

Local 138, International Union of Operating Engineers, AFL-CIO and Thomas A. Eichacker, an individual and Nassau and Suffolk Contractors' Association, Inc., and its members, listed in Appendix A of the complaint, Parties to the Contract

Local 138, International Union of Operating Engineers, AFL-CIO and John J. DeKoning

Local 138, International Union of Operating Engineers, AFL-CIO and Walter W. Miller

Zara Contracting Co., Inc. and Walter W. Miller

Frank Marmorale, Inc. and Albert Bruder

Hendrickson Brothers, Inc. and Peter Batalias

Zara Contracting Co., Inc. and John J. DeKoning

Eastern Fireproofing Company, Inc. and Walter W. Miller

Local 138, International Union of Operating Engineers, AFL-CIO and Walter W. Miller. *Cases Nos. 29-CB-1 (formerly 2-CB-1651), 29-CB-2 (formerly 2-CB-1778), 29-CB-3, (formerly 2-CB-1792), 29-CA-1 (formerly 2-CA-5015), 29-CA-2 (formerly 2-CA-5018), 29-CA-3 (formerly 2-CA-5019), 29-CA-4 (formerly 2-CA-5020), 29-CA-5 (formerly 2-CA-5256), and 29-CB-4 (formerly 2-CB-1895). March 23, 1965*

SUPPLEMENTAL DECISION AND ORDER

On June 1, 1959, the National Labor Relations Board issued a Decision and Order in the above-entitled case,¹ directing, *inter alia*, that Respondent, Local 138, make whole nine employees whom the Board found had suffered a loss in earnings as a result of Respondent's discrimination against them. The Order also directed that Local 138, jointly and severally with Respondents Zara Contracting Co., Inc., Frank Marmorale, Inc., Hendrickson Brothers, Inc., and Eastern Fireproofing Company, Inc., make whole four employees for any loss of pay they may have suffered as a result of discrimination against them. Thereafter, the Board's Order was modified and enforced in part by the United States Court of Appeals for the Second Circuit on July 25 and November 9, 1961.²

¹ 123 NLRB 1393

² 293 F. 2d 187. The court decree of July 25 was amended at the request of the Board on November 9, 1961, to include a number of discriminatees not included in the original decree. The court, *inter alia*, had originally omitted Hendrickson Brothers as a respondent. The court further modified the Board's Order by making the union primarily liable and the remaining employers secondarily liable for making the discriminatees whole.

On March 7, 1963, the Regional Director for Region 2 issued and served upon all Respondents a backpay specification and a notice of hearing for April 22, 1963. None of the Respondents filed timely answers to the backpay specification as required by Section 102.54 of the National Labor Relations Board's Rules and Regulations. However, pursuant to its request, Respondent Union received an extension of time to file an answer, and thereafter, it filed an answer to the specification in the form of a general denial to each and every allegation contained in paragraphs I through VI, inclusive; and in Appendixes A through H, inclusive. Respondent Union was later permitted to file two amended answers. No answers were ever filed by Respondents Zara, Marmorale, and Eastern.

Thereafter, a hearing was held before Trial Examiner George L. Powell in New York, New York, on various dates during June, September, and October, 1963,³ and at Fort Lauderdale, Florida, on December 10, 1963, for the purpose of determining the amounts of backpay due the claimants. On June 29, 1964, the Trial Examiner issued the attached Supplemental Decision in which, for the reasons set forth therein, he awarded the claimants specific amounts of backpay as set forth in the backpay specification. Thereafter, Respondent Union filed exceptions to the Trial Examiner's Supplemental Decision and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the Board has delegated its powers in connection with this case to a three-member panel [Chairman McCulloch and Members Fanning and Jenkins].

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the entire record in this case, including the Supplemental Decision, the exceptions, and the brief, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner⁴ with the following modifications.

³ The specific dates of the hearings were June 18, 19, and 27; September 18; and October 8, 9, 10, 11, and 29

⁴ The penultimate paragraph on the last page of the Trial Examiner's Supplemental Decision is modified to read as follows.

Should Respondent Union fail to pay John DeKoning the sum of \$3,194.85 after legal processes for effecting such recovery have been exhausted, Respondent Zara Contracting Co., Inc., shall make him whole for said amount together with interest as provided herein. Should Respondent Union fail to pay Walter W. Miller the sum of \$9,277.20 after legal processes for effecting such recovery have been exhausted, Respondent Eastern Fireproofing Company, Inc., shall be secondarily liable to pay to him the sum of \$65.20 together with interest as provided herein. The payments herein shall be subject to tax withholdings as required by Federal and State law.

The Trial Examiner did not recommend payment of interest on the amounts of liquidated net backpay which he found to be due to each of the discriminatees, explaining that the payment of such interest was not "required" by the Board's original Order which was enforced by the court. The Trial Examiner's ruling was in accord with earlier Board precedent. (See, e.g., *Ellis and Watts Products, Inc.*, 143 NLRB 1269, 1272). However, after reconsideration, we are now of the opinion that as in this case though the Board's original Order does not provide for the allowance of interest in computing the net amount of backpay due a discriminatee, this does not preclude the Board upon adjudication of the total net backpay due a discriminatee from requiring that the adjudicated amount bear interest until the indebtedness has been discharged. To require interest on the liquidated backpay obligation does not enlarge upon the original Board Order specifying the method of the backpay computation, nor is it inconsistent with the terms of the Board's original Order or of the enforcing court decree. The same equitable and policy considerations which impelled us in *Isis Plumbing and Heating Co.*, 138 NLRB 716, to revise our usual backpay order to allow interest on earnings lost as a result of discrimination now lead us to conclude that it is similarly fitting and proper, even when the original Order is silent thereon, to provide for interest on the total net backpay obligation once the amount of that obligation has been adjudicated. This is in line with the established practice in suits at law to have monetary judgments carry interest from the date of entry until satisfied. We note, moreover, as we did in *Isis*, that in proceedings instituted to adjudge respondents in contempt of court for failure to comply with orders directing payment of back wages to discriminatorily discharged employees, courts of appeals as a matter of course have added interest to the amount of backpay that has been adjudicated to be due. See *N.L.R.B. v. Brashear Freight Lines, Inc.*, 127 F. 2d 198, 200 (C.A. 8). *Corning Glass Works v. N.L.R.B.*, 129 F. 2d 967, 973 (C.A. 2). Accordingly, contrary to the Trial Examiner's recommendation, we direct the addition of interest at the rate of 6 percent per annum on the respective amounts that have herein been determined to be payable to each discriminatee. However, as the Trial Examiner's disallowance of such interest followed earlier Board precedent which we are now overruling, we shall in this case direct that such interest accrue only from the date of this Order rather than from the date of the Trial Examiner's Supplemental Decision.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Respondent, Local 138, International Union of Operating Engineers, AFL-CIO, its officers, representatives, and agents, shall pay to the employees involved in this proceeding as net backpay the amounts awarded to them in the Trial Examiner's Supplemental Decision together with interest as provided herein. It is further ordered that, in the event John DeKoning and Walter Miller are not made whole by the Respondent Union for the discrimination against them after legal process for effecting such recovery have been exhausted, Respondents Eastern Fireproofing Company, Inc., and Zara Contracting Co., Inc., shall be secondarily liable to DeKoning and Miller for the specific amounts set forth in the Trial Examiner's Supplemental Decision as modified together with interest as provided herein.

TRIAL EXAMINER'S SUPPLEMENTAL DECISION

STATEMENT OF THE CASE

This supplemental proceeding was heard by Trial Examiner George L. Powell in New York, New York, on June 18, 19, and 27, September 18, and October 8, 9, 10, 11, and 29, 1963, and, in Fort Lauderdale, Florida, on December 10, 1963, on a backpay specification of the General Counsel dated March 7, 1963, and answer or answers of Local 138, International Union of Operating Engineers, AFL-CIO, herein called Respondent Union, filed at various times after April 17, 1963. The purpose of the proceeding was to determine the amount of backpay due and owing nine named discriminatees under an Order of the Board, enforced by the U.S. circuit court, in the above-captioned matter.¹ At the hearing, the parties who appeared as noted above, were afforded a full opportunity to examine and cross-examine witnesses, to introduce evidence, to present oral argument, and to file briefs presenting their respective contentions.

Upon a consideration of the entire record in this supplemental proceeding, and the Board's Decision and Order in the same case, issued June 1, 1959, 123 NLRB 1393, enfd. as modified 293 F. 2d 187 (C.A. 2), July 25, 1961, of which I take judicial notice, I make the following:

FINDINGS AND CONCLUSIONS

A. *The prior unfair labor practice proceeding*

On June 25, 1958, after a hearing, in which all parties were represented by counsel, which took place from November 19, 1957, to January 7, 1958, Trial Examiner Arthur E. Reyman issued his Intermediate Report finding that the Respondents had engaged in certain unfair labor practices and had not engaged in others and making certain recommendations, as set forth in the Intermediate Report.

On June 1, 1959, the Board issued its Decision and Order affirming the findings of unfair labor practices of the Trial Examiner, and finding additional unfair labor practices by Respondent Union. In this respect the Board said, in footnote 39 of its Decision, "In computing the amount of backpay for all discriminatees except Miller, the period from the date of the Intermediate Report to the date of this Decision and Order shall be excluded as the Trial Examiner found no illegality in the discharge on transfer of any discriminatee except Miller." Accordingly, the period between June 25, 1958, and June 1, 1959, will be excluded from backpay calculations.

¹ This party was dropped at the hearing on motion without opposition.

Thereafter, the General Counsel sought enforcement of the Board's Order by the United States Court of Appeals for the Second Circuit. On July 25, 1961, the court in 293 F. 2d 187, enforced as modified the Board's Order. The court, after finding Respondent Union to be an organization of operators of heavy construction equipment—bulldozers, cranes, power shovels, and the like—in Nassau and Suffolk Counties on Long Island, summarized the background of the unfair labor practice case as follows:

Since about 1954 a small number of determined members, perhaps 10 of a total membership of some twelve hundred, whom we shall call, without implication, reformers, have waged an intensive campaign to overturn Local President William DeKoning, Jr., and other incumbent officers, for what the reformers consider to be gross mismanagement and improper administration of union affairs.

The court went on to find that:

(1) The Respondent Union shall make whole John J. DeKoning, Albert Bruder, William Wilkens, and Walter W. Miller for any loss of pay these employees may have suffered as the result of the discrimination against them in the manner set forth in the section of the Board's Decision and Order entitled "The Remedy" and make whole William Wilkens, Thomas Eichacker, Charles Skura, Peter Batalias, John J. DeKoning, Albert Bruder, Walter Miller, and any other member of the reform group² for loss of pay resulting from the discriminatory operation of its hiring hall as set forth in the section of said Decision and Order entitled "The Remedy."

(2) Zara, Marmorale, and Eastern shall make whole John J. DeKoning, Walter W. Miller, and Albert Bruder for any losses they may have suffered as the result of the discrimination against them in the manner set forth in the section of the Board's Decision and Order entitled "The Remedy," provided that primary liability for making the said employees whole shall rest upon the Respondent Union, and the above-mentioned Respondent Companies shall be liable to make them whole only should the Respondent Union fail to do so.

B. *The instant proceeding*

1. The separate types of liability

As noted above, the instant proceeding is for the purpose of determining the amount of backpay owing and due to named individuals in accordance with the Board Order as enforced by the court decree. There are two separate and distinct types of liability involved. First there are the individual cases of:

(a) Walter Miller for losses resulting from the discrimination against him beginning on January 30, 1957, at Eastern Fireproofing Company's East Meadow School project.

(b) William Wilkens for losses resulting from the discrimination against him beginning on September 4, 1956, at the Northville³ dock project of the Missouri Valley Dredging Company.

(c) John DeKoning for losses resulting from the discrimination against him beginning on July 12, 1956, at Zara Contracting Co., Inc.'s Roosevelt Field project.

(d) Albert Bruder for losses resulting from discrimination against him at Frank Marmorale, Inc.'s Roosevelt Field project; and secondly, there is the case involving the reform group of William Wilkens, Thomas Eichacker, Charles Skura, Peter Batalias, John J. DeKoning, Albert Bruder, Walter Miller, Garrett Nagel, and Frank Ziegelbauer for loss of pay resulting from the discriminatory operation of Respondent Union's hiring hall as set forth in the section of the Board's Decision and Order entitled "The Remedy." The Remedy section provides that Respondents shall "separately recompense" the above-named discriminatees "and other members of the reform group" for losses arising under this paragraph *in addition* to any compensation arising under paragraphs (a), (b), (c), and (d), above; and that the compensation shall include "Pay losses (including weekend pump jobs) caused by the discriminatory operations of the Union's exclusive hiring hall arrangements beginning 6 months before the filing of the original unfair labor practice charges in these cases."

² Garrett Nagel and Frank Ziegelbauer are included under this category

³ In the Board Decision and Order this project is incorrectly referred to as "Northfield"

2. Procedural problems

As noted above, on March 7, 1963, the General Counsel issued and served his backpay specification and notice of hearing upon Respondents. Answers were due 15 days later. None were filed by the required date of March 22, 1963. On April 17, 1963, Respondent Union, pursuant to its request, received an extension of time within which to file an answer until May 8, 1963. Thereafter it filed an answer to the specification in the form of a general denial to each and every allegation contained in paragraphs I through VI, inclusive, of the backpay specification, herein called specification, and in Appendixes A through H, inclusive. No answers were filed by Respondents Zara, Marmorale, and Eastern. Consequently, on May 16, 1963, counsel for the General Counsel moved in writing to strike Respondent Union's answer, to preclude evidence, and for judgment on the pleadings (against all the Respondents) and for issuance of an Intermediate Report and Recommended Order. The basis for this motion was the failure of Respondents to comply with Section 102.54 of the Board's Rules and Regulations.⁴

On May 20, 1963, Trial Examiner Paul Bisgyer issued a notice to show cause in writing, on or before May 24, 1963, why the aforesaid motion should not be granted and the hearing canceled. On May 23, 1963, Respondent Union requested an opportunity to file an amended answer by June 3, 1963, and an adjournment of the backpay hearing until June 18, 1963. Both requests were granted by Trial Examiner Paul Bisgyer. Thereafter, Respondent Union filed its amended answer, which, although not in the form of a general denial, operates as such with regard to the major issues raised by the specification. No answers were filed, or ever have been, on behalf of any of the other Respondents. As a result, on June 7, 1963, counsel for the General Counsel filed a motion to strike in part Respondent Union's answer as amended and to preclude evidence, and for partial judgment on the pleadings

⁴ "Sec. 102.54 *Answer to specification, no requirement for answer to notice of hearing issued without backpay specification*

"(a) *Filing and service of answer to specification.*—The respondent shall, within 15 days from the service of the specification, if any, file an answer thereto; an original and four copies shall be filed with the regional director issuing the specification, and a copy thereof shall immediately be served on any other respondent jointly liable

"(b) *Contents of the answer to specification.*—The answer to the specification shall be in writing, the original being signed and sworn to by the respondent or by a duly authorized agent with appropriate power of attorney affixed, and shall contain the post office address of the respondent. The respondent shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification denied. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, he shall specifically state the basis for his disagreement, setting forth in detail his position as to the applicable premises and furnishing the appropriate supporting figures.

"(c) *Effect of failure to answer or to plead specifically and in detail to the specification*—If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without notice to the respondent, find the specification to be true and enter such order as may be appropriate. If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting said allegation

"(d) *Answer to the notice of hearing issued without backpay specification.*—No answer need be filed by respondent to notice of hearing issued without a specification "

(partial against Respondent Union, complete against the others) and for issuance of an Intermediate Report and Recommended Order. In substance, this motion of General Counsel requested the identical relief that was asked for in the motion of May 16, 1963, described above, and for much the same reasons, except that it was acknowledged therein by counsel for the General Counsel that the amended answer of Respondent Union succeeded in raising as a proper issue the question as to whether William Wilkens was entitled to the amount of backpay computed for him in paragraph III of the specification as a result of the discrimination practiced against him at the Northville dock project. In all other respects, said motion contended that Respondent Union's amended answer was insufficient to raise proper issues for hearing.

At the hearing on June 27, 1963, Trial Examiner granted the above-mentioned June 7 motion of General Counsel in its entirety, the effect of which ruling was to grant judgment against Respondents Zara, Marmorale, and Eastern, in every respect pertinent to each, and against Respondent Union as to all allegations of the specification save paragraph III thereof pertaining to William Wilkens and the Northville dock project. With respect to that issue, it was agreed that the parties would submit in writing to the Trial Examiner by July 11, 1963, the evidence which would support their respective positions. Subsequently, General Counsel submitted the information supporting his contentions regarding Wilkens at the Northville dock project but Respondent Union did not⁵

Thereafter on June 27, Respondent Union petitioned the Board for leave to appeal from the ruling of the Trial Examiner granting the June 7 motion of General Counsel, and in response, the counsel for the General Counsel filed with the Board his opposition to said petition.

On July 26, 1963, the Board granted Respondent Union's leave to appeal from the ruling of the Trial Examiner, and reversed his ruling which had granted the General Counsel's motion to strike in part the amended answer and for partial judgment on the pleadings. In addition, the Board granted Respondent Union until August 12, 1963 (later extended by the Trial Examiner upon request by Respondent Union, to August 19): ". . . to file with the Trial Examiner an amended answer showing with specificity the names and earnings of the union members with seniority and ability comparable to those discriminatees named in paragraph VI(a) of Backpay Specification for the period set forth opposite their names."

On or about August 19 or 20, 1963, Respondent Union filed its second amended answer.

On August 28, 1963, the Trial Examiner ordered that the hearing be reopened on September 4, 1963, for the purpose of taking testimony on the specification and the issues raised by all of Respondent Union's answers thereto, with specific direction to the General Counsel to present evidence as to said specification, and Respondent Union to be prepared specifically to present evidence as to William Wilkens and the Northville dock project pursuant to its contention set out in its first amended answer, and to present evidence as to its contentions respecting Frank Ziegelbauer as set out in its second amended answer together with evidence as to precisely whom is comparable in skill and earnings with Ziegelbauer. Subsequently, the hearing was postponed to September 18, 1963.

On September 16, 1963, General Counsel moved to strike in part Respondent Union's latest answer, to preclude evidence, and for partial judgment on the pleadings and the issuance of an Intermediate Report and Recommended Order. In that motion the General Counsel took the position that Respondent Union's second amended answer succeeded only in raising as issues the propriety of the formula or method used by General Counsel in paragraph VI(b) of the backpay specification to compute gross backpay for members of the reform group named in paragraph VI(a), and the extent of the qualifications of Frank Ziegelbauer as an operating engineer, and who compares with him in skill and earnings (paragraph III relating to William Wilkens and the Northville dock project had already been put in issue.) In all other respects, it was contended that the amended answers failed to meet the requirements of Section 102.54 of the Rules. This motion also renewed General Counsel's request for judgment on the pleadings against Respondents Zara, Marmorale, and Eastern, and further requested the Trial Examiner to preclude Respondent Union from raising any affirmative defenses to the interim earnings set out for each discriminatee in the specification.

⁵ However, at the hearing on October 8, 1963, Respondent Union agreed it would no longer contest the claim made for backpay for Wilkens in paragraph III of the Specification. Thus, Wilkens is conceded the \$92 backpay computed for him therein.

At the hearing on September 18, 1963, after arguments for and against General Counsel's third motion were heard, the Trial Examiner granted the General Counsel's motion for judgment on the pleadings in their entirety against the Employer Respondents, and against Respondent Union on the pleadings as to paragraphs I, II, IV, and VI(a) of the specification, and ruled that Respondent Union could not raise affirmative defenses to the interim earnings except as raised by the answer and this related only to the issue regarding the alleged unavailability of the discriminatees for work during the time each might have engaged in antiunion-administration activities such as picketing the Respondent's offices and going to Washington in furtherance of those activities. Issue was thus considered joined on the propriety of General Counsel's formula used in paragraph VI(b), the qualifications of Ziebelbauer, the Northville dock project and William Wilkens, and the above issue relating to antiunion-administration activities.

3. The trial

On October 8, 1963, the hearing reconvened. Testimony was taken from Sidney Levy, compliance officer of Region 2, in support of the formula. His testimony subsequently was interrupted to accommodate Herbert Schultheis, the accountant who audits the welfare fund records for the Respondent Union. Through Schultheis, Respondent Union proposed a formula to compute gross backpay based on the welfare records using only those members of Local 138 who allegedly held steady jobs with employers throughout the year 1952. Schultheis stated he planned to carry out that method through 1962, and the Trial Examiner specifically instructed Schultheis to continue with his work on that method. He and the Respondent Union were advised that the case would eventually be continued to October 29, 1963, to give time to Schultheis to prepare this information for all the years of 1952 through 1961.

Schultheis testified that he used "Employers' statement of contributions" to get wages earned by members of Local 138 for the calendar year 1952. He had found 179 ". . . men which can be verified from the contractors' contribution reports, working engineers of Local 138, and next to their name I have their wages earned in 1952." "Approximately four hundred and fifty men were in the Local 138 at that time, so I have roughly forty percent of the membership." "I plan to go ahead with the year 1953, '4, '5, '6, '7, '8, '9, '60, '61 On the exact same basis for these figures." Counsel for Respondent Union agreed that, "If given the opportunity, I intended to have Mr. Schutheis run this thing right through." The Trial Examiner recessed the hearing for 18 days and planned ". . . to take Mr. Schultheis on the stand to find out what he has determined for all the years through calendar year 1961."

Using the information gleaned from this 40 percent of the group of Local 138 Schultheis computed total annual wages of the 179 men, divided the number 179 into the total, and arrived at an average annual wage of the 40 percent of the number of Local 138. He did not break down the figures into quarters although he testified the contractors' reports were so broken down. The General Counsel used the quarterly reports in his tabulations.

In the meantime, discriminatees Eichacker, Batalias, Bruder, Wilkens, and Nagle were made available for examination by counsel for Respondent Union as to their antiunion-administration activities. In essence, the time the individual discriminatees engaged in such conduct amounted to a day or two in one or two of their cases to slightly over a week's total period. This activity was engaged in by them at such time as they were out of work due to the discriminatory action of Respondent Union. All attempts of Respondent Union to question each of these discriminatees as to other backpay period activities of theirs was prohibited by the Trial Examiner on the ground that such matters were not raised by Respondent Union in its various answers or were untimely raised and were governed by his previous ruling.

On October 23, 1963, the Respondent Union requested leave of the Board to appeal the Trial Examiner's rulings precluding it from examining the above-named discriminatees as to their unavailability for work because of reasons other than time spent while engaged in antiunion-administration activities, such as, sickness, operating gas stations, working for a community, and going into the Army. General Counsel opposed that request.

On October 29, 1963, Herbert Schultheis resumed the stand and testified that from the welfare fund records of the Respondent Union, he determined for each year from 1955 through 1961 certain members who appeared to have worked steady for one employer during each of those years, and then determined from the

employer contributions made on each of their behalfs the wages that each earned for that given year. By dividing the one into the other, as noted above, he arrived at the "average" earnings of Respondent Union's members for each of the years 1955 through 1961. From these averages, Schultheis explained how he had subtracted the interim earnings for each of the given years in the respective backpay period of each discriminatee (except Batalias and Ziegelbauer) to arrive at the net backpay, if any, owing said discriminatee for each of those years. And in cases where the discriminatee had interim earnings above the "average" earnings for a given year, he further subtracted the difference between said earnings from the total backpay figure favoring the discriminatee. The resulting figure was then offered by Respondent Union as the backpay owed that discriminatee. These computations were not broken down into calendar quarters in accordance with the *Woolworth* formula (90 NLRB 289) as required by the decision of the Board and the court.

Counsel for Respondent Union refused to present testimony relating to the average earnings of members of Local 138 in the prediscrimination period of 1953 and 1954 and elected to stand on the method testified to by Schultheis, and on the figures derived therefrom. The Trial Examiner advised him that one of the purposes for recessing the hearing to October 29, 1963, was to provide Schultheis with sufficient time to compute the average earnings of members of Local 138 for the years 1953 and 1954 as well as thereafter, as noted earlier. When counsel for the Respondent Union refused to yield in his position and present prediscrimination period earnings' figures the Trial Examiner struck the testimony of Schultheis, stating:

Then sir, I consider that this borders on contemptuous conduct, Mr. Maloney, and, as such, I am going to strike from the record all the testimony that we had this morning with respect to Mr. Schultheis inasmuch as it is meaningless, not having anything in the prediscrimination period upon which to base it.⁶

The Respondent Union appealed to the Board from this ruling of the Trial Examiner which appeal, on October 31, 1963, was denied.⁷

On December 10, 1963, the hearing reconvened in Fort Lauderdale, Florida, to take testimony of two individuals. These individuals were Frank Ziegelbauer, a discriminatee, and Verner Sofield, a retired official of Respondent Union.

Ziegelbauer testified that he had no working experience as an operating engineer up until 1952. In 1952, 1953, 1954, and part of 1955 Ziegelbauer worked as a compressor operator, a pump operator, and an oiler, all of which are unskilled jobs. These jobs were obtained either through the aid of John DeKoning, Ziegelbauer's son-in-law who was then a delegate for Local 138, or through the union hall. Referral was refused Ziegelbauer because of the subsequent reform activities of John DeKoning. This was candidly told Ziegelbauer by William DeKoning, Jr., president of Respondent Union.

Respondent Union claims that Ziegelbauer worked in the industry only because of the position of his son-in-law; that he was totally incapable of operating machinery or equipment requiring skill of any kind and, hence, computation of backpay for him on the assumption that he would have been and could have been referred to jobs with anything like the same degree of frequency as had occurred in the prebackpay period was without foundation. The testimony of both Ziegelbauer and Sofield clearly demonstrates that the jobs to which Ziegelbauer had been referred were per custom filled generally by older members or permit men who no longer were capable of doing heavier or skilled work in the industry. Their testimony also shows, however, that younger and skilled members of the Union were at times referred to work as compressor operators and oilers and the like. Moreover, the collective-bargaining contracts with the various employer groups required that members or permit men from Respondent Union be assigned to such unskilled jobs everytime a piece of that equipment was employed, and, in all cases, operators of the machinery in question were supplied by Respondent Union.

⁶ It had earlier been explained to Respondent Union's counsel and Schultheis that the nine discriminatees would have established some sort of ratio between the so-called average earnings of regularly employed members of Local 138 during the prediscrimination period of 1952, 1953, and 1954 and hence this ratio could be projected into the discrimination period.

⁷ General Counsel's motion to correct the record relating to the exhibit designations of the Board's ruling and of the Trial Examiner's notice of hearing for December 10, 1963, is granted. Accordingly, the Board's ruling is correctly designated as 1-11 rather than 1-jj, and the notice of hearing as 1-mm rather than 1-kk.

4. The first type of liability; findings and conclusions thereon

As noted above, the first type of liability involved four individuals on certain jobs. These were set out in the specification as follows:

II. Computation of net backpay for Walter Miller on the East Meadow School project;

III. Computation of net backpay for William Wilkens on the Northville Dock project of the Missouri Valley Dredging Company;

IV. Computation of net backpay for John DeKoning on Zara Contracting Co., Inc's Roosevelt Field project; and

V. Albert Bruder on Frank Marmorale, Inc's Roosevelt Field project.

Findings and Conclusions

As to II, I find the net backpay due Walter Miller on the East Meadow School project, is \$65.20, pursuant to the granting of General Counsel's motion for judgment on the pleadings made September 16, 1963.

As to III, I find the parties stipulated at the hearing on October 8, 1963, that William Wilkens was entitled to net backpay for the Northville dock project of \$91.54.

As to IV, I find the net backpay due John DeKoning for the Roosevelt Field project is \$3,194.85 pursuant to the granting of General Counsel's motion for judgment on the pleadings made September 16, 1963.

As to V, I find it was conceded by the specification that Albert Bruder did not suffer any loss in wages on the Roosevelt Field project.

5. Computation of net backpay due to members of the reform group as a result of the discriminatory operation of the union hiring hall (paragraph VI of the backpay specification), herein called discriminatees

a. Backpay period

The backpay period begins on July 1, 1955,⁸ and runs, for the several members of the reform group,⁹ to the dates listed below opposite their names, for the purpose of this backpay specification:¹⁰

Albert Bruder-----	Mar. 31, 1961	Charles Skura-----	Dec. 31, 1961
Thomas Eichacker---	Dec. 31, 1960	William Wilkens---	Mar. 31, 1959
Walter Miller-----	Dec. 31, 1959	Frank Ziegelbauer---	June 30, 1959
Garrett Nagle-----	Mar. 31, 1960	Pete Batalias-----	Feb. 26, 1962

b. Computation of gross backpay

The General Counsel produced Sidney H. Levy, compliance officer of Region 2, and, after first qualifying him as an expert in the field, elicited from him the following credible evidence as to how the General Counsel arrived at the formula he used in computing the backpay in this case. Essentially the General Counsel found a relationship, in a 3-year period immediately before the discrimination, between what each of the discriminatees earned in each calendar quarter with what the average employee within the jurisdiction of the Respondent Union earned during the same quarters. Then he established the average ratio each discriminatee had with respect to the average employee's earnings and carried it into the discrimination period of time by multiplying the ratio to what the average employee within the jurisdiction of Respondent Union earned during the discrimination period. In other words if a

⁸ In the backpay specification, the General Counsel noted that, the Board Order provides that the discriminatees shall be made whole for losses beginning 6 months before the filing of the original unfair labor practice charges in these cases. The first charge was filed on December 19, 1955, by Eichacker. Six months prior thereto would be June 19, 1955. Despite the loss of an 11-day backpay period, in order to simplify the computation and because a calendar quarter and the fiscal years of the Union and the welfare fund all begin on July 1, that date in 1955 has been adopted as the starting date for the backpay computations which have been prepared in this matter.

⁹ No claim for backpay is made under this hearing for John J. DeKoning

¹⁰ The terminal dates for the accrual of backpay set forth above are applicable to the instant proceeding only and are without prejudice to the right to backpay, or any other rights, of any of the above-named persons or any other persons which may arise out of any other proceedings which are now or may hereafter come before the Board or the courts, and such rights are hereby specifically reserved. No answer having been made to this part of the backpay specification by Respondent Union, I ruled it had been admitted. This ruling was sustained by the Board on appeal on October 31, 1963

discriminatee was earning, say 110 percent of what the average employee was earning during the 3-year period preceding the discrimination, the General Counsel figured he would have earned 110 percent of what the average employee earned during the discrimination period. The General Counsel then made adjustments where investigation indicated they were needed. Because of its importance, the record evidence of Levy on direct examination is as follows:

Q. (General Counsel.) Now, was the compliance in the instant case assigned to you.

A. (Levy.) Yes, it was.

Q. Are you familiar with the decisions of the Board and the Second Circuit leading to this proceeding?

A. I have read them.

Q. Now, who prepared the back pay specification in this case?

A. I did.

Q. I would like to direct your attention to Paragraph VI—Paragraph VI of the back pay specification, in particular Paragraph VI(b), and ask if you can tell us what is the basis for your computation of gross back pay, due as a result of the discriminatory operation of the hiring hall?

A. Well, the Board Order and the Court Decree in this case required that the various discriminatees be made whole for losses suffered as a result of the discriminatory operation of the union hiring hall.

This presented a great many problems. We are dealing here with the employment of operating engineers by the construction industry in Nassau and Suffolk Counties in New York State. There are a great many tangible and intangible factors, a great many variable which affect the earnings of the men who work in this industry as operating engineers, many variables which do not lend themselves readily to precise measurement. Obviously, the going rate of pay is an obvious factor which influences their earnings. We are concerned with a ten-year period here, and the contractual rates, of course, have changed and gone upward periodically as the union has negotiated new contracts.

The volume of work, the availability of jobs has a direct bearing on what a man working in this industry can earn. The industry is affected, of course, by general economic conditions in the country. It's affected by factors peculiar to the construction industry. Weather is an important factor. The normal seasonal variations between spring, summer, fall autumn and winter determine to a considerable extent the degree to which the contractors, and therefore, their employees, can work and earn wages.

Daily weather conditions, even in good seasons, affect whether the individual will work a particular day or days on a particular job.

This industry, and the class of worker, the operating engineer that we are concerned with, as a group operate a tremendous variety of heavy construction machinery and equipment, each of which requires a particular skill or ability. I don't imagine that there is any member of the union that we are concerned with who can operate each and every piece of equipment which falls within the jurisdiction of the union. Some men can operate certain kinds of equipment. Others can operate other types of equipment and even the fact that a man can operate a difficult, heavy, expensive piece of equipment which carries a high rate of pay for its operation, does not necessarily mean that he can operate skillfully each and every lesser, lighter, lower rated piece of equipment.

Over the period involved, there have been many—have been what you might call technological changes as new kinds of—new pieces of machinery have been developed or have been improved, or have had their productive capacity increased.

Again, over the period of time involved, there have been changes in the type of contracts let and the type of work performed by contractors. In the early 1950's there was a tremendous home building boom in Nassau County, which by now has pretty much petered out. That situation required the building of many homes, the installation of gas and electric lines, the building of streets and sidewalks which requires certain kinds—the use of certain kinds of equipment and the employment of certain skills.

More recently, I think there has been an emphasis in the latter part of the period on the construction of roads and bridges which involved again the use of different machinery, and calls upon different skills. The building of homes has moved eastward on Long Island and currently in Suffolk County there is a repetition—I don't know whether it is with the same intensity—a repetition to some degree of the home building boom that occurred in the 1950's in Nassau County. This is—this has a bearing on the geography or location of the jobs, the distance men have to travel for jobs.

And finally—

Q. Does this have any effect upon the rates of pay?

A. Well, I don't know that it has an effect directly. It may be—I couldn't say. It may have an indirect effect in the bargaining posture taken by the union in negotiating the rates of pay. But if you are asking whether there is a special premium or additional rate for going a certain distance, I don't believe that factor is present.

And over-all, the earnings of the employees in this industry are affected by their own individual earnings, seniority, skill and general earnings ability which, in turn, is a reflection, to some extent, of their personal characteristics, their stability, sobriety, ability to see their employer.

Now, because of the presence of all of these factors, and influences, it was necessary to try to devise or arrive at some sort of formula of procedure which would be objective and would, by its very nature, give appropriate weight to all of these intangibles, and variables that I have indicated.

And after considerable thought and reflection about the problems involved, we came to the conclusion that at least theoretically, it was desirable—it was desirable to work out some formula which would take as its starting point the average earnings of all of the employees working in this industry and then, because of the individual variations in the—as I say, in the seniority, experience, ability and general earning power of the various discriminatees, we were concerned with, to try to work out some relationship between their earnings and the earnings of the average employee.

Of course, it was necessary to work out this relationship in a base or pre-discrimination period in order to arrive at a relationship which would not be distorted or influenced by the unfair labor practices which the Board and the courts had found.

Having arrived at some such relationship, the next step would be simply to project this relationship into the back pay period, and that would give us an appropriate measure of what the discriminatees would have earned in the back pay period, absent the discrimination against them. This would simply be a mathematical reflection of the same relationship which existed between each individual discriminatee and the average employee in the pre-discrimination period where there had been no distortion of that relationship by the presence of unfair labor practices.

The projection of the relationship in the pre-discrimination period into the back pay period would simply carry forward into the back pay period the free, undistorted, untainted relationship which had developed historically in the pre-discrimination period.

That was the theory or the conception at which we eventually arrived as a desirable way of handling this problem, if in fact, this was practical and could be implemented.

Q. I see. Now, Mr. Levy, in reaching this conclusion, did you consider the use of a flat average for all the discriminatees?

Mr. MALONEY (RESPONDENT UNION'S COUNSEL.): Excuse me. I am not quite sure I understand that.

Mr. KLENK (G.C.): I will rephrase that question.

Q. Could you tell us what you did after coming to this conclusion with respect to the desirability of the formula used by you in this specification?

A. Well, we attempted to determine whether these theoretical conceptions which I just outlined could, in fact, be implemented. Early in—I think it was 1961—my predecessor as Compliance Officer, Morris Miller, and myself, visited the offices of Local 138 and the Local 138 Welfare Fund for a preliminary inspection of their records.

Q. What records in particular are you referring to?

A. Well, we saw certain reports which were prepared separately [sic] for the union and for its Welfare Fund by Klein and Katcher, and Company, who are the Certified Public Accountants for Local 138 and its Welfare Fund. We saw certain records having to do with union membership. And after examining these and considering what was in them, we came to the conclusion that it would be possible, when the entire set of—or sets of these records were made available to us, that it would be possible to work out in practice the kind of back pay formation that I have previously explained.

In other words, the figures, the financial data, the mathematical—raw mathematical data were available, so that the kind of formula that I discussed which is theoretically desirable, could be realized.

The General Counsel's witness, Levy, explained that the 3-year period was used prior to the discrimination period, to secure a reasonable base period. He said, "... Its quite possible that the earnings of a given individual in 1 year would not be particularly representative of his average earnings over a period of time. His earnings in any one year could be excessively high or excessively low because of the considerable fluctuations in this industry."

One of the answers of Respondent Union which seemed to take issue with the method used by the General Counsel, questioned the propriety of adding together all of the four groups of employees; i.e., Local 138; 138A, 138B, and permit men. According to Levy's testimony, Respondent Union appeared to have received a slight windfall by this addition. This was due to the fact that during the prediscrimination period there was a greater proportion of Local 138 members in the total group than during the discrimination period, assuming that members of Local 138 received the highest wages. Hence when the ratio, established between a given discriminatee and the average wage earner in the prediscrimination period, was carried into the discrimination period without change, the discriminatee receives a slightly lesser amount in gross backpay than would have been the case had there been a greater proportion of Local 138 members to the total group in the discrimination period.

The results of the work in the above area were covered in the backpay specification and notice of hearing served on Respondents. This painstaking work is set out, with comments noted on attached schedules entitled "Appendix C," "Appendix D," "Appendix E," "Appendix F," "Appendix G," and "Appendix H." The same numbering as in the backpay specification is used in these appendixes to avoid undue confusion.

c. Rulings on answers

As noted above, the Trial Examiner made certain rulings on motions made by the General Counsel. These rulings were made in accordance with the spirit, and the language of the Board's Rules and Regulations, Series 8, as amended, which were promulgated to aid all the parties involved in the business of the Board. As their rules are reasonable, as they were known in advance by the Respondent Union, as they were made by the Board, and as a Trial Examiner is part of the Board and bound by its decisions and rules, it was not difficult to follow them when they were duly raised. As Mr. Justice Frankfurter says, "... if the executive head has formulated an administrative procedure for the determination of issues before him, he must follow his own procedure and not let it go hang in a particular case." (*Felix Frankfurter Reminisces*, page 171, quoting from *Colyer v. Skiffington*, 265 F. 13, 48.) Circuit Judge Jones in reversing the Board for its failure to follow its own rules in *N.L.R.B. v. Reliance Steel Products Company*, 322 F. 2d 49, 55 (C.A. 5), August 5, 1963, said "It does not appear illogical to require any party ... to adhere to the rules ... promulgated by the Board for the purpose of encouraging the desirable objective of stability and finality."

The Board has had occasion to observe that the reason for its rule in Section 102.54, as involved in the instant case, requiring the filing of an answer within a definite period of time is "to facilitate the joining of issues and reduce the area of litigation, in order that rights may be more quickly established and wrongs sooner rectified." *Liquid Carbonic Corporation*, 116 NLRB 795, 797.

Trial Examiner David Karasick in his Supplemental Decision in *The Triple AAA Water Co.*, Case No 21-CA-4994 [142 NLRB 803], on February 26, 1964, held that failure by the Respondent therein to comply with Section 102.54(b) of the Rules after the inadequacy was brought to its attention was "... a deliberate disregard of the Board's Rules for under these circumstances it cannot be attributed to either ignorance or inadvertence."

d. Discussion and findings as to the formula or method used by General Counsel in paragraph VI(b) of the backpay specification to compute backpay for members of the reform group named in paragraph VI(a) thereof

It is well settled that the Board has been entrusted with broad discretion in choosing an appropriate backpay formula, as warranted by the circumstances of each case. *Phelps Dodge Corp. v. N.L.R.B.*, 313 U.S. 177, 198. It is necessary only that the formula used be reasonable and fair in carrying out the terms of the Board's Order. Obviously, in many cases, such as here where the General Counsel has endeavored as in paragraph VI(b) of the backpay specification to determine the backpay owing individual discriminatees as a result of the discrimination practiced against them by Respondent Union in the operation of its hiring hall, it is difficult to determine precisely the amount of backpay which should be awarded an employee. In such cases, the Board may use as close approximations as possible, and may adopt formulas reasonably designed to produce such approximations. *Brown and Root, Inc., et al.*,

132 NLRB 486, enfd. 311 F. 2d 447 (C.A. 8). The circuit court in the *Brown & Root* case, *supra*, said "our inquiry may ordinarily go no further than to be satisfied that the method selected cannot be declared to be arbitrary or unreasonable in the circumstances involved" (*N.L.R.B. v. Ozark Hardwood Company*, 282 F. 2d 1, 7 (C.A. 8)). The court then went on to say that the Board's action there, in rejecting Respondent's formula and applying its own, was not arbitrary, capricious, or punitive and it would not be disturbed.

Levy, the compliance officer of Region 2, testified in full to the basic principles of the formula, the factors leading to its adoption, how it operated, and the reasons why the General Counsel was justified in using it. Levy also testified that other formulas were considered but for various reasons proved to be unfeasible. For example, some consideration was given to using a system of computation which would have been based upon records of job applications and referrals that might have been kept by Respondent Union in the daily operation of its hiring hall. This method had to be discarded when it was discovered that such records were not available. Next, consideration was given to devising a formula based on a representative group of employees in the industry who would be comparable in skill and ability and earning power to the discriminatees. This method had to be abandoned because the parties could not agree on the identity of employees who would be comparable to the members of the reform group.¹¹

Levy finally concluded that the most desirable formula would be one based upon objective standards which would reflect the average earnings of *all* employees working in the industry with compensating adjustments or allowances made, insofar as practicable and possible. The nature of the industry required as objective formula which would take into account the many intangibles and variables which defy precise measurement but which directly affect employment in the industry and pecuniary compensation therefor. Among the intangibles and variables cited by Levy as influencing the earnings of employees in the industry were; changes in the rates of pay over the 10-year period 1952-62 caused by changes in the collective-bargaining agreements; changes in the volume of work and its availability over the years; general economic conditions in the country; the weather (both the normal seasonal variations and daily weather conditions); variations in individual skills and abilities (the ability to operate one kind of machinery or equipment is not necessarily interchangeable with the ability to operate other kinds of machinery and the pay scale was based on the kind of machinery operated); technological changes in machinery and equipment used; changes in the types of construction activity; e.g., from building houses in one part of the period to laying roads and constructing bridges which call for different kinds of equipment and machinery, different skills on the part of the operator, and different rates of pay; and lastly, the fact that earnings of the employees in this industry are affected by individual factors of seniority, skill, character, sobriety, stability, and the employee's ability to get along with and satisfy his employer.

With above problems in mind, the General Counsel, according to Levy, reached the conclusion that a formula that would achieve the sought-after objective standards necessary to fairly measure gross backpay was to be found in determining the ratio of each individual discriminatee's total prediscrimination earnings to the average total earnings of all the employees in the industry during that same period. A flat average for all of the discriminatees would not be fair, it was concluded, since there are no two engineers exactly alike in seniority, skill, experience, and earnings ability as demonstrated by the considerable variations in the prediscrimination earnings among the discriminatees and the variation in earnings during the backpay period among the 22 employees listed by Respondent Union in schedule A of its amended answer. Hence, the ratio method as a means of measuring the individual capacity and earnings power of each discriminatee with the average earnings of all employees in the industry was used. Essential to establishing the relationship between the individual discriminatee's earnings and the average earnings of all the employees was the establishment of this ratio in a prediscrimination or base period. Only by working out this relationship could the General Counsel be able to arrive at a relationship in the discrimination period that would not be distorted or influenced by the unfair labor practices of Respondent Union which had previously been found by the Board and the court. The next step would be to project that mathematical relationship into the discrimination or backpay period to find what the discriminatees ordinarily would have earned in the backpay period, had they been permitted to work by the Respondent Union. The use of a 3-year prediscrimination period provided a reasonable base period which would take into account the annual fluctuations

¹¹ Respondent Union did not "show with specificity the names and earnings of the union members with seniority and ability comparable to those discriminatees . . ." in accordance with the Board's ruling on July 26, 1963.

in total earnings of individual employees and secure a fair and representative average income free from the taints of discrimination for both the discriminatees and the average of all employees.

As noted earlier, the General Counsel used the best material available to arrive at his figures. He used the quarterly reports of the accountants of the welfare fund of Respondent Union reflecting the total amount of contributions paid into said fund by each employer for all employees in his employ during that period. The so-called industry wage fund for each quarter was computed by multiplying the employers' quarterly contributions to the welfare fund by the reciprocal of the percentage rate of contribution. The average quarterly earnings of all employees working in the jurisdiction of the Respondent Union was then figured by dividing the total amount of wages paid to such employees (industry wage fund) by the total number of union members of Local 138, 138A, and 138B, and permit men in the corresponding calendar quarter. The number of union members and permit men were derived from records of the Union. The individual discriminatee's quarterly earnings in the prediscrimination periods was found by simply totaling his actual earnings from tax returns, W-2 forms, social security, and employer records. Average earnings for each of the discriminatees and for all the employees were determined for each quarter, under the *Woolworth* formula, throughout the prediscrimination period, and by dividing the discriminatee's average quarterly wage in the prediscrimination period by the average quarterly wage of union members and permit men in the same period, average earnings' ratios between the discriminatees and the employees were established. From that point the gross backpay for each individual discriminatee for each quarterly period of his backpay period was computed by projecting his ratio to the average earnings of all employees in that corresponding quarter. Net backpay was computed merely by subtracting the individual discriminatee's interim earnings from gross backpay on a quarterly basis.

The Respondent Union disputes the formula of General Counsel on several grounds. Among them is the inclusion with Local 138 members of Local 138A, Local 138B, and permit men in order to compute the average earnings of all employees. I find that criticism of the formula on such a ground is unwarranted. The evidence shows that Local 138A and Local 138B and permit men in many cases work at the same jobs as their brethren in Local 138 and because the job determines the pay, receive the same going rates of pay for those jobs. Some of them are even considered more skilled and better workers than some of the members in Local 138. Be this as it may, as the proportionate size of these three groups to the total number in the industry remained remarkably stable throughout the prediscrimination and backpay periods and as this forms the broadest possible base, this inclusion is not error. There was no disadvantage to Respondent Union incurred by the inclusion of Local 138A and Local 138B and permit men in the average earnings calculations. Indeed it makes for a sound and reasonable computation.

There appears to be no perfect formula in this case, to determine exactly how many jobs the discriminatees would have been referred to, the duration of each, and, consequently, the money he would have earned had it not been for the discrimination practiced against him by Respondent Union in operating its hiring hall. The General Counsel, therefore, has adopted a formula which under all of the circumstances appears to be both reasonable and objective.

The Respondent Union has failed to provide the records that would have enabled the General Counsel to make valid comparisons with referrals during the backpay period of comparable representative employees to each of the discriminatees. Indeed, referral records were not available. Consequently, the present formula based upon the ratio of the individual discriminatee's earnings for a representative prebackpay period with those of the average earnings of all employees in the industry for the same period has been utilized. The Board has given its stamp of approval to such formulas and their use. *Story Oldsmobile, Inc.*, 145 NLRB 1647; *Loren A. Decker d/b/a Decker Truck Lines*, 139 NLRB 65; and *Marcus Trucking Company, Inc.*, 137 NLRB 1378. The test is whether the formula is fair and reasonable.

Respondent Union made a point that the earning's figures taken by the General Counsel were in error because there was a time lag between when wages were earned and when they were paid. The period during which earnings were paid was called the period of earning and it was not correct. Levy, for the General Counsel, agreed that for the first 2 weeks in any given quarter the welfare fund payments would have been made for wages earned in the preceding quarter and to that extent there was error. But, he testified that this was the most authoritative information he was able to find and the "carry over" from one quarter to the next would balance itself out over the almost 10-year period involved. The Respondent Union thus argued that as the figures on which the prediscrimination period ratio were based were incorrect, the ratio would be incorrect in the discrimination period. In other words, in this

industry where it is impossible to secure correct figures the Respondent Union cannot be ordered to make discriminatees whole because no correct backpay specification can be prepared. The fallacy in this argument is that the formula and method need only be reasonable and not arbitrary. It is understood that it cannot be "correct."

Respondent Union's Formula

As described above, Schultheis, the Union's accountant, prepared a method for figuring backpay that involved determining from the welfare fund records the members of Local 138 who worked steadily in a given year for an employer and their wages for that year. Schultheis admitted that the number of members in this category varied from year to year of the backpay period, as did the composition of individuals comprising each yearly group. Moreover, Schultheis conceded that the wages gleaned from these records in this manner did not necessarily represent the total wages of the particular member involved. Nevertheless, Schultheis, at the instruction of Respondent Union, calculated the average earnings of a group of members of Local 138 for each year involved by dividing the number of members so considered into the sum of their combined earnings for that year. The compilation of this information was restricted, however, solely to the backpay years. No calculations were presented for the years in the prediscrimination period. Nor were the earnings computed on a quarterly basis. And in the actual computation of the backpay the Respondent Union carried over from one year to the next any surplus of interim earnings over the so-called average earnings over to the next year and offset against any net backpay accruing to the discriminatee in that year.

Schultheis, then, prepared a sample of those members of Local 138 who were steadily employed. No explanation was given as to how this sample was selected, whether all steadily employed members were used, nor was it explained as to the type of equipment operated in the sample. The latter is most important because it is known that the equipment operated determines the pay.¹² At no time did Respondent Union file an amended answer to the Board's action of July 26, 1963, in which it was to show ". . . with specificity the names and earnings of the union members with seniority and ability comparable to those discriminatees named in paragraph VI(a) of the Backpay Specification for the period set opposite their names."

Authorities in the field of sampling in auditing feel the need for objective sampling standards. Pronouncements of official bodies seem to carefully avoid any suggestion of specific sampling standards, usually on the premise that the sample must be tailored to each job. Clearly the special conditions of the individual job must be reflected in the sampling plan, but Schultheis has ignored these special conditions which are mentioned above. The conclusion is that sampling is the selection of part of an aggregate of material to represent the whole aggregate.

L. L. Vance and J. Neter, in their book, "Statistical Sampling for Auditors and Accountants" (John Wiley & Sons, Inc., N.Y. 1956. Lib. Cong. Cat. #56-8003), state the problem thusly:

As long as the standards for selection and interpretation of auditing samples are general and vague, the individual auditor must experience anxiety and doubt in planning, executing, and defending his work. If any sample is to be challenged or defended today, under presently accepted standards it can be appraised only by subjective criteria. This situation is objectionable in three respects: (1) No clear definition of "accounting quality" is used in arriving at a judgment on the appropriate size of an auditing sample or in interpreting it. (2) No objective calculations of the risks of errors in making decisions on the basis of the sample are made. (3) The auditor's judgment on size, selection, and interpretation of the sample is subject to all kinds of improper influences, such as his state of health while doing the work and the client's pressures for economy.

These conditions lead to arbitrary sample sizes which are often either uneconomical or inadequate.

Clearly, the sampling of Schultheis is inadequate in this type of construction industry, because it does not explain or eliminate prejudice and bias. The following excerpt deals with this aspect.

A key to scientific sampling is 'randomization'—i.e., the elimination of prejudice in picking the sample. The statistician must make sure that every individual in the population has a definitely measurable chance of being selected.

¹² Several other unknown factors which were not explained by Schultheis are, for example, that his sample may have included elderly persons near retirement, the injured and handicapped, younger persons junior to the discriminatees, and persons with less skill and ability.

A survey of family incomes would be hopelessly bias, for example, if the sample included only people living in houses on street corners. To escape this sort of bias, that statistician would list all the homes in some definite order (e.g. alphabetically by the names of the owners) and then take the sample with the aid of random-number tables taken from a handbook or generated by a computer. Then, after the survey was made, he could, with straight-forward statistical methods derive an estimate of the average income with a confident statement as to the uncertainty. (*The Science Of Being Almost Certain*, Fortune, February 1964.)

As the computations of Schultheis do not escape the bias outlined above, they cannot be used, *even if they were to be given any consideration*. It is to be remembered that all of his testimony was struck because of his failure to bring in evidence of earnings within the prediscrimination period. Further evidence of a complete disregard by Respondent Union for the Board's Rules, lies in its failure to break down the figures into calendar quarters as required under the *Woolworth* formula and as were done in the backpay specification. The Trial Examiner explained to counsel for Respondent Union the importance of the prediscrimination period earnings of members of Local 138 to even consider Respondent Union's method. He said:

Do you realize, though, that you have not established or attempted to establish any relationship between the nine discriminatees and the so-called average earnings and that relationship could have been established, if you wished to present evidence as to their prediscrimination period as the General Counsel did?

Because, as you know and I know, no individual person is average. He is either better or less than and at the last hearing I think this was thoroughly discussed with you and with Mr. Schultheis that we would need to know the prediscrimination period as well as the discrimination period. Then we could take a look to see how the figures look with respect to those in the backpay specifications.

The method used by Respondent Union in its formula fails completely to give consideration to the fact that the discriminatees were in fact discriminated against in job referrals. There must be a period untaunted by that element in order to have a basis for comparability between the employees discriminated against and those who were not. To argue the validity of average earnings during the period of discrimination, as Respondent does, without first finding where the discriminatees stand in relation to the average, is to vitiate entirely the Board's finding of discrimination.

The dilatory and evasive tactics of Respondent Union in this proceeding cast doubt on its good faith in its contentions as well as its so-called computation. Starting with the testimony of Schultheis and working backward in point of time it is well to list the tactics of Respondent Union.

(1) An extension of time was granted to permit the compilation of promised figures from 1952 to 1961, yet when the hearing reconvened Respondent Union reneged on furnishing the figures for 1953 and 1954. Actually these figures should have been presented months before, and if done so this extension of time would have been wholly unnecessary.

(2) Respondent Union failed to comply with the Board's ruling of July 26, 1963, and file an amended answer "... showing with specificity the names and earnings of other union members with seniority and ability comparable to those discriminatees named in paragraph VI(a) of backpay specifications for the period set forth opposite their names" Of the 450 members of Local 138 (according to Schultheis), only 22 names were listed in the answer filed by Respondent Union pursuant to the Board's July 26, 1963, ruling. Even for these 22, it was admitted that "No attempt has been made to divide the members listed ... into groups comparative in ability and seniority with the discriminatees."

(3) Respondent Union failed in three previous opportunities to file a proper answer to the General Counsel's backpay specification and notice of hearing. Its first failure was in not filing an answer at all to the backpay specification and notice of hearing. The deadline for filing the first answer was March 22, 1963, but nothing was filed until April 17, 1963, some 26 days too late, and that filing was only a request for an extension of time to file an answer. The second failure was thereafter filing an answer in the form of a general denial. Not only did this put in issue any of the backpay specification in accordance with the Board's Rules but obviously no extra time was necessary to make such filing. The third failure took place following the issuance of a notice to show cause on May 20, 1963, why the General Counsel's motion for judgment on the pleadings should not be granted. Instead of responding to the notice, Respondent Union again requested time to file an amended answer to June 3, 1963, and an adjournment of the hearing until June 18, 1963.

These requests were granted. Again, however, the forthcoming amended answer operated as a general denial and was no better than the answer before. The General Counsel was willing to concede, however, that this amended answer raised a question as to the backpay of William Wilkens. Later in the case, Respondent Union conceded that Wilkens' backpay was as stated in the backpay specification of the General Counsel.

It would appear from the above that the Board was most lenient in giving Respondent Union ample opportunity to present its case against the backpay specification.

The General Counsel has the burden of computing gross backpay for the individual discriminatees. *Phelps Dodge Corp. v. N.L.R.B.*, 313 U.S. 177. But when this is done, the burden shifts to Respondent to negate the existence of liability or to mitigate it. *United States Air Conditioning Corporation*, 141 NLRB 1278, 1280.

The General Counsel has sustained his burden by adopting a reasonable and fair formula under all the circumstances for establishing gross backpay. Respondent Union was unable to present a better formula. The General Counsel then set out the amount of interim earnings of the discriminatees and arrived at a computation of net backpay by subtraction. Efforts of Respondent Union to contest the interim earnings failed by virtue of the fact that they were untimely made.

Respondent Union contends that the backpay awards should be reduced for those discriminatees who engaged in antiunion demonstrations during the time of the demonstrations because they were thereby voluntarily taking themselves out of the labor market. There would be merit to this argument if the discriminatees had left jobs to engage in this activity. But the evidence is that they had no jobs having been deprived of them by the Respondent Union. While out of work and seeking work they engaged in some antiunion demonstrations. I find their backpay as computed by the General Counsel should not be reduced.

Only the case of Ziegelbauer remains. The evidence is that the collective-bargaining contracts with the employer group require that members or permit men from Respondent Union operate certain equipment requiring little or no skill. Ziegelbauer had no skill to operate machinery in which skill was required, but he could operate that equipment requiring no skill. He got assignments to "push button" jobs, as noted in Respondent Union's brief, as an oiler, pump operator, compressor operator, and welding machine operator through the good offices of his son-in-law. When the Respondent Union eliminated the son-in-law and his influence, Ziegelbauer lost out on these assignments, and, being relatively unskilled, he was unable to earn much money during the period of discrimination (the backpay period). Hence, the Respondent Union cannot be heard to complain about Ziegelbauer's low interim earnings under these circumstances being responsible as it was, for his loss of good earnings in the first instance.¹³

Finally, Respondent Union argues in its behalf that "... a factor of at least 25 percent should be added to the discriminatees [annual interim earnings] to compensate for . . ." the many strikes in the industry between 1955-60. This is apparently justified on the ground that "Certainly some allowance must be made for the impact of these variable factors on the annual earnings of the discriminatees . . ."

This reasoning lacks merit because if Respondent Union had not caused the loss of the jobs in the first place these discriminatees would have been working along with other members of Locals 138, 138A, 138B, and permit men. Further the 25 percent figure is clearly arbitrary. The General Counsel established a measure of what the quarterly earnings of all these employees was in the backpay period, and as these earnings were based on actual earnings, strikes, and other variable factors would be reflected in them. Once the measure was established (average quarterly earnings), the ratio the earnings of the discriminatees bore to the average quarterly earnings of all members of these four groups in the pre-discrimination period was brought into the backpay period by multiplying this ratio against the average quarterly earnings of all members of these four groups in the backpay period. Thusly the discriminatees were maintained in the backpay period in the same relative position they had in the pre-discrimination period.

The Payment of Interest

I do not recommend the payment of interest on the net backpay as the payment of interest was not required by the Board's original order which was enforced by the court. *Ellis and Watts Products, Inc.*, 143 NLRB 1269, and case cited therein.

¹³ Ziegelbauer credibly testified, "It wasn't that I had any particular skill to operate these machines, but the union bylaws require men on those jobs, and I'm as good a man to be on that as anybody else. Even if I were a top mechanic the way it was supposed to be run. I did it to the satisfaction of fifteen firms more or less. That is a requirement from the union. That is why I have to pay dues to them."

FINAL CONCLUSIONS

Therefore, upon all the evidence, I find that summarizing the facts and the computations set forth above and in the Appendixes, the obligation of the Respondent Union to make whole the discriminatees pursuant to the Board Order and court decree will be discharged by payment to the discriminatees named below of the amounts set forth below opposite their respective names. Said sums are each subject to applicable tax deduction required by Federal and State laws:

Peter Batalias.....	\$16, 123. 00
Albert J. Bruder.....	13, 266. 00
John H. DeKoning.....	3, 194. 85
Thomas Eichacker.....	12, 490. 00
Walter W. Miller.....	9, 277. 20
Garrett Nagle.....	9, 666. 00
Charles Skura.....	13, 069. 00
William H. Wilkens.....	7, 987. 54
Frank Ziegelbauer.....	10, 612. 00
Total.....	\$95, 685. 59

In addition to the above, should the Respondent Union fail to make whole John J. DeKoning and Walter W. Miller, the obligation of the Respondents to make whole the aforementioned discriminatees will be discharged by the payment by Zara to John J. DeKoning of \$3,194.85, and by Eastern to Walter W. Miller of \$65.20, minus the tax withholdings required by Federal and State law.

It is recommended that the Board adopt the foregoing findings and conclusions and take such action in the premises as it deems appropriate.

APPENDIX C

COMPUTATION OF THE NUMBER OF MEMBERS OF LOCALS 138, 138A AND 138B AND PERMITMEN

Calendar quarters by fiscal year	Income from work permits and service fees	Average number of permits in quarter column (b) — \$32 50 *	Number of members Local 138	Number of members Local 138A	Number of members Local 138B	Total number of union members in columns (d), (e) and (f)	Total of union members and permitmen column (c) + column (g)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
<i>1952-53</i>							
7/1-9/30*.....	\$8, 314. 26	256	430	398	180	1, 008	1, 264
10/1-12/31*.....	12, 523. 49	385	442	406	202	1, 050	1, 435
11/1-3/31*.....	6, 965 72	214	449	396	213	1, 058	1, 272
4/1-6/30*.....	14, 467. 28	445	463	404	221	1, 088	1, 533
<i>1953-54</i>							
7/1-9/30.....	7, 672 50	236	503	428	210	1, 141	1, 377
10/1-12/31.....	11, 573 00	356	503	425	246	1, 174	1, 530
1/1-3/31.....	7, 377 50	227	516	426	268	1, 210	1, 437
4/1-6/30.....	15, 311. 50	471	518	423	258	1, 199	1, 670
<i>1954-55</i>							
7/1-9/30.....	16, 027. 00	493	519	432	269	1, 220	1, 713
10/1-12/31.....	15, 198. 00	468	518	432	276	1, 226	1, 694
1/1-3/31.....	12, 197 50	375	515	425	260	1, 200	1, 575
4/1-6/30.....	16, 952. 50	522	515	426	261	1, 202	1, 724
<i>1955-56</i>							
7/1-9/30.....	18, 579 90	572	531	409	272	1, 212	1, 784
10/1-12/31.....	17, 940 00	552	529	395	249	1, 173	1, 725
1/1-3/31.....	12, 675 00	390	533	386	256	1, 175	1, 565
4/1-6/30.....	12, 122 75	588	535	388	249	1, 172	1, 760

See footnotes at end of table.

APPENDIX C—Continued

Calendar quarters by fiscal year	Income from work permits and service fees	Average number of permits in quarter column (b) — \$32 50 *	Number of members Local 138	Number of members Local 138A	Number of members Local 138B	Total number of union members in columns (d), (e) and (f)	Total of union members and permitmen column (c) + column (g)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
<i>1956-57</i>							
7/19/30.....	20,625 00	635	544	394	254	1,192	1,827
10/1-12/31.....	18,875 00	581	548	390	245	1,183	1,764
1/1-3/31.....	11,500 00	354	549	417	245	1,211	1,565
4/1-6/30.....	18,625 00	573	548	418	249	1,215	1,788
<i>1957-58</i>							
7/1-9/30.....	17,875 50	550	549	416	244	1,209	1,759
10/1-12/31.....	15,000 00	462	547	433	236	1,216	1,678
1/1-3/31.....	8,000 00	246	547	437	230	1,214	1,460
4/1-6/30.....	13,112 52	403	545	431	222	1,198	1,601
<i>1958-59</i>							
7/1-9/30**.....	15,375 25	473	545	464	223	1,232	1,705
10/1-12/31**.....	14,379 75	442	551	545	233	1,329	1,771
1/1-3/31**.....	10,187 50	313	541	552	243	1,336	1,649
4/1-6/30**.....	16,618 76	511	544	550	247	1,341	1,852
<i>1959-60</i>							
7/1-9/30.....	12,875 00	396	539	595	244	1,378	1,774
10/1-12/31.....	13,759 50	423	540	594	256	1,390	1,813
1/1-3/31.....	12,375 00	381	542	627	273	1,442	1,823
4/1-6/30.....	20,125 00	619	544	622	280	1,446	2,065
<i>1960-61</i>							
7/1-9/30.....	16,570 00	510	544	620	291	1,455	1,965
10/1-12/31.....	14,630 00	450	545	625	306	1,476	1,926
1/1-3/31.....	14,850 00	457	546	647	313	1,506	1,963
4/1-6/30.....	17,400 00	535	567	623	317	1,507	2,042
<i>1961-62</i>							
7/1-9/30.....	14,430 00	444	577	713	311	1,601	2,045
10/1-12/31.....	14,840 00	457	577	710	324	1,611	2,068
1/1-3/31.....	14,250 00	438	590	732	326	1,648	2,086
4/1-6/30.....	14,444 00	444	590	729	315	1,634	2,078

* Six months receipts for the periods from July 1 to December 31, 1952 and from January 1 to June 30, 1953, allocated to their respective quarters in the same proportion as quarterly income in the fiscal year 1953-54.

^a [Comment] According to Levy's credited testimony a permit to work cost a nonmember \$2.50 a week. Multiplying \$2 50 by the 13 weeks in a calendar quarter gives the total of \$32.50.

** Estimate of quarterly income based upon the average income for the corresponding quarters of fiscal years 1957-58 and 1959-60.

[Comment] N.B. On the theory that members of Local 138 are higher paid than those of the other three groups, The General Counsel pointed out that Local 138 represented 33 percent; Local 138A represented 28 percent; Local 138B represented 16 percent and permitmen represented 24 percent of the number of employees in the prediscrimination period whereas for the entire backpay period the respective percentages were 30, 29, 15 and 26 percent. Because the fixed ratio the discriminatees had with respect to the average wage in the prediscrimination period would be based on a slightly higher average wage (having a greater amount of Local 138 men in it) than that of the discrimination period, the Respondent Union received a slight financial advantage from the General Counsel's formula.

APPENDIX D

COMPUTATION OF AVERAGE QUARTERLY WAGES OF MEMBERS OF LOCALS 138, 138A,
AND 138B AND PERMITMEN

PRE-DISCRIMINATION PERIOD

Calendar quarters by fiscal year	Employers' contributions to welfare fund	Multiplier	Industry wage fund col (b) X col (c)	No of members and permitmen	Average wage col (d) - col (e)
(a)	(b)	(c)	(d)	(e)	(f)
<i>1952-53</i>					
7/1-9/30.....	\$50,233	33 33	\$1,674,417	1,264	\$1,325
10/1-12/31.....	57,070	33 33	1,902,314	1,435	1,326
1/1-3/31.....	48,892	33 33	1,629,717	1,272	1,281
4/1-6/30.....	50,620	33 33	1,687,316	1,533	1,101
<i>1953-54</i>					
7/1-9/30.....	57,242	25 00	1,431,050	1,377	1,039
10/1-12/31.....	69,959	25 00	1,748,975	1,530	1,143
1/1-3/31.....	79,512	20 00	1,590,240	1,437	1,107
4/1-6/30.....	94,858	20 00	1,897,160	1,670	1,136
<i>1954-55</i>					
7/1-9/30.....	120,218	20 00	2,404,360	1,713	1,404
10/1-12/31.....	114,259	20 00	2,285,180	1,694	1,349
1/1-3/31.....	104,920	20 00	2,098,400	1,575	1,332
4/1-6/30.....	111,904	20 00	2,238,080	1,724	1,298

BACKPAY PERIOD

<i>1955-56</i>					
7/1-9/30.....	\$135,811	20 00	\$2,716,220	1,784	\$1,523
10/1-12/31.....	132,241	20 00	2,644,820	1,725	1,533
1/1-3/31.....	122,478	20 00	2,449,560	1,565	1,565
4/1-6/30.....	112,066	20 00	2,241,320	1,760	1,273
<i>1956-57</i>					
7/1-9/30.....	137,059	20 00	2,741,180	1,827	1,500
10/1-12/31.....	163,290	20 00	3,265,800	1,764	1,851
1/1-3/31.....	121,931	20 00	2,488,620	1,565	1,558
4/1-6/30.....	121,040	20 00	2,420,800	1,788	1,354
<i>1957-58</i>					
7/1-9/30.....	141,415	20 00	2,828,300	1,759	1,608
10/1-12/31.....	157,314	20 00	3,146,280	1,678	1,875
1/1-3/31.....	109,540	20 00	2,190,800	1,460	1,501
4/1-6/30.....	95,517	20 00	1,910,340	1,601	1,193
<i>1958-59</i>					
7/1-9/30.....	167,687	20 00	3,353,740	1,705	1,967
10/1-12/31.....	164,948	20 00	3,298,960	1,771	1,863
1/1-3/31.....	122,801	20 00	2,456,020	1,649	1,489
4/1-6/30.....	129,638	20 00	2,592,760	1,852	1,400

APPENDIX D—Continued

Calendar quarters by fiscal year	Employers' contributions to welfare fund	Multiplier	Industry wage fund col (b)×col (c)	No. of members and permitmen	Average wage col (d)÷col (e)
(a)	(b)	(c)	(d)	(e)	(f)
<i>1959-60</i>					
7/1-9/30.....	173,666	20.00	3,473,320	1,774	1,958
10/1-12/31.....	176,520	20.00	3,530,400	1,813	1,947
1/1-3/31.....	195,214	20.00	3,904,280	1,823	2,141
4/1-6/30.....	153,577	20.00	3,071,540	2,065	1,487
<i>1960-61</i>					
7/1-9/30.....	174,170	20.00	3,483,400	1,965	1,773
10/1-12/31.....	187,848	20.00	3,756,960	1,926	1,951
1/1-3/31.....	145,134	20.00	2,902,680	1,963	1,479
4/1-6/30.....	141,899	20.00	2,837,980	2,042	1,390
<i>1961-62</i>					
7/1-9/30.....	153,107	20.00	3,062,140	2,045	1,497
10/1-12/31.....	151,063	20.00	3,021,260	2,068	1,461
1/1-3/31.....	152,499	20.00	3,049,980	2,086	1,462
4/1-6/30.....	144,013	20.00	2,880,260	2,078	1,386

[Comment] At all times material, employers having labor agreements with the Respondent Union have paid to the Welfare Fund of Locals 138, 138A and 138B a specified percentage of the wages earned by their employees who performed work covered by the Local 138 labor agreement whether such employees were union members or permitmen. From July 1, 1952 to June 30, 1953, the rate of such contributions was 3 percent of total wages. From July 1, 1953 to December 31, 1953, the rate of such contributions was 4 percent of total wages. From January 1, 1954 to June 30, 1960, the rate of such contributions was 5 percent of total wages. Since July 1, 1960, the rate of such contributions has been 5 percent of wages for the first 40 hours of work per week. The Industry Wage Fund for each quarter has been computed by multiplying the employers' quarterly contributions to the Welfare Fund as described above by the reciprocal of the percentage rate of contribution.

APPENDIX E

COMPUTATION OF AVERAGE QUARTERLY WAGE OF MEMBERS OF LOCALS 138, 138A AND 138B AND PERMITMEN DURING THE PREDISCRIMINATION PERIOD (7/1/52-6/30/55)

Fiscal year	3d quarter 7/1-9/30	4th quarter 10/1-12/31	1st quarter 1/1-3/31	2d quarter 4/1-6/30
(a)	(b)	(c)	(d)	(e)
(a)..... 1952-53.....	\$1,325	\$1,326	\$1,281	\$1,101
(b)..... 1953-54.....	1,039	1,143	1,107	1,136
(c)..... 1954-55.....	1,404	1,349	1,332	1,298
(d)..... Total.....	3,768	3,818	3,720	3,535
(e)..... Average.....	1,256	1,273	1,240	1,178

APPENDIX F-1

COMPUTATION OF AVERAGE QUARTERLY WAGE OF DISCRIMINATEE ALBERT J. BRUDER IN THE PREDISCRIMINATION PERIOD AND COMPUTATION OF THE PREDISCRIMINATION RATIO BETWEEN THE DISCRIMINATEE'S AVERAGE WAGE AND THE AVERAGE WAGE OF UNION MEMBERS AND PERMITMEN

(a)-----	Fiscal year (a)	3d quarter July 1- Sept. 30 (b)	4th quarter Oct. 1- Dec. 31 (c)	1st quarter Jan. 1- Mar. 31 (d)	2d quarter Apr. 1- June 30 (e)
(b)....	1952-53.....	\$1,668 40	\$2,058 26	\$1 830 25	\$2,543 30
(c)....	1953-54.....	2,250 33	2,228 96	1,717 00	1,995 81
(d)....	1954-55.....	2,207 20	2,191 00	2,680 00	2,010 60
(e)....	Total.....	6,125 93	6,478 22	6,227. 25	6,549 71
(f)....	Discriminatee's average wage line (c) ÷ 3	2,042	2,159	2,076	2,183
(g)....	Average wage of union members and permitmen (App. E, line (e))	1,256	1,273	1,240	1,178
(h)....	Ratio of discriminatee's average wage to average wage of union members and permitmen line (f) ÷ line (g).	163	170	167	185

APPENDIX F-2

COMPUTATION OF AVERAGE QUARTERLY WAGE OF DISCRIMINATEE THOMAS EICHACKER IN THE PREDISCRIMINATION PERIOD AND COMPUTATION OF THE PREDISCRIMINATION RATIO BETWEEN THE DISCRIMINATEE'S AVERAGE WAGE AND THE AVERAGE WAGE OF UNION MEMBERS AND PERMITMEN

(a)-----	Fiscal year (a)	3d quarter July 1- Sept. 30 (b)	4th quarter Oct. 1- Dec. 31 (c)	1st quarter Jan. 1- Mar. 31 (d)	2d quarter Apr. 1- June 30 (e)
(b)....	1952-53.....	\$2,645. 47	\$2,140. 73	\$2,113 40	\$2,076. 50
(c)....	1953-54.....	1,579. 45	2,108. 80	1,716. 99	(¹)
(d)....	1954-55.....	² 1,705. 52	2,406 20	2,080. 80	2,380 20
(e)....	Total.....	5,930 44	6,655 73	5,911. 19	4,456 70
(f)....	Discriminatee's average wage line (e) ÷ 3.	1,977	2,219	1,970	³ 2,228
(g)....	Average wage of union members and permitmen (App. E, line (e)).	1,256	1,273	1,240	1,178
(h)....	Ratio of discriminatee's average wage to average wage of union members and permitmen line (f) ÷ line (g).	157	174	159	189

¹ This quarter eliminated from consideration as not being representative because Eichacker suffered a back injury and was hospitalized during this quarter. His earnings in this quarter amounted to only \$824.85

² Eichacker authorized by doctor to return to work effective 7/9/54. His 3d quarter 1954 earnings were therefore achieved in 12 weeks. Actual 3d quarter 1954 earnings of \$1,574 33 have, accordingly, been increased by $\frac{1}{2}$ in order to make them properly comparable to 3d quarter earnings in other years of the prediscrimination period and the backpay period.

³ This figure secured by dividing col. (e), line (e) by 2.

APPENDIX F-3

COMPUTATION OF AVERAGE QUARTERLY WAGE OF DISCRIMINATEE WALTER W. MILLER IN THE PREDISCRIMINATION PERIOD AND COMPUTATION OF THE PREDISCRIMINATION RATIO BETWEEN THE DISCRIMINATEE'S AVERAGE WAGE AND THE AVERAGE WAGE OF UNION MEMBERS AND PERMITMEN

(a).....	Fiscal year (a)	3d quarter July 1- Sept. 30 (b)	4th quarter Oct. 1- Dec. 31 (c)	1st quarter Jan. 1- Mar. 31 (d)	2d quarter Apr. 1- June 30 (e)
(b).....	1952-53.....	\$1,828 00	\$1,830 00	\$1,682.00	\$2,092 00
(c).....	1953-54.....	2,056 35	2,172.00	2,142 52	1,965 00
(d).....	1954-55.....	2,429 00	2,334 00	2,215.85	2,116.00
(e).....	Total.....	6,313.35	6,336.00	6,040 37	6,173 00
(f).....	Discriminatee's average wage line (e) ÷ 3.	2,104	2,112	2,013	2,058
(g).....	Average wage of union members and permitmen (App. E, line (e)).	1,256	1,273	1,240	1,178
(h).....	Ratio of discriminatee's average wage to average wage of union members and permitmen line (f) ÷ line (g).	167	166	162	175

APPENDIX F-4

COMPUTATION OF AVERAGE QUARTERLY WAGE OF DISCRIMINATEE GARRETT NAGLE IN THE PREDISCRIMINATION PERIOD AND COMPUTATION OF THE PREDISCRIMINATION RATIO BETWEEN THE DISCRIMINATEE'S AVERAGE WAGE AND THE AVERAGE WAGE OF UNION MEMBERS AND PERMITMEN

(a).....	Fiscal year (a)	3d quarter July 1- Sept 30 (b)	4th quarter Oct 1- Dec 31 (c)	1st quarter Jan 1- Mar. 31 (d)	2d quarter Apr. 1- June 30 (e)
(b).....	1952-53.....	\$2,203 00	\$2,070 06	\$1,998.73	\$2,058.65
(c).....	1953-54.....	1,892.99	2,436 57	1,976 69	2,407.83
(d).....	1954-55.....	2,197 11	2,149.96	1,180.45	2,145.76
(e).....	Total.....	6,293 10	6,656 59	5,155 87	6,612 24
(f).....	Discriminatee's average wage line (e) ÷ 3	2,098	2,219	1,719	2,204
(g).....	Average wage of union members and permitment (App E, line (e)).	1,256	1,273	1,240	1,178
(h).....	Ratio of discriminatee's average wage to average wage of union members and permitmen line (f) ÷ line (g).	167	174	139	187

APPENDIX F-5

COMPUTATION OF AVERAGE QUARTERLY WAGE OF DISCRIMINATEE CHARLES SKURA IN THE PREDISCRIMINATION PERIOD AND COMPUTATION OF THE PREDISCRIMINATION RATIO BETWEEN THE DISCRIMINATEE'S AVERAGE WAGE AND THE AVERAGE WAGE OF UNION MEMBERS AND PERMITMEN

(a).....	Fiscal year	3d quarter July 1- Sept 30	4th quarter Oct. 1- Dec 31	1st quarter Jan 1- Mar 31	2d quarter Apr 1- June 30
	(a)	(b)	(c)	(d)	(e)
(b)....	1952-53.....	\$1 752 60	\$1,509 80	\$2,249 10	\$1,985 98
(c)....	1953-54.....	1,196 40	1,510 74	2,501 29	2,556 60
(d)....	1954-55.....	2,385 84	1,887 54	2,246. 18	1,882 82
(e)....	Total.....	5,334 84	4,908 08	6,996 57	6,425 40
(f)....	Discriminatee's average wage line (e) ÷ 3.	1,778	1,636	2,332	2,142
(g)....	Average wage of union members and permitmen (App E, line (e)).	1,256	1,273	1,240	1,178
(h)....	Ratio of discriminatee's average wage to average wage of union members and permitmen line (f) ÷ line (g).	142	129	188	182

APPENDIX F-6

COMPUTATION OF AVERAGE QUARTERLY WAGE OF DISCRIMINATEE WILLIAM H. WILKENS IN THE PREDISCRIMINATION PERIOD AND COMPUTATION OF THE PREDISCRIMINATION RATIO BETWEEN THE DISCRIMINATEE'S AVERAGE WAGE AND THE AVERAGE WAGE OF UNION MEMBERS AND PERMITMEN

(a).....	Fiscal year	3d quarter July 1- Sept 30	4th quarter Oct. 1- Dec. 31	1st quarter Jan. 1- Mar 31	2d quarter Apr 1- June 30
	(a)	(b)	(c)	(d)	(e)
(b)....	1952-53.....	\$2,061.25	\$2,496 50	\$1,856 25	\$2,156 90
(c)....	1953-54.....	2,841 60	3,725 82	2,257. 45	2,813 05
(d)....	1954-55.....	1,636 60	1,947. 20	1,956 00	1,514 45
(e)....	Total.....	6,539 45	8,169 52	6,069 70	6,484 40
(f)....	Discriminatee's average wage line (e) ÷ 3.	2,180	2,723	2,023	2,161
(g)....	Average wage of union members and permitmen (App E, line (e)).	1,256	1,273	1,240	1,178
(h)....	Ratio of discriminatee's average wage to average wage of union members and permitmen line (f) ÷ line (g).	174	214	163	183

APPENDIX F-7

COMPUTATION OF AVERAGE QUARTERLY WAGE OF DISCRIMINATEE FRANK ZIEGELBAUER IN THE PREDISCRIMINATION PERIOD AND COMPUTATION OF THE PREDISCRIMINATION RATIO BETWEEN THE DISCRIMINATEE'S AVERAGE WAGE AND THE AVERAGE WAGE OF UNION MEMBERS AND PERMITMEN

(a).....	Fiscal year (a)	3d quarter July 1- Sept 30 (b)	4th quarter Oct 1- Dec 31 (c)	1st quarter Jan 1- Mar 31 (d)	2d quarter Apr 1- June 30 (e)
(b).....	1952-53.....	\$1,670 65	\$1,580 20	\$1,740 40	\$1,4549 3
(c).....	1953-54.....	1,059 75	1,958 75	1,480 20	2,034 90
(d).....	1954-55.....	1,083 60	795 40	None	557 78
(e).....	Total.....	3,814 00	4,314 45	3,220 60	4,047 61
(f).....	Discriminatee's average wage line (e)-3.	1,271	1,438	1,074	1,349
(g).....	Average wage of union members and Permitmen (App. E, line (e)).	1,256	1,273	1,240	1,178
(h).....	Ratio of discriminatee's average wage to average wage of union members and permitmen line (f) ÷ line (g).	101	113	87	115

APPENDIX F-8

COMPUTATION OF AVERAGE QUARTERLY WAGE OF DISCRIMINATEE PETER BATALIAS IN THE PREDISCRIMINATION PERIOD AND COMPUTATION OF THE PREDISCRIMINATION RATIO BETWEEN THE DISCRIMINATEE'S AVERAGE WAGE AND THE AVERAGE WAGE OF UNION MEMBERS AND PERMITMEN

(a).....	Fiscal year (a)	3d quarter July 1- Sept 30 (b)	4th quarter Oct. 1- Dec 31 (c)	1st quarter Jan 1- Mar. 31 (d)	2d quarter Apr 1- June 30 (e)
(b).....	1952-53.....	\$1,935 85	\$1,835 70	\$1,705 20	\$1,650 10
(c).....	1953-54.....	1,495 70	1,948 95	1,388 70	1,968 75
(d).....	1954-55.....	2,224 60	2,517 09	(1)	2,019 38
(e).....	Total.....	5,656 15	6,301 74	3,093 90	5,638 23
(f).....	Discriminatee's average wage ¹ line (e)-3	1,885	2,100	² 1,547	1,879
(g).....	Average wage of Union members and permitmen (App. E, line (e))	1,256	1,273	1,240	1,178
(h).....	Ratio of discriminatee's average wage to average wage of union members and permitmen line (f) ÷ line (g).	150	165	125	159

¹ This quarter eliminated from consideration as not being representative because Batalias was hospitalized twice in this period. His earnings in this quarter amounted to only \$405.13.

² This figure secured by dividing column (d), line (e) by 2.

APPENDIX G-1

COMPUTATION OF GROSS BACKPAY, INTERIM EARNINGS AND NET BACKPAY FOR
ALBERT J. BRUDER

Calendar quarters by fiscal year	Average wage of union members and permitmen	Discriminatee's ratio (Line h) App. F-1	Gross backpay	Interim earnings	Net backpay
(a)	(b)	(c)	(d)	(e)	(f)
<i>1955-56</i>					
7/1-9/30.....	\$1,523	163	\$2,482	\$1,985	\$497
10/1-12/31.....	1,533	170	2,606	2,251	355
1/1-3/31.....	1,565	167	2,614	1,423	1,191
4/1-6/30.....	1,273	185	2,355	2,252	103
<i>1956-57</i>					
7/1-9/30.....	1,500	163	2,445	2,071	374
10/1-12/31.....	1,851	170	3,147	2,091	1,056
1/1-3/31.....	1,558	167	2,602	1,578	1,024
4/1-6/30.....	1,354	185	2,505	2,217	288
<i>1957-58</i>					
7/1-9/30.....	1,608	163	2,621	2,309	312
10/1-12/31.....	1,875	170	3,187	2,338	849
1/1-3/31.....	1,501	167	2,507	1,775	732
4/1-6/30.....	1,193	185	1 2,084	1 2,194	0
<i>1958-59</i>					
7/1-9/30.....	} These quarters excluded from backpay period pursuant to footnote 39 of the Board Decision and Order herein.	}	}	}	}
10/1-12/31.....					
1/1-3/31.....					
4/1-6/30.....					
<i>1959-60</i>					
7/1-9/30.....	1,958	163	3,192	2,499	693
10/1-12/31.....	1,947	170	3,310	2,254	1,056
1/1-3/31.....	2,141	167	3,575	2,445	1,130
4/1-6/30.....	1,487	185	2,751	2,331	420
<i>1960-61</i>					
7/1-9/30.....	1,773	163	2,890	2,825	0
10/1-12/31.....	1,951	170	3,317	2,044	1,273
1/1-3/31.....	1,479	167	2,470	606	1,864
4/1-6/30.....	1,390				
<i>1961-62</i>					
7/1-9/30.....	1,497				
10/1-12/31.....	1,461				
1/1-3/31.....	1,462				
4/1-6/30.....	1,386				
Total.....					\$13,266

¹ These are adjusted figures after the reduction of gross backpay of \$2,207 and interim earnings of \$2,323 by 5% pursuant to footnote 39 *supra*.

² These are adjusted figures after the reduction of gross backpay of \$2,590 and interim earnings of \$2,443 by 3, pursuant to footnote 39 *supra*.

APPENDIX G-2

COMPUTATION OF GROSS BACKPAY, INTERIM EARNINGS AND NET BACKPAY FOR THOMAS EICHACKER

Calendar quarters by fiscal year	Average wage of union members and permitmen	Discriminatee's ratio	Gross backpay	Interim earnings	Net backpay
(a)	(b)	(c)	(d)	(e)	(f)
<i>1955-56</i>					
7/1-9/30.....	\$1,523	157	\$2,391	\$1,874	\$517
10/1-12/31.....	1,533	174	2,667	1,974	693
1/1-3/31.....	1,565	159	2,488	2,060	428
4/1-6/30.....	1,273	189	2,406	1,988	418
<i>1956-57</i>					
7/1-9/30.....	1,500	157	2,355	1,530	825
10/1-12/31.....	1,851	174	2,684	1,840	844
1/1-3/31.....	1,558	159	1,651	547	1,104
4/1-6/30.....	1,354	189	2,559	2,374	185
<i>1957-58</i>					
7/1-9/30.....	1,608	157	2,525	1,908	617
10/1-12/31.....	1,875	174	3,262	2,364	898
1/1-3/31.....	1,501	159	2,387	3,132	0
4/1-6/30.....	1,193	189	2,255	3,212	0
<i>1958-59</i>					
7/1-9/30.....					
10/1-12/31.....					
1/1-3/31.....					
4/1-6/30.....	1,400	189	1,882	1,608	274
<i>1959-60</i>					
7/1-9/30.....	1,958	157	3,074	603	2,471
10/1-12/31.....	1,947	174	3,388	2,021	1,367
1/1-3/31.....	2,141	159	3,404	2,828	576
4/1-6/30.....	1,487	189	2,810	2,673	137
<i>1960-61</i>					
7/1-9/30.....	1,773	157	2,783	2,876	0
10/1-12/31.....	1,951	174	3,395	2,259	1,136
1/1-3/31.....	1,479				
4/1-6/30.....	1,390				
<i>1961-62</i>					
7/1-9/30.....	1,497				
10/1-12/31.....	1,461				
1/1-3/31.....	1,462				
4/1-6/30.....	1,386				
Total.....					\$12,490

These quarters excluded from backpay period pursuant to footnote 39 of the Board Decision and Order herein

¹ These are adjusted figures after the reduction of gross backpay of \$2,646 and interim earnings of \$1,824 by $\frac{1}{8}$, pursuant to footnote 39 *supra*.

² Unavailable for employment 12/15-12/31/56. Gross backpay of \$3,221 reduced by $\frac{1}{8}$.

³ Unavailable for employment 1/1-1/31/57. Gross backpay of \$2,477 reduced by $\frac{1}{8}$.

APPENDIX G-3

COMPUTATION OF GROSS BACKPAY, INTERIM EARNINGS AND NET BACKPAY FOR
WALTER W. MILLER

Calendar quarters by fiscal year	Average wage of union members and permitmen	Discriminatee's ratio	Gross backpay	Interim earnings	Net backpay
(a)	(b)	(c)	(d)	(e)	(f)
<i>1955-56</i>					
7/1-9/30.....	\$1,523	167	\$2,543	\$2,482	\$61
10/1-12/31.....	1,533	166	2,545	2,499	46
1/1-3/31.....	1,565	162	2,535	2,148	387
4/1-6/30.....	1,273	175	2,228	2,176	52
<i>1956-57</i>					
7/1-9/30.....	1,500	167	2,505	1,482	1,023
10/1-12/31.....	1,851	166	3,073	1,724	1,349
1/1-3/31.....	1,558	162	2,524	910	1,614
4/1-6/30.....	1,354	175	2,369	2,382	0
<i>1957-58</i>					
7/1-9/30.....	1,608	167	2,685	2,110	575
10/1-12/31.....	1,875	166	3,113	1,882	1,231
1/1-3/31.....	1,501	162	2,432	919	1,513
4/1-6/30.....	1,193	175	1,972	1,748	224
<i>1958-59</i>					
7/1-9/30.....	} These quarters excluded from backpay period pursuant to footnote 3 ⁹ of the Board Decision and Order herein.	}	}	}	}
10/1-12/31.....					
1/1-3/31.....					
4/1-6/30.....					
	1,400	175	2,817	2,837	0
<i>1959-60</i>					
7/1-9/30.....	1,958	167	3,270	2,183	1,137
10/1-12/31.....	1,947	166	3,232	3,447	0
1/1-3/31.....	2,141				
4/1-6/30.....	1,487				
Total.....					\$9,212

¹ These are adjusted figures after the reduction of gross backpay of \$2,088 and interim earnings of \$1,851 by 5%, pursuant to footnote 3⁹ *supra*.

² These are adjusted figures after the reduction of gross backpay of \$2,450 and interim earnings of \$2,510 by 2%, pursuant to footnote 3⁹ *supra*.

APPENDIX G-4

COMPUTATION OF GROSS BACKPAY, INTERIM EARNINGS AND NET BACKPAY FOR
GARRETT NAGLE

Calendar quarters by fiscal year	Average wage of union members and permitmen	Discriminatee's ratio	Gross backpay	Interim earnings	Net backpay
(a)	(b)	(c)	(d)	(e)	(f)
<i>1955-56</i>					
7/1-9/30.....	\$1,523	167	\$2,543	\$2,517	\$26
10/1-12/31.....	1,533	174	2,667	2,069	598
1/1-3/31.....	1,565	139	2,175	1,709	466
4/1-6/30.....	1,273	187	2,381	2,262	119

APPENDIX G-4—Continued

Calendar quarters by fiscal year (a)	Average wage of union members and permitmen (b)	Discriminatee's ratio (c)	Gross backpay (d)	Interim earnings (e)	Net backpay (f)
<i>1956-57</i>					
7/1-9/30.....	1,500	167	2,505	315	2,190
10/1-12/31.....	1,851	174	3,221	1,963	1,258
1/1-3/31.....	1,558	139	2,166	1,674	492
4/1-6/30.....	1,354	187	2,532	1,931	601
<i>1957-58</i>					
7/1-9/30.....	1,608	167	2,685	2,530	155
10/1-12/31.....	1,875	174	3,262	2,475	787
1/1-3/31.....	1,501	139	2,086	2,134	0
4/1-6/30.....	1,193	187	2,107	1,951	156
<i>1958-59</i>					
7/1-9/30.....	} These quarters excluded from backpay period pursuant to footnote 39 of the board Decision and Order herein.	}	}	}	}
10/1-12/31.....					
1/1-3/31.....					
4/1-6/30.....					
<i>1959-60</i>					
7/1-9/30.....	1,958	167	3,270	2,612	658
10/1-12/31.....	1,947	174	3,388	2,061	1,32
1/1-3/31.....	2,141	139	2,976	2,165	811
4/1-6/30.....	1,487				
Total.....					\$9,666

¹ These are adjusted figures after the reduction of gross backpay of \$2,231 and interim earnings of \$2,066 by 5%, pursuant to footnote 39 *supra*.

² These are adjusted figures after the reduction of gross backpay of \$2,618 and interim earnings of \$2,554 by %, pursuant to footnote 39 *supra*.

APPENDIX G-5

COMPUTATION OF GROSS BACKPAY, INTERIM EARNINGS AND NET BACKPAY FOR CHARLES SKURA

Calendar quarters by fiscal year (a)	Average wage of union members and permitmen (b)	Discriminatee's ratio (c)	Gross backpay (d)	Interim earnings (e)	Net backpay (f)
<i>1955-56</i>					
7/1-9/30.....	\$1,523	142	\$2,163	\$1,991	\$172
10/1-12/31.....	1,533	129	1,978	1,166	812
1/1-3/31.....	1,565	188	2,942	1,859	1,083
4/1-6/30.....	1,273	182	2,317	1,790	527
<i>1956-57</i>					
7/1-9/30.....	1,500	142	2,130	2,939	0
10/1-12/31.....	1,851	129	2,388	1,393	995
1/1-3/31.....	1,558	188	2,929	688	2,241
4/1-6/30.....	1,354	182	2,464	2,846	0

APPENDIX G-5—Continued

Calendar quarters by fiscal year (a)	Average wage of union members and permitmen (b)	Discriminatee's ratio (c)	Gross backpay (d)	Interim earnings (e)	Net backpay (f)
<i>1957-58</i>					
7/1-9/30.....	1,608	142	2,283	2,753	0
10/1-12/31.....	1,875	129	2,419	2,495	.0
1/1-3/31.....	1,501	188	2,822	1,230	1,592
4/1-6/30.....	1,193	182	2,171	2,577	0
<i>1958-59</i>					
7/1-9/30.....	These quarters excluded from backpay period pursuant to footnote 39 of the Board Decision and Order herein.				
10/1-12/31.....					
1/1-3/31.....					
4/1-6/30.....					
<i>1959-60</i>					
7/1-9/30.....	1,958	142	2,730	2,188	592
10/1-12/31.....	1,947	129	2,512	1,417	1,095
1/1-3/31.....	2,141	188	4,025	2,312	1,713
4/1-6/30.....	1,487	182	2,706	2,554	152
<i>1960-61</i>					
7/1-9/30.....	1,773	342	2,518	2,312	206
10/1-12/31.....	1,951	129	2,517	2,148	369
1/1-3/31.....	1,479	188	2,781	1,826	955
4/1-6/30.....	1,390	182	2,530	2,084	446
<i>1961-62</i>					
7/1-9/30.....	1,497	142	2,126	2,059	67
10/1-12/31.....	1,461	129	1,885	1,957	0
1/1-3/31.....	1,462				
4/1-6/30.....	1,386				
Total.....					\$13,069

¹ These are adjusted figures after the reduction of gross backpay of \$2,548 and interim earnings of \$2,392 by $\frac{1}{2}\%$, pursuant to footnote 39 *supra*.

APPENDIX G-6

COMPUTATION OF GROSS BACKPAY, INTERIM EARNINGS AND NET BACKPAY FOR WILLIAM H. WILKENS

Calendar quarters by fiscal year (a)	Average wage of union members and permitmen (b)	Discriminatee's ratio (c)	Gross backpay (d)	Interim earnings (e)	Net backpay (f)
<i>1955-56</i>					
7/1-9/30.....	\$1,523	174	\$2,650	\$2,465	\$185
10/1-12/31.....	1,533	214	3,281	1,715	1,566
1/1-3/31.....	1,565	163	2,551	1,997	554
4/1-6/30.....	1,273	183	2,330	1,661	669

APPENDIX G-6—Continued

Calendar quarters by fiscal year (a)	Average wage of union members and permitmen (b)	Discriminatee's ratio (c)	Gross backpay (d)	Interim earnings (e)	Net backpay (f)
<i>1956-57</i>					
7/1-9/30.....	1,500	174	2,610	1,898	712
10/1-12/31.....	1,851	214	3,961	2,518	1,443
1/1-3/31.....	1,588	163	2,540	2,311	229
4/1-6/30.....	1,354	183	2,478	2,656	0
<i>1957-58</i>					
7/1-9/30.....	1,608	174	2,798	2,222	576
10/1-12/31.....	1,875	214	4,012	2,587	1,425
1/1-3/31.....	1,501	163	2,447	1,910	537
4/1-6/30.....	1,193	183	12,062	12,505	0
<i>1958-59</i>					
7/1-9/30.....	1,400				
10/1-12/31.....					
1/1-3/31.....					
4/1-6/30.....					
<i>1959-60</i>					
7/1-9/30.....	1,958				
10/1-12/31.....	1,947				
1/1-3/31.....	2,141				
4/1-6/30.....	1,487				
Total.....					\$7,896

These quarters excluded from backpay period pursuant to footnote 39 of Board Decision and Order herein

¹ These are adjusted figures after the reduction of gross backpay of \$2,183 and interim earnings of \$2,652 by 5%, pursuant to footnote 39 *supra*.

APPENDIX G-7

COMPUTATION OF GROSS BACKPAY, INTERIM EARNINGS AND NET BACKPAY FOR FRANK ZIEGELBAUER

Calendar quarters by fiscal year (a)	Average wage of union members and permitmen (b)	Discriminatee's ratio (c)	Gross backpay (d)	Interim earnings (e)	Net backpay (f)
<i>1955-56</i>					
7/1-9/30.....	\$1,523	101	\$1,538	\$323	\$1,215
10/1-12/31.....	1,533	113	1,732	0	1,732
1/1-3/31.....	1,565	87	1,362	0	1,362
4/1-6/30.....	1,273	115	1,461	369	1,095
<i>1956-57</i>					
7/1-9/30.....	1,500	101	1,515	970	545
10/1-12/31.....	1,851	113	2,092	1,081	1,011
1/1-3/31.....	1,558	87	1,355	1,054	301
4/1-6/30.....	1,354	115	1,557	1,053	504

APPENDIX G-7—Continued

Calendar quarters by fiscal year (a)	Average wage of union members and permitmen (b)	Discriminatee's ratio (c)	Gross backpay (d)	Interim earnings (e)	Net backpay (f)
<i>1957-58</i>					
7/1-9/30.....	1,608	101	1,624	841	783
10/1-12/31.....	1,875	113	2,119	1,061	1,058
1/1-3/31.....	1,501	87	1,306	1,200	106
4/1-6/30.....	1,193	115	1,296	1,537	759
<i>1958-59</i>					
7/1-9/30.....	These quarters excluded from backpay period pursuant to footnote 39 of the Board Decision and Order herein.				
10/1-12/31.....					
1/1-3/31.....					
4/1-6/30.....	1,400	115	2,537	2,396	141
<i>1959-60</i>					
7/1-9/30.....	1,958				
10/1-12/31.....	1,947				
1/1-3/31.....	2,141				
4/1-6/30.....	1,487				
Total.....					\$10,612

¹ These are adjusted figures after the reduction of gross backpay of \$1,372 and interim earnings of \$569 by 50, pursuant to footnote 39 *supra*.

² These are adjusted figures after the reduction of gross backpay of \$1,610 and interim earnings of \$1,189 by 3, pursuant to footnote 39 *supra*.

APPENDIX G-8

COMPUTATION OF GROSS BACKPAY, INTERIM EARNINGS AND NET BACKPAY FOR PETER BATALIAS

Claim for backpay for Peter Batalias pursuant to paragraph 3(B)(1) of the court decree for the period from July 1, 1955 to December 31, 1958 is hereby waived.

Claim for backpay for the period from January 1, 1959 to February 26, 1962 is set forth below.

Calendar quarters by fiscal year (a)	Average wage of union members and permitmen (b)	Discriminatee's ratio (c)	Gross backpay (d)	Interim earnings (e)	Net backpay (f)
<i>1959</i>					
1/1-3/31.....	This quarter excluded from backpay period pursuant to footnote 39 of the Board Decision and Order herein.				
4/1-6/30.....					
	\$1,400	159	1,742	\$0	\$742
<i>1959-60</i>					
7/1-9/30.....	1,958	150	2,937	235	2,702
10/1-12/31.....	1,947	165	3,213	372	2,841
1/1-3/31.....	2,141	125	2,676	248	2,428
4/1-6/30.....	1,487	159	2,364	1,432	932

See footnotes at end of table.

APPENDIX G-8—Continued

Calendar quarters by fiscal year (a)	Average wage of union members and permittmen (b)	Discriminatee's ratio (c)	Gross backpay (d)	Interim earnings (e)	Net backpay (f)
<i>1960-61</i>					
7/1-9/30.....	1,773	150	2,659	1,440	1,219
10/1-12/31.....	1,951	165	3,219	1,590	1,629
1/1-3/31.....	1,479	125	1,849	1,805	44
4/1-6/30.....	1,390	159	2,210	1,773	437
<i>1961-62</i>					
7/1-9/30.....	1,497	150	2,245	1,353	892
10/1-12/31.....	1,461	165	2,411	154	2,257
1/1-3/31.....	1,462	125	² 1,827	² 1,923	0
Total.....					16,123

¹ Adjusted figure after the reduction of gross backpay of \$2,226 by $\frac{3}{8}$ pursuant to footnote 39 *supra*. The only interim earnings in this quarter were earned prior to June 1 and are therefore not credited above

² Backpay period is terminated February 26, 1962, date of Union's posting of the Notice to All Members in this case. Figures shown are for full quarter. This terminal date is without prejudice to Batalias' rights pursuant to the Decision and Order of the Board in 2-CA-6301, *et al*.

APPENDIX H-1

PREDISCRIMINATION PERIOD AND INTERIM EARNINGS—ALBERT J. BRUDER

Quarter	Name of Employer	Amount
<i>1952</i>		
3d quarter.....	T & T Construction Co.....	\$1,176.00
	Allerton Construction Corp.....	262.00
	American Concrete Cutters.....	53.00
	Ace Contracting Co.....	177.40
	Total for the quarter.....	1,668.40
4th quarter....	L. G. Felece & Son Inc.....	2,058.26
	Total for the quarter.....	2,058.26
<i>1953</i>		
1st quarter....	L. G. Felece & Son Inc.....	1,830.25
	Total for the quarter.....	1,830.25
2d quarter.....	L. G. Felece & Son Inc.....	2,543.30
	Total for the quarter.....	2,543.30
3d quarter.....	L. G. Felece & Son Inc.....	2,250.33
	Total for the quarter.....	2,250.33
4th quarter....	L. G. Felece & Son Inc.....	139.65
	John C. Peterson Construction Corp.....	1,633.31
	Standard Contracting Co.....	456.00
	Total for the quarter.....	2,228.96

APPENDIX H-1—Continued

<i>Quarter</i>	<i>Name of Employer</i>	<i>Amount</i>	
1954 1st quarter	Lizza & Sons Inc.....	\$136 00	
	Zara Contracting Co., Inc.....	453 00	
	Traynor & Hansen Corp.....	1, 128. 00	
	Total for the quarter.....	<u>1, 717. 00</u>	
2d quarter	Zara Contracting Co. Inc.....	1, 407 21	
	T & T Construction Co.....	81. 60	
	Sessano & Co.....	176. 40	
	Samuel Gallucci & Sons Inc.....	302. 40	
	Dominick Milone Inc.....	28 20	
Total for the quarter.....	<u>1, 995. 81</u>		
3d quarter	T & T Construction Co.....	2, 118. 20	
	Joes Pharmacy Inc.....	89. 00	
	Total for the quarter.....	<u>2, 207. 20</u>	
4th quarter	T & T Construction Co.....	2, 056 00	
	Joes Pharmacy Inc.....	135 00	
	Total for the quarter.....	<u>2, 191 00</u>	
1955 1st quarter	Joes Pharmacy Inc.....	100 00	
	T & T Construction Co.....	2, 580 00	
	Total for the quarter.....	<u>2, 680 00</u>	
	2d quarter	Joes Pharmacy Inc.....	80 00
		T & T Construction Co.....	943 60
Radory Construction Corp.....		987 00	
Total for the quarter.....		<u>2, 010 60</u>	
3d quarter	Radory Construction Corp.....	539. 10	
	Frank Stamato & Co.....	1, 369. 00	
	Joes Pharmacy Inc.....	77. 10	
	Total for the quarter.....	<u>1, 985. 20</u>	
4th quarter	Frank Stamato & Co.....	418 60	
	Balport Construction Corp.....	30 20	
	Jonwal Construction Co. Inc.....	62. 80	
	Nassau Suffolk Pavements Inc.....	1, 739 88	
	Total for the quarter.....	<u>2, 251 48</u>	
1956 1st quarter	Nassau Suffolk Pavements Inc.....	604. 00	
	Frank Marmorale Inc.....	155. 00	
	Eastern Fireproofing Co. Inc.....	62 00	
	A. Cestone Co & Alconn Utilities Inc.....	544. 00	
	Herman & Hinsch.....	58. 40	
	Total for the quarter.....	<u>1, 423 40</u>	
2d quarter	Frank Marmorale Inc.....	2, 252. 25	
	Total for the quarter.....	<u>2, 252 25</u>	
3d quarter	Frank Marmorale Inc.....	2, 071. 36	
	Total for the quarter.....	<u>2, 071. 36</u>	

APPENDIX H-1—Continued

<i>Quarter</i>	<i>Name of Employer</i>	<i>Amount</i>
1956		
4th quarter	Frank Marmorale Inc.	\$2,090.85
	Total for the quarter	2,090.85
1957		
1st quarter	Frank Marmorale Inc.	233.75
	Caye Construction Co. Inc.	84.93
	John C. Peterson Construction Corp.	342.30
	Wielandt Construction Co. Inc.	916.70
	Total for the quarter	1,577.68
2d quarter	John C. Peterson Construction Corp.	2,216.72
	Total for the quarter	2,216.72
3d quarter	John C. Peterson Construction Corp.	2,308.64
	Total for the quarter	2,308.64
4th quarter	John C. Peterson Construction Corp.	2,337.96
	Total for the quarter	2,337.96
1958		
1st quarter	John C. Peterson Construction Corp.	1,775.11
	Total for the quarter	1,775.11
2d quarter	John C. Peterson Construction Corp.	2,323.08
	Total for the quarter	2,323.08
3d quarter	Excluded from backpay period (123 NLRB 1393, 1408 footnote 39).	
4th quarter	Excluded from backpay period (123 NLRB 1393, 1408 footnote 39).	
1959		
1st quarter	Excluded from backpay period (123 NLRB 1393, 1408 footnote 39).	
2d quarter	Onram Corp.	35.40
	Anthony Farino & Sons Inc.	1,491.45
	Mark Masons Inc.	916.00
	Total for the quarter	2,442.85
3d quarter	Switzer Contracting Co. Inc.	68.00
	The Austin Co.	135.68
	Eddy Steel Construction Inc.	81.60
	Thomas O'Connor & Co. Inc.	1,069.60
	Forest Excavators Inc.	343.80
	Total for the quarter	2,498.68
4th quarter	Switzer Contracting Co. Inc.	34.00
	Thomas O'Connor & Co. Inc.	649.40
	Horn Construction Co. Inc.	78.00
	Uman Contracting Co. Inc.	37.00
	Accurate Concrete Co. Inc.	222.00
	Paul J. Roche Inc.	1,033.50
	Herman A. Hirsch	78.00
	Kurtz Steel Corp.	122.40
	Total for the quarter	2,254.30

APPENDIX H-2

PREDISCRIMINATION PERIOD AND INTERIM EARNINGS—THOMAS EICHACKER

<i>Quarter</i>	<i>Name of Employer</i>	<i>Amount</i>
1952 3d quarter----	T & T Construction Co.....	\$1,560.00
	L. G. DeFelice & Son Inc.....	1,085.47
	Total for the quarter.....	<u>2,645.47</u>
4th quarter---	L. G. DeFelice & Son Inc.....	1,216.05
	William J. Peter Co.....	548.28
	Arc Electrical Construction Co. Inc.....	172.00
	Longwood Erecting Co. Inc.....	146.00
	Grove, Shepherd, Wilson & Kruge Inc.....	58.40
Total for the quarter.....	<u>2,140.73</u>	
1953 1st quarter---	Grove, Shepherd, Wilson & Kruge Inc.....	1,879.80
	Bethlehem Steel Co.....	233.60
	Total for the quarter.....	<u>2,113.40</u>
2d quarter----	Grove, Shepherd, Wilson & Kruge Inc.....	705.00
	Garden Spot Florist.....	100.80
	Metropolitan Sand & Gravel Corp.....	1,270.70
	Total for the quarter.....	<u>2,076.50</u>
3d quarter----	Metropolitan Sand & Gravel Corp.....	628.65
	Hudson Contracting Corp.....	103.20
	Railroad Waterproofing Corp.....	292.80
	Hendrickson Bros. Inc.....	317.20
	Grove, Shepherd, Wilson & Kruge Inc.....	237.60
	Total for the quarter.....	<u>1,579.45</u>
4th quarter---	Metropolitan Sand & Gravel Corp.....	2,108.80
	Total for the quarter.....	<u>2,108.80</u>
1954 1st quarter----	Metropolitan Sand & Gravel Corp.....	1,716.99
	Total for the quarter.....	<u>1,716.99</u>
2d quarter----	Metropolitan Sand & Gravel Corp.....	824.85
	Total for the quarter.....	<u>824.85</u>
3d quarter----	John C Peterson Construction Corp.....	359.10
	Industrial Sound Control.....	56.40
	Steel Erecting Co. Inc.....	81.60
	Horn Construction Co. Inc.....	165.68
	L & J Concrete Corp.....	34.65
	Alexander Muss & Sons.....	56.40
	Ralph W Fox.....	612.00
	Salson Construction Corp.....	45.30
	Hudson Contracting Corp.....	163.20
	Total for the quarter.....	<u>1,574.33</u>
4th quarter----	Ralph W Fox.....	2,406.20
	Total for the quarter.....	<u>2,406.20</u>

APPENDIX H-2—Continued

<i>Quarter 1955</i>	<i>Name of Employer</i>	<i>Amount</i>
1st quarter	Ralph W. Fox	\$2, 080. 80
	Total for the quarter	2, 080. 80
2d quarter	Ralph W. Fox	1, 244. 40
	M. H. Treadwell Co. Inc.	451. 20
	Standard Erecting Corp.	684. 60
	Total for the quarter	2, 380. 20
3d quarter	B & B Contracting Co.	147. 75
	Beaver Concrete Breaking Co. Inc.	294. 00
	South Shore Contracting & Dredging Corp.	56. 80
	The M. W. Kellogg Co.	1, 032. 00
	Standard Erecting Corp.	343. 20
	Total for the quarter	1, 873. 75
4th quarter	Karlson & Reed Inc.	56. 80
	NY State Public High School Athletic Assoc.	96. 60
	Steel Erecting Co. Inc.	1, 328. 00
	Tully & DiNapoli Inc.	124. 26
	Turner Construction Co.	58. 80
	The M. W. Kellogg Co.	309. 60
	Total for the quarter	1, 974. 06
<i>1956</i>		
1st quarter	Carmine Ambrosio	687. 50
	Merritt, Chapman & Scott Corp.	255. 45
	Herman A. Hinsch	1, 116. 90
	Total for the quarter	2, 060. 15
2d quarter	Herman A. Hinsch	1, 987. 60
	Total for the quarter	1, 987. 60
3d quarter	A.G. Concrete Breakers Inc.	30. 20
	Hendrickson Bros. Inc.	140. 00
	Herman A. Hinsch	277. 40
	John C. Peterson Construction Corp.	35. 00
	Victor J. Georgetti	60. 00
	E. W. Howell Co.	66. 00
	Michael Contracting Co. Inc.	66. 00
	Harris Structural Steel Co. Inc.	34. 00
	Mansfield Iron Works Inc.	104. 40
	Karlson & Reed Inc.	28. 00
	W. D. Baracci Construction Corp.	93. 00
	Castagna & Son Inc.	62. 00
	E. W. Realty Co.	107. 25
	Arthur W. Funfgeld Associates Inc.	93. 00
	Kurtz Steel Corp.	104. 40
	Lordi Stroller Ltd.	229. 50
	Total for the quarter	1, 530. 15
4th quarter	Lordi Stroller Ltd.	1, 377. 00
	Eastern Fireproofing Co. Inc.	95. 40
	Caye Construction Co. Inc.	155. 00
	John C. Peterson Construction Corp.	31. 50
	Farr Construction Corp.	181. 20
	Total for the quarter	1, 840. 10

APPENDIX H-2—Continued

<i>Quarter</i>	<i>Name of Employer</i>	<i>Amount</i>
1st quarter-----	John C. Peterson Construction Corp.....	\$407. 56
	F. H. Sparks Co. Inc.....	139. 20
	Total for the quarter.....	546. 76
2d quarter-----	John C. Peterson Construction Corp.....	997. 10
	Lordi Stroller Ltd.....	1, 377. 00
	Total for the quarter.....	2, 374. 10
3d quarter-----	Lordi Stroller Ltd.....	803. 25
	J. J. Haggerty Inc.....	1, 105. 00
	Total for the quarter.....	1, 908. 25
4th quarter-----	J. J. Haggerty Inc.....	772. 30
	Kurtz Steel Corp.....	144. 00
	Gencarello Inc. & Edward Acker Corp.....	1, 447. 87
	Total for the quarter.....	2, 364. 17
1st quarter-----	Edward Acker Corp. & Gencarelli Corp.....	3, 131. 52
	Total for the quarter.....	3, 131. 52
	2d quarter-----	Edward Acker Corp. & Gencarelli Corp.....
3d quarter-----	Anderson Construction Co. Inc.....	33. 80
	Porette Mfg. Co.....	108. 60
	American Chimney Corp.....	405. 55
	Total for the quarter.....	3, 212. 10
4th quarter-----	Excluded from backpay period (123 NLRB 1393, 1408 footnote 39).	
1st quarter-----	Excluded from backpay period (123 NLRB 1393, 1408 footnote 39).	
	2d quarter-----	Switzer Contracting Co., Inc.....
3d quarter-----	Keystone Fireproofing Corp.....	153. 60
	Eddy Steel Construction, Inc.....	39. 20
	Atlas Erectors Co.....	117. 60
	V.B. Construction Co., Inc.....	37. 40
	Steel Erecting Co., Inc.....	71. 60
	E. W. Howell Co.....	617. 10
	Millmont Construction Corp.....	138. 80
	Insured Steel Erectors, Inc.....	512. 80
	Craft & Brucia, Inc.....	32. 40
	Acoustical Deck Erectors Corp.....	70. 80
	Total for the quarter.....	1, 823. 70
	4th quarter-----	Krimat Inc.....
Hoffman Rigging & Crane Service Inc.....		138. 49
Total for the quarter.....	603. 49	
4th quarter-----	Switzer Contracting Co., Inc.....	34. 00
	Steel Erecting Co., Inc.....	111. 00
	Mark Masons, Inc.....	283. 20
	Cranford Co., Inc.....	1, 592. 38
	Total for the quarter.....	2, 020. 58

APPENDIX H-2—Continued

<i>Quarter</i>	<i>Name of Employer</i>	<i>Amount</i>
1960		
1st quarter	W. J. Barney Corp.....	\$1, 935. 00
	M. H. Treadwell Co., Inc.....	55. 00
	Craft & Bruceta, Inc.....	34. 00
	Paul J. Roche, Inc.....	78. 00
	Cranford Co., Inc.....	726. 12
	Total for the quarter.....	<u>2, 828. 12</u>
2d quarter	W. J. Barney Corp.....	1, 175. 00
	Porette Mfg. Co.....	40. 80
	A. J. McNulty.....	395. 80
	Edward Acker Corp.....	939. 17
	Lizza & Sons, Inc.....	121. 80
	Total for the quarter.....	<u>2, 672. 57</u>
3d quarter	Edward Acker Corp.....	1, 801. 81
	Paul A. Cardone.....	576. 79
	Main Construction Corp.....	111. 00
	Switzer Contracting Co., Inc.....	34. 00
	Ralph W. Fox.....	352. 00
	Total for the quarter.....	<u>2, 875. 60</u>
4th quarter	Edward Acker Corp.....	1, 689. 18
	Switzer Contracting Co., Inc.....	34. 00
	Kurtz Steel Corp.....	535. 60
	Total for the quarter.....	<u>2, 258. 78</u>
1961		
1st quarter	Edward Acker Corp.....	3, 243. 21
	Total for the quarter.....	<u>3, 243. 21</u>

APPENDIX H-3

PREDISCRIMINATION PERIOD AND INTERIM EARNINGS—WALTER W. MILLER

<i>Quarter</i>	<i>Name of Employer</i>	<i>Amount</i>
1952		
3d quarter	Heroes Excavating and Contracting Corp....	\$1, 828. 00 (E)
	Total for the quarter.....	<u>1, 828. 00</u>
4th quarter	Heroes Excavating and Contracting Corp....	1, 830. 00 (E)
	Total for the quarter.....	<u>1, 830. 00</u>
1953		
1st quarter	Heroes Excavating and Contracting Corp....	1, 682. 00
	Total for the quarter.....	<u>1, 682. 00</u>
2d quarter	Heroes Excavating and Contracting Corp....	2, 092. 00 (E)
	Total for the quarter.....	<u>2, 092. 00</u>
3d quarter	Heroes Excavating and Contracting Corp....	1, 974. 00 (E)
	Philip J. Bruno.....	82. 35
	Total for the quarter.....	<u>2, 056. 35</u>
4th quarter	Heroes Excavating and Contracting Corp....	2, 172. 00 (E)
	Total for the quarter.....	<u>2, 172. 00</u>

(E) Estimated, see Appendix H-3, page 1015.

APPENDIX H-3—Continued

<i>Quarter</i>	<i>Name of Employer</i>	<i>Amount</i>
<i>1954</i>		
1st quarter	Heroes Excavating and Contracting Corp...	\$2, 142. 52
	Total for the quarter.....	<u>2, 142. 52</u>
2d quarter	Heroes Excavating and Contracting Corp...	1, 965. 00 (E)
	Total for the quarter.....	<u>1, 965. 00</u>
3d quarter	Heroes Excavating and Contracting Corp...	2, 429. 00 (E)
	Total for the quarter.....	<u>2, 429. 00</u>
4th quarter	Heroes Excavating and Contracting Corp...	2, 334. 00 (E)
	Total for the quarter.....	<u>2, 334. 00</u>
<i>1955</i>		
1st quarter	Heroes Excavating and Contracting Corp...	2, 215. 85
	Total for the quarter.....	<u>2, 215. 85</u>
2d quarter	Heroes Excavating and Contracting Corp...	2, 116. 00 (E)
	Total for the quarter.....	<u>2, 116. 00</u>
3d quarter	Heroes Excavating and Contracting Corp...	2, 482. 00 (E)
	Total for the quarter.....	<u>2, 482. 00</u>
4th quarter	Heroes Excavating and Contracting Corp...	2, 499. 00 (E)
	Total for the quarter.....	<u>2, 499. 00</u>
<i>1956</i>		
1st quarter	Heroes Excavating and Contracting Corp...	1, 143. 81
	Builders Sand & Gravel Corp.....	1, 004. 12
	Total for the quarter.....	<u>2, 147. 93</u>
2d quarter	Builders Sand & Gravel Corp.....	1, 891. 21
	Merrick Utility Associates Inc.....	284. 70
	Total for the quarter.....	<u>2, 175. 91</u>
3d quarter	Isaacson Steel Erectors Inc.....	382. 80
	Zara Contracting Co Inc.....	56. 00
	Buchanan & Eberhard Inc.....	97. 50
	A. J McNulty & Co.....	417. 60
	John C. Peterson Construction Corp.....	56. 00
	Ace Hoeffner Contracting Co. Inc.....	63. 00
	Jonwal Construction Co. Inc.....	66. 00
	Freeport Iron Works.....	43. 50
	Michael Contracting Co. Inc.....	66. 00
	Liquid Plastics Corp.....	163. 80
	Eddy Steel Construction Inc.....	69. 60
	Total for the quarter.....	<u>1, 481. 80</u>

(E) Estimated, see Appendix H-3, page 1015.

APPENDIX H-3—Continued

<i>Quarter</i>	<i>Name of Employer</i>	<i>Amount</i>
1956 4th quarter-----	John C. Peterson Construction Corp-----	\$350. 00
	Eastern Fireproofing Co Inc-----	413. 40
	Steel Erecting Co. Inc-----	31 00
	Freeport Iron Works-----	78 30
	Caye Construction Co. Inc-----	224 75
	Mineola Steel Fabricators Inc-----	626. 40
	Total for the quarter-----	<u>1, 723. 85</u>
1957 1st quarter-----	Mineola Steel Fabricators Inc-----	213. 60
	Eastern Fireproofing Co. Inc-----	293. 40
	Isaacson Steel Erectors Inc-----	35. 60
	Freeport Iron Works-----	213. 60
	John C. Peterson Construction Corp-----	25. 00
	Caye Construction Co. Inc-----	63. 60
	Local 138—Backpay due for discrimination on Eastern Fireproofing job.	*65. 20
	Total for the quarter-----	<u>910. 00</u>
2d quarter-----	John C. Peterson Construction Corp-----	2, 382. 42
	Total for the quarter-----	<u>2, 382. 42</u>
3d quarter-----	John C. Peterson Construction Corp-----	775 76
	Salson Construction Corp-----	40 28
	Kurtz Steel Corp-----	70. 40
	Peralex of N.J. Inc-----	396. 00
	J. J. Haggerty Inc-----	60. 00
	Expert Concrete Breakers Inc-----	57. 60
	Harris Grand-----	709. 50
Total for the quarter-----	<u>2, 109. 54</u>	
4th quarter-----	Eastern Fireproofing Co. Inc-----	87. 60
	Steel Erecting Co. Inc-----	99. 60
	J. J. Haggerty Inc-----	292. 88
	Mineola Steel Fabricators Inc-----	508. 00
	Keystone Fireproofing Corp-----	429. 00
	Kurtz Steel Corp-----	105. 60
	Harris Grand-----	359 24
Total for the quarter-----	<u>1, 881. 92</u>	
1958 1st quarter-----	Steel Erecting Co. Inc-----	99 60
	Keystone Fireproofing Corp-----	101. 40
	Mathews Industrial Piping Corp-----	398. 03
	Caye Construction Co. Inc-----	67. 60
	Mineola Steel Fabricators Inc-----	252. 00
	Total for the quarter-----	<u>918. 63</u>

* Amount due pursuant to this specification but not yet paid.

APPENDIX H-3—Continued

<i>Quarter</i>	<i>Name of Employer</i>	<i>Amount</i>
<i>1958</i>		
2d quarter-----	Keystone Fireproofing Corp-----	\$135. 20
	Rust Proof Chain and Fence Co-----	33 80
	Zimms Gasoline Tanks Maintenance Corp---	33. 00
	Graves Tank & Mfg. Co. Inc-----	972. 90
	Tomeo Contracting Co-----	76. 05
	Eastern Fireproofing Co Inc-----	499. 20
	Kurtz Steel Corp-----	101. 28
	Total for the quarter-----	<u>1, 851 43</u>
3d quarter-----	Excluded from backpay period (123 NLRB 1393, 1408 footnote 39).	
4th quarter-----	Excluded from backpay period (123 NLRB 1393, 1408 footnote 39).	
<i>1959</i>		
1st quarter-----	Excluded from backpay period (123 NLRB 1393, 1408 footnote 39).	
2d quarter-----	Anthony Farino & Sons Inc-----	1, 483. 05
	Davis Construction Corp-----	226. 80
	Amfar Asphalt Corp-----	799. 66
	Total for the quarter-----	<u>2, 509. 51</u>
3d quarter-----	Amfar Asphalt Corp-----	2, 025. 80
	Barnaby Concrete Corp-----	106. 95
	Total for the quarter-----	<u>2, 132. 75</u>
4th quarter-----	Amfar Asphalt Corp-----	1, 680. 80
	Switzer Contracting Co. Inc-----	34. 00
	Horn Construction Co. Inc-----	78. 00
	Freeport Iron Works-----	41 20
	Paul J. Roche Inc-----	1, 365. 00
	Nassau Suffolk Pavements Inc-----	248. 30
	Total for the quarter-----	<u>3, 447. 30</u>

WALTER MILLER

CONVERSION OF ANNUAL INTERIM EARNINGS DATA TO QUARTERLY BASIS

In the case of Walter Miller, who was employed by Heroes Excavating and Contracting Corp. during the years 1952, 1953, 1954 and 1955, accurate earnings data for each of the calendar quarters is not available. First quarter, second quarter, and annual earnings are known however, as follows:

	1952	1953	1954	1955
First Quarter-----	\$1, 587 00	\$1, 682 00	\$2, 142. 52	\$2, 215 85
Second Quarter-----	1, 651 50			
Annual Total-----	6, 884 33	7, 930 29	8, 870 35	9, 297 56

From these data and from the figures for the average quarterly earnings of union members and permitmen taken from Appendix D and listed in column (b) below, it has been possible to compute the ratio between the earnings of union members and permitmen on the one hand and Miller on the other hand for the last two quarters in 1952 and for the last three quarters in 1953, 1954, and 1955 (column (d) below).

APPENDIX H-3—Continued

Average quarterly earnings of union members and permitmen have been multiplied by the applicable ratios to secure Miller's estimated quarterly wages (column (e) below).

Calendar quarter (a)	Average quarterly wage of union members and permitmen (b)	Miller's wage (actual) (c)	Ratio col (c) ÷ col. (b) (d)	Miller's quarterly wage estimated col (b) × col. (d) (e)
<i>1952</i>				
3Q.....	\$1,325		138	\$1,828
4Q.....	1,326		138	1,830
2 quarters total.....	2,651	3,646	138	
<i>1953</i>				
2Q.....	1,101		190	2,092
3Q.....	1,039		190	1,974
4Q.....	1,143		190	2,172
3 quarters total.....	3,283	6,248	190	
<i>1954</i>				
2Q.....	1,136		173	1,965
3Q.....	1,404		173	2,429
4Q.....	1,349		173	2,334
3 quarters total.....	3,889	6,727	173	
<i>1955</i>				
2Q.....	1,298		163	2,116
3Q.....	1,523		163	2,482
4Q.....	1,533		163	2,499
3 quarters total.....	4,354	7,082	163	

APPENDIX H-4

PREDISCRIMINATION PERIOD AND INTERIM EARNINGS—GARRETT NAGLE

Quarter	Name of Employer	Amount
<i>1952</i>		
3d quarter.....	Hendrickson Bros. Inc.....	\$2,203.00
	Total for the quarter.....	2,203.00
4th quarter.....	Hendrickson Bros. Inc.....	2,070.06
	Total for the quarter.....	2,070.06
<i>1953</i>		
1st quarter.....	Hendrickson Bros. Inc.....	1,998.73
	Total for the quarter.....	1,998.73
2d quarter.....	Hendrickson Bros. Inc.....	2,058.65
	Total for the quarter.....	2,058.65

APPENDIX H-4—Continued

<i>Quarter</i>	<i>Name of Employer</i>	<i>Amount</i>
<i>1953</i>		
3d quarter.....	Hendrickson Bros. Inc.....	\$1, 892. 99
	Total for the quarter.....	1, 892. 99
4th quarter....	Hendrickson Bros. Inc.....	2, 436. 57
	Total for the quarter.....	2, 436. 57
<i>1954</i>		
1st quarter.....	Hendrickson Bros. Inc.....	1, 976. 69
	Total for the quarter.....	1, 976. 69
2d quarter.....	Hendrickson Bros. Inc.....	2, 407. 83
	Total for the quarter.....	2, 407. 83
3d quarter.....	Hendrickson Bros. Inc.....	2, 197. 11
	Total for the quarter.....	2, 197. 11
4th quarter....	Hendrickson Bros. Inc.....	2, 149. 96
	Total for the quarter.....	2, 149. 96
<i>1955</i>		
1st quarter.....	Hendrickson Bros. Inc.....	450. 45
	T. A. Gable Associates.....	175. 00
	Samuel Gallucci & Sons Inc.....	555. 00
	Total for the quarter.....	1, 180. 45
2d quarter.....	T & T Construction Co.....	50. 40
	Auserehl & Son Cont. Corp.....	60. 40
	Expert Concrete Breakers Inc.....	56. 40
	Samuel Gallucci & Sons Inc.....	405. 15
	A. Cestone Company & Alconn Utilities.....	994. 03
	S.C. Construction Co. Inc.....	116. 30
	A. Cestone & Local 138.....	463. 08
	Total for the quarter.....	2, 145. 76
3d quarter.....	South Shore Contracting & Dredging Corp....	56. 80
	A. Cestone Company & Alconn Utilities.....	2, 460. 01
	Total for the quarter.....	2, 516. 81
4th quarter....	A. Cestone Company & Alconn Utilities.....	2, 069. 30
	Total for the quarter.....	2, 069. 30
<i>1956</i>		
1st quarter.....	A. Cestone Company & Alconn Utilities.....	1, 650. 81
	Herman A. Hinsch.....	58. 40
	Total for the quarter.....	1, 709. 21
2d quarter.....	A. Cestone Company & Alconn Utilities.....	1, 418. 97
	Albert G. Macinnis Co. Inc.....	132. 00
	M. Parisi & Son Inc.....	661. 04
	Switzer Contracting Co. Inc.....	27. 20
	Dougald A. McFadyen.....	23. 00
	Total for the quarter.....	2, 262. 21

APPENDIX H-4—Continued

<i>Quarter</i> <i>1956</i>	<i>Name of Employer</i>	<i>Amount</i>
3d quarter-----	Caye Construction Co. Inc.-----	\$314. 60
	Total for the quarter-----	314 60
4th quarter-----	Caye Construction Co. Inc.-----	1963. 25
	Total for the quarter-----	1963. 25
<i>1957</i>		
1st quarter-----	Caye Construction Co. Inc.-----	1673. 94
	Total for the quarter-----	1673 94
2d quarter-----	Caye Construction Co. Inc.-----	1931. 00
	Total for the quarter-----	1931. 00
3d quarter-----	Caye Construction Co. Inc.-----	2, 123. 00 (E)
	Kurtz Steel Corp.-----	99. 00
	John C. Peterson Construction Corp.-----	307. 70
	Total for the quarter-----	2, 529. 70
4th quarter-----	Caye Construction Co. Inc.-----	2, 475. 00 (E)
	Total for the quarter-----	2, 475 00
<i>1958</i>		
1st quarter-----	Caye Construction Co. Inc.-----	2, 134. 40
	Total for the quarter-----	2, 134 40
2d quarter-----	Caye Construction Co. Inc.-----	2, 065. 60
	Total for the quarter-----	2, 065. 60
3d quarter-----	Excluded from backpay period (123 NLRB 1393, 1408 footnote 39).	
4th quarter-----	Excluded from backpay period (123 NLRB 1393, 1408 footnote 39).	
<i>1959</i>		
1st quarter-----	Excluded from backpay period (123 NLRB 1393, 1408 footnote 39).	
2d quarter-----	Queens Structure Corp.-----	211. 50
	Tomrich Construction Co. Inc.-----	2, 342 40
	Total for the quarter-----	2, 553. 90
3d quarter-----	Tomrich Construction Co. Inc.-----	1, 512. 00
	Allied Pile & Boring Co. Inc.-----	779. 73
	Brooklyn Announcement Co. Inc.-----	185. 00
	Oneram Corp.-----	135. 00
	Total for the quarter-----	2, 611. 73
4th quarter-----	Karlson & Reed Inc.-----	1, 838. 75
	Record Concrete Cutting Corp.-----	185. 00
	Humphreys & Harding Inc.-----	37. 00
	Total for the quarter-----	2, 060 75

(E) Estimated, see Appendix H-4, page 1018.

APPENDIX H-4—Continued

<i>Quarter</i> 1960	<i>Name of Employer</i>	<i>Amount</i>
1st quarter-----	Karlson & Reed Inc-----	\$2, 165. 45
	Total for the quarter-----	<u>2, 165. 45</u>

GARRETT NAGLE

CONVERSION OF ANNUAL INTERIM EARNINGS DATA TO QUARTERLY BASIS

In the case of Garrett Nagle who was employed by Caye Construction Co., Inc. during the year 1957, accurate earnings for each of the calendar quarters is not available. First quarter, second quarter, and annual earnings are known, however, as follows:

	1957
First Quarter-----	\$1, 673 94
Second Quarter-----	1, 931. 06
Annual Total-----	8, 212 84

From these data and from the figures for the average quarterly earnings of union members and permitmen taken from Appendix D and listed in column (b) below, it has been possible to compute the ratio between the earnings of union members and permitmen on the one hand, and Nagle on the other hand, for the last two quarters in 1957. Average quarterly earnings of union members and permitmen have been multiplied by the applicable ratio to secure Nagle's estimated quarterly wages (column (e) below).

Calendar quarter (a)	Average quarterly wage of union members and permitmen (b)	Nagle's wage (actual) (c)	Ratio col. (c)÷col. (b) (d)	Nagle's quarterly wage estimated col. (b)×col. (d) (e)
<i>1957</i>				
3Q-----	\$1, 608		132	\$2, 123
4Q-----	1, 875		132	2, 475
2 quarters total-----	3, 483	4, 608	132	

APPENDIX H-5

PREDISCRIMINATION PERIOD AND INTERIM EARNINGS—CHARLES SKURA

<i>Quarter</i> 1952	<i>Name of Employer</i>	<i>Amount</i>
3d quarter-----	Radory Construction Corp-----	\$1, 551. 00
	Tully & DiNapoli Inc-----	201. 60
	Total for the quarter-----	<u>1, 752. 60</u>
4th quarter-----	Radory Construction Corp-----	878. 70
	Horn Construction Co. Inc-----	258. 30
	Builders Products of America Inc-----	146. 00
	Tully & DiNapoli Inc-----	226. 80
	Total for the quarter-----	<u>1, 509. 80</u>

APPENDIX H-5—Continued

<i>Quarter</i> <i>1953</i>	<i>Name of Employer</i>	<i>Amount</i>
1st quarter.....	Tully & DiNapoli Inc.....	\$2,249.10
	Total for the Quarter.....	<u>2,249.10</u>
2d quarter.....	Tully & DiNapoli Inc.....	889.78
	Paul A. Cardone.....	218.40
	Holger Olsan.....	141.00
	Hudson Contracting Corp.....	50.40
	R.E.J.B. Contractors & Builders.....	686.40
	Total for the quarter.....	<u>1,985.98</u>
3d quarter.....	Hudson Contracting Corp.....	1,196.40
	Total for the quarter.....	<u>1,196.40</u>
4th quarter.....	Hudson Contracting Corp.....	607.20
	T & T Construction Co.....	819.54
	Raynor Contracting Corp.....	28.00
	D.E. Electric Co.....	56.00
	Total for the quarter.....	<u>1,510.74</u>
<i>1954</i>		
1st quarter.....	Spencer, White & Prentis Inc.....	54.40
	T & T Construction Co.....	2,378.94
	T & T Contracting Co.....	67.95
	Total for the quarter.....	<u>2,501.29</u>
2d quarter.....	T & T Construction Co.....	2,556.60
	Total for the quarter.....	<u>2,556.60</u>
3d quarter.....	T & T Construction Co.....	2,385.84
	Total for the quarter.....	<u>2,385.84</u>
4th quarter.....	T & T Construction Co.....	1,887.54
	Total for the quarter.....	<u>1,887.54</u>
<i>1955</i>		
1st quarter.....	T & T Construction Co.....	2,246.18
	Total for the quarter.....	<u>2,246.18</u>
2d quarter.....	T & T Construction Co.....	1,634.62
	South Shore Contracting & Dredging Corp.....	248.20
	Total for the quarter.....	<u>1,882.82</u>
3d quarter.....	South Shore Contracting & Dredging Corp.....	1,480.20
	Hendrickson Bros., Inc.....	511.20
	Total for the quarter.....	<u>1,991.40</u>
4th quarter.....	Hendrickson Bros., Inc.....	149.10
	Karlson & Reed, Inc.....	237.60
	D. Fortunato, Inc.....	205.80
	Dade Trucking, Inc.....	29.40
	C.S.P. Construction Co.....	164.40
	Tully & DiNapoli Inc.....	246.60
	Freeport Iron Works.....	132.80
	Total for the quarter.....	<u>1,165.70</u>

APPENDIX H-5—Continued

<i>Quarter</i>	<i>Name of Employer</i>	<i>Amount</i>
1st quarter.....	Carmine Ambrosio.....	\$717. 00
	Herman A. Hinsch.....	1, 109. 60
	Total for the quarter.....	<u>1, 858. 80</u>
2d quarter.....	E. W. Howell Co.....	32. 20
	Herman A. Hinsch.....	1, 383. 35
	Merrick Utility Associates, Inc.....	219. 00
	Liquid Plastics Corp.....	155. 00
	Total for the quarter.....	<u>1, 789. 55</u>
3d quarter.. --	John C. Peterson Paving Corp.....	1, 145. 44
	John C. Peterson Construction Corp.....	1, 673. 90
	Frank Lentino, Inc.....	120. 00
	Total for the quarter.....	<u>2, 939. 34</u>
4th quarter.....	John C. Peterson Construction Corp.....	113. 00
	John C. Peterson Paving Corp.....	1, 279. 52
	Total for the quarter.....	<u>1, 392. 52</u>
1st quarter.....	John C. Peterson Construction Corp.....	545. 66
	Freeport Iron Works.....	142. 40
	Total for the quarter.....	<u>688. 06</u>
2d quarter.....	John C. Peterson Construction Corp.....	2, 845. 94
	Total for the quarter.....	<u>2, 845. 94</u>
3d quarter.....	John C. Peterson Construction Corp.....	2, 752. 56
	Total for the quarter.....	<u>2, 752. 56</u>
4th quarter.....	John C. Peterson Construction Corp.....	2, 494. 88
	Total for the quarter.....	<u>2, 494. 88</u>
1st quarter.....	John C. Peterson Construction Corp.....	1, 193. 43
	Mathews Industrial Piping Corp.....	36. 60
	Total for the quarter.....	<u>1, 230. 03</u>
2d quarter.....	John C. Peterson Construction Corp.....	2, 577. 34
	Total for the quarter.....	<u>2, 577. 34</u>
3d quarter.....	Excluded from backpay period (123 NLRB 1393, 1408 footnote 39).	
4th quarter.....	Excluded from backpay period (123 NLRB 1393, 1408 footnote 39).	
1st quarter.....	Excluded from backpay period (123 NLRB 1393, 1408 footnote 39).	
	John Ruggiero Inc.....	2, 392. 00
2d quarter.....	John Ruggiero Inc.....	2, 392. 00
	Total for the quarter.....	<u>2, 392. 00</u>

APPENDIX H-5--Continued

<i>Quarter</i>	<i>Name of Employer</i>	<i>Amount</i>	
3d quarter	1969		
	John Ruggiero Inc.....	\$600 00	
	Hallen Welding Service Inc.....	367. 20	
	Jos. Bisceglia & Sons Inc.....	37. 00	
	Jewel Plumbing & Heating Co. Inc.....	37. 00	
	Fischer Malik Inc.....	74. 00	
	Kurtz Steel Corp.....	81. 60	
	W. T. Tooker Inc.....	74. 00	
	New Castle Iron Works Inc.....	41. 60	
	D. Fortunato Inc.....	876. 00	
Total for the quarter.....		2, 188. 40	
4th quarter	Edward F. Hickey Inc.....	400. 00	
	Hendrickson Bros. Inc.....	144. 00	
	J. B. Eurell Co.....	310. 88	
	Foster Newman Contracting Corp.....	37. 00	
	Switzer Contracting Co. Inc.....	272. 00	
	Pollack & Wysong Corp.....	37. 00	
	Craft & Brucia Inc.....	216. 00	
Total for the quarter.....		1, 416. 88	
1st quarter	1960		
	Eddy Steel Construction Inc.....	61. 20	
	A. D. Herman Construction Co. Inc.....	37. 00	
	Joseph J. Wulforst.....	156. 00	
	J. B. Eurell Co.....	351. 60	
	Parks Seidman Inc.....	1, 706. 25	
	Total for the quarter.....		2, 312. 05
	2d quarter	Eddy Steel Construction Inc.....	591. 60
		Palermo Construction Corp.....	40. 00
		L. J. McNeil Construction Corp.....	70. 80
C.Y. Construction Co.....		472. 05	
Kurtz Steel Corp.....		41. 20	
James Michael Construction Corp.....		148 00	
D. Fortunato Inc.....		162. 35	
Steel Erecting Co Inc.....		40. 80	
Ahneman Fallen Inc.....		497. 24	
Karlson & Reed Inc.....		34. 00	
Hendrickson Bros. Inc.....		72. 25	
Vincent Provenzano Construction Co. Inc.....		102. 00	
Pyramid Cranes Co Inc.....		81. 60	
J. B. Eurell Co.....		200 00	
Total for the quarter.....		2, 553. 89	
3d quarter	Ahneman Fallen Inc.....	41 62	
	K. B. Eurell Co.....	824. 00	
	Halper & Sons Inc.....	535. 60	
	Leon D. DeMattais Construction Corp.....	296 00	
	John Ruggiero Inc.....	615 01	
	Total for the quarter.....		2, 312 23
4th quarter	Elizabeth Iron Works Inc.....	41. 00	
	Halper & Sons Inc.....	800. 25	
	H. Johnson & Son Inc.....	723. 60	
	Construction Unlimited Inc.....	74 00	
	Karlson & Reed Inc.....	34. 00	
	Gypsum Constructors Inc.....	367. 20	
	Consolidated Concrete Cutting Co. Inc.....	34. 00	
	Bay Iron Works Inc.....	74. 00	
Total for the quarter.....		2, 148. 05	

APPENDIX H-5—Continued

<i>Quarter</i> 1961	<i>Name of Employer</i>	<i>Amount</i>
1st quarter.....	Steel Erecting Co. Inc.....	\$37. 00
	Craft & Burcia Inc.....	204. 00
	H. Johnson & Co. Inc.....	1, 459. 80
	Steel Structures Inc.....	124. 80
	Total for the quarter.....	<u>1, 825. 60</u>
2d quarter.....	Frank Darrile, Inc.....	199. 00
	Kurtz Steel Corp.....	259. 60
	Hendrickson Bros , Inc.....	34. 00
	Louis R. Loviso, Inc.....	214. 00
	M. Krugman Construction Corp.....	256. 80
	Craft & Brucia, Inc.....	4. 80
	Gypsum Fireproofing Corp.....	89. 55
	Pavarini Assoc , Inc.....	37. 80
	Golmo Concrete Co.....	37. 80
	Pamco Construction Co., Inc.....	136. 50
	Charles Yaegel.....	114. 40
	Switzer Contracting Co., Inc.....	174. 00
	Master Waterproofers, Inc.....	204. 00
	Gypsum Constructors Inc. of New England.....	75. 68
	L & J Concrete Corp.....	37. 80
Steel Structures, Inc.....	208. 00	
Total for the quarter.....	<u>2, 083. 73</u>	
3d quarter.....	Hendrickson Bros., Inc.....	78. 80
	M. Krugman Construction Corp.....	428. 00
	Gypsum Fireproofing Corp.....	288. 56
	Switzer Contracting Co., Inc.....	68. 00
	Karlson & Reed, Inc.....	34. 00
	A. J. McNulty.....	40. 80
	Gypsum Constructors Inc. of New England.....	74. 00
	Central Cement Finishing Co.....	47. 25
	Esposito Concrete Co., Inc.....	127. 20
	Cass Mason Contractors Inc.....	501. 40
	Eddy Steel Construction Inc.....	285. 60
	John Ruggiero, Inc.....	48. 15
Underhill Construction Corp.....	37. 00	
Total for the quarter.....	<u>2, 058. 76</u>	
4th quarter.....	Gypsum Fireproofing Corp.....	69. 66
	Eddy Steel Construction, Inc.....	652. 80
	John Ruggiero, Inc.....	48. 15
	Mineola Steel Fabrications, Inc.....	163. 20
	Schumacher & Forelle, Inc.....	864. 90
	Jonwal Construction Co., Inc.....	39. 80
	Brennan & Sloan, Inc.....	81. 60
	Robbins Michigan Corp.....	37. 00
Total for the quarter.....	<u>1, 957. 11</u>	

APPENDIX H-6

PREDISCRIMINATION PERIOD AND INTERIM EARNINGS—WILLIAM WILKENS

<i>Quarter</i> <i>1952</i>	<i>Name of Employer</i>	<i>Amount</i>
3d quarter ----	Wright Engineering Co.....	\$56. 00
	American Concrete Cutters.....	50. 00
	Wm. H. Greene.....	125. 00
	Cropsey Construction Corp.....	25. 00
	R. B. Hamilton Contracting Co. Inc.....	395. 35
	Anthony Rivera & Sons.....	56. 40
	Foger Construction Corp.....	273. 00
	W.J. Trucking & Rigging Co. Inc.....	125. 00
	Garden Spot Florist.....	787. 50
	V.B. Construction Co. Inc.....	126. 00
	A & E Concrete Corp.....	42. 00
	Total for the quarter.....	<u>2, 061. 25</u>
4th quarter ----	Garden Spot Florist.....	1, 568. 70
	Hoeger Olson.....	84. 60
	T & T Construction Co.....	761. 60
	Nazzaro Construction Corp.....	81. 60
	Total for the quarter.....	<u>2, 496. 50</u>
<i>1953</i>		
1st quarter ----	T & T Construction Co.....	1, 496. 00
	J. P. Duffy Co. Inc.....	360. 25
	Total for the quarter.....	<u>1, 856. 25</u>
2d quarter ----	T & T Construction Co.....	1, 475. 60
	N. Ryan Co. Inc.....	681. 30
	Total for the quarter.....	<u>2, 156. 90</u>
3d quarter ----	N. Ryan Co. Inc.....	1, 592. 70
	L. G. DeFelice & Son Inc.....	249. 90
	The Hartford Roofing & Sheet Metal Co. Inc.....	88. 20
	Kelly Pile Driving Co.....	764. 40
	L & J Concrete Corp.....	146. 40
	Total for the quarter.....	<u>2, 841. 60</u>
4th quarter ----	N. Ryan Co. Inc.....	1, 911. 80
	Certified Transit Mix Corp.....	1, 814. 02
	Total for the quarter.....	<u>3, 725. 82</u>
<i>1954</i>		
1st quarter ----	Certified Transit Mix Corp.....	2, 257. 45
		Total for the quarter.....
2d quarter ----	L & J Concrete Corp.....	175. 20
	Certified Transit Mix Corp.....	1, 170. 25
	Garden Spot Florist.....	1, 413. 20
	Bluco Textile Printers Inc.....	54. 40
	Total for the quarter.....	<u>2, 813. 05</u>

APPENDIX H-6—Continued

<i>Quarter</i>	<i>Name of Employer</i>	<i>Amount</i>
<i>1954</i>		
3d quarter-----	Davis Construction Corp.....	\$358. 40
	Garden Spot Florist.....	1, 248. 00
	S.C. Construction Co.....	30. 20
	Total for the quarter.....	1, 636. 60
4th quarter-----	Merrick Utility Associates Inc.....	190. 40
	Irvington Knitting Mills Inc.....	362. 40
	Ralph Perri Inc.....	265. 60
	Anthony Perri Inc.....	1, 128. 80
Total for the quarter.....	1, 947. 20	
<i>1955</i>		
1st quarter-----	Clyde W. Briggs Inc.....	56. 40
	A. J. McNulty & Co.....	568. 00
	Paul A. Cardone.....	1, 162. 00
	Well Mixed Concrete Co. Inc.....	209. 20
	Earl P. Baker Oil Burner Service.....	60. 40
Total for the quarter.....	1, 956. 00	
2d quarter-----	L & J Concrete Corp.....	25. 20
	Auserehl & Son Cont. Corp.....	411. 60
	E.W. Realty Co.....	199. 20
	Rusciano & Son Corp.....	528. 75
	T & T Construction Co.....	54. 40
	South Shore Contracting & Dredging Corp.....	220. 60
Paul A. Cardone.....	74. 70	
Total for the quarter.....	1, 514. 45	
3d quarter-----	Acme Casa Inc.....	182. 40
	Eastern Fireproofing Co. Inc.....	966. 40
	South Shore Contracting & Dredging Corp.....	1, 315. 85
Total for the quarter.....	2, 464. 65	
4th quarter-----	Eastern Fireproofing Co. Inc.....	1, 600. 60
	Hudson Erecting Corp.....	114. 70
Total for the quarter.....	1, 715. 30	
<i>1956</i>		
1st quarter-----	Merritt Chapman & Scott Corp.....	56. 80
	John C. Peterson Construction Corp.....	101. 20
	Herman A. Hinsch.....	1, 095. 00
	Insured Steel Erectors Inc.....	110. 50
	Eastern Fireproofing Co. Inc.....	120. 80
	Carmine Ambrosio.....	513. 00
Total for the quarter.....	1, 997. 30	
2d quarter-----	Samuel Gallucci & Sons Inc.....	26. 40
	A. J. McNulty & Co.....	531. 20
	Herman A. Hinsch.....	1, 072. 15
	DiPasquale Bros. Inc.....	31. 00
Total for the quarter.....	1, 660. 75	

APPENDIX H-6—Continued

<i>Quarter</i>	<i>Name of Employer</i>	<i>Amount</i>
<i>1956</i>		
3d quarter-----	E. W. Howell-----	\$66. 00
	Consolidated Concrete Cutting Co. Inc-----	93. 00
	A J. McNulty & Co-----	337. 60
	John C. Peterson Construction Corp-----	468. 74
	Caye Construction Co. Inc-----	31. 00
	Harrod Steel Erection Co. Inc-----	118. 20
	Carr Construction Corp-----	90. 60
	Victor J. Georgetti-----	60. 00
	George W. Samis-----	120. 00
	Devoc Iron Works Inc-----	104. 40
	M. Krugman Co-----	408. 00
	Total for the quarter-----	<u>1, 897. 54</u>
4th quarter----	John C. Peterson Construction Corp-----	2, 426. 62
	Local 138—Backpay due for discrimination on Northville Dock Project.	*91. 54
	Total for the quarter-----	<u>2, 518. 16</u>
* Amount due pursuant to this specification but not yet paid.		
<i>1957</i>		
1st quarter----	John C. Peterson Construction Co-----	2, 310. 68
	Total for the quarter-----	<u>2, 310. 68</u>
2d quarter-----	John C. Peterson Co-----	2, 656. 46
	Total for the quarter-----	<u>2, 656. 46</u>
3d quarter-----	John C. Peterson Construction Co-----	2, 222. 22
	Total for the quarter-----	<u>2, 222. 22</u>
4th quarter----	John C. Peterson Construction Co-----	2, 586. 62
	Total for the quarter-----	<u>2, 586. 62</u>
<i>1958</i>		
1st quarter----	John C. Peterson Construction Co-----	1, 910. 38
	Total for the quarter-----	<u>1, 910. 38</u>
2d quarter-----	John C. Peterson Construction Co-----	2, 651. 95
	Total for the quarter-----	<u>2, 651. 95</u>
3d quarter-----	Excluded from backpay period (123 NLRB 1393, 1408 footnote 39).	
4th quarter----	Excluded from backpay period (123 NLRB 1393, 1408 footnote 39).	
<i>1959</i>		
1st quarter----	Excluded from backpay period (123 NLRB 1393, 1408 footnote 39).	

APPENDIX H-7

PREDISCRIMINATION PERIOD AND INTERIM EARNINGS—FRANK ZIEGELBAUER

<i>Quarter</i> <i>1952</i>	<i>Name of Employer</i>	<i>Amount</i>
3d quarter	Marine Welding Inc.	\$78. 60
	Cross Island Construction Inc.	523. 75
	Tully & DiNapoli Inc.	888. 30
	TDB Construction Co.	180. 00
	Total for the quarter	1, 670. 65
4th quarter	Tully & DiNapoli Inc.	1, 560. 20
	Total for the quarter	1, 560. 20
<i>1953</i>		
1st quarter	Tully & DiNapoli Inc.	1, 740. 40
	Total for the quarter	1, 740. 40
2d quarter	Tully & DiNapoli Inc.	69. 60
	Harris Structural Steel Co. Inc.	620. 40
	Horn Construction Co. Inc.	764. 93
	Total for the quarter	1, 454. 93
3d quarter	Harris Structural Steel Co. Inc.	1, 059. 75
	Total for the quarter	1, 059. 75
4th quarter	Harris Structural Steel Co. Inc.	1, 565. 55
	Nathan L. Weingrad	137. 00
	The Hallen Construction Co. Inc.	256. 20
	Total for the quarter	1, 958. 75
<i>1954</i>		
1st quarter	The Hallen Construction Co. Inc.	982. 80
	Spencer, White & Prentis Inc.	27. 20
	E. W. Jackson Contracting Co. Inc.	28. 20
	Consolidated Lithographing Corp.	432. 00
	Nathan L. Weingrad	10. 00
	Total for the quarter	1, 480. 20
2d quarter	The Hallen Construction Co. Inc.	2, 034. 90
	Total for the quarter	2, 034. 90
3d quarter	The Hallen Construction Co. Inc.	378. 00
	John C. Peterson Construction Corp.	705. 60
	Total for the quarter	1, 083. 60
4th quarter	John C. Peterson Construction Corp.	795. 40
	Total for the quarter	795. 40
<i>1955</i>		
1st quarter	None	None
2d quarter	Tully & DiNapoli Inc.	557. 78
	Total for the quarter	557. 78

APPENDIX H-7—Continued

<i>Quarter</i>	<i>Name of Employer</i>	<i>Amount</i>
<i>1955</i>		
3d quarter	Tully & DiNapoli Inc.	\$323. 05
	Total for the quarter	323. 05
4th quarter	None	None
<i>1956</i>		
1st quarter	None	None
2d quarter	Maywood Construction Co. Inc.	40. 00
	John C. Peterson Construction Co.	100. 20
	Revo-File Co.	106. 12
	Corydon M. Johnson Co. Inc.	122. 36
	Total for the quarter	368. 68
3d quarter	Revo-File Co.	969. 80
	Total for the quarter	969. 80
4th quarter	Revo-File Co.	1, 081. 25
	Total for the quarter	1, 081. 25
<i>1957</i>		
1st quarter	Revo-File Co.	644. 25
	Revo-File Co., Inc.	410. 25
	Total for the quarter	1, 054. 50
2d quarter	Revo-File Co., Inc.	1, 053. 30
	Total for the quarter	1, 053. 30
3d quarter	Revo-File Co., Inc.	840 83
	Total for the quarter	840. 83
4th quarter	Revo-File Co. Inc.	1, 060. 68
	Total for the quarter	1, 060. 68
<i>1958</i>		
1st quarter	Revo-File Co. Inc.	1, 200. 24
	Total for the quarter	1, 200 24
2d quarter	John F. Redding & Son	212. 80
	George B. Clark & Son	355. 78
	Total for the quarter	568. 58
3d quarter	Excluded from backpay period (123 NLRB 1393, 1408 footnote 39).	
4th quarter	Excluded from backpay period (123 NLRB 1393, 1408 footnote 39).	
<i>1959</i>		
1st quarter	Excluded from backpay period (123 NLRB 1393, 1408 footnote 39).	
2d quarter	George B. Clarke & Sons Inc.	1, 189. 05
	Total for the quarter	1, 189. 05

APPENDIX H-8

PREDISCRIMINATION PERIOD AND INTERIM EARNINGS—PETER BATALIAS

<i>Quarter</i>	<i>Name of Employer</i>	<i>Amount.</i>
<i>1952</i>		
3d quarter.....	K & M Contractors.....	\$1, 003. 50
	L. G. Felice & Son, Inc.....	932. 35
	Total for the quarter.....	<u>1, 935. 85</u>
4th quarter....	L. G. Felice & Son, Inc.....	1, 835. 70
	Total for the quarter.....	<u>1, 835. 70</u>
<i>1953</i>		
1st quarter.....	L. G. Felice & Son, Inc.....	1, 705. 20
	Total for the quarter.....	<u>1, 705. 20</u>
2d quarter.....	L. G. Felice & Son, Inc.....	501. 70
	Grove, Shepherd, Wilson & Kruge, Inc.....	1, 148. 40
	Total for the quarter.....	<u>1, 650. 10</u>
3d quarter.....	Grove, Shepherd, Wilson & Kruge, Inc.....	620. 35
	Hendrickson Bros., Inc.....	82. 35
	Cross Island Construction, Inc.....	793 00
	Total for the quarter.....	<u>1, 495. 70</u>
4th quarter....	Cross Island Construction, Inc.....	1, 948. 95
	Total for the quarter.....	<u>1, 948. 95</u>
<i>1954</i>		
1st quarter.....	Cross Island Construction, Inc.....	1, 388. 70
	Total for the quarter.....	<u>1, 388 70</u>
2d quarter.....	Cross Island Construction, Inc.....	1, 464. 75
	Karlson & Reed, Inc.....	504 00
	Total for the quarter.....	<u>1, 968 75</u>
3d quarter.....	Karlson & Reed, Inc.....	648. 90
	Stock Construction Corp.....	1, 575 70
	Total for the quarter.....	<u>2, 224 60</u>
4th quarter....	Stock Construction Corp.....	2, 517. 09
	Total for the quarter.....	<u>2, 517 09</u>
<i>1955</i>		
1st quarter.....	Stock Construction Corp.....	77. 55
	John C. Peterson Construction Corp.....	327. 58
	Total for the quarter.....	<u>405. 13</u>
2d quarter.....	John C. Peterson Construction Corp.....	2, 019. 38
	Total for the quarter.....	<u>2, 019. 38.</u>

Claim for backpay for Peter Batalias pursuant to paragraph 3(B)(1) of the court decree for the period from July 1, 1955 to December 31, 1958 is hereby waived.

APPENDIX H-8—Continued

Quarter	Name of Employer	Amount
1959		
1st quarter-----	Excluded from backpay period (123 NLRB 1393, 1408 footnote 39).*	
2d quarter-----		
	Total for the quarter-----	None
3d quarter-----	Finance Center, U.S. Army-----	\$234 93
	Total for the quarter-----	234 93
4th quarter-----	Finance Center, U.S. Army-----	372. 00
	Total for the quarter-----	372. 00
1960		
1st quarter-----	Finance Center, U.S. Army-----	248. 00
	Total for the quarter-----	248 00
2d quarter-----	Finance Center, U.S. Army-----	128 13
	Smithtown Bowling Inc-----	431 86
	Town of Smithtown-----	872. 50
	Total for the quarter-----	1, 432. 49
3d quarter-----	Town of Smithtown-----	1, 440 00
	Total for the quarter-----	1, 440 00
4th quarter-----	Town of Smithtown-----	1, 590 00
	Total for the quarter-----	1, 590 00
1961		
1st quarter-----	Town of Smithtown-----	1, 805. 00
	Total for the quarter-----	1, 805 00
2d quarter-----	Town of Smithtown-----	1, 773. 25
	Total for the quarter-----	1, 773 25
INTERIM EARNINGS—PETER BATALIAS		
1961		
3d quarter-----	Town of Smithtown-----	\$1, 353. 00
	Total for the quarter-----	1, 353 00
4th quarter-----	Town of Smithtown-----	154. 00
	Total for the quarter-----	154. 00
1962		
1st quarter-----	Town of Smithtown-----	1, 923. 00
	Total for the quarter-----	1, 923. 00

* [Comment] Batalias received \$74.80 from E. W. Howell Co. in the 2d quarter of 1959 according to the backpay specification. However, this cannot be included as it was received during the first 2 months of the quarter and hence excluded under footnote 39 *supra*.