

8. All employees of Wyatt engaged in its logging operations in and about Flagstaff, Arizona, excluding office and clerical employees and supervisors, as defined by the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

9. Northern Arizona District Council of Lumber and Sawmill Workers, United Brotherhood of Carpenters and Joiners of America, affiliated with the American Federation of Labor, was on June 5, 1950, and at all times thereafter has been, the exclusive representative of all the employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9 (a) of the Act.

10. By refusing on June 8, 1950, and at all times thereafter, to bargain collectively with the Union, as the exclusive representative of all employees in the appropriate unit, Respondent Wyatt has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

11. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, Respondent Wyatt has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

12. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

13. Respondent Wyatt did not discriminatorily lock out its employees, as alleged in the complaint.

[Recommended Order omitted from publication in this volume.]

#### Appendix A

Fiano Apadaca  
D. L. Berryhill  
Samson Brue  
Gilbert Holden

Jesus Pozas  
Claude Sanders  
Sidney M. Stewart  
A. C. Everett

H. PAUL PRIGG, AN INDIVIDUAL, DOING BUSINESS UNDER THE NAME AND STYLE OF PRIGG BOAT WORKS *and* INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF AMERICA, C. I. O. *Case No. 10-C-1660. December 7, 1951*

#### Amendment to Supplemental Decision and Recommendation

On October 31, 1950, the Board issued its Supplemental Decision and Recommendation in the above-entitled case.<sup>1</sup> Upon further consideration it appeared to the Board that said Supplemental Decision and Recommendation should be amended. Accordingly, on November 9, 1951, the Board issued a Notice to Show Cause, returnable on or before November 23, 1951, why the proposed amendment attached to said notice should not issue as an amendment to Supplemental Decision and Recommendation. None of the parties has responded to said notice.

IT IS HEREBY ORDERED that the said Supplemental Decision and Recommendation be, and it hereby is, amended by substituting for the

<sup>1</sup> 91 NLRB 1379.

97 NLRB No. 56.

last paragraph on page 1379 and "Recommendations" on page 1380, the following:

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. To the extent here consistent, the rulings are hereby affirmed. The Board has considered the Supplemental Intermediate Report, a copy of which is attached hereto, the exceptions and briefs filed by the parties, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following modifications, exceptions and additions:

1. In concluding that four of the claimants were actually entitled to back pay under the applicable provisions of our original back-pay order, the Trial Examiner ruled, in accordance with his interpretation of the remand order, that he would consider only the possibility that the claimants might have been selected for nondiscriminatory release *at sometime after* the date (February 7, 1945) on which they were discharged. This approach necessarily compelled a finding that all claimants were entitled to some back pay for the period commencing on about February 7, 1945. We do not agree with the Trial Examiner.

In our original Decision we expressly found that the "general reduction [of force on February 7, 1945] was itself not discriminatorily motivated," but that the discrimination "took the form of the selection" of the claimants for separation because of unlawful considerations. Thus, in a remedial context, we in effect found that economic considerations required the Respondent to discharge six employees on February 7, explicitly reserving for future consideration the question of when the claimants, absent discriminatory motivation, would have been normally separated during the course of the general reduction in force.<sup>2</sup> In these circumstances, we think it clear that both our Decision and the remand order of the court contemplated the possibility that some or all of the claimants might normally have been included in the February 7 reduction of force as well as in subsequent reductions. Our findings as to back pay shall be made accordingly.

2. We next turn to the question of when the claimants would have normally been released under the Respondent's reduction of force program. We agree with the Trial Examiner in principle that under the circumstances of this case, length of service by classification is a reasonable and practical criteria for making such determination.

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<sup>2</sup> The original Decision stated. "It is possible that one or more of the six employees might have been discharged in the general reduction of the work force, even if the Respondent's selection had been on a nondiscriminatory basis. This possibility will be taken into consideration in determining the amount due to the employees in compliance with our order herein."

To the extent here material, the record shows that the reduction of force program required terminations on dates, as follows:

February 7, 1945, four first-class carpenters and two second-class carpenters.

March 30, 1945, one second-class carpenter.

May 4, 1945, one first-class carpenter.

May 18, 1945, one first-class carpenter.

August 17, 1945, two first-class carpenters and one second-class carpenter.

The following tables show the original employment dates of the six claimants and other similarly classified employees:

*First-Class Carpenters*

<i>Name</i>	<i>Employment Date</i>
*Belknap	12/12/44
Jarrell	11/ 2/44
Woods	11/ 1/44
Bond	10/18/44
*Craig	10/10/44
*D. H. Wood	11/27/43
*Watton	11/22/43
Worthington	5/22/42

*Second-Class Carpenters*

<i>Name</i>	<i>Employment Date</i>
*J. P. Wood	11/ 1/44
*Berry	6/12/44
Owens	12/11/43
Di Lorenzo	6/ 2/43

\*The claimants are designated with asterisks.

On the basis of the foregoing, we find that Belknap, J. P. Wood, and Berry would have normally been discharged on February 7, 1945, and therefore are entitled to no back pay. We further find that Craig would have been normally discharged on May 4, 1945; D. H. Wood on May 18, 1945; and Watton on August 17, 1945, and that their back-pay periods would normally terminate on these respective dates. Notwithstanding, we shall, for reasons assigned by the Trial Examiner, award no back pay to Craig. In the absence of exceptions, we also adopt the Trial Examiner's finding that D. H. Wood's back-pay period terminate as of the date he quit his employment with the Merrill Company.<sup>3</sup>

<sup>3</sup> The record does not establish the exact date on which Wood severed his employment with the Merrill Company. However, we have administratively ascertained by a letter from that employer that Wood's employment there terminated on March 10, 1945, and, in the absence of a showing of cause to the contrary, we shall rely on the information so obtained for the purpose of terminating his back-pay period as of March 10, 1945.

3. In arriving at a formula for computing the gross earnings of the claimants, the Trial Examiner relied to some extent upon an absentee factor. Any question as to the projection of past absenteeism into the gross back period is not sufficiently important under the particular facts of this case to warrant consideration of a different method of computation. We shall therefore adopt the Trial Examiner's formula. However, in determining gross earnings under the formula, we shall compute hours in excess of 40 a week at one and one-half times the prevailing rate, in accordance with the Fair Labor Standards Act.

*Net Back-Pay Calculation*

	<i>P. G. Watton</i>	<i>D. H. Wood</i>
A. Gross Back Pay <sup>4</sup> .....	\$1802. 59	\$253 73
B. Interim Earnings.....	<sup>5</sup> 1052. 43	<sup>6</sup> 285 46
C. Expenses.....	-----	-----
D. Net Interim Earnings.....	1052. 43	285. 46
E. Net Back Pay.....	750. 16	\$0

### Recommendations

Upon the basis of this Supplemental Decision and the entire record in the case, the National Labor Relations Board hereby respectfully recommends to the United States Court of Appeals for the Fifth Circuit:

(a) That paragraph 2 (a) of the original Order herein (relating to reinstatement) be denied enforcement.

(b) That paragraph 2 (b) thereof be enforced only as to P. G. Watton.

(c) That the Respondent be required to pay P. G. Watton the sum of \$750.16 as back pay.

MEMBERS REYNOLDS and STYLES took no part in the consideration of the above Amendment to Supplemental Decision and Recommendation.

<sup>4</sup> For method of computation, see appendices A and B, attached hereto.

<sup>5</sup> Computed as follows:

\$199 65—1st quarter 1945 earnings.

643 01—2nd quarter 1945 earnings.

804 10—last half 1945 earnings.

Claimant's back-pay period ends on August 17, 1945. Claimant earned \$804 10 in the last half of 1945, a period of 184 days, 48 of which are within the back-pay period.

$\frac{48}{184} \times \$804 10 = \$209.77$ , i. e. interim earnings from July 1, 1945, to August 17, 1945.

Total Interim Earnings = \$199.65

643 01

209 77

-----  
\$1052 43

<sup>6</sup> Representing \$12 unreported income, \$110 56 from the Merrill Company of Miami, Florida, and \$162 90 from the American Boat Building Corp., as set forth in the Intermediate Report.

## Appendix A

## Calculation of Gross Back Pay

Period: 4-7-44 through 2-2-45

	<i>Hours worked by weeks before discharge</i>	
	<i>P G</i>	<i>Watton D H Wood</i>
	5700	4400
	5700	4750
	5700	5700
	5700	5700
	5700	5700
	5700	4600
	5700	4100
	4750	3800
	5700	5700
		5200
		5200
		1900
		2850
		4750
	2850	5200
	5200	4250
	5200	5200
	5200	950
	3675	1900
	4750	1900
	5700	4750
	5200	5200
	5700	5700
	4750	5700
	4750	4200
	5200	2800
	4750	4750
	2850	950
	5700	1400
	5200	4250
	950	4750
	5700	3800
	5200	5500
	5200	1200
	5200	5600
	5200	2850
	5200	4600
	4250	1900
	5200	5550
	5150	5200
	5200	4500
	5200	2850
Total hours worked.....	184675	176950
Total No. of weeks worked.....	37	43
Weekly average hours.....	5000	4125

**Appendix B***Calculation of Gross Back Pay*

	<i>P G Watton</i>	<i>D. H Wood</i>
A. Gross back pay before 2/16/45		
1. Daily Average Hours (Weekly Avg. Hours 6)-----	8.25	7.00
1.a. Date of Discrimination-----	2/8/45	2/8/45
2. No. of Working Days; date of discrimination to 2/16/45-----	7	7
3. Hourly Rate of Pay Before 2/16/45-----	1.05	1.00
3.a. Total Hours Before 2/16/45-----	57.75	49.00
4. Gross Back Pay Before 2/16/45-----	\$60.64	\$49.00
5. Straight-time. Overtime Gross Back Pay before 2/16/45 A-----	\$7.35	\$ .88
B. Gross back pay after 2/16/45		
1. Weekly Average Hours (From Table A)-----	50.00	41.25
2. Hourly Rate of Pay After 2/16/45-----	1.18	1.18
3. Date—End of Back Pay-----	8/17/45	3/10/45
4. Number of Whole Weeks in Back-Pay Period After 2/16/45-----	26	3
5. Number of Odd Days in Back-Pay Period after 2/16/45-----	0	1
6. Total Hours in Whole Weeks-----	1300.00	123.75
7. Total Hours in Odd Days-----	0	7.00
8. Grand Total Hours of back pay in period after 2/16/45-	1300.00	130.75
9. Straight-time. Gross Back Pay After 2/16/45-----	\$1534.00	\$154.29
10. 40 Hours Vacation Pay-----	\$47.20	\$47.20
11. Overtime Gross Back Pay After 2/16/45-----	\$153.40	\$2.36
C. Grand total—Gross back pay B-----	\$1802.59	\$253.73

A Computed by multiplying the number of hours over 40 for every week in the back period (including parts of week by one-half of the claimant's pay rates)

B Addition of lines A4, A5, B9, B10, and B11.

THE GREAT ATLANTIC & PACIFIC TEA COMPANY *and* LOCAL 474,  
NATIONAL FOOD CHAIN STORE EMPLOYEES, CIO, PETITIONER *and*  
RETAIL FOOD CLERKS UNION, LOCAL 1500, AFL. *Case No. 2-RC-*  
*2119. December 7, 1951*

**Decision and Order Setting Aside Election**

On September 27, 1950, pursuant to a stipulation for certification upon consent election, an election by secret ballot was conducted under the direction and supervision of the Regional Director for the Second Region among the employees in the appropriate unit.<sup>1</sup> Upon completion of the election, a tally of ballots was issued and duly

<sup>1</sup> The stipulated unit was composed of all employees of the Employer's supermarkets and service stores serviced by the Bronx warehouse in the counties of New York, Bronx, Westchester, Putnam and Dutchess, including dairy department heads, produce depart-