Coast Delivery Service, Inc. *and* Teamsters and Warehousemen Local 381, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 31–CA–847

August 22, 1972

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS FANNING, KENNEDY, AND PENELLO

On May 10, 1972, Trial Examiner Stanley Gilbert issued the attached Supplemental Decision and Order in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and the Respondents[1] filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the Trial Examiner's Decision in light of the exceptions and briefs and has decided to affirm the Trial Examiner's rulings, findings, and conclusions and to adopt his recommended Supplemental Order.[2]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Supplemental Order of the Trial Examiner and hereby orders that Respondents, Coast Delivery Service, Inc., and Western Transfer & Storage, Santa Maria, California, their officers, agents, successors, and assigns, shall pay to the discriminatees, or to the Regional Director for Region 31 to be held in escrow as provided in the Trial Examiner's recommendations, as appropriate, as net backpay the amounts determined to be due by the Trial Examiner in the attached Supplemental Decision.

[1] Western Transfer & Storage, Santa Maria Van & Storage, Inc, and Harrison Van & Storage, Inc, are also named in the backpay specification as liable

[2] The General Counsel has renewed its motion, originally made to and denied by the Trial Examiner, to amend the backpay specification to impose backpay liability on James A Harrison as an individual In agreement with the Trial Examiner, the motion is denied.

TRIAL EXAMINER'S SUPPLEMENTAL DECISION

STANLEY GILBERT, Trial Examiner: On October 26, 1968, the National Labor Relations Board issued its Decision and Order in this proceeding directing Coast Delivery Service, Inc., its officers, agent, successors, and assigns, to, *inter alia,* make whole Salvador Casillas, Ted Searle, Frank Vasquez, Sr., and Manuel Vasquez, Jr., for their losses resulting from unfair labor practices committed by said Respondent, Coast Delivery Service, Inc., in violation of Section 8(a)(3) and (1) of the Act.[1] On March 25, 1971, the United States Court of Appeals for the Ninth Circuit entered its Judgment enforcing the Board's Order including the monetary provisions thereof.[2] The aforesaid Board Order and court judgment also provided for the reinstatement of the above-named employees.

It appears that the Respondent, Coast Delivery Service, Inc., has failed to reinstate and make whole the above-named discriminatees in accordance with the court judgment and Board Order. It further appears that a controversy has arisen over the amount of backpay due under the aforesaid court judgment and Board Order and also as to the obligation thereunder, if any, of the three other enterprises which are named as co-Respondents in the backpay specification herein (Santa Maria Van & Storage, Inc., Harrison Van & Storage, Inc., and Western Transfer & Storage[3]).

On October 22, 1971, the Board's Acting Regional Director for Region 31 issued the aforesaid backpay specification setting forth the amounts of backpay which General Counsel claims are due to each of the claimants. Said backpay specification further alleges, among other things, that Santa Maria Van & Storage, Inc., Harrison Van & Storage, Inc., and Western Transfer & Storage are, together with Respondent Coast Delivery Service, a "single employer" and/or that Santa Maria Van, Harrison Van, and Western Transfer are "successors" to Coast Delivery, and/or they are *"alter egos"* of Coast Delivery and of one another. Based on said allegations, the backpay specification further alleges that Santa Maria Van, Harrison Van, and Western Transfer are jointly and severally liable with Coast Delivery in remedying the unfair labor practices found by the Board. Thus, in issue in this proceeding are the appropriate amounts of backpay due to the aforesaid discriminatees and what obligation and liability, if any, may appropriately be imposed upon the aforesaid co-Respondents.

Pursuant to notice, a hearing was held in this supplemental proceeding in Santa Maria, California, on January 11, 12, 13, 14, 18, and 19, before the duly designated Trial Examiner. After the close of hearing, briefs were filed. General Counsel filed his brief on March 9, 1972, and Rodney Robertson filed his brief on March 8, 1972, on behalf of "Coast Delivery Service, Inc., Santa Maria Van &

[1] 172 NLRB No. 214

[2] 437 F 2d 264

[3] As is set forth more fully below Western Transfer & Storage is in bankruptcy. Although Mr. Robertson stated that he got "authority" to appear for Western, he is "not officially appearing" for said enterprise. It appears that the trustee in bankruptcy was not served with the backpay specification and notice of hearing Mr Robertson also entered his appearance on behalf of James A. Harrison and Bridget Harrison as individuals They, however, are not named in the backpay specification as individual parties to this proceeding

Storage, Harrison Van & Storage, James A. Harrison, and Bridget Harrison."[4]

Upon the record in this supplemental hearing[5] and from my observation of the witnesses who testified, I make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. *The Issue of Derivative Liability*

The principal dispute in this proceeding is whether or not derivative liability may be imposed on Santa Maria Van and Harrison Van which are apparently the only two viable business entities of the parties to this proceeding. It appears that Coast Delivery is hopelessly insolvent (it is no longer operating, although not dissolved) and that Western Transfer is part of the bankrupt estate of Russell Stowell who entered bankruptcy in late 1967 or early 1968.

It is well established that liability for backpay and reinstatement of discriminatees may be imposed upon a party to a supplemental proceeding, even though he had not been a party to the proceeding in which the unfair labor practices were found, if he was sufficiently closely related to the party found to have committed the unfair labor practices or had removed its assets in attempted evasion of the backpay liability. *N.L.R.B.* v. *Deena Artware, Inc.*, 361 U.S. 398 (1960); *N.L.R.B.* v. *C. C. C. Associates*, 306 F.2d 534 (C.A. 2, 1962); *N.L.R.B.* v. *Mastro Plastics Corporation*, 354 F.2d 170, 179–180 (C.A. 2, 1965); *Perma Vinyl Corporation*, 164 NLRB 968 (1967), enfd. *sub nom. United States Pipe and Foundry Company* v. *N.L.R.B.*, 398 F.2d 544 (C.A. 5, 1968); *Associated Transport Company of Texas, Inc.*, 194 NLRB No. 12 (1971); *Riley Aeronautics Corp.*, 178 NLRB 495, 499 (1969). (Such liability imposed upon a party to a supplemental proceeding is frequently referred to as "derivative liability.") The Board and the courts have used the terms "successor," "single employer," and *"alter ego"* to describe the relationship between the party to the original unfair labor practice proceeding and the additional entity made party to the supplemental proceeding to indicate that it was sufficient to warrant the imposition of derivative liability. These terms are used in other unfair labor practice proceedings which do not involve the issue of derivative liability, but such cases are not wholly reliable as precedents for establishing the sufficiently close relationship to warrant imposition of derivative liability. Extreme examples of such cases are those in which companies wholly unrelated to each other except as members of a multiemployer bargaining group are held to be a "single employer" for jurisdictional purposes. Another group of such cases are those in which a "successor" was found to be bound by a predecessor's contract with a union or bound to continue his recognition and bargaining obligations with a union which represented the predecessor's employees. It is noted that in *N.L.R.B.* v. *Mastro Plastics Corporation, supra,* at 180, the court, in considerating the question of imposing derivative liability, stated:

> Whether a successor corporation is liable is a question of fact which turns on whether, for example, it is the alter ego of the original respondent or whether it has participated in an attempted evasion of obligations imposed by the Board.

In *Deena Artware, supra,* the Supreme Court considered the appropriateness of imposing the backpay liability of one corporation upon another. It stated, at 402, ". . . we think the Board is entitled to show that these separate corporations are not what they appear to be, that in truth they are but divisions or departments of a 'single enterprise.' " The Court continued, at 403:

> . . . as Mr. Justice Cardozo said in *Berkey* v. *Third Avenue R. Co.*, 244 N.Y. 84, 95, 155 N.E. 58, 61, "Dominion may be so complete, interference so obtrusive, that by the general rules of agency the parent will be a principal and the subsidiary an agent. Where control is less than this, we are remitted to the tests of honesty and justice." That is not a complete catalogue. The several companies may be represented as one. Apart from that is the question whether in fact the economic enterprise is one, the corporate forms being largely paper arrangements that do not reflect the business realities. One company may in fact be operated as a division of another; one may be only a shell, inadequately financed; the affairs of the group may be so intermingled that no distinct corporate lines are maintained. These are some, though by no means all, of the relevant considerations, as the authorities recognize. [Footnotes deleted.]

For the reasons set forth hereinbelow, it is found that Western Transfer was sufficiently closely related to Coast Delivery as to warrant the finding that it is derivatively liable to remedy the unfair labor practices of Coast Delivery, but that the record will not support a similar finding with respect to Santa Maria Van and Harrison Van.

Coast Delivery was incorporated in California on November 30, 1960, by Donald C. Lundgren, L. J. McGinley, Phil Jacobson, and Stowell. Sometime in 1965, Harrison was employed as manager of Coast Delivery and received a salary for his services. At that time the only stockholders were Lundgren and Stowell. Shortly thereaf-

[4] It is not clear whether Mr Robertson did not include Western Transfer & Storage among the parties on whose behalf he was filing his brief because he had not been retained by the trustee in bankruptcy representing Western or because said trustee had not been served a copy of the backpay specification and notice of hearing. Further, it is not clear why he included among the parties on whose behalf he filed his brief James A Harrison and Bridget Harrison as individuals, since neither of them is a party to this proceeding Bridget Harrison was at no time named in this proceeding as a party and was only referred to in the backpay specification as an officer of Santa Maria Van and Harrison Van James A. Harrison was apparently an officer of Coast Delivery, but it does not appear that the General Counsel contends that he was obligated to remedy the unfair labor practices merely by reason of the fact that he was an officer of Coast Delivery. On the last day of the hearing, the General Counsel moved, at the close of his case, to amend the specification to "name" James Harrison "individually liable for the backpay on the same basis as the four Respondents named" in the original specification This motion was denied. It appears that General Counsel contends that the record would support a finding, and he so argues in his brief, that Harrison, as an individual, in effect owned and operated all four of the above-named enterprises Although said motion was denied, this contention is considered hereinbelow, since it is closely interrelated to the issue of whether or not the four enterprises are a "single employer" or *alter egos* of each other

[5] The backpay specification was amended during the course of the hearing with respect to various aspects of the computation of backpay. General Counsel's unopposed motion to correct the transcript is granted

ter, Stowell obtained all of the stock issued by the corporation. It appears that as early as the beginning of 1966 Harrison not only served as manager of Coast Delivery but also represented himself as president thereof.

Western Transfer was apparently a sole proprietorship of Stowell with its principal place of business in San Diego. In April 1966 it opened a branch in Santa Maria under the managership of Harrison. Western Transfer ceased operating in May 1968. As aforesaid, Stowell went into bankruptcy around the start of 1968.

Santa Maria Van was incorporated in California in December 1966. It apparently began operating as a partnership of Harrison and Robert Shepherd in September 1966. Although there is some testimony that Stowell may have had an interest in Santa Maria Van, Harrison's denial thereof is credited. Shepherd retained his ownership interest in Santa Maria Van for about 2 years. It appears that the officers of Santa Maria Van included Bridget Harrison, president, and Harrison, secretary-treasurer. It is found that Harrison managed the operation or comanaged it with his wife, Bridget.

Harrison Van began its operations as a sole proprietorship of Harrison in May 1967 and it was incorporated in California on May 22, 1969. The corporation is wholly owned by Harrison and his wife, Bridget, and since its inception has been managed by them.

All of the four above-mentioned enterprises were in the same line of business, that of acting as agents for various domestic and overseas carriers. The principal business of all four enterprises was with the military at Vandenberg Air Force Base on behalf of the respective carriers they represented. On May 1, 1966, military regulations were promulgated which limited to three the number of domestic carriers for whom a single van and storage company could serve as agent but permitted unlimited representation of overseas carriers until sometime in 1968 when the number of overseas carriers was limited to four.

It is noted as a chronological point of reference that the unfair labor practices found in the original proceeding occurred in August, September, and early October 1967 and that the union activity commenced in August 1967. It is further noted that the three additional Respondents to this supplemental proceeding started their operations prior thereto.

Stowell opened a branch of his San Diego operations (Western Transfer) on or about May 1, 1966, at the time the military regulation was promulgated limiting an agent to three domestic carriers. Coast Delivery had six carriers and three were shifted from Coast Delivery to Western. Two domestic carriers (Burnham Van Lines and Continental Van Lines) contacted Harrison in the latter half of 1966 for the purpose of obtaining representation. It appears that in order to handle this new business it was necessary to form a new company. Harrison consulted Stowell about the formation of a new company but was told that he was not interested. Stowell, however, suggested Shepherd, one of his employees, as a prospective investor. Thus, Santa Maria commenced operation as a partnership of Harrison and Shepherd.

In May 1967, Global Van Lines informed Harrison that it wanted primary representation by him. In order to comply, Harrison started Harrison Van as an individual proprietorship.

Early in 1967, Coast Delivery lost two of its major accounts to outside companies, but, in May 1967, Harrison obtained another major carrier for Coast Delivery, despite the fact that he could have placed it with one of the two enterprises in which he had a financial interest (Santa Maria Van and Harrison Van). By 1968, both Coast Delivery and Western Transfer had lost all their domestic carriers. Harrison credibly testified that because of the bankrupt status of Stowell as the principal, if not sole, stockholder in Coast Delivery, it became impossible to obtain for it representation of any domestic carriers. As noted hereinabove, Western was part of the bankrupt estate of Stowell by the beginning of 1968. It appears that Coast Delivery, until the end of 1971, did do a minimal amount of business on behalf of overseas carriers. The payroll records of the four companies show that Western Transfer had no employees on its payroll after the second quarter of 1968 and Coast Delivery none after the fourth quarter of 1968.

It is concluded that Western Transfer commenced business in Santa Maria for the purpose of taking over part of the business of Coast Delivery and that it and Coast Delivery were commonly owned and managed. It is further concluded that neither Santa Maria Van nor Harrison Van was formed in order to take over any of the business of Coast Delivery but rather they were formed to assume new business which could not be undertaken by either Coast Delivery or Western Transfer. While all four were commonly managed, it is found that Stowell, who was the sole owner of Coast Delivery and Western Transfer, had no ownership interest in either Santa Maria Van or Harrison Van and that Harrison and his wife, Bridget, who owned Santa Maria Van and Harrison Van, had no ownership interest in either Coast Delivery or Western Transfer. It appears that the Harrisons were carried on the payroll of Coast Delivery, but not after 1967.

While there was a blurring of the distinction between Harrison, Harrison Van, and Western Transfer as evidenced by tax returns and between Harrison, Western Transfer, Coast Delivery, and Santa Maria Van as evidenced by insurance coverage, the Trial Examiner is of the opinion that the evidence with regard thereto is not sufficient to establish that Harrison was operating all four enterprises as a single enterprise in the context of all the circumstances.

The record establishes that all four enterprises used the same office space, that the small office force serviced all four businesses, that to a large extent they divided the warehouse space between them, that to a large extent they shared the supplies and equipment, and that to a considerable extent they used the same working personnel. It appears, however, that each enterprise maintained separate books and separate payrolls and that the expenses of operating were allocated among the four enterprises. As to working personnel, separate timecards were maintained for them. It further appears that at times one or another of the enterprises paid out money for the others, but it also appears an accounting was kept on such advances and reflected in each of the books by way of credits and debits.

Coast Delivery had little in the way of physical assets and they were of negligible value. The only physical assets of some value owned by any of the enterprises consisted of a few trucks which to some extent were used by other of the enterprises. Also, to some extent they shared leased transportation equipment.

As aforesaid, it appears that to a considerable extent the four enterprises utilized a common pool of working personnel but maintained separate timecards. For example, an individual employee might work for two or more enterprises during the same day, but he was required to distribute the hours worked on the timecard maintained by each of the enterprises.

During the year 1967, the names of a total of 40 men appeared on the payrolls of the four enterprises. Of the 27 who appeared on the payroll of Coast Delivery, 15 of them also appeared on the payroll of Santa Maria Van or Harrison Van or both. It is noted that in the original proceeding it was found that, on August 17, 1967, seven employees of Coast Delivery constituted an appropriate bargaining unit; four of the seven are the discriminatees for whom backpay is sought in this proceeding. Of these four, Frank Vasquez, Sr., worked for all four enterprises in the second and third quarters of 1967. Manuel Vasquez, Jr., worked for Coast Delivery in the second and third quarters, for Western Transfer in the third quarter, for Santa Maria Van in the third quarter, and for Harrison Van in the third quarter. Ted Searle worked for Coast Delivery in the second and third quarters, Western Transfer in the second and third quarters, Santa Maria Van in the third quarter, and Harrison Van in the second and third quarters. Salvador Casillas worked for Coast Delivery in the third quarter, Western Transfer in the third quarter, and Harrison Van in the third quarter, but apparently never worked for Santa Maria Van. At the time of the issuance of the complaint and the hearing in the original proceeding, the General Counsel knew, or should have known of, many of the facts upon which he relies to sustain his contention with respect to derivative liability, particularly the employment of the discriminatees by the other Respondents herein besides Coast Delivery. Nevertheless, the General Counsel is not estopped from litigating the relationship between the four Respondents in this supplemental proceeding, even though said additional parties to this proceeding might well have been made Respondents in the original proceeding.

It is concluded that derivative liability should be imposed on Western Transfer. It and Coast Delivery were, in effect, commonly owned and Western Transfer started operations in Santa Maria as a device to circumvent the military regulations that no single agency could represent more than three domestic carriers. Consequently, in all of the circumstances, it appears appropriate to find that Western Transfer was the *alter ego* of Coast Delivery during the period it operated in Santa Maria.[6]

On the other hand, it is concluded that, in all of the circumstances, derivative liability cannot appropriately be imposed on Santa Maria and Harrison Van or either of them. It is apparent that in 1968, Western Transfer and, shortly thereafter, Coast Delivery were virtually forced out of doing business because of the bankruptcy of Stowell, and that after 1968, Coast Delivery did a negligible amount of business because of its financial status. There was no degree of common ownership between Santa Maria Van and Harrison Van, on the one hand, and either of the two enterprises Coast Delivery and Western Transfer, on the other hand. The record will not support a finding that Harrison operated all four enterprises as a single enterprise of his own. Profits of Coast Delivery and Western Transfer, if any, would have accrued to the bankrupt estate of Stowell. There were good business reasons for the establishment of Santa Maria Van and Harrison Van and there is no basis for finding that in forming or operating the said two enterprises there was any depletion or diversion of the assets of Coast Delivery or of its clients or attempt to accomplish such results.[7] There is no evidence that there was fraud, concealment, or purpose to defeat backpay by the establishment of Santa Maria Van and Harrison Van or through their operations. While the interrelationship between the four enterprises does lend color to the contention of the General Counsel, it is found that said interrelationship was not sufficiently close as to make appropriate the imposition of derivative liability on Santa Maria Van and Harrison Van. The fact that Harrison served as an officer or manager of all four enterprises does not furnish a basis for imposing liability upon him individually for the backpay obligation of Coast Delivery and its *alter ego* Western Transfer. *Riley Aeronautics Corporation,* 178 NLRB 495, 501.[8]

B. *The Backpay Computation*

One of the principal problems which must be resolved in determining the amount of backpay due the discriminatees is that of establishing their appropriate average weekly earnings. The backpay specification computes the average weekly earnings on the basis of what each of the discriminatees earned during the third quarter of 1967 not only from Coast Delivery but also from the other enterprises made Respondents to this supplemental proceeding. As noted hereinabove, all of the discriminatees except Casillas worked for all four enterprises during said quarter. Casillas worked for Coast Delivery, Western Transfer, and Harrison Van but did not work for Santa Maria Van in said quarter of 1967 (or apparently at any other time). It appears that as a result of their discriminatory discharges from the employ of Coast Delivery they were also deprived of earnings they would have received from the aforesaid three other enterprises which utilized their services while they were in the employ of Coast Delivery.[9]

[6] As to the lack of service upon the trustee in the bankruptcy of Stowell, it is noted that the claim against his bankrupt estate must be filed in the bankruptcy proceeding, and, in any event, Harrison, who ostensibly was managing Western Transfer for the trustee, was served

[7] There is no basis for finding that the few carriers which transferred their business to Harrison's enterprises were prompted to do so by anything but business necessity

[8] In his brief General Counsel renewed his motion to amend the backpay specification to name Harrison individually liable which motion is hereby again denied.

[9] While it is possible that in discharging the four discriminatees, Harrison also discriminatorily discharged them from employment with the

(Continued)

Therefore, it appears appropriate that, in order to make said discriminatees whole, their average earnings should be computed on the basis of what they earned in the third quarter of 1967 not only from Coast Delivery but also from the other three enterprises.

Further, there is the problem of when, if at all, the backpay period should be terminated. It appears that Coast Delivery had no employees after the end of 1968. Consequently, it is concluded that the cutoff date for backpay should be at the end of the fourth quarter of 1968.[10] It does not appear to be appropriate to speculate whether the aforesaid discriminatees would have been employed by Santa Maria Van and Harrison Van after the fourth quarter of 1968 had they not been discriminatorily discharged by Coast Delivery (apparently their primary employer in view of the findings in the original proceeding).

It is concluded that the average weekly earnings for each discriminatee is correctly set forth in the backpay specification as follows:

	Earnings in 3d Calendar Qtr. '67	No. Weeks Worked in 3d Calendar Qtr. '67	Weekly Average
Frank Vasquez, Sr.	$2,200.00	12	$183.33
Manuel Vasquez, Jr.	$1,275.60	12	$106.30
Salvador Casillas	$1,423.97	11	$129.45
Ted Searle	$1,112.26	12	$92.70

Before computing the backpay due the discriminatees, it is noted that two matters were raised by Respondents with respect to the appropriateness of the computation of the backpay due each of the discriminatees. There is evidence that for varying periods at least three of the discriminatees were paid "strike benefits" or "out of work benefits" at the rate of $25 per week. Respondents contend that such payments should be treated as interim earnings. It does not appear that said benefits were paid to the discriminatees for services performed for the Union. There is no showing that there is any relationship between the amounts paid them and the number of hours which discriminatees might have spent picketing. The uniform amount of $25 per week indicates that it was not related to hours of "work" performed. Consequently, it is concluded that said sums should not be considered as interim earnings. *Rice Lake Creamery Company,* 151 NLRB 1113, 1131; *Lozano Enterprises,* 152 NLRB 258, 260; *Florence Printing Company,* 158 NLRB 775, 777.

In their brief, Respondents state that the backpay specification indicates that, with respect to all four discriminatees, union dues were charged as expenses and that the three discriminatees who testified at the hearing testified that union dues were included as part of their expenses. An examination of the backpay specification does not reveal a basis for concluding that union dues were included among their expenses and the record fails to reveal that the discriminatees testified as Respondents claim.

Following is the computation of the backpay due to each of the discriminatees during the period from the date of his discharge to the aforemention cutoff date, the end of the fourth quarter of 1968:

Manuel Vasquez, Jr.: As stated above, it is found that his average weekly earnings were $106.30. Based upon said finding, the above conclusions, and the record, the backpay due to him for the period between his discharge and the date of cutoff (as of the end of the fourth quarter of 1968) is found to be as follows:

Calendar Qtr.	Gross Backpay	Exps.	Interim Earnings	Net Earnings	Net Backpay
4th/67	$1,275.60	$50	$ 0	-$ 50.00	$1,325.60
1st/68	1,381.90	75	647.65	572.65	809.25
Remaining qtrs. of 1968 Net Earnings exceeded Gross Backpay					0
			Total Backpay		$2,134.85

Salvador Casillas: As stated above, it is found that his average weekly earnings were $129.45. Based upon said finding, the above conclusions, and the record, the backpay due to him for the period between his discharge and the date of cutoff (as of the end of the fourth quarter of 1968) is found to be as follows:

Calendar Qtr.	Gross Backpay	Exps.	Interim Earnings	Net Earnings	Net Backpay
3d/67	$ 258.90	$20	$ 88.75	$ 68.75	$ 190.15
4th/67	1,682.85	50	70.00	20.00	1662.85
1st/68	1,682.85	50	1,389.87	1,339.87	342.98
2d/68	Net Earnings exceeded Gross Backpay				0
3d/68	Net Earnings exceeded Gross Backpay				0
4th/68	1,682.85	100	1,600.41	1,500.41	182.44
			Total Backpay		$2,378.42

Frank Vasquez, Sr.: As stated above, it is found that his average weekly earnings were $183.33. Based upon said finding, the above conclusions, and the record, the backpay due to him for the period between his discharge and the date of cutoff (as of the end of the fourth quarter of 1968) is found to be as follows:

Calendar Qtr.	Gross Backpay	Exps.	Interim Earnings	Net Earnings	Net Backpay
3d/67	$ 183.33	$10	0	-$ 10.00	$ 193.33
4th/67	2,383.29	50	0	- 50.00	2,433.29
1st/68	2,383.29	50	769.13	719.13	1,664.16
2d/68	2,383.29	50	1,509.34	1,459.34	923.95
3d/68	2,383.29	50	2,361.62	2,311.52	71.67
4th/68	2,383.29	50	2,343.72	2,293.72	89.57
			Total Backpay		$5,375.97

Ted Searle: As stated above, it is found that his average weekly earnings were $92.70. General Counsel did not

other enterprises in this proceeding, such a finding should have been made in the unfair labor practice proceeding (The 10(b) period expired long before the backpay specification was issued.). It is not appropriate in this supplemental proceeding to make a finding that the other three enterprises also committed a violation of Sec. 8(a)(3) and (1) of the Act at the time the discriminatees were discharged in 1967 Any liability which can be imposed upon them in this proceeding must be based on their relationship to Coast Delivery, not on their conduct with respect to the discharges.

[10] At that time it appears that Coast Delivery virtually ceased operating for nondiscriminatory reasons and the discriminatees would, therefore, have lost their employment with Coast Delivery at that time for lawful reasons *Riley Aeronautics Corporation, supra* at 500.

produce Searle at the hearing due apparently to his inability to find Searle. Thus, General Counsel could not examine him as to his interim expenses and Respondents did not have the opportunity to examine him with respect to his interim earnings. However, Respondents did have records from an interim employer which were received in evidence.[11] In view of the fact that the amount of Searle's interim earnings and expenses cannot be determined at this time, the net backpay due him is labeled as "tentative" in the computation hereinbelow. Based upon the above finding of his average weekly earnings, the above conclusions, and the record, the tentative backpay due to him for the period between his discharge and the date of cutoff (as of the end of the fourth quarter of 1968) is found to be as follows:

Qtr.	Gross Backpay	Interim Earnings	Tentative Net Backpay
3d/67	$ 92.70	$ - - -	$ 92.70
4th/67	1,205.10	- - -	1,205.10
1st/68	1,205.10	- - -	1,205.10
2d/68	1,205.10	111.00	1,094.10
3d/68	1,205.10	1,765.50	- - -
4th/68	1,205.10	1,229.01	- - -
Tentative Total Backpay			$3,597.00

It will be recommended that Respondents, Coast Delivery Service, Inc. and Western Transfer & Storage, be ordered jointly and severally to pay to the Regional Director for Region 31 the above amount of tentative backpay ($3,597) to be held in escrow for a period not exceeding 1 year from the date of this Supplemental Decision and Order.[12] It is further recommended that the Regional Director be instructed to make suitable arrangements to afford the aforesaid Respondents together with the General Counsel's representative an opportunity to examine Searle and any other witnesses with relevant testimony and to introduce any relevant and material evidence bearing on the amount of backpay due to Searle. It is further recommended that the Regional Director make a final determination whether any interim earnings or other amounts in excess of those shown here or any other factors are revealed which may alter the amount of backpay due under existing Board precedent. In the event the Regional Director determines that deductions are warranted, it is recommended that the amount so deducted be returned to the Respondent or Respondents who have deposited money in escrow. In addition, it is recommended that the Regional Director, when this matter has been finally resolved, promptly and no later than one year from the date of this Supplemental Decision and Order report to the Board the status of this matter.

In view of the above findings and conclusions that derivative liability cannot appropriately be imposed upon Santa Maria Van & Storage, Inc. and Harrison Van & Storage, Inc., it will be recommended that the backpay specification be dismissed as to these said two parties.

Upon the foregoing findings of fact, conclusions of law, and upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:[13]

SUPPLEMENTAL ORDER

Respondents, Coast Delivery Service, Inc. and Western Transfer & Storage, their officers, agents, successors, and assigns, shall:

(1) Jointly and severally pay to the three discriminatees named hereinbelow as net backpay the amounts set forth below:

Manuel Vasquez, Jr.	$2,134.85
Salvador Casillas	$2,378.42
Frank Vasquez, Sr.	$5,375.97

(2) Jointly and severally pay to the Regional Director for Region 31 $3,597, the tentative amount of backpay found to be due Ted Searle, to be held by him in escrow pursuant to the recommendations set forth hereinabove.

(3) In addition to the above amounts, pay interest at the rate of 6 percent per annum computed on the basis of each quarterly amount of net backpay due less any tax withholding required by law.

The backpay specification should be, and is hereby, dismissed against Santa Maria Van & Storage, Inc. and Harrison Van & Storage, Inc.

[11] Although General Counsel conceded the records to be authentic, he objected to their receipt in evidence because Searle was not present to testify with respect to his interim expenses for the quarters involved The Trial Examiner ruled that this was not a sufficient reason to exclude the aforesaid evidence of interim earnings *Steve Aloi Ford, Inc*, 190 NLRB No 131

[12] *Steve Aloi Ford, Inc*, *supra*

[13] In the event no exceptions are filed as provided by Sec 102 46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Supplemental Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Supplemental Order, and all objections thereto shall be deemed waived for all purposes.