interest as calculated in accordance with applicable Board precedent.

Dated: July 5, 1995.



DOUGLAS GALLOP
Administrative Law Judge

⁷The gross backpay and interim earnings for the third quarter of 1991 have both been reduced by 2/13 to reflect the two-week period, at and slightly before the beginning of that quarter (from June 26 to July 9), in which Yepis was still irrigating at Indio 80.

APPENDIX

Vidal Lopez, Backpay
July 3, 1990 through July 31, 1994

1990

Third Quarter: (7/3 - 9/30)

\$ 4.50 - Net backpay (1 qualified irrigation hour lost,
at- \$4. 50 per- hour.)

Fourth Quarter:

\$ 103.50 - Net backpay (23 qualified irrigation hours lost,
reduced by hours worked, at \$4.50 per hour.)

1991

First Quarter:

\$ -0- Net backpay (No qualified irrigation hours lost)

Second Quarter:

\$ 301.50 - Net backpay (67 qualified irrigation hours lost,
reduced by hours worked, at \$4.50 per hour.)

Third Quarter:

\$ 18.00 - Net backpay 7/1 - 7/9 (4 qualified irrigation hours lost,
reduced by hours worked, at \$4.50 per hour.)

\$3,013.00 - 1989 wages 7/10 - 10/1

\$2,017.00 - less interim earnings 7/10 - 10/1/91

\$ 996.00 - net backpay 7/10 - 10/1

\$1,014.00 - net backpay for quarter

Fourth Quarter:

\$2,586.00 - 1989 wages 10/2 - end

\$2,247.00 - interim earnings

\$ 339.00 - net backpay

Vidal Lopez, Backpay (continued)

1992

First Quarter:

\$3,756.00 - 1989 wages 1/1 - 4/2
\$2,297.00 - less interim earnings
\$1,459.00 - net backpay

Second Quarter:

\$3,171.00 - 1989 wages 4/3 - 6/25
\$2,567.00 - less interim earnings
\$ 604.00 - net backpay

Third Quarter:

\$3,561.00 - 1989 wages 6/26 - 10/1
\$2,660.00 - less interim earnings
\$ 901.00 - net backpay

Fourth Quarter:

\$2,586.00 - 1989 wages
\$2,890.00 - less interim earnings
\$ -0- - interim earnings exceed backpay

1993

First Quarter:

\$3,756.00 - 1989 wages
\$2,175.00 - less interim earnings
\$1,581.00 - net backpay

Second Quarter:

\$3,171.00 - 1989 wages
\$2,775.00 - less interim earnings
\$ 396.00 - net backpay

Third Quarter:

\$3,561.00 - 1989 wages
\$2,800.00 - less interim earnings
\$ 761.00 - net backpay

Fourth Quarter:

\$2,586.00 - 1989 wages
\$2,820.00 - less interim earnings
\$ -0- - interim earnings exceed backpay

Vidal Lopez, Backpay (continued)

1994

First Quarter:

\$3,756.00 - 1989 wages

\$2,142.00 - less interim earnings

\$1,614.00 - net backpay

Total Net Backpay, without interest, as of
March 31, 1994 = \$8,970.50