

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

FRUDDEN PRODUCE, INC.,	)	
	)	
Respondent,	)	Case No. 75-CE-138-M
	)	
and	)	
	)	
UNITED FARM WORKERS	)	8 ALRB No. 26
OF AMERICA, AFL-CIO,	)	(4 ALRB No. 17)
	)	
Charging Party.	)	
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SUPPLEMENTAL DECISION AND ORDER

On April 5, 1978, the Agricultural Labor Relations Board issued a Decision and Order in this proceeding (4 ALRB No. 17), concluding, inter alia, that Respondent had discriminatorily discharged employees Noe Garibay, Francisco Garibay, and Alejandro Garibay, in violation of Labor Code section 1153 (c) and (a), and ordering Respondent to reinstate those three employees to their former or equivalent positions and to make them whole for all losses of pay and other economic losses they have suffered as a result of their discriminatory discharge.

On September 8, 1981, a hearing was held before Administrative Law Officer (ALO) Brian L. Tom for the purpose of determining the amount of backpay due to each of the said employees, Thereafter, on December 15, 1981, the ALO issued his Supplemental Decision, attached hereto, in which he made findings as to the amount of backpay due each discriminatee. Thereafter, the General Counsel and Respondent each timely filed exceptions to the ALO's Supplemental Decision and a supporting brief.

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

The Board has considered the record and the ALO's Supplemental Decision in light of the exceptions and briefs, and has decided to affirm the ALO's rulings, findings, conclusions, and recommendations as modified herein.

The parties stipulated that the method used to compute gross backpay was reasonable and that the gross backpay amount for each of the discriminatees was accurate as amended.<sup>1/</sup> The gross backpay for each of the employees was computed as follows:

<u>GROSS BACK PAY</u>		
1975	31 cents x 20 days x 125 buckets	= \$ 775.00
1976	31.5 cents x 65 days x 125 buckets	= 2,559.38
1977	32.5 cents x 65 days x 125 buckets	= 2,640.63
1978	35 cents x 65 days x 125 buckets	= 2,843.75
1979	35 cents x 30 days x 125 buckets	
	41 cents x 32 days x 125 buckets	= 2,952.50 <sup>2/</sup>
1980	41 cents x 22 days x 125 buckets	= 1,127.50

Respondent excepts to the ALO's refusal to adopt an

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<sup>1/</sup>The parties agreed that the backpay period includes the years 1975 to 1980, inclusive. There is no evidence in the record before us that the discriminatees have been reinstated or offered reinstatement. This decision does not act to terminate Respondent's backpay liability as of 1980 if in fact the discriminatees have not been offered reinstatement to their previous, or substantially equivalent employment.

<sup>2/</sup>Where necessary, we have corrected the ALO's errors in computation. The resultant changes will also be reflected in the net backpay due to each of the discriminatees.

annual, as opposed to a seasonal, time frame for determining the amount of backpay liability. We find no merit in this exception.

The National Labor Relations Board's (NLRB) formula for computing backpay calls for computation on a quarterly basis. F.W. Woolworth Co. (1950) 90 NLRB 289 [26 LRRM 1185]. However, in Sunnyside Nurseries, Inc. (May 20, 1977) 3 ALRB No. 42, this Board rejected the NLRB's formula as inappropriate for agricultural situations and established a formula for calculating backpay on a daily basis. We have since authorized the calculation of backpay on a weekly basis or by any method that is reasonable in light of the information available, equitable, and in accordance with the policy of the Act. Butte View Farms (Nov. 8, 1978) 4 ALRB No. 90, affirmed (1979) 95 Cal.App.3d 961; see Arnuaao Brothers (August 31, 1981) 7 ALRB No. 25.

Based on this Board's precedent and on the facts of this case, we conclude that the seasonal formula adopted by the ALO is proper. In the instant case, the seasonal backpay periods extended from approximately early August to late October in each of the six years. Once the General Counsel established the gross amount of backpay that was due, Respondent had the burden of negating the existence of liability or of mitigating the extent of liability. Kawano, Inc. (Dec. 26, 1978) 4 ALRB No. 104 at p. 19, affirmed (1980) 106 Cal.App.3d 1937. However, in establishing mitigation, we can consider earnings from other sources during the six seasonal backpay periods and earnings from periods outside of the backpay periods only to the extent that they would be determinative of wages earned during the backpay periods.

The General Counsel excepts to the ALO's conclusion that he had not proved the amount of travel expenses incurred by the discriminatees. This exception has merit.

General Counsel claimed that the discriminatees each spent \$50 per year in their efforts to secure interim employment during the backpay period. The ALO concluded that the only testimony concerning the travel expenses was hearsay and conclusionary and was thus too speculative to support the claim.

Board agent Roger Smith testified that he interviewed the discriminatees who told him they had spent this amount of money. The discriminatees lived in Soledad and drove to Salinas, King City, and San Lucas seeking employment in the tomato harvest. (R.T. II:pp. 20-23.)<sup>3/</sup> The expenses were based on estimates given to Smith (R.T. II:pp. 20-23;64) and were for the purchase of gasoline (R.T. II:pp. 20-23.) The discriminatees made trips every day for a few weeks each year, seeking employment. (R.T. II:p. 64.)

The Board agent's hearsay testimony is the only evidence in the record concerning the travel expenses. Smith's testimony was admitted without objection and Respondent did not put on any contrary evidence.

Material and relevant evidence which is technically incompetent and inadmissible... if offered and received without a proper objection or motion to strike will be considered in support of the judgement....

Witkin, California Evidence (2d ed. 1966) Evidence Sufficient to Sustain a Judgment, sections 1305, 1306

<sup>3/</sup>This is a reference to the reporter's transcript at Volume II, pages 20-23.

p. 1207. Flood v Simpson (1975) 45 Cal.App.3d 644, 649; Waller v Waller (1970) 3 Cal.App.3d 456.

The California Evidence Code recognizes this principle. See Evidence Code section 140, Comment. In addition, technically incompetent and inadmissible evidence becomes competent proof when the question of the sufficiency of evidence to support a finding is considered. Berry v. Chrome Crankshaft Co. (1978) 159 Cal.App.3d 545.

We find that Board agent Smith's testimony is sufficient to establish the General Counsel's claim for travel expenses for the three discriminatees. We shall, accordingly, add \$50.00 per year as reimbursement for those expenses to the backpay award of each discriminatee, See Appendix, attached hereto.

#### ORDER

Pursuant to Labor Code section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent Frudden Produce, Inc., its officers, agents, successors, and assigns, pay to the employees listed below, who in our Decision and Order dated April 15, 1978, were found to have been discriminatorily discharged by Respondent, the amounts set forth below beside their respective names, plus interest thereon compounded at the rate of seven percent per annum, plus such additional backpay and interest, if any, as has accrued up to the date Respondent offers reinstatement to the said employees in accordance with our prior order in this matter.

Noe Garibay	\$5,136.51
Francisco Garibay	\$3,563.76
Alejandro Garibay	\$4,741.26

Dated: March 29, 1982

HERBERT A. PERRY, Acting Chairman

JEROME R. WALDIE, Member

JOHN P. McCARTHY, Member

APPENDIX A

BACKPAY CALCULATIONS

	<u>GROSS</u>	<u>INTERIM</u>	<u>EXPENSES</u>	<u>NET</u>
<u>Noe Garibay</u>				
1975	\$ 775.00	\$ -0-	\$50.00	\$ 825.00
1976	2,559.38	2,344.00	50.00	265.38
1977	2,640.63	2,032.00	50.00	658.63
1978	2,843.75	850.00	50.00	2,043.75
1979	2,952.50	2,591.25	50.00	411.25
1980	1,127.50	245.00	50.00	<u>932.50</u>
			Total	\$5,136.51

<u>Francisco Garibay</u>				
1975	\$ 775.00	\$ -0-	\$50.00	\$ 825.00
1976	2,559.38	560.00	50.00	2,049.38
1977	2,640.63	2,595.00	50.00	95.63
1978	2,843.75	2,300.00	50.00	593.75
1979	2,952.50	3,770.00	50.00	-0-
1980	1,127.50	1,933.00	50.00	<u>-0-</u>
			Total	\$3,563.76

<u>Alejandro Garibay</u>				
1975	\$ 775.00	-0-	\$50.00	\$ 825.00
1976	2,559.38	560.00	50.00	2,049.38
1977	2,640.63	2,595.00	50.00	95.63
1978	2,843.75	2,300.00	50.00	593.75
1979	2,952.50	3,770.00	50.00	-0-
1980	1,127.50	-0-	50.00	<u>1,177.50</u>
			Total	\$4,741.26

CASE SUMMARY

Frudden Produce, Inc.

8 ALR3 No. 26  
Case No. 75-CE-138-M  
(4 ALRB L7)

ALO DECISION

In this backpay case, the ALO concluded that the General Counsel's seasonal formula for calculating back pay was proper, and rejected Respondent's contention that the proper time frame for computing back pay was on an annual basis. In addition, the ALO refused to allow the discriminatees to recover travel expenses, finding that the evidence was too speculative.

BOARD DECISION

The Board upheld the ALO's conclusion that the General Counsel's seasonal formula for computing backpay was proper. The Board noted that backpay can be calculated on a daily or weekly basis, or by any method that is reasonable in light of the information available, equitable, and in accordance with the policy of the Act. In addition, the Board concluded that the discriminatees' travel expense claims were adequately proved. While the only evidence regarding these expenses was the hearsay testimony of a Board agent, that testimony was admitted without objection and was not rebutted.



STATE OF CALIFORNIA  
BEFORE THE  
AGRICULTURAL LABOR REATIONS BOARD

In the Matter of )

FRUDDEN PRODUCE, INC., )

Respondent, )

UNITED FARM WORKERS OF AMERICA, )  
AFL-CIO, )

Charging Party. )

Case No. 75-CE-138-M  
4 ALRB No. 17

APPEARANCES:

Jose B. Martinez, Esq.  
On Behalf of General Counsel

Phillip R. Hertz, Esq.  
Littler, Mendelson, Fastiff & Ticky On  
Behalf of Respondent

SUPPLEMENTAL DECISION

STATEMENT OF THE CASE

BRIAN TOM, Administrative Law Officer:

This matter was heard before me on September 2 and 8, 1981, in Salinas, California, to determine the amount of back pay owed by the Respondent to Noe, Francisco, and Ale Janeiro Garibay. The Agricultural Labor Relations Board (hereinafter "Board") previously issued a decision (4 ALRB No. 17) finding unfair labor practices and an accompanying order requiring, inter alia, that Frudden Produce, Inc., the Respondent herein, offer immediate and full reinstatement of the above-named employees to their former or substantially equivalent position and make them whole for any

1 losses they may have suffered by reason of their discriminatory discharges.

2 The parties were unable to agree on the amount of the back pay and on  
3 July 17, 1981, the Regional Director issued a Back Pay Specification and  
4 Notice of Hearing. On July 20, 1981, the Regional Director issued an  
5 Amended Back Pay Specification amending Francisco Garibay's interim  
6 earnings for 1980. On August 31, 1981, Respondent filed its Answer to the  
7 Back Pay Specification and Amended Back Pay Specification.  
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9 All parties were given a full opportunity to participate in the hearing,  
10 and the General Counsel and the Respondent were both represented at the  
11 hearing. After the close of the hearing, the General Counsel and the  
12 Respondent filed briefs. Upon the entire record, including my observation of  
13 the demeanor of the witnesses, and after careful' consideration of the briefs  
14 submitted by the parties, I made the following:  
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16 FINDINGS OF FACT

17 At the outset of the hearing, the parties stipulated that the gross pay  
18 amounts for the discriminatees as reflected in appendix one of the Back Pay  
19 Specifications were accurate as amended.  
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21 1. At the hearing, I understood the stipulation as to gross back pay to  
22 relate to each individual and I so find. Respondent raises the issue in his  
23 post-hearing brief that the stipulation did not relate to each individual but  
24 rather to what a "hypothetical" worker at Frudden made in the tomato harvest  
25 for those years. However, throughout the hearing the parties, and I, treated  
26 the stipulation as one where no proof would be required to prove gross back  
27 pay, and the record is replete with statements by the parties so indicating.  
28 In addition, I find that Respondent's answer, denying the amount of gross back  
pay, without specifying the basis for this disagreement as required by 8 Cal.  
Admin. Code Section 20290 (d) (2) and (3), not sufficient to put into issue  
the gross back pay as specified by the General Counsel. Standard Materials,  
Inc., 252 NLRB No. 94 (1980). United Contractors, Inc., 239 NLRB No. 123  
(1978).

2.

1 These amounts are set forth as below.

2 GROSS BACK PAY

3 1975 31 cents x 20 days x 125 buckets = \$775  
4 1976 31.5 cents x 65 days x 125 buckets = \$2,559  
5 1977 32.5 cents x 65 days x 125 buckets = \$2,640  
6 1978 35 cents x 65 days x 125 buckets = \$2,843  
7 1979 35 cents x 30 days x 125 buckets  
8 = \$3,083  
9 41 cents x 32 days x 125 buckets  
10 1980 41 cents x 22 days x 125 buckets = \$1,127

11 In addition, the parties also stipulated that the method  
12 used to compute the gross back pay was reasonable.

13 Having stipulated to the gross back pay amounts the remaining, issues were the  
14 amount of the interim earnings and the amount of the expenses claimed by the  
15 discriminatees.<sup>2</sup>

16 Respondent argues in his post-hearing brief that the General Counsel has  
17 not shown "by a preponderance of the testimony taken" standard, that any of the  
18 discriminatees was "out-of-pocket" any gross back pay for the subject period.  
19 Respondent is apparently arguing that there must be some testimony in order to  
20 make a finding of back pay. However, stipulations entered into between  
21 parties may be a substitute for proof. 1 Witkins, Cal. Proc., (2d ed. 1971)  
Attorneys, Section 132, p. 144 and cases cited thereunder.

22 Respondent further argues that the discriminatees earned "gross pay  
23 in an amount equal to or greater than that which they  
24

25

26

27 2. The Respondent took the position at the hearing that the burden of  
28 proof on the amount of interim earnings was on the General Counsel. In his  
post-hearing brief, Respondent acknowledges that the burden of proof shifts  
to the employer once the gross back pay has been established.

1 would hypothetically have made at Respondent during the years  
2 in question." As Respondent has already stipulated to these  
3 gross pay amounts, his argument at this time challenging these  
4 same amounts is inappropriate. In any event, the facts he relies  
5 on in support of this argument are based on annual gross earnings  
6 and do not disprove the stipulated gross back pay which, except  
7 for 1975 and 1980, cover back pay periods of only 65 days per  
8 year. The periods for 1975 and 1980 are 20 and 22 days, respect-  
9 ively. For example, Respondent argues, on the basis of a Social  
10 Security document entitled "Itemized Statement of Earning," that  
11 Noe Garbiay for the year 1975 earned \$2,396.55, or more than \$800<sup>3</sup>  
12 greater than the gross back pay stipulated to. By comparing  
13 Noe Garibay's earning in 1975 for the entire year with a period  
14 of only 22 days under the gross back pay for 1975, it is not  
15 surprising that the annual earnings should be greater.

16 Respondent submits that the appropriate time frame for  
17 measuring whether a discriminatee is "out-of-pocket" a certain  
18 amount of back pay is on an annual basis. He argues that "this  
19 is an especially reasonable approach in light of the unique,  
20 transient and seasonal nature of the labor force in California  
21 agriculture in which employees traditionally work for one or  
22 more employers in a particular calendar year." No authority is  
23 cited for this rather startling proposition. It would appear  
24 that precisely for the reasons cited by the Respondent a shorter  
25 time frame would be appropriate. The Board has authorized the  
26 calculation of back pay on a daily or weekly basis. Sunnyside

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27 3. As amended, the difference is actually \$1,621.55,  
28

1 Nurseries, Inc., (1977) 3 ALRB No. 42, Butte View Farms, (1978)  
2 4 ALRB No. 90. Under the circumstances of this case, the seasonal  
3 formula set forth by the General Counsel is proper and in any  
4 event, the parties stipulated to its reasonableness at the  
5 hearing.

#### 6 INTERIM EARNINGS

7 Having stipulated to the amount of discriminatees' gross  
8 back pay, the burden shifts to the employer to introduce evidence  
9 which mitigates that amount, including interim back pay. Maggio-  
10 Tostado (1978) 4 ALRB No. 36.

11 The General Counsel has conceded a certain amount of interim  
12 earnings as set forth in its Back Pay Specifications. Respondent  
13 contends, however, that the interim earnings are not accurate,  
14 and offers in support of his contention, documents which show  
15 either the discriminatees' annual or quarterly earnings for any  
16 given year.<sup>4</sup>

17 Thus, for example, Respondent referring to the same document  
18 earlier described, claims that Noe Garibay earned \$3,011 working  
19 for other employers in 1975. This amount is greater than the  
20 lack of interim earnings shown for Noe Garibay for 1975. However,  
21 the \$3,011 covers earnings for the entire year, 1975, and the  
22 lack of interim earnings claimed by the General Counsel, only  
23 refers to a 20-day period. Similarly for 1976, Respondent claims  
24 that between July 1, 1976, and December 31, 1976, Noe Garibay  
25 earned \$4,479.49 as compared to the \$2,344 alleged by the General

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26 4. Respondent does not raise the issues of the discriminatees'  
27 willingness or availability to work during the periods in  
28 question.

1 Counsel. Yet the General Counsel's earnings only cover a 65-day  
2 period, whereas the Respondent's figure is for a six-month  
3 period. In like fashion, Respondent compares the interim earnings  
4 of the discriminatees claimed by the General Counsel for the years  
5 between 1975 and 1980 with either quarterly or annual earnings  
6 set forth in various exhibits, each time showing that the annual  
7 or quarterly figures are higher. And, of course, this is not  
8 surprising as the quarterly or annual figure covers either a  
9 greater or different period of time.

10 From this evidence, Respondent, without proposing what  
11 changes should be made, asks that I modify the interim earnings  
12 claimed by the General Counsel. Under the circumstances, I do not  
13 have a basis for either increasing or decreasing the interim  
14 earnings as set forth by the General Counsel, as the figures used  
15 by Respondent are not directly comparable. I find therefore that  
16 the Respondent has not met his burden of proof on the interim  
17 earnings and will accept the interim earnings amount admitted by  
18 the General Counsel.

#### 19 EXPENSES

20 The General Counsel contends that as part of the make whole  
21 remedy, the Garibays should be reimbursed for their travel  
22 expenses resulting from their search for interim employment and  
23 the costs of replacing three tires which were slashed prior to  
24 the date of the unlawful discharge of the Garibays.

25 In support of this contention, the General Counsel called  
26 the ALRB field examiner in charge of this case, Roger Smith (hereinafter  
27 "Smith"), to testify regarding these expenses. Smith  
28 testified that he was the person that computed the expenses set

1 forth in the Back Pay Specification. He based the figures on  
2 information received by interviewing the three discriminatees.  
3 Smith testified that the \$290 shown as expenses for Noe Garibay  
4 for 1975 included \$240 for the replacement of three tires damaged  
5 while he worked at Frudden Produce. The additional \$50 was the  
6 amount Noe Garibay told Smith it cost him in gasoline to try and  
7 find work. The Back Pay Specifications also claimed \$50 in travel  
8 expense for each discriminatee for each year from 1975 to 1980.  
9 Smith testified this amount was the amount the discriminatees  
10 estimated it took each year to look for work. In addition,  
11 Smith testified that the discriminatees looked for jobs in cities  
12 25 miles from where they lived. Smith requested receipts for  
13 the expenses claimed, but the discriminatees did not have receipts.  
14 Smith admitted under cross examination that he did not know the  
15 condition of the tires prior to their being slashed and, therefore,  
16 did not know their value at that time. No other evidence was  
17 introduced, except for Smith's hearsay testimony on the amount  
18 of the expenses. General Counsel argues that Respondent should  
19 pay to replace Noe Garibay's tires on the grounds that such  
20 relief is part of the make whole remedy. However, in the  
21 Board decision, 4 ALRB No. 17, the Board found the evidence  
22 insufficient to establish that Respondent's supervisors were,  
23 in fact, responsible for the slashed tires. On this basis alone,  
24 I would deny the General Counsel's claim for the replacement costs  
25 of the damaged tires. In any event, I do not find the evidence  
26 sufficient to make a finding for the replacement of the tires.

27       There is no question but that the discriminatees would be entitled to  
28 their travel expenses to seek interim employment if

1 they were able to show the amount of these expenses. Butte View  
2 Farms, (1978) 4 ALRB No. 90. However, I am not persuaded that  
3 the record supports the award of any travel expenses in this case.  
4 The only evidence regarding the expenses comes from the testimony  
5 of Smith. Smith's testimony was, of course, hearsay only, and  
6 though admitted without objection, entitled to less weight than  
7 direct evidence. Furthermore, he did not indicate what the  
8 claimed travel expenses were based on. While there is testimony  
9 that the discriminatees looked for work in cities 25 miles from  
10 their residence, there is no indication how many times they took  
11 these trips. Claims for travel expenses are subject to the same  
12 standards of proof as other testimony. Butte View Farms, supra.  
13 Because of the hearsay and conclusionary nature of the testimony,  
14 I find the evidence too speculative to support a claim for travel  
15 expenses.

16           The General Counsel, in addition, argues that Respondent's  
17 answer is deficient and, therefore, the General Counsel was not  
18 obligated to offer any evidence in support of the travel expenses.  
19 The Respondent, in his answer, after denying the expenses set  
20 forth in the Back Pay Specification, did not set forth the basis  
21 of his disagreement with the General Counsel's figures in the  
22 Back Pay Specification.

23           The General Counsel cites as authority for this proposition  
24 United Contractors, Inc., (1978) 238 NLRB No. 123 and 8 Cal. Admin.  
25 Code Section 20290 (d) (2) and (3).

26           In the United Contractors, Inc., case, the adequacy of  
27 Respondent's answer therein as it relates to expenses was not  
28 in the issue and therefore not precedent for our purposes.



1 8 Cal. Admin. Code Section 20290 (d) (2) and (3) provides in  
2 part that "as to all matters within the knowledge of the respondent:  
3 including but not limited to the various factors entering into  
4 the computation of gross back pay, a general denial shall not  
5 suffice."<sup>5</sup>

6 The NLRB has held that a general denial is sufficient to  
7 put into issue interim earnings on the grounds that this inform-  
8 ation is not generally within the knowledge of employers.  
9 Standard Materials, Inc., supra. Dews Construction Corp., 246  
10 NLRB No. 156, 103 LRRM 1001 (1979). Garrard Convalescent Home,  
11 Inc., 220 NLRB 450, 90 LRRM 1541 (1975). While these cases did  
12 not specifically rule on expenses incurred by discriminatee, they  
13 appear to be directly analogous to interim earnings, in that a  
14 discriminatee's expenses in seeking employment is generally  
15 information unknown to the employer. Accordingly, I find that  
16 respondents general denial of discriminatee's expenses was  
17 sufficient to put into issue the question of discriminatee's  
18 expenses.

#### 19 INFLATION FACTOR

20 Finally, General Counsel made a motion to amend the Back  
21 Pay Specification to "include an inflation factor based on the  
22 California Consumer Price Index ..." No authority was cited  
23 by the General Counsel either at the hearing or in his post-  
24 hearing brief indicating that such an award would be appropriate.  
25 The Board's order in 4 ALRB No. 17 on which the Back Pay  
26 Specification is based made no reference to an "inflation factor."

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27 5. NLRB Rules and Regulations Section 102.54 (b) and (c) contains a similar  
28 provision.

1 Furthermore, no evidence was introduced upon which I could  
2 determine what the inflation factor might be. Accordingly, I  
3 decline to include in this finding any provision for the inflation  
4 factor apart from the 7 percent interest heretofore ordered by 5  
5 the Board.

6 THE REMEDY

7 For the reasons indicated above, I find that Respondent's  
8 obligations to the discriminatees will be discharged by the  
9 payment to them of the respective sums as set forth in Appendix I.  
10 Such amounts shall be payable plus interest at the rate of 7  
11 percent per annum to accrue commencing with the 27th day of  
12 October<sup>6</sup> of the year back pay was due and owing for each such  
13 year as set forth in Appendix I, and continuing until the date  
14 this decision is complied with, minus any tax withholding required  
15 by federal and state laws.

16 Accordingly, I hereby issue the following recommended:

17 ORDER

18 Respondent, Frudden Produce, Inc., shall pay to the employer  
19 listed below the amount set forth by their names together with  
20 interest at the rate of 7 percent per annum minus tax withholding  
21 required by federal and state laws:

22	Noe Garibay	\$4,964.75
23	Francisco Garibay	\$3,362.00
24	Alejandro Garibay	\$4,489.00

25 \_\_\_\_\_  
26 6. No specific dates as to when the back pay period ended each year were  
27 introduced into evidence, however, as the first year back pay was due started  
28 on October 4, 1975, and there was 20 days remaining in the back pay period  
for that year, I added the 20 days to October 4 for the ending date. Any  
difference between this date and the actual dates will be minimal.

1 Dated:

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BRIAN TOM  
Administrative Law Officer

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APPENDIX I  
Noe Garibay

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	<u>Gross Back Pay</u>	<u>Interim Earnings</u>	<u>Net</u>
1975	775.00	-0-	\$ 775.00
1976	2,559.00	2,344.00	215.00
1977	2,640.00	2,032.00	608.00
1978	2,843.00	850.00	1,993.00
1979	3,083.00	2,591.00	491.00
1980	1,127.00	245.00	<u>882.00</u>

Total back pay due: \$4,964.75

Francisco Garibay

1975	775.00	-0-	\$ 775.00
1976	2,559.00	560.00	1,999.00
1977	2,640.00	2,595.00	45.00
1978	2,843.00	2,300.00	543.00
1979	3,083.00	3,770.00	-0-
1980	1,127.00	1,933.00	<u>-0-</u>

Total back pay due: \$3,362.00

Alejandro Garibay

1975	775.00	-0-	\$ 775.00
1976	2,559.00	560.00	1,999.00
1977	2,640.00	2,595.00	45.00
1978	2,843.00	2,300.00	543.00
1979	3,083.00	3,770.00	-0-
1980	1,127.00	1,933.00	<u>\$4,489.00</u>

Total back pay due: \$4,489.00