

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

PESSOA CONSTRUCTION COMPANY

and

LABORERS' INTERNATIONAL UNION
OF NORTH AMERICA

Cases 05-CA-034547
05-CA-034761
05-CA-035083

Chad M. Horton and Theresa A. Lenz, Esqs.,
for the General Counsel.

Michael Avakian, Esq.,
for the Respondent.

ERRATA

On January 7, 2014, the General Counsel e-filed a motion for erratum to my December 24, 2013 supplemental decision in the case captioned above. (The General Counsel also served courtesy copies of the motion on me and counsel for Respondent by email.) In its motion, the General Counsel maintained that my supplemental decision contains two inadvertent mathematical errors that require correction because the errors affect the total net backpay that Respondent owes to discriminatee William Membrino (Membrino). Specifically, in the supplemental decision, I inadvertently: converted 24 work days into 5.8 weeks (instead of 4.8 weeks) in footnote 49, and used the erroneous calculation to determine Membrino's gross backpay, interim earnings and net backpay for the third quarter of 2010; and converted 23 work days into 5.6 weeks (instead of 4.6 weeks) in footnote 51, and used the erroneous calculation to determine Membrino's gross backpay, interim earnings and net backpay for the second quarter of 2011. Respondent opposed the General Counsel's motion for erratum in a pleading filed on January 24, 2014.

After reviewing the parties' pleadings, I agree with the General Counsel that I should issue errata, albeit with recalculations that differ from those that the General Counsel proposed in its motion.¹ Accordingly, I hereby make the following corrections to my December 24, 2013 supplemental decision in this case:

Page 31, line 18: "\$94,554.63" is corrected to "\$95,046.07"

Page 32: The chart entries for the third quarter of 2010 (along with corresponding footnote 49), the second quarter of 2011 (along with corresponding footnote 51), and total net backpay are corrected to:

Year	Calendar Quarter	Regular Hours	Overtime Hours	Gross Backpay	Interim Earnings	Net Backpay
2010	3	280.4	38.5	\$7,439.30	\$5,257.46	\$2,181.84 ⁴⁹

¹ Respondent presented the following four arguments in opposing the General Counsel's motion: (a) that I lack jurisdiction to issue the errata because this case has been transferred to the Board; (b) the General Counsel improperly submitted its motion to me by email instead of filing its motion on the record; (c) the General Counsel improperly requests that I issue an erratum to make a substantive change to my decision; and (d) the changes that the General Counsel requested are contrary to the evidentiary record.

Respondent's first three arguments lack merit. The General Counsel duly e-filed its motion for erratum on January 7, 2014, and copied both me and Respondent when it served courtesy copies of its motion by email. There was nothing improper about the method that the General Counsel used to submit its motion for erratum. As for my authority to issue these errata, the Board has held that under Sections 102.35 and 102.45 of the Board's Rules and Regulations, "an administrative law judge is authorized to issue post-decisional errata to correct material typographical errors, but not to change matters of substance, such as findings on the merits." *Wilco Business Forms*, 280 NLRB 1336, 1336 fn. 2 (1986). The errata that I issue here are well within the Board's parameters. Indeed, I make no changes to my finding that the backpay period should be tolled 24 days for the third quarter of 2010, and tolled 23 days for the second quarter of 2011, and I make no changes to the formulae that I used to calculate regular and overtime hours (after tolling), gross backpay and net backpay. See *Pessoa Construction Co.*, Case 05-CA-034547, slip op. at 31-32 & fn. 47-48 (2013). Instead, I only correct the material typographical errors that I made in converting the tolling period from days into weeks (as noted above).

With that stated, I do agree with Respondent that the General Counsel's proposed recalculations of backpay are inconsistent with my supplemental decision. In my supplemental decision, I used the following formula to calculate gross backpay for each calendar quarter: (number of regular hours worked x \$22) + (number of overtime hours worked x \$33) = gross backpay. See *Pessoa Construction Co.*, Case 05-CA-034547, slip op. at 32 fn. 48 (2013). The General Counsel used the following formula for its proposed recalculations of gross backpay: (\$11,797.50)(number of weeks worked/13 weeks). Since the General Counsel's formula for gross backpay differs from the formula that I used in my supplemental decision and produces different gross backpay figures, I have not accepted the General Counsel's proposed recalculations. Instead, I used the same formula that I used in my supplemental decision to arrive at the revised calculations reflected in the errata.

⁴⁹ I deducted 24 days (4.8 weeks) from the third quarter of 2010 because the backpay period was tolled in that quarter from August 30 to September 30, 2010. Interim earnings for that quarter were prorated at an 8.2 week/13 week ratio to avoid giving Respondent an unwarranted offset for interim earnings that accrued while the backpay period was tolled.

Year	Calendar Quarter	Regular Hours	Overtime Hours	Gross Backpay	Interim Earnings	Net Backpay
2011	2	287.3	39.5	\$7,624.10	\$5,518.15	\$2,105.95 ⁵¹
Total Net Backpay						\$95,046.07

Page 33, line 10: “\$94,554.63” is corrected to “\$95,046.07”

Dated, Washington, D.C. January 28, 2014

GEOFFREY CARTER
Administrative Law Judge

⁵¹ I deducted 23 days (4.6 weeks) from the second quarter of 2011 because the backpay period was tolled in that quarter from May 31 to June 30, 2011. Interim earnings for that quarter were prorated at an 8.4 week/13 week ratio.