

G & T Terminal Packaging Co., Inc., and Mr. Sprout, Inc., and Tray Wrap, Inc. and Chain Trucking Inc. a Single Employer, and G & T Terminal Packaging Inc., and its alter ego Slow Pack, Inc. and Paper Products and Miscellaneous Drivers, Warehousemen, Helpers and Messengers, Local 27, International Brotherhood of Teamsters, AFL-CIO now known as Private Sanitation Union Local 813, International Brotherhood of Teamsters a/w AFL-CIO and Denny Lopez. Cases 2-CA-26738, 2-CA-27745, 2-CA-28364, and 2-CA-28360

August 20, 1998

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX
AND HURTGEN

On September 9, 1996, Administrative Law Judge Raymond P. Green issued the attached decision. The Respondent and the General Counsel filed exceptions and supporting briefs. The General Counsel also filed a brief in support of the administrative law judge's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions² and to adopt the recommended Order³ as modified.

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In affirming the judge's finding that Respondent Slow Pack is an alter ego of Respondent G & T, we note in addition that Anthony Spinale, president of both companies, admitted that "Slow Pack was set up to replace G & T when we had the problem with Local 27."

² The General Counsel excepted to a series of minor inadvertent errors involving the judge's conclusions of law and appendices. We shall make corrections as warranted. Thus, Conclusion of Law 3 shall read "April 17, 1995" rather than "June 17, 1995"; Denny Lopez and Mercedes Garcia shall be included in App. A because both their testimony and their time cards show they reported to work on April 17, 1995, but did not work; the date "1/1/94" on App. D shall read "Jan. 93."

³ We agree with the judge that a broad order is warranted and find that the Respondent's exception to it is without merit. We rely, however, on the judge's findings, and our additional findings here, that the Respondent engaged in widespread violations of Sec. 8(a)(5) and (3) of the Act thereby demonstrating a general disregard for the employees' fundamental statutory rights. We note that the judge erred by stating that there had been a previous finding that the Respondent violated Sec. 8(a)(5) and (1) of the Act in Case 2-CA-26738 by both withdrawing recognition from the Union and by

1. The judge found that the Respondent violated Section 8(a)(5), (3), and (1) of the Act in several respects. First, the Respondent and the Union agreed on a contract on June 10, 1994, which the Respondent refused to sign, in violation of Section 8(a)(5). Second, the Respondent discriminatorily discharged or laid off almost all of its employees on April 17, 1995, and refused to reemploy them, in violation of Section 8(a)(3). Third, the Respondent violated Section 8(a)(5) by unilaterally subcontracting or transferring its potato packaging operations on April 17, 1995. Fourth, the Respondent reinstated some employees on April 19, 1995, without regard to the seniority provisions of the expired contract, in violation of Section 8(a)(5). Fifth, the Respondent unilaterally granted a wage increase to some of its employees in May 1995, in violation of Section 8(a)(5). In addition, the judge found that the Respondent must comply with the back-pay specification pursuant to the Board Order in Case 2-CA-26738 (not included in bound volumes) and make whole the Union's Welfare and Pension Funds for those amounts that it unlawfully withheld.⁴

We agree with the judge's findings with the following modifications.

(1) The judge found that the Respondent discriminatorily discharged or laid off employees on April 17, 1995. He noted that Union Business Agent Richard Ruggiero and two other business agents arrived at the Respondent's business location about 7:30 a.m. They began picketing to protest the Respondent's unfair labor practices and to communicate with employees. He further found that the union agents did not ask the employees to engage in a strike. Employees attempted to go to work at 7:55 a.m., 5 minutes before the starting time. The Respondent's owner, Anthony Spinale, told them that he did not need them and that they should go home and/or collect unemployment.⁵ The judge then concluded that "Spinale laid off a large group of his employees on April 17, 1995, when he saw that the Union was engaged in picketing activity

unilaterally discontinuing payments to the Union's Pension and Welfare Funds. In fact, the Respondent's misconduct there involved only the latter violation. However, even without the former matter, a broad order is warranted.

⁴ In adopting the judge's findings regarding Case 2-CA-26738, we need not rely on his opinion that "the contracts . . . incorporate by reference the underlying trust documents." The judge correctly applied *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979), to the issue of calculating interest for defaulted payments owed to funds. In *Merryweather* the Board held that, as matter of remedy, it would look in the first instance to the underlying trust documents to determine the amounts necessary to satisfy a make-whole remedy for defaulted fund payments. Accordingly, the Respondent owes the Union's Pension and Welfare Funds the amounts established by the judge in his decision, tabulated in Apps. D and E, and subject to such continuing liability as indicated by the judge.

⁵ Spinale allowed 10-12 of his approximately 80 employees to perform the work of packaging Brussel sprouts.

and when he saw that his employees were speaking to union representatives before the start of the work day.”

The judge’s recitation of facts and conclusion reveal that he implicitly credited the testimony of Ruggiero and other General Counsel witnesses and implicitly discredited Spinale and other Respondent witnesses.

Ruggiero testified that he and his union colleagues went to the Respondent’s site in the Hunts Point Market on April 17, 1995, at 7:30 a.m. They displayed picket signs stating that “the NLRB ruled the Employer has been charged with an unfair labor practice” and “would have to pay back health and welfare benefits.” According to Ruggiero, he and his colleagues wanted to let the employees “know that the NLRB had ruled against the Employer and in favor of them, [and] that . . . back pension and health and welfare benefits would be paid.”⁶ Ruggiero also testified that the Respondent’s employees “were starting to come in to report to work and they asked us questions.” He spoke to “around 68” employees telling them “that this was . . . an information picket line,” and urging them “to report to work, not to stay out here.” Ruggiero further testified that about 5 minutes before the 8 a.m. starting time, Spinale told the employees “that he didn’t want any of [them] working here anymore, that they would all be fired and get out of here to collect unemployment, he didn’t need them anymore.” Ruggiero then approached Spinale with the employees and asked Spinale to let the employees go to work, but Spinale “said that he didn’t want anybody back here that would be affiliated or socializing with the Union.” Spinale also repeated his admonitions that he did not want the employees working for him, and they could collect unemployment.⁷

In cases in which it is alleged that an employer had discriminated against employees in violation of Section 8(a)(3) and (1), the General Counsel must demonstrate that animus against the employees’ protected concerted activities was a factor that motivated the

employer’s actions.⁸ If the General Counsel makes that showing, the burden then shifts to the employer to show that it would have taken the same action regardless of the employees’ protected activities.⁹

The record amply supports a finding that antiunion animus motivated the discharges of the Respondent’s employees on April 17, 1995, when, just before attempting to report to work, they were seen speaking with Ruggiero and his union colleagues about the Respondent’s failure to make payments to the union funds. As found in our previous decision and by the judge here, the Respondent had been violating the Section 7 rights of its employees by failing to make the contractually required payments to the Union’s Welfare and Pension Funds since January 1993 and by failing to sign its renewed agreement with the Union since June 1994. In his testimony, Spinale described the employees as having been “corralled by the [Union] representatives.” Even more tellingly, on the morning in question, when Ruggiero asked why the employees were being prevented from coming in to work, Spinale said he did not want anyone who would be socializing with the Union and that they should just go collect unemployment. Spinale therefore clearly conveyed the message that consorting with the Union and employment with the Respondent were incompatible.

On the basis of the foregoing, we find that the General Counsel has established that antiunion animus was a motivating factor in the Respondent’s action. The burden therefore shifts to the Respondent to show that the discharges or layoffs would have occurred irrespective of the employees’ union activities. In this regard, the Respondent claims that the employees were on strike and were not discharged or laid off. The judge, however, implicitly discredited Spinale’s testimony to that effect. The Respondent also argues that some of the employees were not reinstated because of the closure of its potato packaging operations. As we find below, however, the closure of those operations was also motivated by antiunion animus, and therefore it cannot justify the failure to reinstate those employees. Accordingly, the Respondent has failed to carry its burden and we find, as did the judge, that the Respondent discharged or laid off employees on April 17, 1995, in violation of Section 8(a)(3) and (1) of the Act.

2. The judge found that the Respondent unilaterally subcontracted or transferred its potato packaging operations on April 17, 1995. We agree with the judge for the reasons he states. However, we find merit to the General Counsel’s exception that this conduct vio-

⁶ Ruggiero was referring to Case 2–CA–26738. The Board Order, enforced by the Second Circuit Court of Appeals, required the Respondent to make whole the Union’s Welfare and Pension Funds for payments it had unlawfully withheld.

⁷ The General Counsel presented several employee witnesses who corroborated Ruggiero’s testimony generally rather than specifically. Denny Lopez testified that he arrived at work at 7:45 a.m. and Spinale said that he “didn’t want anyone inside”; Mercedes Garcia testified that she arrived at 7:30 a.m. and Spinale said, “I don’t want people with a Union working here”; Antonio Castillo testified that he arrived at 7:45 a.m. and Spinale said, “[H]e didn’t have work for us.” Finally, three of the Respondent’s witnesses also generally corroborated Ruggiero. Ramona Escoboza testified he went to work and “found all of the people outside” and was told by Spinale to “go ahead outside” when he attempted to go into work. Anthony Pugello, an electrician for the Hunts Point Market, testified that he saw people gathering the employees outside the Respondent’s location before 8 a.m. Albert Lipsey, an independent truckdriver who delivers tomatoes to the Respondent, testified that he heard Spinale tell the employees “to go home” at about 7:30 a.m.

⁸ *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983).

⁹ *Wright Line*, 251 NLRB 1083, 1089 (1980).

lated Section 8(a)(3) and (1) as well as Section 8(a)(5) and (1) of the Act.

The judge found that Spinale “decided to get rid of the potato packaging machine because of the union activity that occurred on the morning of April 17, which indicated that the Union was serious about pressing him to sign a contract.” We agree. Ruggiero testified that he twice met with the Respondent’s attorney, Linda Strumpf, after 8 a.m. on April 17, 1995, in a vain attempt to have Spinale sign the June 10, 1994 contract. Strumpf communicated with Spinale throughout this time. Spinale testified that he decided to eliminate his potato packaging operations at this time and the potato packaging machine was dismantled and on the truck for delivery to M&M Farms an hour after noon.

Therefore, at the very time Spinale decided to terminate his potato packaging operations on April 17, 1995, he knew that his employees were agitating for the long-overdue payments to the expired contract’s Pension and Trust Funds, and their union representative was agitating for him to sign the June 10, 1994 renewed contract. Moreover, Spinale discharged or laid off his employees at either approximately the same time or only shortly before he decided to terminate his potato packaging operations and proceeded to do so. We find that the animus that motivated the Respondent’s decision to discharge his employees also motivated the Respondent’s decision to terminate his potato packaging operations. Spinale’s contemporaneous resistance to signing the agreed-upon June 10, 1994 contract is additional evidence of animus.

Accordingly, we agree with the judge that the General Counsel has established that antiunion animus was a motivating factor in the Respondent’s decision to terminate its potato packaging operations. We also agree with the judge’s implicit finding that the Respondent failed to carry its burden to show that the termination and transfer or subcontracting of the potato packaging operations would have occurred even in the absence of union activities.¹⁰ The judge contrasted Spinale’s testimony claiming the potato packaging operation was not economically viable with the evidence showing that Spinale’s potato packaging operations were profitable in 1994 and 1995; that the Union was not seeking an increase in wages in the renewed contract; and Spinale’s concession that 40–60 percent of his pre-April 17, 1995 sales were made to his customers pursuant to his instructions via his subcontractor, M&M Farms. Hence the Respondent failed to carry its burden of rebuttal. We find that the Respondent’s April 17, 1995 termination and transfer of its

potato packaging operations violated Section 8(a)(3) and (1) of the Act.¹¹

3. The judge recommended that the Union be allowed to set the commencement date of the 3-year term of the agreed-on June 10, 1994 contract at any time from June 10, 1994, until the time of the Respondent’s compliance. We disagree. The record shows that the parties agreed to a fixed term retroactive from October 1, 1992, and running until September 30, 1995, with automatic renewal from year-to-year thereafter in the absence of reopening. In these circumstances, we cannot change the agreement of the parties.¹²

In similar circumstances, the Board has given the union the choice between making the employer sign the contract and bargaining for a new agreement. *Ben Franklin National Bank*, 278 NLRB 986 fn. 3 (1986). The rationale was that, the contract having expired, the union should be allowed to choose between the contract and bargaining. Although the contract in that case, like the one here, contained a rollover provision, the Board did not appear to focus on that fact in devising the remedy.

In contrast to *Ben Franklin*, we would give full play to the entire contract, including the rollover provision. The normal remedy for an unlawful refusal to sign a contract is to require the offending party to sign the contract. Accordingly, the Respondent should be bound to the contract through September 30, 1995, and the Union should have the roll over option (as set forth in the contract) from year-to-year thereafter. The contract is what the Union bargained for and is therefore what it should get.¹³ More particularly, the Union should have the choice between bargaining for a new agreement as of the expiration of the contract in 1995 and deeming the contract to have rolled over in 1995

¹¹ We agree with the judge, for the reasons he states, that a restoration remedy is appropriate. It is warranted by both aspects of the misconduct—Spinale failed to notify and bargain with the Union about his transfer or subcontracting of the potato packaging operations, and he did so in retaliation for his employees’ union activities. However, we do not rely on the judge’s comment: “if as Mr. Spinale says a more modern and computerized machine would be more efficient than this obsolete potato packaging machine, then the sum of money spent to replace it would probably be a good investment, yielding future profits.”

In light of the conclusion that Respondent’s discontinuance of the potato packaging operations violated Sec. 8(a)(3), Member Hurtgen finds it unnecessary to pass on whether that conduct violated Sec. 8(a)(5).

¹² *H. K. Porter Co. v. NLRB*, 397 U.S. 99 (1970).

¹³ We shall order the Respondent to make the unit employees whole for any losses they may have suffered as the result of the Respondent’s unlawful refusal to sign and to abide by the terms of the agreement, as prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), *enfd.* 444 F.2d 502 (6th Cir. 1971), and *Kraft Plumbing & Heating*, 252 NLRB 891 (1980), *enfd. mem.* 661 F.2d 940 (9th Cir. 1981), with interest as set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

¹⁰ *Wright Line*, *supra*.

(and also in subsequent years). We cannot assume that the contract would have renewed because neither party requested that it be renegotiated. After all, the Respondent refused to sign or acknowledge the agreement; consequently, the Union cannot be faulted for not having requested a reopener. Had the Respondent honored the agreement, the Union might well have reopened in 1995 and in later years, and we shall not assume that it would not have done so. On the other hand, neither party might have reopened the agreement, and thus it might have rolled over in 1995, and perhaps also in subsequent years.

We find that, as the innocent party here, the Union should have the option of treating the contract as having expired on September 30, 1995, or as having renewed on that date. If the Union chooses the latter course, the contract will be deemed to have been in effect through September 30, 1996, and the Union can choose whether to treat the contract as having expired on that date or as having renewed again; and so on. If the Union chooses to treat the agreement as having expired on any of those dates, the Respondent must bargain over the terms and conditions of employment for a successor agreement.¹⁴

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, G & T Terminal Packaging Co., Inc., Mr. Sprout, Inc., Chain Trucking, Inc., Tray Wrap, Inc., and Slow Pack, Inc., Bronx, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 1(d) and reletter the subsequent paragraphs.

“(d) Subcontracting or transferring its potato packaging operations because of the union activity of its employees.”

2. Substitute the following for paragraphs 2(a) and (b).

“(a) Execute the collective-bargaining agreement that was agreed to on June 10, 1994; give retroactive effect to its terms and conditions of employment from October 1, 1992, until September 30, 1995, and for any

¹⁴ We note that in *Operating Engineers Local 30 (Hyatt Management)*, 280 NLRB 205 (1986), enf. 817 F.2d 140 (D.C. Cir. 1987), the Board in an 8(b)(3) refusal-to-sign case declined to order the parties to apply the terms and conditions of employment of the contract, which had expired. That case, however, is distinguishable. The Board there reasoned that, had it applied the contract, the offending union would have gotten the wage increases it had bargained for, but the innocent employer would not have received the benefits of its bargain such as the management-rights clause. Apparently to avoid that anomalous result, the Board simply ordered the union to sign the contract. Here, by contrast, the Union is the innocent party, and should receive the benefits it bargained for; if the Respondent fails to reap the benefits of its bargain, it has only itself to blame.

periods thereafter for which the Union may elect to treat the agreement as having renewed; and make employees whole, with interest, for any losses they may have suffered as a result of the Respondent's refusal to sign the agreement on June 10, 1994.

“(b) For any period after September 30, 1995, for which the Union may elect to treat the collective-bargaining agreement as not having renewed, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time employees employed by the Respondent at its facility, excluding guards, professional employees and supervisors as defined in the Act.”

3. Substitute the attached notice for that of the administrative law judge.

CHAIRMAN GOULD, dissenting in part.

I agree with my colleagues' determination not to adopt the remedy recommended by the administrative law judge but I disagree with their refusal to grant the remedy set forth in *Ben Franklin National Bank*, 278 NLRB 986 fn. 3 (1986). The record shows that the parties agreed to a fixed term retroactive from October 1, 1992, and running until September 30, 1995. As the Board did in *Ben Franklin*, I would order the Respondent to sign the June 10, 1994 agreement at the request of the Union or, absent such request, bargain in good faith with the Union, on request, with respect to the terms and conditions of a contract and, if an agreement is reached, embody it in a signed agreement. *Worrell Newspapers, Inc.*, 232 NLRB 402 (1977).

APPENDIX F

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to bargain collectively with Private Sanitation Union Local 813, International Brotherhood of Teamsters a/w AFL-CIO by refusing to sign the contract that was agreed to on June 10, 1994.

WE WILL NOT refuse to bargain collectively with the Union by unilaterally subcontracting or transferring potato packaging operations.

WE WILL NOT refuse to bargain collectively with the Union by unilaterally reinstating employees out of seniority order.

WE WILL NOT refuse to bargain collectively with the Union by unilaterally granting wage increases to some of our employees.

WE WILL NOT discharge, lay off, or subcontract our potato packaging operations or otherwise discriminate against any of you for supporting Private Sanitation Union Local 813, International Brotherhood of Teamsters a/w AFL-CIO or any other union.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL execute the collective-bargaining agreement with the Union that was agreed to on June 10, 1994, through its expiration date of September 30, 1995, and WE WILL give retroactive effect to the terms and conditions of employment contained in the agreement for that period and for any subsequent periods for which the Union may elect to treat the agreement as having been renewed.

WE WILL make our employees whole, with interest, for any losses they may have suffered as a result of our refusal to sign the contract.

WE WILL, for any periods since September 30, 1995, for which the Union may elect to treat the contract as not having renewed, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

All full-time and regular part-time employees employed by the Respondent at its facility, excluding guards, professional employees and supervisors as defined in the Act.

WE WILL, within 14 days from the date of the Board's Order, offer the employees illegally discharged, full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make the employees who were unlawfully discharged, whole for any loss of earnings and other benefits resulting from their discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges of employees and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the discharges will not be used against them in any way.

WE WILL restore the potato packaging operation to its size as of April 17, 1995.

WE WILL furnish to the Union, a list of the bargaining unit employees currently working setting forth their names, addresses, telephone numbers, rates of pay, and job classification.

G & T TERMINAL PACKAGING CO.,
INC. AND MR. SPROUT, INC., AND
TRAY WRAP, INC., AND CHAIN
TRUCKING, INC., A SINGLE EMPLOYER,
AND G & T TERMINAL PACKAGING
INC., AND ITS ALTER EGO SLOW PACK,
INC.

Margit Reiner, Esq., and Laura Kaplan Esq., for the General Counsel.

Thomas P. Piekara, Esq. and Linda Strumpf Esq., for the Respondents.

Michael S. Lieber, Esq., for the Union.

DECISION

STATEMENT OF THE CASE

RAYMOND P. GREEN, Administrative Law Judge. This case was tried in New York on various days from December 4, 1995, to March 15, 1996.

Case 2-CA-26738 involves a backpay specification after the Board issued an unpublished Decision and Order on July 15, 1994. In that case the Respondent G & T Terminal Packaging, Inc. was ordered to make whole bargaining unit employees by making monetary contributions to the Welfare Trust Fund and the Pension Fund as required under the terms of the employer's collective-bargaining agreement effective November 1, 1989, through October 31, 1992. The Court of Appeals, for the Second Circuit enforced the Board's Order on September 20, 1994. The backpay specification alleges the following.

1. That the backpay period is from on or about January 1, 1993, the date that the Respondent ceased making contributions and continuing until such date that the Respondent resumes payment.

2. That the amount owed to the Welfare Fund, pursuant to paragraph 25 of the contract is the sum of \$6 per month for each employee covered by the Agreement.

3. That the amount owed to the Pension Fund is the sum of \$8 per employee who works 1 or more days in a given week.

4. That in determining the amounts owed to the Pension and Welfare Funds, the calculation of the number of employees working after April 17 and 19, 1995 (the dates of the alleged unlawful layoffs), should be supplemented by the number of employees who would have been employed but for the unlawful actions of the Respondent.

5. That the liability for fund contributions is still continuing.

6. That the interest rate should be calculated in accordance with the Trust Agreements for each fund.

The charge in Case 2-CA-28360 was filed by Denny Lopez on April 19, 1995. The charge in Case 2-CA-28364 was filed by the Union on June 14, 1995, and amended on June 14 and October 18, 1995.¹ A consolidated complaint in relation to these two charges was issued on August 23, 1995, and was amended on November 8, 1995. Further amendments were made during the trial. The complaint as amended alleged:

1. That G & T Terminal Packaging Co., Inc. (G & T), Mr. Sprout, Inc., Chain Trucking, Inc., and Tray Wrap, Inc., were affiliated business enterprises with common officers, owners, directors, management, and supervisors and constitute a single employer within the meaning of the Act.

2. That on or about April 19, 1995, a company called Slow Pack, Inc., was created by G & T as a disguised continuation of G & T and that it is an alter ego of G & T.

3. That the collective Respondent is obligated to recognize and bargain with the Union as the representative of the following employees:

All full-time and regular part-time employees employed by the Respondent at its facility, excluding guards, professional employees and supervisors as defined in the Act.²

4. That on or about June 10, 1994, the Union and the Respondent reached a full and complete agreement which the Respondent has failed and refused to execute.

5. That on or about April 14, 1995, the Union requested the Respondent to execute a written contract embodying the agreement described above.

6. That since April 14, 1995, the Respondent has failed and refused to execute the aforesaid agreement.

7. That on April 17, 1995, the Union and employees engaged in a concerted protest regarding Respondent's refusal to execute the agreement.

8. That on or about April 17, 1995, the Respondent discharged certain of its employees because of their union activity.

9. That on or about April 17, 1995, Respondent G & T unilaterally transferred and subcontracted to M&M Farms and Sales, that portion of its business operations associated with the packaging of potatoes; work that was previously performed by bargaining unit employees.

10. That on or about April 19, 1995, the Respondent reinstated certain employees but refused to reinstate or offer to reinstate other employees.³

11. That in or about mid-May 1995, the Respondent, in order to discourage employees from supporting the Union, raised the hourly wages of certain of its employees.

12. The General Counsel is asking, inter alia that the Respondent (a) execute the agreement that was allegedly reached; (b) reinstate with backpay the employees who were discharged; and (c) restore the potato packaging operations as they existed before April 17, 1995.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed, I make the following

FINDINGS OF FACT

I. JURISDICTION

During the course of the hearing, the Respondent admitted that G & T Terminal Packaging Co., Inc. (G & T), Mr. Sprout, Inc., Chain Trucking, Inc., Slow Pack, Inc., and Tray Wrap, Inc., were affiliated business enterprises with common officers, owners, directors, management, and supervisors and constitute a single employer within the meaning of the Act. It also is admitted and I find that these Companies (collectively the Respondent), constitute a single employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.⁴ I also find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE UNFAIR LABOR PRACTICE ALLEGATIONS

A. The Negotiations and the Alleged Refusal to Execute an Agreement

The Respondent and the Union have maintained a collective-bargaining relationship for many years, first at a location at 230th Street in the Bronx, and then after the Company moved to the Hunts Point Terminal Produce Market.⁵ After the Company moved its operations in or about 1990, it employed on average about 80 employees who were represented by the Union in its various vegetable packaging operations (potatoes, tomatoes, and sprouts).

For the most part, the Company buys these vegetables in bulk from growers and brokers, and after repackaging them into smaller units, sells them to retail grocers and supermarkets. In connection with potatoes, the Company has used, for many years, potato sorting and packaging machinery into which loose potatoes are dumped and out of which emerge 5 pound bags. This is, from what I understand, an assembly line type of operation, having a conveyer belt, scales, and bagging equipment. The parties refer to this as the potato packaging machine and its role in this case will soon be apparent.

At some point in 1992, the Union was put into trusteeship by the International. Richard Ruggiero, a business agent, took over representing certain of the shops that had been the

¹ G.C. Exh. 1 shows that each of the charges and amended charges were filed in the Regional Office respectively on August 24, 1994, April 19 and 20, and June 14, 1995. Further, the exhibit shows that all of the charges were served on the Respondent and this is evidenced by affidavits of service and Post Office return receipts.

² The last effective contract prior to the one that the Respondent refused to reduce to writing and sign ended, by its terms, on October 31, 1992.

³ At the March 15, 1996 session of the hearing, the General Counsel made certain amendments to Apps. A and B to the complaint. In some cases, names were deleted from an appendix and in some cases, names were added.

⁴ The answer admitted that G & T, Mr. Sprout, Tray Wrap, and Slow Pack each purchased and received goods and materials valued in excess of \$50,000 from points located outside the State of New York.

⁵ Initially, the collective-bargaining relationship was between the company and Local 27, IBT. However, on December 1, 1995, Local 27 merged into Teamsters Local 813. Companies such as G & T were notified that their contracts would be administered by Local 813 and that any future contracts would be negotiated with Local 813.

responsibility of a person who left. As a contract between the Respondent and the Union was to expire on October 31, 1992, Ruggiero attempted to contact Anthony Spinale, the Respondent's president, to set up negotiations for a new contract. After further communications, Ruggiero met Spinale at a restaurant on October 29, 1992, where according to the uncontradicted testimony in the prior case (Case 2-CA-26738), Spinale said that he did not recognize a union and that he was not going to bargain.

The administrative law judge in Case 2-CA-26738, essentially dealing with the negotiations that took place in 1992 and 1993, made the following conclusions:

1. That the Respondent did not have objective grounds for asserting a good faith doubt as to the Union's continued majority status and therefore that it violated Section 8(a)(5) by withdrawing recognition.
2. That the Respondent, in the absence of an impasse, unilaterally discontinued to make contributions to the Union's Pension and Welfare Funds and therefore violated Section 8(a)(5) of the Act.
3. That the Respondent had met and bargained with the Union in good faith. Therefore, this allegation of the Complaint was dismissed.

It should be noted that the judge, in the prior case, concluded that as of November 5, 1993, "the parties had agreed to all of the terms except for the arbitration clause."

As noted above, the prior decision was adopted by the Board on July 15, 1994, and was enforced by the court of appeals on September 20, 1994.

Ruggiero testified that on June 10, 1994, he had a meeting with Linda Strumpf, who had represented the Company during the previous negotiations. He testified that she said that the Company would not appeal the administrative law judge's decision and that she was there to sign a contract. Ruggiero told her that the Company would have to pay accrued Pension and Welfare contributions and that all union dues should be made current. He states that they reviewed the contract to the extent that they had agreed to its terms back on November 5, 1993, and that Strumpf said that Spinale wanted to eliminate the arbitration clause. According to Ruggiero, he responded that he would agree to eliminate the arbitration clause if the Company agreed to eliminate the no-strike clause. He states that she agreed and said that she would have Spinale sign the contract and fax it to the Union as soon as possible. Ruggiero states that in response to his request for a list of the current job classifications and wages, she said she would send a rider containing that information. (The Union was only looking to maintain the current pay that the employees were getting.)⁶

With respect to the June 10 meeting, Ruggiero credibly testified that he asked that the Company pay back dues and what it owed to the Pension and Welfare Funds. But he also testified that he did not make payment of defaulted fund payments or payment of past dues a condition of any agreement. (As the Company, by virtue of the prior unfair labor practice case, was legally obligated to make retroactive payments to the Pension and Welfare Funds, Ruggiero would

have been well within his rights on insisting that such obligation be satisfied.)

Strumpf testified that she attended the June 10 meeting and asserts, contrary to Ruggiero that she did not agree to a contract. She testified that Ruggiero said that another union was trying to organize the employees and wanted to get a contract. She states that Ruggiero said that the Union would agree to delete the arbitration clause if the Company agreed to delete the no-strike, no-lockout clause. She claims that she said that she could not agree right away and would have to check with Spinale.

Regarding the allegation that the parties reached a full agreement on June 10, 1994, it is my opinion that the evidence supports the General Counsel's contention. That is, I believe the version of the events as testified to by Ruggiero. In this regard, the credible evidence convinces me that after the judge's decision in the prior case, Strumpf, who was delegated the function of collective bargaining, met with Ruggiero to resolve the *only* outstanding contract issue, namely what to do about the arbitration clause. And what happened was that the Union essentially gave in to the Company's previous demand for its elimination, conditioned only on the concomitant elimination of the no-strike, no-lockout clause. There is no question in my mind that Strumpf agreed to this quid pro quo and that she conveyed to the Union that she was authorized to do so. Although there was some discussion about back dues and back payments to union funds, these were treated as separate issues and the execution of a contract was not dependent on them.

Ruggiero testified that he waited from June to the middle of August 1994, without receiving anything, before finally calling up Strumpf to inquire as to the contract's whereabouts. He states that Strumpf said that she would be faxing the contract over to Spinale for his signature. When Ruggiero, on August 16, received the "contract" via fax, he noticed that although the contract had eliminated the arbitration and no-strike clauses, as per agreement, it was not signed and it did not have a schedule containing the employees wages and classifications. (The wage and classification schedule would really not be a new contract term as the Union had agreed to keep wages the same as they were under the expired contract. Instead, what the Union wanted was simply a list memorializing what the employees were getting paid.)

According to Ruggiero, he called Strumpf on several occasions in August 1994, in an attempt to get a signed contract with a wage and classification schedule and never received it despite Strumpf's assurances that she had left it with Spinale.

Strumpf acknowledges that she did not do anything about the contract in June or July because it was not on the top of her priority list. (She admits that she procrastinated.) She testified that in the beginning of August 1994, the Company got a letter from a Local 202 IBT indicating that they wanted to represent the employees and that Spinale told her that he wanted to get a contract drafted vis a vis the Charging Party. She testified that on August 8, 1994, she called Ruggiero, referred to the letter from the rival union, and said that Spinale wanted her to draft a contract covering what had been

⁶ At this and at all future meetings, Linda Strumpf represented the Company as Spinale refused to attend any of the meetings with the Union.

agreed upon.⁷ According to Strumpf, she told Ruggiero that she would have a document ready to send to both Spinale and Ruggiero the following week. She also testified that Ruggiero said that he wanted to have the pension and welfare payments made and that he wanted dues to be taken out retroactively. (At this point, the Company, in accordance with the decision in the previous unfair labor practice case, owed an indeterminate amount of money to the funds.) She states that Ruggiero said that he would fax her what the Union believed was owed to the Pension and Welfare Funds. (R. Exh. 8 is a copy of the fax where Ruggiero enclosed what amounts to a bill for pension and welfare contributions for the period from January 20, 1992, to August 26, 1994. It makes no claim for union dues.)

According to Strumpf, on August 16, 1994, she sent a draft contract to both Spinale and to Ruggiero. In the cover letter to the company, she stated:

I am enclosing two copies of proposed Union contract for Tony to sign. prepared it. I am also enclosing the list of payments the union says is due for pension and welfare. They agree to take payments. Tell me how many you need.

Also, they want us to deduct back dues owed from the employees. They want us to take 3—1 each month to catch up.

Finally, if Tony wants to sign contract and return to me; that is OKAY. Meanwhile, I will try to get up there either Wednesday or Friday early.

In my opinion, the letter from Strumpf to Spinale contradicts her assertion that she had not reached an agreement with Ruggiero. It asks for his signature on the document and does not either make or ask for any comments or suggestions regarding its terms. Moreover, by its terms, it demonstrates to me that she understood that any moneys that the Company owed to the Union's Pension and Welfare Funds and any claimed dues payments, were separate issues and that the execution of a contract was not conditioned on them.

When Ruggiero did not receive the executed contract, he filed the charge in Case 2-CA-27745 on August 24, 1994, alleging that the Company refused to execute an agreement reached on June 10, 1994. As noted above, a complaint was issued in that case on October 7, 1994. As far as I can determine, not much happened with the parties until April 1995.

Ruggiero states that on April 12, 1995, he received a call from Federal Mediator Irwin Gerard, who said that Strumpf wanted to meet on April 14, to sign the contract.

According to Ruggiero, he met with Strumpf and Gerard on April 14 at his office. He states that Strumpf asked if he had received a signed contract and he said no. Ruggiero testified that she said that she made a mistake and had sent it to Washington, but would have it later in the day. At this point, according to Ruggiero, Strumpf presented an unsigned version of a contract from which she had deleted a number of provisions in the previously agreed upon contract. He states that two holidays were deleted, and that the shop steward and grievance clauses were deleted. Ruggiero testified that when he pointed out the deletions that she had made in the con-

tract, Strumpf said that she would change them and that she would call him on Monday to set up a meeting. Ruggiero states that at one point during the meeting, Strumpf tendered a check for \$15,000 made out to Local 27 and said that this was for pension and welfare moneys owed. Ruggiero states that he told her that this should be for back dues and not fund payments.⁸

Strumpf acknowledges that on April 12, she made some deletions in the contract and asserts that Spinale told her that he wanted additional concessions from the Union in exchange for deleting the no-strike and no-lockout clause. (These concessions being proposed by Strumpf for the first time after about 11 months had gone by.) She testified that there was a dispute about the check and for what purpose the money was supposed to be used. While this whole issue is, in my view, irrelevant to this case, I will point out that in her view, the check was intended for pension and welfare payments whereas Ruggiero said that he wanted that money to go to payment of back union dues. Strumpf states that she told Ruggiero that the Employer was not going to pay back dues out of his own pocket and suggested that the Union waive back dues. She states that Ruggiero said that employees should pay back dues once a week until they were caught up, which in her opinion, would raise a stink because the employees didn't get paid much to begin with. Strumpf testified that she told Ruggiero that she would not be able to speak to Spinale until after Monday, April 17, 1995.

Pursuant to Section 8(d) of the Act, when the parties reach a collective-bargaining agreement either side, at the request of the other, is required to reduce such agreement to writing and to execute it. Thus, under the National Labor Relations Act once it has been established that there has been a meeting of the minds, a contract will come into existence before its execution, and the Act requires both sides to sign such an agreement at the request of the other, *H. J. Heinz Co. v. NLRB*, 311 U.S. 514, 526 (1941).

In the present case, I am convinced that on June 10, 1994, Strumpf as counsel to the Respondent and as its sole representative during the negotiations, conveyed to the Union that she was authorized to make a final contract with the Union. Thus, I conclude that she either had actual or apparent authority to make an agreement. *Metco Products v. NLRB*, 884 F.2d 156 (4th Cir., 1989), *enfg.* 289 NLRB 76 (1988). I am also convinced that at this meeting, the parties reviewed the negotiations that had preceded the previous unfair labor practice case, reiterated their agreement to those items already agreed to, and further agreed to eliminate from the contract the arbitration clause in exchange for the elimination of the no strike/no lockout clause. Accordingly, I conclude that from that moment, a contract came into existence and that the Respondent was obligated to reduce it to writing and to execute it upon request.

I reject, as contrary to the evidence, any suggestion that the Union, by Ruggiero, conditioned the contract on the

⁷ This testimony supports my conclusion that Strumpf not only agreed to the terms of a contract on June 10 but that she had been authorized by Spinale to do so.

⁸ In this regard, Ruggiero testified that at the time, he understood that a check for pension and welfare fund payments had to be made out to the funds and not to the Union. Indeed as such liability was the subject of the previous unfair labor practice case, the proper procedure was for the company to tender the payments, via the compliance procedure, to the NLRB's Regional Office which then is responsible for its disbursement. (The check was not cashed.) In either event, this issue is to my mind, essentially irrelevant.

payment of back union dues or on the payment of pension and welfare contributions that were owed to the funds. Nor do I conclude that the Union, on April 17 or 18, 1995, withdrew from the agreement previously reached on June 10, 1994. As will be discussed below, when the Respondent still refused to execute the agreement and insisted on making new and additional changes, Ruggiero, in a fit of pique, said that if the Respondent wanted to change the contract, then he wanted a 25-cent-an-hour raise for the employees during each year of the contract. This, to my mind, is not equivalent and cannot be construed as manifesting an intention to withdraw from the agreement previously reached on June 10, 1994. Nor do I construe it as a waiver by Ruggiero of the Respondent's (and the Union's), obligation to execute that agreement. Ruggiero's statement merely was an outburst made in response to the Respondent's provocative behavior of bringing up new contract changes at the last moment and which were first mentioned almost a year after the parties had reached an agreement.

B. The Layoffs and the Events on April 17 to 19

Although the Hunts Point market was closed to the public on Monday, April 17, 1995, this was a regular workday for the employees of the Respondent. At about 7:30 a.m., Ruggiero and two other business agents went to the market and started picketing at the Company's business location. The signs indicated that the Union was protesting the employer's unfair labor practices. At the lower portion of the signs, some said, "On Strike, G&T Packers."⁹

Notwithstanding the picketing activity, the fact is that the Union did not ask the employees to engage in a strike, and at about 7:55 a.m., the employees attempted to enter the premises to go to work.

The evidence shows that when the employees tried to enter the premises, Spinale told them that he did not need them anymore and that they should go home and/or collect unemployment. At this point, as they were not allowed to go to work, the employees joined the Union in the picketing activity. In this regard, I conclude that the evidence establishes that Spinale laid off a large group of his employees on April 17, 1995, when he saw that the Union was engaged in picketing activity and when he saw that his employees were speaking to union representatives before the start of the workday. On that day, about 10 to 12 of the employees were allowed to go to work and these were people who packaged Brussels sprouts.

The testimony of Spinale also shows that later on April 17, he decided to terminate, at least for the moment, his potato packaging operation. His testimony was that he decided to either sell or junk the potato packaging machine and to have the packaging of 5 pound bags of potatoes done by one of his suppliers. This was M&M Farms located in Goshen, New York. Working with remarkable dispatch, Spinale had the potato packaging machine disassembled and on a truck up to M&M by that afternoon. He asserts that M&M did not buy the machine, but used it for parts.

Spinale's testimony convinces me that he decided to get rid of the potato packaging machine because of the union activity that occurred on the morning of April 17, which

⁹ Ruggiero testified that one of the purposes of the picketing was to try to communicate with the employees particularly as the Union had had little contact with them for a couple of years.

indicated that the Union was serious about pressing him to sign a contract. When he was asked what had changed to make him decide to terminate his potato packaging operation, his testimony, in part, was as follows:

JUDGE GREEN: So, what was the problem? I don't understand. What is the problem with respect to that?

THE WITNESS: I couldn't compete. My packages were costing me \$2.20, \$2:30 to pack, where M&M could pack them for 80 cents. So, how could I compete and make money? My overhead was tremendous. My labor costs was tremendous. And I wasn't feeling well. And somewhere along, I made bad judgments with certain things, and it just didn't work out that well. *And finally, I found out the problem, and Mr. Ruggiero helped me correct it in a hurry.* (Emphasis added.)

When one considers that his labor costs were no different from preceding years, that the Union was not asking for any change in the wage rates, and that the Company's potato packaging operations were profitable in 1994 and 1995, the only conclusion that I can reach regarding Spinale's testimony, is that what was now different and what caused him to ship the potato packaging machine up to M&M, was that Ruggiero was pressing him to execute the contract and it was looking as if there were no more delaying tactics to employ.¹⁰

Spinale claims that between April 17, 1995, to some time in May 1995, he suspended his potato packaging operations. (He states he resumed some potato packaging by hand in May 1995.) In the meantime, he acknowledges that somewhere between 40 to 60 percent of the potato sales that he had made before April 17, were now being made to his customers *and pursuant to his instructions*, by M&M.¹¹ He also claims that he gave up some potato sales, but these seem to have been limited. In any event, the evidence shows that a substantial portion of Respondent's potato sales after April 17 were essentially subcontracted to M&M and that whatever sales Spinale chose to give up, were given up by his own choice, which, as I have already concluded, was motivated by his desire to avoid having a contract with the Union.

In short, I conclude that the Respondent did not partially close its business. Rather, it temporarily stopped doing potato packaging at its own facility for a short time, effectively subcontracted out that work to M&M, and ceased selling certain limited types of potatoes. These decisions were made, I believe, to avoid signing a contract with the Union and in response to the Union's lawful picketing which occurred on April 17. This decision, to my mind was not taken because of any outside market forces and I view as absurd, any conten-

¹⁰ R. Exh. 30 was offered as a profit and loss summary for the potato operations of G & T from 1991 through March 31, 1996. While showing losses in 1991, 1992, and 1993, this summary shows that for the year ending 1994, the potato operations had a profit of \$169,000 and that for the year ending 1995, potato operations had a profit of \$85,000. Although the summary purports to show a loss during the first quarter of 1996, (of \$59,000), this is after the decision to dispose of the potato packaging machine.

¹¹ Inasmuch as I found Spinale to be argumentative and evasive, I take this estimate as being the minimal estimate. I would not be surprised, if a much larger percentage of his potato packaging operations were subcontracted to M&M.

tion by the Respondent that it merely acceded to a “demand” by Ruggiero that the Company go out of business.

At about 8:30 a.m. on April 17, 1995, Ruggiero and the pickets were told by the market’s security officer that they would have to take their pickets outside the market and they complied. Later in the morning, Strumpf appeared at the market and had a conversation with Ruggiero at the security office. Ruggiero credibly testified that Strumpf said that she had a contract to be signed but that the shop steward and grievance clauses had to be deleted. He told her that this was not what had been agreed to and in a fit of pique (clearly justified), Ruggiero told her that if she insisted on changing the agreement, then he wanted a 25-cent-per-hour increase for each year of the contract. (Recall that the Union had already agreed to a contract containing no wage increases.) In response, Strumpf said that the Employer was going to close and Ruggiero said that was fine and that they should negotiate the terms of a close out. She then said that Employer would reinstate about 30 people but would not do so by seniority. Ruggiero told her that she could not do that and she said that she could inasmuch as there was no contract and therefore no seniority clause.

Ruggiero testified that on Tuesday, April 18, 1995, he asked Spinale to take the employees back and that Spinale said that he would take back about 30 people.

In his pretrial affidavit, Spinale stated:

Linda Strumpf came into the Employer facility later that morning. When she arrived the Union representatives and employees were gathered in an area outside the main gate to the Market. After Strumpf arrived, I told her that since I had eliminated the potato packing machine, I would not be able to continue to employ all of the employees. I told her that I might be able to use 25 to 30 employees, and that if the Union wanted me to, I would go out to the main gate and pick them from the group of employees gathered outside the main gate, and that the rest could then go and collect unemployment.

Similarly, Strumpf stated in her pretrial affidavit:

On Tuesday April 18, 1995, I arrived at the Market at about 7:30 a.m. Later that morning at 9:00 a.m. Market Security told Spinale that all of the employees wanted to come back to work. . . . Spinale said that he had closed his G&T operation based upon the Union’s ultimatum, and that he could not use all of the employees. He went on to say that he could use about 30 employees for his other operations. Don responded that he was not sure that was a good idea because there were about 70 employees out there. Spinale then said O.K., and to forget it. Shortly thereafter, Don suggested that either Spinale or myself go out to talk about it with the Union.

On Wednesday, April 19, Spinale took back some of the laid-off employees and told the remainder that they could collect unemployment. He concedes that he did not use seniority as a criteria and asserts that he picked those people who could do the jobs that he needed.¹²

¹² In the collective-bargaining agreement that was agreed to on June 10, 1994, the parties agreed to carry over most of the terms of the previous contract which had expired in 1992. Under the terms of that agreement, it provides at art. 15(a):

The Company concedes that after April 19, it hired new workers and resumed at least some of the potato packaging operation in May 1995. The Company claims that around Thanksgiving it sent letters to some of the laid-off employees and as they did not respond, hired additional new employees. In the latter regard, these letters were not sent by certified mail and the Company offered no convincing evidence either that these purported letters were sent or that they were ever received.

Appendix A to this decision is a list of company employees laid off on April 17, 1995. Appendix B to this decision is a list of employees who remained laid off after April 19, 1995, and who either were never recalled to work or were reinstated at some point after April 19. Appendix C is a list of employees who while not laid off on April 17, 1995, were either on vacation, were ill or were on leave during the week of April 17 and were not reinstated when they wished to go back to work thereafter.

In addition to the above, the evidence shows that in May 1995, the Company gave a 10-cent-an-hour raise to some of its female employees and that it did so without notifying or offering to bargain with the Union.¹³

The General Counsel alleges that Spinale created a new corporation and that he shifted his employees onto its payroll after April 17, 1995. As it is conceded that this new corporation, Slow Pack, is a single employer with the old, it is liable for all of the unfair labor practices committed herein. The evidence shows that Slow Pack has common ownership and management as G & T, that it has the same business purpose and place of business, and that it uses many of the same employees as G & T. Also, as the evidence shows that Slow Pack was established immediately after the Union’s request to have the contract signed and right after the mass layoffs on April 17 and 19, it is my opinion that Spinale, on advice of counsel, set up this new corporation and transferred the employees of G & T to its payroll, in the vain hope that he could avoid executing a contract with the Union. As such, it is concluded that Slow Pack is an alter ego of G & T and that it is obligated to abide by the terms of the collective-bargaining agreement that was reached on June 10, 1994. *RCR*, 312 NLRB 513 (1993), *Crawford Door Sales Co.*, 226 NLRB 1144 (1976).

III. THE BACKPAY SPECIFICATION

General Counsel’s Exhibit 65 is the final amendment to the backpay specification in Case 2–CA–26738.

As noted above, Judge Morris, in his earlier decision, found that the Respondent violated Section 8(a)(5) of the Act when it unilaterally failed and refused to make continued contributions on behalf of its employees to the Welfare and Pension Funds in accordance with the terms of its expired collective-bargaining agreement with Local 27 IBT. The judge noted that pension and welfare contributions, as provided for by a collective-bargaining agreement, survive the

The Employer will not discharge any of its Employees for Union activities. In laying off for economic reasons, the Employer will abide by Seniority. Seniority shall prevail among all Employees for purposes of preference in employment, re-employment, lay-off or recall, providing the Employee so affected has the skill and ability to perform the work required. . . .

¹³ Spinale testified that this raise was given only to the female employees.

expiration of the contract and cannot be unilaterally altered without bargaining and in the absence of an impasse.

Judge Morris recommended that the Respondent be ordered to make payments to the Pension and Welfare Funds in the amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and *Merryweather Optical Co.*, 240 NLRB 1213 (1979). For better or worse, *New Horizons*, supra, and *Merryweather Optical*, supra, provide for two different interest rate formulas and this discrepancy will have to be reconciled.

The backpay specification alleged that the backpay period commenced on January 1, 1993, which is the date that the Respondent ceased making contributions to the funds. It also alleges and I agree that the backpay period continues until the Respondent resumes making payments at the rates set forth by whatever collective-bargaining agreement is in effect.

Under the terms of the expired contract and the terms of the agreement that was reached on June 10, 1994, there are provisions at article 25, requiring the Employer to make contributions to the Union's Welfare Trust Fund and the Union's Pension Fund. As to the Welfare Trust Fund, the contributions are set at \$6 per month for each employee covered by the agreement. Regarding the Pension Fund, the contributions are set at \$8 per week for any employee covered by the Agreement who worked at least one day during any given week.

Effective from June 1995, and in accordance with a court order, the Respondent has been making payments of \$3000 per month to the Union which have been transferred into the Pension and Welfare Funds. These moneys have been allocated by the two Trust Funds to the defaulted payments retroactive to when the payments ceased. Thus for example, the payment in June 1995 was applied to the default in January 1993, the payment in July 1995 was applied to the default in February 1993, etc. As this is the case, then the maximum period for at least a portion of the interest computation would be 30 months as each \$3000 payment would have been and is still being made and applied to a default month that occurred 30 months before.

All parties agree that the payments of \$3000 per month should offset the payments owed to the funds. I will allocate the \$3000 to each fund in proportion to what had been allocated in the past. Thus, \$2500 per month is allocated to the Pension Fund and \$500 per month is allocated to the Welfare Fund.

For the period from January 1, 1993, to April 19, 1995, the backpay specification uses the actual number of bargaining unit employees that worked during any given weekly period for calculating the amounts owing to the funds. From April 19, 1995, on, the General Counsel used the actual number of bargaining unit employees who worked and added 22 to that number. This is based on the assumption that although there were 24 people illegally laid off on April 19, 2 were rehired within the week. (See App. B.)

The parties stipulated to the number of employees who worked during the respective periods of time and the amounts that would be required to be paid for each employee for each fund during the entire period of the backpay specification. Thus, there is no dispute as to the gross amounts

owed to each fund for the period from January 1, 1993, to the week of April 17, 1995. What was in dispute was whether the employer had illegally laid off a group of employees during that week who should be added to the employee count for purposes of calculating the Pension and Welfare Fund contributions. Also in dispute is the method to calculate interest.

As I have concluded above that the employer laid off this group of employees on April 19, 1995, for discriminatory reasons, and as I also conclude that the Respondent should be ordered to restore its potato packaging operation, I agree with the General Counsel's assumption that but for the illegal layoffs, the number of employees that would have worked after April 19, 1995, is the number who actually worked plus the number who would have worked but for the illegal discrimination. Appendices D and E to this Decision sets forth the amounts owed to the Pension and Welfare Funds.

With respect to interest, *New Horizons For the Retarded*, supra, sets interest on backpay awards at the short-term Federal rate, determined quarterly, with the rate for any calendar quarter being the rate determined by the Secretary of the Treasury on the first month of the previous calendar quarter. Thus, under this rule, the interest rate can theoretically change four times a year which is consistent with the fact that the Board computes backpay on a quarterly basis.

However, the Board in *Merryweather Optical Co.*, supra., established a different rule for calculating interest for defaulted payments owed to funds established under collective-bargaining agreements. In that case the Board stated:

Because the provisions of employee benefit fund agreements are variable and complex, the Board does not provide at the adjudicatory state of a proceeding for the addition of interest at a fixed rate on unlawfully withheld fund payments. We leave to the compliance state the question of whether Respondent must pay any additional amounts into the benefit funds in order to satisfy our "make-whole remedy. These additional amounts may be determined, depending upon the circumstances of each case, by reference to provisions in the documents governing the funds at issue and, where there are no governing provisions, to evidence of any loss directly attributable to the unlawful withholding action, which might include the loss of return on investment of the portion of funds withheld, additional administrative costs, etc., but not collateral losses.

In the present case, the underlying collective-bargaining agreements (the voluntarily signed contract that expired in 1992 and the agreement reached on June 10, 1994), require the employer to make contributions to the respective funds but do not set out any specific interest rate for defaulted payments. However, the contracts, in my opinion, incorporate by reference the underlying trust documents. General Counsel's Exhibit 37 is a Declaration of Trust dated May 2, 1994, for the Pension Fund modifying the "Agreement and Declaration of Trust as originally entered into as of April 9, 1970 and restated in its entirety in 1975." At section 5 of this document, it states in pertinent part:

In addition to any other remedies to which the parties may be entitled, an Employer in default for not less than five working days shall be obligated to pay interest at the rate specified in the Collective Bargaining Agreement, or if a

rate is not specified in the collective Bargaining Agreement, at a rate of not less than one and one half percent per month on the contributions due from the date when payment was due to the date when payment is made, together with all expenses of collection incurred by the Trustees, including reasonable attorneys' and auditors' fees.

General Counsel's Exhibit 38 is the Declaration of Trust for the Welfare Fund and it contains an identical provision.

As the present backpay case involves the failure to make pension and welfare fund contributions, the proper rule for calculating interest is the one set forth in *Merryweather Optical Co.*, supra and this is the rule I shall adopt for this case. Therefore, pursuant to the Trust documents, the interest would be 1.5 percent per month or 4.5 percent per quarter.

Moreover, because the \$3000-per-month payments have each been applied and will continue to be applied retroactively to a default period 30 months before, the maximum period for a portion of the interest for any given month would be 30 months. That is, when an offset payment was made and applied to a default month, and the amount paid turns out to be lower than the payment owed *plus* 30 month's of accumulated interest, then additional interest would be owed on the difference. For example, for January 1993, the pension amount due was \$2400, *plus* interest at 1.5 percent per month for 30 months or \$1080, minus an offset of \$2500, which *equals* a remaining obligation of \$980 for that month. As this latter amount would still be owed for January 1993, additional interest should be calculated for the remainder (\$980) at 1.5 percent per month until such time as the full amount that is owed, is paid.

As the backpay specification as amended runs only until the end of February 1996, and as backpay is still running, the General Counsel may issue a new backpay specification or reopen this one as appropriate. Additionally, as the backpay amounts for all months after March 1994 are calculated on the assumption that the Respondent will continue to comply with the court's Order to pay \$3000 per month, any cessation or deviation of that obligation may give reason to reopen this matter.

CONCLUSIONS OF LAW

1. By refusing to execute a collective-bargaining agreement that was mutually agreed to on June 10, 1994, the Respondent has violated Section 8(a)(1) and (5) and Section 8(d) of the Act.

2. By discharging or laying off employees on April 17 and 19, 1995, and by refusing to reemploy employees thereafter because of their union membership and activities, the Respondent has violated Section 8(a)(1) and (3) of the Act.

3. By unilaterally subcontracting or transferring its potato packaging operations to M&M Farms and Sales, on June 17, 1995, the Respondent has violated Section 8(a)(1) and (5) of the Act.

4. By unilaterally reinstating employees out of seniority order, the Respondent has unilaterally changed the terms and conditions of employment and has violated Section 8(a)(1) and (5) of the Act.

5. By unilaterally granting wage increases to some of its employees, the Respondent has violated Section 8(a)(1) and (5) of the Act.

6. In relation to the backpay specification in Case 2-CA-26738, the Respondent owes the sums of money set forth in

Appendices D and E, with interest. Moreover, the backpay liability shall continue until Respondent fully complies with the Order in that case.

THE REMEDY

The General Counsel seeks an order compelling the Respondent to restore its potato packaging operations as they existed before the events of April 17, 1995.

In *We Can, Inc.*, 315 NLRB 179 (1994), the Board stated:

When an employer has curtailed operations and discharged employees for discriminatory reasons, the Board's usual practice is to order a return to the status quo ante—that is, to require the employer to reinstate the employees and restore the operations as they existed before the discrimination—unless the employer can show that such a remedy would be unduly burdensome.¹⁴

The Respondent asserts that the record in this case shows that such a remedy would be unduly burdensome. Alternatively, it seeks permission to adduce additional evidence at the compliance stage to show that such a remedy would be unduly burdensome.

In my opinion, the record does not show that a restoration remedy would be unduly burdensome to the Respondent. The evidence shows that on April 17, 1995, the Company ceased, on a temporary basis, its potato packaging operations and that it dismantled and got rid of its potato packaging assembly line machine. This machine, according to Spinale was about 35 years old and was substantially out of date. When asked how much a replacement would cost, he gave the opinion that it would cost between \$130,000 and \$150,000. Nevertheless, as he admitted that he has not gone out to price such a machine, this figure was merely a guess.

Although claiming that its potato packaging operations were not profitable, this was belied by the summary introduced by the Respondent which showed that its potato operations made a profit in 1994 and 1995. Moreover, there seems to be no contention that the Respondent's other operations were not profitable, and taken as a whole, a sum of \$150,000, may not be all that significant in proportion to the Company's total financial picture. At least the Respondent has not shown that such an amount would be a great deal in the context of its total operations. Finally, if as Spinale says, a more modern and computerized machine would be more efficient than his obsolete potato packaging machine, then the sum of money spent to replace it would probably be a good investment, yielding future profits.

In *We Can, Inc.*, supra, the Board, although refusing to reopen the record, did amend the administrative law judge's recommended Order to provide that restoration and reinstatement would be required "unless the Respondent can establish at compliance—on the basis of evidence that was not available at the time of the unfair labor practice hearing—that those remedies are inappropriate." See also *Ferragon Corp.*, supra.

In view of the above, I shall therefore recommend that the Respondent, having discriminatorily laid off or discharged employees, must offer them reinstatement and make them whole for any loss of earnings and other benefits, computed

¹⁴ See also *Ferragon Corp.*, 318 NLRB 359 (1995).

on a quarterly basis from the date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (2987).¹⁵ I shall further recommend that the potato packaging operation be restored. Consistent with the cited cases, I shall recommend that the Respondent be allowed at the compliance stage of the proceeding, to try to establish, based on new evidence, that the restoration of operations would not be appropriate.

In relation to the finding that the Respondent refused to execute an agreed upon contract, I shall recommend that the Respondent do so if requested by the Union. In this regard, it appears that the document which was received into evidence as General Counsel's Exhibit 6 incorporates the contract that was agreed to on June 10, 1994.

As the Respondent refused to sign General Counsel's Exhibit 6, and as there is and may continue to be a substantial hiatus between the effective date of that agreement until the time that this Order is enforced or complied with, I recommend that the Union be given the option of having the 3-year term of that contract commence at any time of its choosing from June 10, 1994, until the time that the Respondent complies with this Order.

Further, as the Company has illegally but successfully kept the Union at bay for a significant amount of time, I recommend that the Respondent be required to furnish to the Union a current list of its employees, their job classifications, and rates of pay, along with their home addresses and telephone numbers. This remedy is designed to allow the Union to reestablish communication with the employees affected by the Employer's unfair labor practices and to enable it to evaluate the terms of the agreed upon contract vis a vis the existing terms and conditions of the Respondent's bargaining unit workforce.

Although I have concluded above, that the Respondent has violated Section 8(a)(5) of the Act by giving wage increases to some of its employees without first bargaining with the Union, the Respondent shall not be required to rescind these wage increases unless explicitly requested to do so by the Union.

As the Respondent's employees are largely Spanish speaking, it is recommended that the notices be in Spanish and English.

Finally, as the Respondent has previously violated the Act and as the violations herein are considered by me to be substantial and serious, I recommend that a broad order be issued. *Hickmott Foods*, 242 NLRB 1357 (1979).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁶

ORDER

The Respondent, G & T Terminal Packaging Co., Inc., Mr. Sprout, Inc., Tray Wrap, Inc., Chain Trucking, Inc., a

¹⁵ However, any moneys owed to the union trust funds pursuant to the terms of the June 14, 1994 contract would require interest as calculated in *Merrweather Optical*, supra.

¹⁶ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

single employer, and G & T Terminal Packaging, Inc., and its alter ego Slow Pack, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively with Private Sanitation Union, Local 813, International Brotherhood of Teamsters a/w AFL-CIO by refusing to sign the contract that was agreed to on June 10, 1994.

(b) Discharging or laying off employees and refusing to re-employ employees because of their membership in or activities on behalf of Private Sanitation Union, Local 813, International Brotherhood of Teamsters a/w AFL-CIO, or any other labor organization.

(c) Unilaterally subcontracting or transferring its potato packaging operations.

(d) Unilaterally reinstating employees out of seniority order.

(e) Unilaterally granting wage increases to some of its employees.

(f) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request of the Union, execute the contract that was agreed to on June 10, 1994, in accordance with the terms of the remedy section of this opinion.

(b) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time employees employed by the Respondent at its facility, excluding guards, professional employees and supervisors as defined in the Act.

(c) Within 14 days from the date of this Order, offer the employees listed on Appendices B and C full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(d) Make the employees listed on Appendices A, B, and C whole for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of the decision.

(e) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges and notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

(f) Restore the potato packaging operation to its size as of April 17, 1995, unless it can show at compliance, on the basis of evidence that was not available at the time of the unfair labor practices hearing, that those actions would be unduly burdensome.

(g) Furnish to the Union, a list of the bargaining unit employees currently working setting forth their names, addresses, telephone numbers, rates of pay, and job classifications.

(h) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, time-

cards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(i) Within 14 days after service by the Region, post at its facility Bronx, New York, copies of the attached notice marked "Appendix F."¹⁷ Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 19, 1995.

(j) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

In relation to the backpay specification in Case 2-CA-26738, the Respondent owes the sums of money set forth in Appendices D and E, with interest as calculated. Moreover, the backpay liability in relation to that charge shall continue until Respondent fully complies with the Order in that case.

APPENDIX A

The evidence shows that 60 employees were discharged on April 17, 1995, when they were not allowed to go to work on that day. These are:

Estefania Acevado	Maria Garcia
Nancy Amparo	Vitalina Genao
A. Rocio Barragan	Martin Gonzales
Daria Batista	Benjamin Guzman
Ysidro Canela	Ana Hernandez
Anonio Castillo	Paula Javier
Miriam Contreras	Victor Jimenez
Herman DiazEligio Disla	Romana Lopez
Agapito Duran	Fernando Mendez
Ramona Escoboza	Primitiva Mercado
Erlinda Espinoza	Jose Merigildo
Astia Mesa	Luz Ramos
Regino Mora	Francisco Rodriguez
Leonardo Morel	Matilda Rodriguez
Magdalena Negron	Olimpia Rodriguez
Beatriz Olivo	Aida Romero
Benita Olivo	Juan Romero
Juana Olivo	Onofre Romero
Dominot Orbe	Felix Sanchez
Jose Rafael Ortega	Carlos Santana
Maria Ortiz	Zunilda Santana

¹⁷ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Bienvenido Padilla	Claudio Santiago
Carmen Perez	Thelma E. Severino
Leonides	Perez Carment Sosa
Juan Ramos	RosaTejada
Augustina Fermin	Aurora Terrero
Candida Frias	Leyda Triunfel
Ana Villanueva	

APPENDIX B

This list consists of those people who were laid off on April 17, 1995, and who were not recalled by the Respondent on April 19, 1995. In a few cases, employees returned to work on the dates set forth next to their names.

Estefania Acevado	Primitivo Lopez
Sabina Cabrera	Jose Merigildo
Antonio Castillo	Leonardo Morel
Marco Delgado	Beatriz Olivo
Herman Diaz	Benita Olivo
Romana Escoboza (retn 4/25)	Juana Oliva
Erlinda Espinoza	Jose Ortega
Maria Garcia	Francisco Rogriguez (retn 4/23)
Mercedes Garcia	Matilda Rodriguez
Ana Hernandez	Carlos Santan
Casimiro Hernandez	Claudio Santiago
Denny Lopez	Leyda Triunfel

APPENDIX C

There were four employees who were not actually working during the week of April 17 because of illness or because they were on leave and who were not allowed to return when they reported to work. These are:

Sabina Cabrera. She had left for the Dominican Republic on or about April 12 and when she reported back to work on May 1, 1995, she was not allowed to return.

Marcos Delgado. On April 17 he was out sick, his last previous day worked being April 6, 1995. He testified that when he tried to return to work on or about April 26, he was not allowed in.

Primitivo Lopez. He testified that he left on or about March 27, 1995, to go to Santa Domingo for 1 month and that he reported this to Spinale's nephew. He returned to New York on April 27 and within a day or two tried, without success to return to work. He testified that when he did, Spinale told him that he had no more work.

Casimiro Hernandez. He had been out ill for about 2 months before April 17, 1995. He attempted to return to work in late April and was told through a coworker that he should collect unemployment.

With respect to these employees, the evidence shows that the company has had a practice of permitting employees to take extended leaves and that it has put them back to work when they were ready to return. Since I have concluded that the Respondent made its decision to reduce its workforce and have their work done by another company, I conclude that the failure to allow these four employees to return to work after their illnesses or their leaves of absence, constituted a violation of Section 8(a)(1) and (3) of the Act.

APPENDIX D					
PENSION FUND CONTRIBUTIONS					
<i>PERIOD</i>		<i>GROSS</i>	<i>INTEREST</i>	<i>OFFSET</i>	<i>TOTAL</i>
1/1/94		\$2,400	\$1,080	\$2,500	\$ 980
Feb.-93		2,424	1,090.8	2,500	1,014.8
Mar.-93		2,424	1,090.8	2,500	1,014.8
Apr.-93		3,120	1,404	2,500	2,024
May.-93		2,544	1,144.8	2,500	1,188.8
Jun.-93		2,536	1,141.2	2,500	1,177.2
Jul.-93		3,064	1,378.8	2,500	1,942.8
Aug.-93		2,432	1,094.4	2,500	1,026.4
Sep.-93		2,440	1,098	2,500	1,038
Oct.-93		3,272	1,472.4	2,500	2,244.4
Nov.-93		3,224	1,450.8	2,500	2,174.8
Dec.-93		2,592	1,166.4	2,500	1,258.4
TOTAL	\$17,084.4				
Jan.-94		2,488	1,119.6	2,500	1,107.6
Feb.-94		2,560	1,152	2,500	1,212
Mar.-94		2,448	1,101.6	2,500	1,049.6
Apr.-94		2,928	1,317.6	2,500	1,745.6
May.-94		2,480	1,116	2,500	1,096
Jun.-94		2,608	1,173.6	2,500	1,281.6
Jul.-94		3,248	1,461.6	2,500	2,209.6
Aug.-94		3,216	1,447.2	2,500	2,163.2
Sep.-94		2,656	1,195.2	2,500	1,351.2
Oct.-94		2,688	1,209.6	2,500	1,397.6
Nov.-94		3,368	1,515.6	2,500	2,383.6
Dec.-94		2,600	1,170	2,500	2,270
TOTAL	\$19,267.6				
Jan.-95		2,344	1,054.8	2,500	898.8
Feb.-95		2,384	1,072.8	2,500	956.8
Mar.-94		3,128	1,407.6	2,500	2,035.6
Apr.-95		2,416	1,087.2	2,500	1,003.2
May.-95		3,280	1,476	2,500	2,256
Jun.-95		2,664	1,198.8	2,500	1,362.8
Jul.-95		2,664	1,198.8	2,500	1,362.8
Aug.-95		3,072	1,382.4	2,500	1,954.4
Sep.-95		2,624	1,180.8	2,500	1,304.8
Oct.-95		3,152	1,418.4	2,500	2,070.4
Nov.-95		2,784	1,252.8	2,500	1,536.8
Dec.-95		2,800	1,260	2,500	1,560
TOTAL	\$18,302.4				
Jan.-96		3,392	1,526.4	2,500	2,418.4
Feb.-96		2,672	1,202.4	2,500	1,374.4
TOTAL	\$ 3,682.8				
GRAND TOTAL	\$58,447.2 Plus Interest				

APPENDIX E					
WELFARE FUND CONTRIBUTIONS					
<i>PERIOD</i>		<i>GROSS</i>	<i>INTEREST</i>	<i>OFFSET</i>	<i>TOTAL</i>
Jan.-93		\$474	\$213.3	\$500	\$187.3
Feb.-93		486	218.7	500	204.7
Mar.-93		480	216	500	196
Apr.-93		498	224.1	500	222.1
May-93		510	229.5	500	239.5
Jun.-93		492	221.4	500	213.4
Jul.-93		516	232.2	500	248.2
Aug.-93		510	229.5	500	239.5
Sep.-93		486	218.7	500	204.7
Oct.-93		540	243	500	283
Nov.-93		522	234.9	500	256.9
Dec.-93		516	232.2	500	248.2
TOTAL	\$2,743.5				
Jan.-94		498	224.1	500	222.1
Feb.-94		504	226.8	500	230.8
Mar.-94		504	226.8	500	230.8
Apr.-94		498	224.1	500	222.1
May-94		498	224.1	500	222.1
Jun.-94		504	226.8	500	230.8
Jul.-94		516	232.2	500	248.2
Aug.-94		516	232.2	500	248.2
Sep.-94		558	251.1	500	309.1
Oct.-94		522	234.9	500	256.9
Nov.-94		516	232.2	500	248.2
Dec.-94		504	226.8	500	230.8
TOTAL	\$2,900.1				
Jan.-95		456	205.2	500	161.2
Feb.-95		474	213.3	500	187.3
Mar.-94		492	221.4	500	213.4
Apr.-95		510	229.5	500	239.5
May-95		510	229.5	500	239.5
Jun.-95		510	229.5	500	239.5
Jul.-95		510	229.5	500	239.5
Aug.-95		510	229.5	500	239.5
Sep.-95		510	229.5	500	239.5
Oct.-95		510	229.5	500	239.5
Nov.-95		510	229.5	500	239.5
Dec.-95		510	229.5	500	239.5
TOTAL	\$2,717.4				
Jan.-96		510	229.5	500	239.5
Feb.-96		510	229.5	500	239.5
TOTAL	\$ 479				
GRAND TOTAL	\$8,840 Plus Interest				